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Is the Democratic Space Shrinking? – Human Rights Implementation in Viet Nam

A Case Study of the Democratic Space for Civil Society
in Viet Nam

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Abstract

The democratic space for civil society has become a topic of significant international debate. Particular concern has been raised toward a worsened situation for human rights defenders and civil society organisations. This thesis aims to gain further understanding of the phenomenon *democratic space* by examining the situation for human rights defenders and civil society organisations in Viet Nam. This qualitative case study examines the freedom of speech, freedom of expression and opinion, and the freedom of peaceful assembly and association for human rights defenders and civil society organisations through the method of semi-structured interviews. To gain deeper understanding of the current situation in Viet Nam, this study puts forward the question of whether the democratic space can be said to be expanding or shrinking in this context and if this has an effect on human rights implementation.

The collected material revealed an opinion amongst interview respondents that human rights and economic growth have developed at different paces in Viet Nam. The democratic space for civil society has in large expanded during the past twenty years, but is of late revealing restrictions for human rights defenders and civil society organisations working to protect and promote human rights. Respondents expressed optimism toward the widening of democratic space in the long-term, but remained uncertain of the development of human rights implementation in the near future.

Keywords: Democratic space, human rights, shrinking space, UDHR, freedom of speech, expression, peaceful assembly and association, human rights defender, civil society, Vietnam.

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Pearl Mulkerrins

Uppsala, 21 May 2018.

List of Abbreviations

CSO	Civil society organisation
HRD	Human rights defender
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDEA	International Institute for Democracy and Electoral Assistance
INGO	International non-governmental organisation
NGO	Non-governmental organisation
UDHR	UN Universal Declaration of Human Rights
UI	Utrikespolitiska Institutet/ The Swedish Institute for International Affairs
UPR	Universal Periodic Review
VNGO	Vietnamese non-governmental organisation
VUSTA	Vietnam Union of Science and Technology Associations

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Excerpts

”Despite the considerable progress made in the past 70 years, the words of the Universal Declaration of Human Rights are not yet matched by facts on the ground. We must make human rights a reality for everyone.”¹

UN Secretary-General António Guterres, 26 February 2018

“The Declaration is as valid as it was at the time of its adoption and sadly, we are far from the full respect of these commitments all over the world. Rights and freedoms are still being challenged and the space for civil society is shrinking in many countries throughout the world.”²

Head of EU Delegation to the UN, Peter Sorensen, 23 February 2018

¹ A. Guterres, *Twitter*, (website), 2018, <https://twitter.com/antonioguterres/status/968168119985475586>, (accessed 27 March 2018).

² Delegation of the European Union to Vietnam, *EU priorities for the 37th session of the Human Rights Council*, (website), 2018, <https://eeas.europa.eu/delegations/vietnam/40333/eu-priorities-> (accessed 27 March 2018).

1. Introduction

The Universal Declaration of Human Rights states that human rights are *equal*, *inalienable* and *universal*³. However, despite this statement the full enjoyment of human rights for all is not being met. The term *human rights* itself derives from the French “droits de l’homme” and literally means the rights pertained simply because one is human.⁴ In spite of the Universal Declaration’s wide acclamation, human rights are recognised and implemented to varying extents in different countries and regions of the world.⁵ Several human rights doctrines have been established since 1948, revealing national instruments that provide a lower level of protection for the full enjoyment of human rights than the Declaration recommends.⁶ In theory human rights are universally safeguarded, however the reported variations in human rights implementation across the world suggests that this coverage varies in practice.

The lack in consensus of how human rights should be implemented can cause some tension both amongst and within states. This tension can be better understood by studying the many theoretical approaches to human rights implementation, especially the *Universalist* and *cultural relativist* approaches. To give an initial understanding of these contrasting perspectives, a Universalist approach builds largely on the notion of inherent human dignity, that is, “the special moral worth and status had by a human being”⁷ and reaffirms fundamental human rights through the implementation of the Declaration.⁸ A cultural relativist approach however, stresses the importance of cultural variations, giving greater allowance for religious and cultural interpretations in human rights implementation.⁹ Closely associated with cultural relativist critique of universalism is the notion of “western” and “non-western values”, with the former said to be dominating international human rights conventions today. In this sense, some regard cultural relativism as “a shield” toward an enforcement of

³ Universal Declaration of Human Rights (preamble), 1948.

⁴ J. Donnelly, *Universal Human Rights- In theory and practice*, 3rd edn., Cornell University Press, 2013, p. 7.

⁵ O. Bring, *De mänskliga rättigheternas väg- genom historien och litteraturen*, Atlantis, Stockholm, 2011, p. 595.

⁶ *ibid.*, p. 595.

⁷ M. J. Meyer, *Dignity as a (Modern) Virtue*, in *The Concept of Human Dignity in Human Rights Discourse*, The Hague: Kluwer Law International, 2002, pp. 196-197, cited in J. Donnelly, *Universal Human Rights: In theory and practice*, 2013, p. 129.

⁸ Donnelly, *op. cit.*, pp. 24-25.

⁹ Bring, *op. cit.*, p. 595.

“western hegemonic values” upon other cultures, vis-à-vis a Universalist approach.¹⁰ In contrast to this, a Universalist approach suggests that every state is obligated to implement and safeguard the full enjoyment of human rights for all cultures¹¹ and questions cultural traditions and interpretations that challenge the idea of equality and human dignity.¹² Thus, these two approaches differ in their schools of thought, resulting in some tension. To clarify, the differences between the above-mentioned approaches to human rights will constitute the broader theoretical entry point to this study.

The full implementation of human rights is largely dependent on functioning governance and democratic participation. Therefore, this qualitative study will further examine the topic of *democratic space* and the contemporary human rights issue known as shrinking democratic space. Shrinking democratic space is a phenomenon that has accelerated in recent years and can be described as “the implementation of restrictive laws that limit the operations of civil society” often as a process of power consolidation.¹³ Shrinking democratic space is part of a general authoritarian pushback against democracy and is intensifying in both democratic and non-democratic countries, a process often referred to as *democratic backsliding*.¹⁴ Established democracy and human rights indicators report that general democratic development in the world has started to decline, with many countries revealing a negative trend of power deconsolidation.¹⁵ Although it is not a new phenomenon, shrinking democratic space has deepened in recent years resulting in an infringement on human rights and in a repressive media climate in many parts of the world.¹⁶ Threatened in particular are the right to freedom of speech and the freedom of opinion and expression. These human rights are fundamental for democratic participation and often signal a limit of several human rights and freedoms in a country.

Not only has shrinking democratic space become a global challenge for human rights implementation but it has also been described as “a crusade against human

¹⁰ Bring, op. cit., p. 595.

¹¹ Donnelly, op. cit., p. 39.

¹² Bring, op. cit., p. 595.

¹³ European Parliament, ‘Shrinking space for civil society: the EU response’, *Directorate-General for External Policies*, 2017, p. 5.

¹⁴ *ibid.*, p. 5.

¹⁵ International IDEA, *Overview: The Global State of Democracy: Exploring Democracy's Resilience*, Sweden, International Institute for Democracy and Electoral Assistance, 2017, p. v.

¹⁶ Government Offices of Sweden, ‘Human rights, democracy and the principles of the rule of law in Swedish foreign policy’, *Government Communication 2016/17:62*, Elanders, 2017, p. 25.

rights defenders”.¹⁷ International human rights organisations and reports indicate that many states today are impeding the work of human rights defenders and restricting the space for civil society.¹⁸ As the Declaration on human rights defenders indicates, the role of human rights defenders and civil society actors are central to maintaining a vibrant and pluralistic civil society that enables political participation and decision-making.¹⁹ Therefore, democratic space and whether it is shrinking for human rights defenders and civil society is a highly topical human rights issue that compels further research.

1.1 Aim

This thesis aims to gain further understanding of the phenomenon *democratic space* by examining and questioning whether the democratic space is shrinking or not for civil society. More specifically, this thesis aims to study the democratic space for human rights defenders and civil society organisations that actively promote and advocate for human rights. While shrinking democratic space has become a global trend, it exhibits different characteristics and effects across different countries.²⁰ To further specify and narrow down the scope, the chosen case study is of civil society in Viet Nam. By studying the current work and challenges for human rights defenders and civil society organisations this study can gain situated knowledge of the current state for human rights and the development of democracy in Viet Nam.

This study will also gain empirical knowledge of the situation for human rights defenders and civil society organisations in a country where restrictions occur to the *freedom of speech, freedom of opinion and expression, and the freedom of peaceful assembly and association*, all of which are protected by the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, among others.²¹ By studying the democratic space for civil society and whether it is shrinking or expanding, this study can contribute to international human rights research and the understanding of human rights implementation in this case.

¹⁷ European Parliament, op. cit., p. 5.

¹⁸ Government Offices of Sweden, op. cit., p. 25.

¹⁹ The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1984.

²⁰ European Parliament, op. cit., p. 5.

²¹ M. C. Davis, 'Strengthening Constitutionalism in Asia', *Journal of Democracy*, vol. 28, no. 4, October 2017, pp. 148-149.

It should be noted that this study does not intend to assume or proclaim that Viet Nam is de facto a country experiencing shrinking democratic space but rather aims to further study the situation and chosen phenomenon in the Vietnamese context.

1.2 Research Questions

To operationalize and carry out the aim of this thesis, the following research question is posed: *To what extent is the democratic space for civil society expanding or shrinking in Viet Nam and what is the effect for the full implementation of human rights for all?*

To further examine the democratic space for civil society in Viet Nam and successfully answer the research question, the following sub-questions will examine the current situation for central actors to Vietnamese civil society: human rights defenders and civil society organisations. Together, these sub-questions will allow for a holistic approach to the topic of democratic space, while maintaining a qualitative nature.

- What is the current democratic space for human rights defenders in Viet Nam?
- To what extent do human rights defenders in Viet Nam experience restrictions to their freedom of speech, freedom of opinion and expression, and freedom of peaceful assembly and association?
- What is the current democratic space for civil society organisations in Viet Nam?
- To what extent do civil society organisations in Viet Nam experience restrictions to their freedom of speech, freedom of opinion and expression, and freedom of peaceful assembly and association?

The definition of civil society in Viet Nam is heavily disputed, as it is comprised of many different actors. Therefore, in order to study the democratic space for civil society it is important to narrow down and select actors that are central for civil society. Thus, two categories have been selected on the basis of their relevance for the research question: human rights defenders and civil society organisations. These two categories

include persons who actively work within civil society to promote and advocate human rights in Viet Nam. The term *human rights defender* refers to people who work non-violently to promote and protect any or all of the human rights enshrined in the Universal Declaration of Human Rights in Viet Nam. *Civil society organisation* refers to Vietnamese and international organisations that work to promote and protect the full implementation of human rights in Viet Nam. These two categories are considered central to civil society in Viet Nam as they work at a grassroots level and together produce situated knowledge of the current democratic space for civil society and its development.

1.3 Case Selection

Viet Nam is a post-conflict country that has transitioned from a turbulent history of civil war and colonialism, to become an independent state with one of the world's quickest accelerating economies.²² The great economic development in Viet Nam has seen expansion of businesses and markets, while restrictions remain on many human rights and freedoms.²³ Situated in Southeast Asia, Viet Nam borders several states that are exhibiting human rights restrictions and tight control over civil society. Given the surrounding context, the question is raised of whether similar restrictions apply to the current situation for human rights and civil society in Viet Nam.²⁴ Little previous research can be found on the topic of democratic space in the Vietnamese context, which elicits further research in this area. This choice of case study can therefore give knowledge of the situation for human rights implementation in a developing country that can be compared to similar cases in the future and contribute to a greater understanding of the phenomenon democratic space.

²² Utrikespolitiska institutet, *Asien*, (website) <https://www.ui.se/landguiden/lander-och-omraden/asien/vietnam/oversikt/>, (accessed 10 February 2018).

²³ Regeringskansliet, Utrikesdepartementet, *Mänskliga rättigheter, demokrati och rättsstatens principer i Vietnam 2015-2016*, Sweden, 2017, pp. 1-2.

²⁴ Utrikespolitiska institutet, *Aktuell politik*, (website), <https://www.ui.se/landguiden/lander-och-omraden/asien/vietnam/aktuell-politik2/>, (accessed 10 February 2018).

1.4 Delimitations

To successfully carry out and narrow down this study, some deliberate delimitation has been made. To begin with, this study does not claim to assume that the democratic space in Viet Nam is de facto shrinking, but wishes to examine *if* and *how* the democratic space is expanding or shrinking in Viet Nam, specifically for civil society organisations and human rights defenders. Subsequently, this study looks at the effects of this phenomenon in the chosen environment and attempts to connect situated knowledge to the larger research area of human rights implementation. To ensure that no leading questions were posed or that interview respondents were intentionally affected, any contact with interview persons either prior to- or during- interviews, referred only to “democratic space” and did not specify whether it was perceived to be shrinking or expanding. Avoiding these adjectives and avoiding the use of leading questions minimizes the potential researcher-bias in this thesis.

Furthermore, this case study takes place predominantly in the capital city of Hanoi. The reason for this choice is that many civil society organisations and human rights defenders are located in Hanoi, which facilitates interviews. Moreover, key actors to this study were the Swedish Embassy and the European Delegation to Viet Nam, both of which are based in Hanoi. These actors provided contextual information and acted as gatekeepers to relevant interview respondents. The sensitive nature of the topic of human rights and democratic space played a part in the decision to base this study in Hanoi. Although Ho Chi Minh City is the largest, these topics are more difficultly discussed in this region. The great distance between these cities, located in the North and the South respectively, meant that travels between them could not take place on a regular a basis. The choice of one city also facilitated the chosen convenience sampling method of snowball sampling. This method was most easily carried out in the population dense capital city, where many human rights defenders and civil society organisations work. Although this study does not limit itself solely to human rights defenders and civil society organisations based in Hanoi, the choice of location has been instrumental to this study. Also, given the time frame of this study and the intention to conduct face-to-face interviews, the choice of location for this study was of a practical and strategic nature.

Even though the geographical spread of interview respondents is limited, it does also contribute to the qualitative nature of this study as it gives in-depth

knowledge of the situation in a central area of Viet Nam. This delimitation has been accounted for by choosing more than one category of interview respondent, so as to capture more than one perspective in this chosen case.

Moreover, the chosen target respondent group is not an exhaustive list of all human rights defenders in Viet Nam, but rather a selected portion. The main reason for this being that not all human rights defenders can be contacted, for instance those currently in detention or abroad. This selectivity in respondents does however give greater time allowance to collect in-depth information from respondents about their experiences.

1.5 Outline

This thesis is divided into a total of seven chapters. Chapter 1 provides an introduction, defining the intention and scope of study. Chapter 2 gives background and context to the chosen case study. Chapter 3 presents the theoretical framework, including theoretical approaches to human rights implementation and previous research. Chapter 4 describes the methods used for material collection. Chapter 5 presents the interview results thematically. Chapter 6 is an analysis and discussion of the empirical material in relation to the theoretical framework. Chapter 7 contains concluding remarks.

2. Background

By examining the historical and political background in Viet Nam one can better understand how the democratic space has originated and developed. The following background information has been collected from human rights reports that cover a twenty-year period of time. This time period is deemed adequate to understand the development of democratic space. Furthermore, the most recent UN Universal Periodic Review in Viet Nam is presented from national, international and civil society actors.

2.1 Human Rights Reports

Located in Southeast Asia, Viet Nam has a current population of over 96 million people and ranks as the 15th most populous country in the world.²⁵ Viet Nam is a one-party state and has a long tradition of being steered by the Communist Party of Viet Nam (Dang Cong San Viet) and is presently ranked as “not free” by Freedom House Index.²⁶ Political and civil rights in Viet Nam are also ranked as “least free”, whereupon opposing political candidates, including civil society activists, are prohibited from running in elections.²⁷ Freedom House reports that “the state controls all print and broadcast media, and authorities actively silence critical journalists and bloggers through arrest, prosecution, and other means of harassment” leading to the lowest ranking in general freedom.²⁸ A trend of democratic deconsolidation is reportedly emerging in Viet Nam and Asia, whereupon so-called “Asian values” are contrasted to a widespread norm of western liberal democracy.²⁹ Typically this means curtailed rights and liberties for citizens, weakened accountability and media oversight.³⁰ Situated in this context, current country reports from Viet Nam reveal a worsened situation for

²⁵ United Nations Department of Economic and Social Affairs: Population Division, ‘Viet Nam’, *World Populations Prospects 2017*, (website), <https://esa.un.org/unpd/wpp/DataSources/>, (accessed 28 February 2018).

²⁶ Freedom House Index, ‘Freedom in the World 2017: Vietnam’, *Freedom House Index*, (website), <https://freedomhouse.org/report/freedom-world/2017/vietnam>, (accessed 28 February 2018).

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ M. C. Davis, ‘Strengthening Constitutionalism in Asia’, *Journal of Democracy*, vol. 28, No. 4, October 2017, pp. 147-148.

³⁰ Davis, *op. cit.*, 147-148.

freedom of speech, internet-access, freedom of assembly and increased surveillance and reprimands for human rights defenders.³¹

The Swedish International Development Cooperation Agency, Sida, has had a longstanding relationship with Viet Nam through its official development assistance.³² During the 1970's the aid was mainly humanitarian, which progressed to cover other sectors such as healthcare, education, environment, government and civil society.³³ During 2013 Viet Nam was reclassified as a middle-income country and after more than 50 years the decision was made to cease development assistance. During this time period, Sida developed a working relation with Viet Nam and gathered vast information on their development during this time period. On the behalf of Sida, Bring et al reported on the situation for human rights and democracy in Viet Nam in 1998.³⁴ Although published twenty years ago, this report contributes to an understanding for the background situation during this time. Bring et al described a trying situation for Vietnamese media, where their primary purpose was described as “the realisation of the communist party and the governments politics”³⁵ as opposed to a free and independent media. Cemented by national law, a “good journalist” was described as having a “communist ethic”, preferably working to uncover actions described as bureaucracy and corruption.³⁶ Telephone lines and Internet connection were starting to establish themselves in Viet Nam during this time, increasing citizens access to information, challenging the status quo of state control and censorship.³⁷

Vietnamese newspapers found themselves in a state of quick development, whereupon traditional propaganda journalism became intertwined with modern forms of news- and entertainment journalism and dependency on state control loosened as income from advertisement increased.³⁸ Private ownership of outlets was not yet sanctioned.³⁹ Bring et al described how newspapers grew in quantity, approaching 600

³¹ Regeringskansliet, Utrikesdepartementet, *Mänskliga rättigheter, demokrati och rättsstatens principer i Vietnam 2015-2016*, Sweden, 2017, pp. 1-2.

³² J. Thaarup and S. Villadsen, 'Long Term Development Cooperation Between Vietnam and Sweden: Part 1: Documentation', Sida, UTV Working Paper 2010:12, July 2010, pp. 1-59.

³³ *ibid.*, p. 10.

³⁴ O. Bring and C. Gunnarsson, 'Vietnam: Demokrati och mänskliga rättigheter, En rapport på uppdrag av Sida', Utrikespolitiska Institutet, Research Report 30, 1998.

³⁵ *ibid.*, p. 19.

³⁶ *ibid.*, p. 19.

³⁷ *ibid.*, p. 19.

³⁸ *ibid.*, pp. 19-20.

³⁹ *ibid.*, p. 19.

outlets; possibly contributing to a democratisation process in Viet Nam.⁴⁰ This modernisation of journalism made news outlets more difficult to control and began to “open up” the media and also enlarging the private and civil space for citizens to question the information they were receiving.⁴¹ Critics however also reported that the freedom of press had become all the more pressurised globally, suggesting that democratic backsliding was imminent in Viet Nam.⁴² Control over newspaper content was still maintained through obligatory, weekly meetings between media owners and the governing party to “receive their directives”⁴³ on what may be published. Even international newspapers were censored and difficult to distribute within the country, especially those newspapers expressing critique toward the Vietnamese government.⁴⁴

The UN working group for arbitrary detentions stated at the time that the freedoms of speech, assembly, association and religious freedom had the largest discrepancy between Vietnamese law and actual practice.⁴⁵ Law regulating press and media in 1989 stipulated citizens rights to criticize the governing party, laws and to receive and spread information regarding national and international circumstances.⁴⁶ However, contradicting these freedoms, article 10 of the same press laws forbade the incitement of opposition toward the government or to “undermine the national unity”.⁴⁷ It was not uncommon that journalists were told to operate under the rule that they may publish what they wished as long as it was not critical of the governing party.⁴⁸

Furthermore, the report concluded that it was apparent that many parts of Vietnamese society wished to see democratic development and that society was showing signs of democratisation.⁴⁹ However, there was also a dilemma in that the governing communist party did not wish to engage in a “peaceful evolution”, but rather behold their power.⁵⁰ Bring et al described a Viet Nam that in 1998 was gradually becoming more open as a result of modernisation of media and Internet access, but that also began to subsume to democratic backsliding through a backlash of state control.

⁴⁰ Bring and Gunnarsson, op. cit., p. 21.

⁴¹ *ibid.*, p. 21.

⁴² *ibid.*, p. 21.

⁴³ *ibid.*, pp. 41-42.

⁴⁴ *ibid.*, p. 21.

⁴⁵ *ibid.*, p. 44.

⁴⁶ *ibid.*, p. 42.

⁴⁷ *ibid.*, p. 42.

⁴⁸ *ibid.*, p. 42.

⁴⁹ *ibid.*, p. 79.

⁵⁰ *ibid.*, p. 79.

Moving forward in time to 2018, the Swedish Institute of International Affairs (UI) has closely studied political norms and trends in the quickly expanding economic region of the world that is Southeast-Asia.⁵¹ Of particular interest today is the political system and norms in countries with quick economic development that have less Western influence, such as Viet Nam.⁵² Aspects of democracy, freedom of expression, Internet and civil society are described as central for internal development and also for international relations.⁵³ Viet Nam is recognised by UI as one of Asia's most authoritarian societies, with executive power centralised to the general secretary of the Communist Party, the president and the prime minister.⁵⁴

Taking a look outside of Scandinavia, Amnesty International regularly conducts country specific reports, giving an updated assessment on human rights development in the world. The most recent report conducted in Viet Nam reveals "severe restrictions on the rights to freedom of expression, of association and of peaceful assembly"⁵⁵. Amnesty described how judicial and extra-legal means were used to silence peaceful criticism of Vietnamese government policies and that there was extensive surveillance and harassment of human rights activists.⁵⁶ The report stated that attacks against human rights defenders were commonplace.⁵⁷ Amnesty indicated that those who exercise their freedom of speech; human rights defenders, human rights lawyers, bloggers and activists- are a particularly targeted and vulnerable group for routine beatings and incarceration.⁵⁸ The term "prisoner of conscience" reoccurs in the report and describes those peaceful activists who have been incarcerated on the grounds of "vaguely worded legislation"⁵⁹. Prisoners of conscience are reportedly submitted to torture and other ill treatment while in incarceration, including solitary confinement, beatings, punishment by electric shocks and withholding of medication.⁶⁰ Such

⁵¹ Utrikespolitiska institutet, *Asien*, (website), <https://www.ui.se/forskning/asien/>, (accessed 26 March 2018).

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ Utrikespolitiska institutet, *Landguiden: Politiskt system*, (website), <https://www.ui.se/landguiden/lander-och-omraden/asien/vietnam/politiskt-system/>, (accessed 26 March 2018).

⁵⁵ Amnesty International, *Viet Nam 2016/2017*, (website), <https://www.amnesty.org/en/countries/asia-and-the-pacific/viet-nam/report-viet-nam/>, (accessed 9 February 2018).

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

reprimands are reportedly also extended toward family members and spouses of human rights advocates.⁶¹

Human Rights Watch reported on the restrictions on freedom of assembly, association, and movement in Viet Nam.⁶² Independent political parties and human rights organisations are forbidden and authorities reportedly deny approval for public meetings, assemblies or marches.⁶³ HRW reports that local police force use intimidation to deter and prevent participation in protests or what is described as human rights discussions.⁶⁴ At the same time, economic development in Viet Nam has sped up, with predictions that Viet Nam will be among the top 20 biggest economies in terms of gross domestic product by 2025.⁶⁵ The question is raised whether human rights implementation will continue to develop at the same rate during this time. According to a recent report conducted by the Swedish Ministry for Foreign Affairs, the living standard has quickly increased for the Vietnamese population, as well as improvements for women and children's full enjoyment of human rights.⁶⁶ However, socio-economic gaps continue to grow and ethnic minorities and rural citizens have difficulty accessing full economic and social rights.⁶⁷ The World Bank reports that the transition from a planned to a market economy in Viet Nam has spurred great economic development during the past thirty years.⁶⁸ This economic development has seen Viet Nam transform from one of the world's poorest nations to a lower middle-income country.⁶⁹ Despite developments, poverty gains are described as fragile because a large portion of the population, significantly in rural areas, are at risk of falling back into poverty.⁷⁰ In 2014 the growth of the labour force was described as having slowed down, meanwhile labour productivity has decreased, affecting economic growth.⁷¹ In sum, this information gives background to the current situation and case being studied in this thesis from an international perspective.

⁶¹ Amnesty International, op. cit.

⁶² Human Rights Watch, 'Vietnam: Events of 2017', (website), <https://www.hrw.org/world-report/2018/country-chapters/vietnam>, (accessed 28 February 2018).

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ Price Waterhouse Coopers, 'Doing Business in Viet Nam: A reference guide for entering the Viet Nam market', 6th Edition, July 2017, p. 7.

⁶⁶ Regeringskansliet, op. cit., p. 2.

⁶⁷ *ibid.*, p. 2.

⁶⁸ The World Bank, 'Overview', *The World Bank in Vietnam*, (website), <http://www.worldbank.org/en/country/vietnam/overview>, (accessed 19 February 2018).

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

2.2 The Universal Periodic Review

The Universal Periodic Review has been conducted twice in Viet Nam. The second and most recent review took place on 5 February 2014.⁷² During the review, 106 delegations gave recommendations to Viet Nam.⁷³ The Vietnamese delegation received commendations for the country's process with the UN Millennium Development Goals and the intention of meeting the requirements to ratify the Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷⁴ Viet Nam was also commemorated for developments made in achieving the standards needed for the International Covenant on Economic, Social and Cultural Rights but many states also "noted the importance of freedom of expression and the roles of the media in socioeconomic development", suggesting the need for improvement in Viet Nam.⁷⁵

The delegation of Switzerland expressed concern about the restricted right to freedom of expression, peaceful assembly and association in Viet Nam, while Sweden noted an increased state control of Internet use and arrests of persons for exercising their rights to freedom of expression.⁷⁶ Similarly, Hungary explicitly expressed concern over the "prosecution of writers, journalists, bloggers and human rights defenders"⁷⁷ and increased restricting of the freedom of expression, while Poland expressed concern for the "situation of human rights defenders"⁷⁸ without specifying what that situation might be. The delegation of Ireland expressed concern about reported harassment and imprisonment of human rights defenders and increased surveillance of Internet use.⁷⁹ The UK and Northern Ireland gave recommendations, encouraging Viet Nam to "ensure that all citizens have the right to freedom of expression and assembly without fear of harassment or imprisonment"⁸⁰.

In response to these statements, the Vietnamese National Delegation commented that they were aware that the country faced challenges, stating that as a result of "wars, natural disasters, pandemics and climate change" the country faced

⁷² United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review', *Twenty-sixth session, Agenda Item 6*, 2 April 2014.

⁷³ *ibid.*, p. 5.

⁷⁴ *ibid.*, p. 13.

⁷⁵ *ibid.*, p. 5.

⁷⁶ *ibid.*, p. 6.

⁷⁷ *ibid.*, p. 6.

⁷⁸ *ibid.*, p. 5.

⁷⁹ *ibid.*, p. 12.

⁸⁰ *ibid.*, p. 7.

negative impacts of globalisation.⁸¹ Furthermore, the Vietnamese delegation stated that any restrictions on the exercise of the freedoms of expression and opinion were in conformity with the International Covenant on Civil and Political Rights and were intended to “protect public security, safety, order, health and morality, and to prevent the abuse of those freedoms to infringe legitimate rights and benefits or the dignity of other people and entities (...).”⁸²

During the 2014 review, an array of civil society organisations submitted shadow reports of Viet Nam’s progress with human rights. The INGO “CIVICUS” echoed concerns related to the freedom of association and restrictions on civil society activities, harassment and arbitrary detention of human rights defenders, concerns related to the freedom of expression, independence of the media and restrictions on access to information, and concerns regarding the freedom of assembly in Viet Nam.⁸³ When describing the situation for civil society in Viet Nam, CIVICUS stated the following: “The government has effectively prevented the creation of an independent civil society sector in the country”.⁸⁴ Furthermore, CIVICUS explained that the existing regulatory framework for civil society is severely stratified, fostering support for specific so-called “mass organisations” and government supported groups, while restricting activists or groups that are seen to “defy” the government.⁸⁵ As of 2010 there are currently only six groups permitted to conduct advocacy work and comment on public policy.⁸⁶ According to the report these mass organisations are considered to have “special characteristics” and are given legal protection and preferential treatment by the government.⁸⁷

On the topic of human rights defenders, CIVICUS reports that the climate for these persons in Viet Nam is “one of the most disabling in the world”.⁸⁸ Despite the constitutional rights to the freedom of speech, press, assembly and association judicial harassments and detention of activists is reportedly continued.⁸⁹ Furthermore, the report states that great restrictions and systematic oppression remains for media and

⁸¹ United Nations Human Rights Council. *op. cit.*, p. 5.

⁸² *ibid.*, p. 8.

⁸³ CIVICUS, ‘The Socialist Republic of Vietnam’, Submission to the UN Universal Periodic Review, 18th Session of the UPR Working Group, 17 June 2013, p. 2.

⁸⁴ *ibid.*, p. 2.

⁸⁵ *ibid.*, pp. 2-3.

⁸⁶ *ibid.*, p. 3.

⁸⁷ *ibid.*, p. 3.

⁸⁸ *ibid.*, p. 4.

⁸⁹ *ibid.*, p. 4.

that there lacks existence of independent media outlets as a result of such bans.⁹⁰ Reportedly, the government has also intensified control over the Internet, with the use of firewalls to restrict access to certain websites and international news sites.⁹¹ Accessing restricted websites, such as those covering the topics of freedom of religion and democratic rights, is punishable by law (Sanctions for Administrative Violations in Journalism and Publishing, Decree No. 2, 2011) limiting the access to information on human rights.⁹²

A trend emerged from the many shadow reports that were produced by VNGOs for the latest review, which reiterated the importance of full and proper implementation of all human rights in Viet Nam. The Viet Nam Committee on Human Rights stated in their latest mid-term report that Viet Nam has failed to ensure that legislation conforms to the international human rights instrument to which it has acceded.⁹³ Adding that “Arresting and detaining human rights and civil society activities because ‘they have violated Vietnamese law’ is no justification” for such actions.⁹⁴ To summarise, there seems to be a discrepancy between the current status given on human rights implementation by the Vietnamese state and the reports submitted by civil society. Although the UPR can partly be seen as a tool to further political intentions of international delegations, the latest review reveals consistency amongst comments from international delegations and national shadow reports from civil society, suggesting that the problems regarding human rights implementation in Viet Nam remain.

⁹⁰ CIVICUS, *op.cit.*, p. 6.

⁹¹ *ibid.*, p. 7.

⁹² *ibid.*, pp. 6-7.

⁹³ Vietnam Committee on Human Rights, ‘Shrinking spaces: Assessment of Human Rights in Vietnam during the 2nd Cycle of its Universal Periodic Review’, Paris, February 2018, p. 22.

⁹⁴ *ibid.*, p. 22.

3. Theoretical framework

3.1 Central Concepts

To begin with, some central concepts and terminology will be discussed and defined. The following concepts are used continually throughout this study and refer to the descriptions specified below.

3.1.1 Asian and Western Values Argument

Michael Davis approaches the topic of Asian and Western values in his research on democratic backsliding in the Asian context.⁹⁵ Davis suggests that where democratic deconsolidation has occurred and illiberal democratic rule reigns, the “Asian values argument” is used to defend human rights restrictions.⁹⁶ Davis explains that this argument is often used by authoritarians who disparage safeguards for human rights, criticizing them for being “Western imports” that encourage pluralism, which is regarded as unsuited to Asian society or even destructive for safety and stability.⁹⁷ Furthermore, Davis portrays how the perception of contrasting values can in fact be used to further non-democratic rule, by using the term “value” to stress dissimilarities in cultural perceptions.⁹⁸

The often-contrasted concepts of “Western values” and “Asian values” are introduced in the beginning of this study. These terms are socially construed to explain varying ways of life or even ideologies and can be considered misleading if used sweepingly to describe countries. Nevertheless, the term *value* can be more easily defined and can be understood as monetary worth or a linguistic unit, but also as “principles or standards of behaviour; one’s judgement of what is important in life”⁹⁹. Considering the political (and non-numerical or quantitative) nature of this study, values can in this context be understood as *principles* or *standards*. The term value is often

⁹⁵ Davis, op. cit., p. 148.

⁹⁶ *ibid.*, pp. 147-149.

⁹⁷ *ibid.*, p. 149.

⁹⁸ *ibid.*, pp. 147-149.

⁹⁹ Oxford University Press, *English Oxford Living Dictionaries: Definition of Value*, (website), <https://en.oxforddictionaries.com/definition/value>, (accessed 28 February 2018).

interchanged with and understood as political opinions or ideological standpoints, therefore western values would signal a certain set of principles or standards of behaviour that are deemed important for a “western way of living”. The comparison of Western values and Asian values is often used to highlight differences in these cultural contexts and of perceived ways of living. The definitions in themselves however, are arguably subjective and at the disposal of their user.

3.1.2 Democracy and Development

Just as political scientists cannot agree on how many democracies there are in the world, there also lacks consensus as to a singular definition of the term *democracy*.¹⁰⁰ Joseph Schumpeter defines democracy as a system “for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote”¹⁰¹. Meanwhile, according to Robert A. Dahl, democracy should be regarded as a developmental phenomenon and not as something static that can be achieved only once.¹⁰² Dahl describes that even those countries that have passed the threshold for democracy face the challenge of continually improving and deepening their democratic systems.¹⁰³ The fate of democracy is to be seen as open-ended, explains Dahl, expressing that “there is no guarantee that democratic development moves in only one direction”.¹⁰⁴ Subsequently, all political systems are liable to gradual breakdown and decay if they are not up kept with consistent review and potential for reform.¹⁰⁵

Contrary to common perception, the process of democratic development can move in another direction, away from human rights implementation, democratic governance and the principles of the rule of law.¹⁰⁶ This is becoming increasingly known as *democratic backsliding* and is the process whereby a country retrogresses or backslides to authoritarianism rather than continuing to progress democratically.¹⁰⁷

¹⁰⁰ L. Diamond, ‘Defining and Developing Democracy’, in R. A. Dahl, et al., *The Democracy Sourcebook*, Defining Democracy, edited by Jose Antonio Cheibub, et al., MIT press, 2014, p. 31.

¹⁰¹ Diamond, *op. cit.*, p. 31.

¹⁰² R. A. Dahl, et al., *The Democracy Sourcebook*, Defining Democracy, edited by Jose Antonio Cheibub, et al., MIT press, 2014,, p. 38.

¹⁰³ *ibid.*, p. 38.

¹⁰⁴ *ibid.*, p. 39.

¹⁰⁵ Diamond, *op. cit.*, p. 39.

¹⁰⁶ International IDEA, *op. cit.*, p. viii.

¹⁰⁷ *ibid.*, p. viii.

Democratic backsliding can for instance occur if political leaders don't follow or accept election results or refuse to hand over power willingly.¹⁰⁸ According to the research institute International IDEA, countries that experience backsliding share three common factors: 1) a party coming to power through fair elections, 2) manipulation of institutions providing checks and balances, 3) the use of law to reduce civic space and political freedoms.¹⁰⁹ Although Viet Nam is a one-party state it has shown some democratic development, the last criterion will be of focus in this study as it aims to understand the phenomenon of shrinking democratic space.

3.1.3 Democratic Space

The notion of *space* is a fairly abstract notion.¹¹⁰ Space can in fact be tangible, but more importantly refers to perceptions and experiences of social and cultural constructs.¹¹¹ Social space for example, is not limited by physical boundaries such as urban planning, but is predominantly created by the individuals who reside there.¹¹² Similarly, according to Habermas definition of the public sphere, space for civil society is created when agents within civil society engage and act to expand that space.¹¹³ This thesis intends to explore the *democratic space* for civil society. The term democratic space is considerably more inclusive than its counterpart "civil" or "civic space", as it refers not only to those rights and fundamental freedoms that are necessary for civil society, such as the freedom of peaceful assembly and association (Article 21 and 22 ICCPR) but *all* the human rights enshrined in the Universal Declaration. The full enjoyment of all human rights and a pluralistic civil society is considered a foundation and corner stone for democracy. Therefore this study uses the term democratic space for civil society.

Given that this study examines the current status and the development of the democratic space for civil society, the terms *expanding* and *shrinking space* must also be defined. Many different terminologies are used to refer to shrinking democratic space, although the description of the concept itself appears to be consequent.

¹⁰⁸ International IDEA, op. cit., p. viii.

¹⁰⁹ International IDEA, *The Global State of Democracy: Exploring Democracy's Resilience*, 1st edn., Sweden, International Institute for Democracy and Electoral Assistance, 2017, p. 71.

¹¹⁰ B. Le Quang, et. al., *Benchmark Assessment of Civil Society Space In Vietnam*, Vietnam Lawyers Association, Hong Duc Publishing House, Hanoi, 2016, p. 17.

¹¹¹ *ibid.*, p. 17.

¹¹² *ibid.*, p. 17.

¹¹³ *ibid.*, p. 17.

Terminology that is often used in other research papers, reports, news articles and documents is: “shrinking civil space”, “shrinking of civil society space”, “closing space for civil society” and “shrinking civic space”. Arguably the most vital aspect of the concept itself is that one can agree on its characteristics, so that it can be correctly identified and addressed. For the purpose of this study, the process of *implementation of restrictive laws that limit the operations of civil society in order to consolidate political power* will be referred to as shrinking democratic space, abbreviated *shrinking space*. This term will refer to the shrinking space for civil society but also to the restriction of human rights, therefore the term democratic is used instead of civic or civil space. Thus, the expanding of democratic space can be considered the inverse of the description above.

Keeping the discourse of Asian and Western values in mind, the concept of democratic space must also be considered as possibly having different meanings in varying contexts. Democratic space is a term that is predominantly used in European and Western research, which must be approached with some care in an Asian context. Care must be taken to avoid generalisations through the assumption that shrinking space occurs in every Asian country and in the same fashion.

3.2 Theoretical Approaches to Human Rights

A popular and sometimes dominant ideal within democracy and human rights is that every human being can question those who have political power.¹¹⁴ This ideal is not only popular in human rights discourse but also central for democratic rule and popular sovereignty.¹¹⁵ States are often willing to openly declare their commitment to international human rights treaties, showcasing their commitment to safeguarding human rights, but in order to truly implement a convention then states must incorporate said conventions into national laws so as to fully protect human rights.¹¹⁶ It is at this point of implementation that not only states but also theorists and academics disagree on how best to ensure implementation and the safeguarding of human rights across the

¹¹⁴ E. Namli, *Human Rights As Ethics, Politics, And Law*, Uppsala, Acta Universitatis Upsaliensis, 2014, p. 35.

¹¹⁵ *ibid.*, p. 35.

¹¹⁶ *ibid.*, p. 35.

globe. The following theoretical framework presents arguments from a Universalist, cultural relativist and overlapping consensus approach to human rights. Recent research of the current global state of democracy as well as case studies conducted on the topic of shrinking democratic space are presented to give contextual background and help to position this study within the field of human rights research.

3.2.1 Universalism & International human rights development

After the failure of its predecessor The League of Nations, The Universal Declaration marked a critical juncture in the institutionalisation of human rights norms internationally.¹¹⁷ Although it did not have the same status as a treaty, explains Thomas Banchoff, the Declaration intended to form a common understanding between states of the rights and freedoms set out in the UN Charter.¹¹⁸ This common understanding is built on the foundational premise that every human being is born free and equal in dignity and rights, and so, should unite humankind in a spirit of sisterhood.¹¹⁹ Although not legally binding, the Declaration emanates a normative force of human rights, essentially a Universalist approach.¹²⁰ With 193 member states, the Declaration has become a common bottom line for human rights implementation in the world and through its human rights mechanisms influences the expectations and obligations set out for member states. The 1948 vote for the Universal Declaration was seen as a triumph in itself, marking the overcoming of religious, historical and philosophical differences.¹²¹ Despite the Declaration's wide reach, Banchoff stresses that it does not constitute a "human rights regime", with Article 29 in particular underscoring the ability of states to limit human rights practices.¹²² Limitations may however only occur "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in democratic society". Although these restrictions may not be exercised contrary to the purpose of the Declaration, these terms are left undefined. This exemption leaves what

¹¹⁷ T. Banchoff and R. Wuthnow (ed.), *Religion and The Global Politics of Human Rights*, Oxford, Oxford University Press, 2011, p. 25.

¹¹⁸ *ibid.*, p. 25.

¹¹⁹ *ibid.*, p. 25.

¹²⁰ Banchoff and Wuthnow, *op.cit.*, p. 25.

¹²¹ J. Amos, 'Embracing and Contesting: The Soviet Union and the Universal Declaration of Human Rights 1948-1958', in S. L. Hoffman (ed.), *Human Rights in the Twentieth Century*, Cambridge University Press, 2010, p. 147.

¹²² Banchoff and Wuthnow, *op. cit.*, pp. 25-26.

Banchoff also describes as the ability for dictatorships to “supress human rights in the name of national sovereignty, while still aligning themselves with the Declaration and its principles.”¹²³ This reasoning suggests that although a Universalist approach to human rights manages to unite states that differ in terms of history and philosophy, while maintaining a common ground of foundational rights and freedoms, it also gives room for loopholes in its implementation. Thus, the status of being a ratifying state of the Declaration can be upheld, while essentially human rights are implemented in varying and subpar conditions, resulting in a human rights implementation that is neither equal nor inalienable.

3.2.2 Universalism & International covenants

As differences began to emerge amongst cultural interpretations of human rights, “with the United States and Western Europe fighting for political and civil rights, while the Soviet Union and its allies pushed for economic rights to the exclusion of political and civil rights”¹²⁴ the Declaration was divided into two covenants. The ICCPR and ICESCR give special recognition and protection of civil and political rights, as well as economic, social and cultural rights. These conventions are legally binding, providing greater protection for proper implementation of each of these human rights, but these covenants also reflect the international tensions that surrounded their creation.¹²⁵ As the drafting of a legally binding covenant based on the Declaration began in 1948, the focus lay on civil rights only.¹²⁶ In response, the Soviet Union argued that the absence of economic rights represented a deprivation of these rights and an effort to divide them, suggesting that the covenant be based on the Declaration in its entirety.¹²⁷ Amos describes the Declaration at this time as a tool with which the Soviets could push for the rights that they wished to prioritise, however it is worth noting that many states supported the Soviet reasoning of having only one covenant.¹²⁸

Significant for the human rights discourse of the twentieth century, explains Amartya Sen, was the recognition of democracy as a universally relevant

¹²³ Banchoff and Wuthnow, op. cit., p. 26.

¹²⁴ Amos, op. cit., p. 149.

¹²⁵ *ibid.*, p. 149.

¹²⁶ *ibid.*, p. 150.

¹²⁷ *ibid.*, p. 150.

¹²⁸ *ibid.*, pp. 150-151.

system.¹²⁹ Unlike the discourse of the nineteenth century that questioned whether countries were “fit for democracy” or not, democracy became more accepted as a universal value.¹³⁰ The discussion has in later years discussed the idea that non-democratic countries foster greater economic development in contrast to democracies.¹³¹ There is however no convincing evidence, explains Sen, that the suppression of political and civil rights are beneficial to economic development.¹³² On the contrary, Sen exemplifies empirical studies that give no support to the claim that there is conflict between political rights and economic performance.¹³³ It is important to look beyond economic growth explains Sen, emphasising the importance of scrutinising the demands of economic development, such as the needs for economic- and social security.¹³⁴ Ensuring political and civil rights, such as voting and protesting, major economic disasters can be avoided explains Sen.¹³⁵ When political rights can be exercised, the political incentives that operate on a government can be positively affected.¹³⁶ Sen exemplifies this argument by stating that “no substantial famine has ever occurred in any independent and democratic country with a relatively free press”¹³⁷. Famines are easy to prevent if there is democratic government facing political opposition and criticism.¹³⁸

3.2.3 Cultural relativism

Discussions regarding the foundation of human rights are both divisive and controversial explains Abdulaziz Sachedina¹³⁹ Despite the controversial manner of this matter it *must* be approached explains Sachedina, as anything else would be “defeatist”.¹⁴⁰ As it stands today, the Universal Declaration is understood by many Muslim societies as insensitive to their cultural values and is therefore disregarded

¹²⁹ A. Sen, 'Democracy as a Universal Value', *Journal of Democracy*, vol. 10, no. 4, October 1999, p. 4.

¹³⁰ *ibid.*, p. 4.

¹³¹ *ibid.*, p. 5.

¹³² *ibid.*, pp. 5-6.

¹³³ *ibid.*, p. 6.

¹³⁴ *ibid.*, p. 6.

¹³⁵ *ibid.*, p. 6.

¹³⁶ *ibid.* p. 6.

¹³⁷ *ibid.*, pp. 6-7.

¹³⁸ *ibid.*, p. 7.

¹³⁹ A. Sachedina, *Islam and the Challenge of Human Rights*, Oxford University Press, 2009, p. 5.

¹⁴⁰ *ibid.*, p. 5.

Sachedina says.¹⁴¹ It is argued that individual rights are preferential in the Declaration, in contrast to collective and family values that are favoured in Muslim society.¹⁴² To ensure the protection of the Declaration's underlying values of human dignity and human agency in the context of universal human rights, then cross-cultural application must have legitimacy and enforcement in Muslim countries explains Sachedina.¹⁴³ As long as underlying human rights morals and norms remain undefined then they are more easily dismissed as imperialistic or incompatible with Muslim values, similar to the "Asian values" argument.¹⁴⁴ Although Vietnam is not predominantly a Muslim country, it is of interest for this study to examine if a cultural relativist approach to human rights is applicable in Vietnamese culture.

For Muslim scholars, explains Sachedina, the concept of protecting human beings from cruel, degrading and inhumane treatment has been protected through religious and non-religious traditions throughout history, which resonates with Article 1 of the Declaration.¹⁴⁵ However, Abdullahi Ahmed An-Na'im discusses what he describes as conflicts between Islamic Shari'a law and human rights standards, rejecting the proposition that inconsistencies do not exist¹⁴⁶ and instead adopting a "constructive and re-interpretative approach"¹⁴⁷. An-Na'im's constructive approach suggests that problems of cultural legitimacy of human rights norms can be handled through a process of reinterpretation of Islamic traditions.¹⁴⁸ Although An-Na'im's primary focus is the inconsistency in interpretation of the Declaration as a result of a dominant religious and cultural tradition (Shari'a law)¹⁴⁹, which is not the focus of this thesis on democratic space, it *does* pose critique toward the Cultural relativist approach. According to An-Na'im, Shari'a law has the ability to regulate both public and private life as a religious and moral authority and also through its formal influence on legal norms.¹⁵⁰ Both individual and collective behaviour in Muslim countries is influenced by social norms in accordance with Shari'a law, affecting for example the status and

¹⁴¹ Sachedina, op. cit., p. 5.

¹⁴² *ibid.*, p. 5.

¹⁴³ *ibid.*, p. 5.

¹⁴⁴ *ibid.*, p. 5.

¹⁴⁵ *ibid.*, p. 6.

¹⁴⁶ A. A. An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives- A Preliminary Enquiry', *Harvard Human Rights Journal*, vol. 3., 1990, p. 13.

¹⁴⁷ *ibid.*, p. 17.

¹⁴⁸ *ibid.*, p. 17.

¹⁴⁹ *ibid.*, p. 14.

¹⁵⁰ *ibid.*, p. 14.

rights of women, which are more restrained than that of the Declaration.¹⁵¹ As a result, Shari'a law has greater influence on Muslim society and law than the Declaration.

An-Na'im does however state that Shari'a is not the sole source of influence in Muslim political institutions, but that other factors have impacted poor human rights implementation.¹⁵² Many Asian countries did not participate in the formation of the Declaration, as many were colonized countries and therefore non-members of the UN.¹⁵³ As a consequence of Asian absence in the formation of the Declaration, many countries did not have influence over foundational principles and the philosophical assumptions that were adopted.¹⁵⁴ To exemplify this difference, An-Na'im explains that the underlying assumptions of the Declaration favour individual, civil and political rights over collective solidarity rights.¹⁵⁵ An absence of Asian influence suggests that many countries do not see the Declaration as a product of their own labour and possibly feel less incentive to implement it fully and unconditionally instead of scriptures from the Sunna and the Qur'an. Moreover, An-Na'im explains that some authors extend the previous argument even further and propose, "Inherent differences exist between the Western notion of human rights ... and non-Western notions of human dignity".¹⁵⁶ An-Na'im suggests that there are blatant conflicts between Shari'a and the full enjoyment of human rights for all women and for non-Muslims.¹⁵⁷ As previously stated, Viet Nam consists of not one but many religious groups and ethnic minorities. The question is raised whether an interpretation of international human rights in this environment should take consideration of cultural and traditional values.

3.2.4 Overlapping consensus

To further depict and map out the array of human rights approaches present today, a third and multidimensional approach known as *Overlapping consensus* suggests that it is possible to combine elements of universality and cultural relativism.¹⁵⁸ Initially put forth by John Rawls, the idea of an overlapping consensus within human rights suggests

¹⁵¹ A. A. An-Na'im. op. cit., p. 14.

¹⁵² *ibid.*, p. 14.

¹⁵³ *ibid.*, p. 15.

¹⁵⁴ *ibid.*, pp. 15-16.

¹⁵⁵ *ibid.*, p. 15.

¹⁵⁶ *ibid.*, pp. 15-16.

¹⁵⁷ *ibid.*, p. 16.

¹⁵⁸ Donnelly, op.cit., p. 104.

that comprehensive doctrines that contain apparently inconsistent conceptions of justice can come to agree on particular principles of justice.¹⁵⁹ This perspective claims that both of the approaches stated above are essential to international human rights implementation, arguing that the justification of human rights should allow consideration for local history, experience and cultures.¹⁶⁰ Jack Donnelly describes the question of whether universality and relativity conflict or complement each other as an empirical matter that can be furthered through empirical study.¹⁶¹ An overlapping consensus is therefore partial rather than complete, whereby doctrines converge rather than completely coincide and reflects reasoned agreement despite differences.¹⁶² This concept is based on the premise that human rights can appeal to different sets of foundational values, including traditions and cultures; the conditions of human dignity as outlined by the Declaration can be achieved.¹⁶³ Thus, human rights have not one singular foundation but rather several that can be provided from a plethora of moral, philosophical or religious grounds.¹⁶⁴

Donnelly suggests that human rights should be understood as “a political conception of justice around which an international overlapping consensus has formed over the past century”.¹⁶⁵ Donnelly argues that although they vary in their language, many doctrines provide accounts of human dignity, serving as “an accepted principle of shared morality”.¹⁶⁶ Although somewhat ambiguous, explains Donnelly, the concept of human dignity points to different deeper substantive foundations for different persons, which in turn provides personal or moral meaning to the concept.¹⁶⁷ Similarly, Davis addresses the premise of “democracy’s wide appeal”, whereby the appeal for democracy and human rights can be found across many cultures as a result of a common interest for freedom and security.¹⁶⁸ The need for security and strong government however, also sees tendency in both Eastern and Western cultures of domination and consolidation of power.¹⁶⁹ This tendency has seen authoritarian leaders and populists in Asia push back against pressure for democratic constitutional reform by claiming that

¹⁵⁹ Donnelly, *op. cit.*, pp. 57-58.

¹⁶⁰ *ibid.*, p. 104.

¹⁶¹ *ibid.*, p. 104.

¹⁶² *ibid.*, p. 58.

¹⁶³ *ibid.*, p. 58.

¹⁶⁴ *ibid.*, p. 58.

¹⁶⁵ *ibid.*, p. 131.

¹⁶⁶ *ibid.*, p. 131.

¹⁶⁷ *ibid.*, p. 131.

¹⁶⁸ *ibid.*, p. 152.

¹⁶⁹ *ibid.*, p. 152.

such reforms are “unsuitable and destabilizing for Asian societies”¹⁷⁰. Therefore, the challenge for democracy activists according to Davis is to demonstrate how liberal constitutionalism can address both cultural and religious concerns while also supporting sustained economic development.¹⁷¹

Finally, Sachedina argues that regardless of its secular or religious foundation, to ensure the protection of inalienable human rights emphasis must lie on the “unshakeable universal moral foundation of the Declaration and its ability to speak to peoples of different traditions and cultures without denying them an opportunity to affirm or deny that universalism in the name of some comprehensive religious doctrine”¹⁷². Essentially, the moral assessment of human action is the only source of universal appeal argues Sachedina, which can secure support and implementation from the international community.¹⁷³

3.3 Previous Research

As the phenomenon of democratic space has garnered global attention, research has shone light on this topic in many regions of the world. In order to position this case study in relation to previous research and pinpoint its contribution to the area of human rights, earlier studies that focus on democratic backsliding, shrinking space and on democratization are presented below. Moreover, by drawing experience from previously conducted case studies, this study can contribute with situated, country specific information regarding the current situation for democratic space in Viet Nam.

To begin with, the most recent and closely related research to this thesis is the “Benchmark Assessment on Civil Society Space” that was published in 2016.¹⁷⁴ Binh Le Quang et al, together with several international financial donors aimed to measure the space both created and used by civil society actors in Viet Nam, while also measuring the experiences and perceptions of these actors on opening up this space.¹⁷⁵ Le Quang et al state that the expansion or shrinking of civil society space depends on

¹⁷⁰ Davis, op. cit., p. 152.

¹⁷¹ *ibid.*, p. 152.

¹⁷² Sachedina, op. cit., p. 8.

¹⁷³ *ibid.*, p. 8.

¹⁷⁴ B. Le Quang, et. al., *Benchmark Assessment of Civil Society Space In Vietnam*, Vietnam Lawyers Association, Hong Duc Publishing House, Hanoi, 2016, pp. 1-136.

¹⁷⁵ *ibid.*, p. 9.

three factors: 1) social and cultural values; 2) civil society capacity; and 3) state regulation.¹⁷⁶ This quantitative assessment focuses on organisations in civil society and does not take into account other civil society actors such as human rights defenders. The report concluded that the correlation between civil society capacity, that is their ability to impact civil society, and civil society space overall is highly positive.¹⁷⁷ The report states that “civil society capacity determines not only the extent of civil society space but also its impacts on society”, adding that state regulation has less impact on the space.¹⁷⁸

In their recent publication titled “The Global State of Democracy”, International IDEA studied the effects of democratic backsliding and whether power consolidation affects factors such as democratic space.¹⁷⁹ Four aspects of democracy were used as indicators: representative government, fundamental rights, checks on government, and impartial administration and participatory engagement. IDEA reported that democratic backsliding appeared to depress the development of social rights and equality by nearly half of the previous development rate in countries where this occurred.¹⁸⁰ Furthermore, the report indicated that almost all aspects stagnated or declined as a result of democratic backsliding, showing a trend of reversal in previous development within these categories.¹⁸¹ This trend did however show one exception, which was that the attribute of participatory engagement did not suffer to the same extent as a result of democratic backsliding.¹⁸² In fact, while many aspects of democracy seem to suffer, the report states that it “(...) does not seem to disengage the population even in the face of attempts to silence civil society”¹⁸³. IDEA defined participatory engagement by its sub-attributes civil society participation, electoral participation, direct democracy and subnational elections. Of particular interest for this study is the attribute of civil society participation and whether this is affected in Viet Nam.

¹⁷⁶ B. Le Quang, op. cit., p. 12-13.

¹⁷⁷ *ibid.*, p. 13.

¹⁷⁸ *ibid.*, p. 13.

¹⁷⁹ International IDEA, *Overview: The Global State of Democracy: Exploring Democracy's Resilience*, p. 13.

¹⁸⁰ *ibid.*, p. 16.

¹⁸¹ *ibid.*, p. 77.

¹⁸² *ibid.*, p. 77.

¹⁸³ Human Rights Watch (HRW), *World Report 2017*, New York, 2017, cited in International IDEA, *Overview: The Global State of Democracy: Exploring Democracy's Resilience*, p. 14.

In research dating back to 1999, Silliman suggests that NGOs committed to safeguarding women's rights must actively *carve out* an independent space in order to act independently from governmental influence.¹⁸⁴ Although this study focuses on the problematic role of the government as *both* arbitrators and guarantors of public space, it also highlights the pressing issue of shrinking democratic space.¹⁸⁵

Helmut Anheier discusses shrinking space for civil societies as a result of a changing relationship between states and the international community.¹⁸⁶ Anheier explains that civil society has experienced many changes in recent decades, among which is the effect of stricter regulations toward civil society organisations.¹⁸⁷ Civil society is described as "...a highly diverse ensemble of many different organizations that range from small neighbourhood associations to large international NGOs..." and that represent interests and causes that serve the public good.¹⁸⁸ There is however what Anheier describes as a "grey area" between advocacy and politics when it comes to profit-seeking and non-profit organisations, which requires regulation.¹⁸⁹ Anheier suggests that the borders between government, business and civil society need shaping by political and regulatory frameworks, internationally and nationally to ensure that they pursue the public good.¹⁹⁰ Subsequently, Anheier raises the question of what the optimal amount of regulation is to harness and strengthen CSOs work, while minimising "disadvantages".¹⁹¹

Rajib Timalina studied the peacekeeping efforts and political tensions in Nepal in relation to democratic development.¹⁹² There was a democratic system in place in Nepal, at least in principle, explained Timalina, however it was the practice of political actors themselves that contributed to the shrinking democratic space.¹⁹³ A model of consensus politics was implemented in Nepal in the hopes of establishing a peace process, which in fact made the country more fragile from a democratic

¹⁸⁴ J. Silliman, 'Expanding civil society: Shrinking political spaces- The case of women's nongovernmental organizations', *Social politics*, vol 6, Oxford University Press, 1999, p. 49.

¹⁸⁵ *ibid.*, p.49.

¹⁸⁶ H. K. Anheier, 'Civil society challenged: towards an enabling policy environment', *Economics: The Open-Access, Open-Assessment E-Journal*, vol 2017-29, 2017.

¹⁸⁷ *ibid.*, p. 2.

¹⁸⁸ *ibid.*, p. 4.

¹⁸⁹ *ibid.*, p. 4.

¹⁹⁰ *ibid.*, p. 4.

¹⁹¹ *ibid.*, p. 6.

¹⁹² R. Timalina, 'Consensus Modality in Nepal's Transition: Accomodating Parties and Shrinking Democratic Spaces', *Asian Journal of Peacebuilding*, vol. 5, issue 1, May 2017.

¹⁹³ *ibid.*, p. 14.

perspective explained Timalsina.¹⁹⁴ Elected representatives and the Nepalese people were described as isolated from each other, especially in decision-making processes, which resulted in the lack of legitimate and empowered representation.¹⁹⁵ This research paper does not solely focus on the topic of shrinking democratic space, but suggests that it is occurring in Nepal as a result of political and institutional instability.

Jacqueline Wood described the backlash against civil society organisations that is becoming evident in Kenya and many other developing countries.¹⁹⁶ Wood describes this process as a “rights and democracy pushback”¹⁹⁷ that primarily affects civil society organisations as the political, operating and legislative space available to them is shrinking.¹⁹⁸ Wood described the availability of civil society space as dependent on the availability of rights and democracy, while at the same time this space allowed such organisations to advance and sustain rights and democratic gains for society as a whole, indicating that CSOs were both “dependents” and “safe keepers” for democracy.¹⁹⁹ Wood described how CSOs in Kenya were met with hostility from their government in the subjection to limited regulations and a negative public relations narrative portraying organisations as unreliable.²⁰⁰ In search of funding for their work, organisations turned to international forums, which the Kenyan government had equated with ‘terrorism’ and pronounced as “unelected and unaccountable institutions that answer to elsewhere”²⁰¹. Wood described how this negative narrative toward CSOs was often intertwined with an anti-west and foreign government funding dialogue, depicting organisations as “answering to their foreign masters”²⁰² as opposed to Kenyan civil society or government. Wood concluded that careful consideration was needed of western governments’ involvement in national policy funding.²⁰³

Foreign aid influenced developing countries with a “carrot and stick” method according to Wood, whereby positive conditions were rewarded with

¹⁹⁴ Timalsina, op. cit., p. 14.

¹⁹⁵ *ibid.*, p. 14.

¹⁹⁶ J. Wood, ‘Unintended consequences: DAC governments and shrinking civil society in Kenya’, *Development in Practice*, vol 28, issue 5, 2016.

¹⁹⁷ *ibid.*, p. 533.

¹⁹⁸ *ibid.*, p. 533.

¹⁹⁹ *ibid.*, p. 533.

²⁰⁰ *ibid.*, pp. 533-534.

²⁰¹ *ibid.*, p. 534.

²⁰² *ibid.*, p. 534.

²⁰³ *ibid.*, p. 540.

investments and subsequently negative conditions were met with the threat of suspending diplomatic aid and relations.²⁰⁴ Often when it came to human rights and democracy, CSOs found themselves on the same line of reasoning as their foreign aid, aggravating the Kenyan government.²⁰⁵ According to Wood, foreign funding of CSOs has unintended effects for the human rights and democracy landscape in Kenya, whereby organisations accountability and legitimacy are questioned, furthermore effecting the space for civil society.²⁰⁶ The situation for shrinking space in Kenya is of relevance for this study as it showcases a similar situation for human rights, but in another context. Although this study does not intend to study foreign governmental aid, it can more easily be positioned in relation to previously conducted research, clarifying its contribution and purpose. Woods' study raises the question whether the Kenyan governmental approach can be compared to that of the Vietnamese and whether Woods recommendations of caution in the future can be applicable in this case study.

3.4 Theoretical framework contribution

To summarise, the theoretical framework contributes with two predominant approaches to human rights implementation (universalism and cultural relativism) and a third approach (overlapping consensus) that will be applied to the results of this study. The presentation of arguments both for and against these approaches gives understanding of the nuances within this field. The theoretical framework allows this study to carry out a further theoretical discussion beyond the limits of qualitative results, with the intention of contributing to human rights discourse regarding human rights implementation. Moreover, the presentation of previous research positions this study in relation to earlier findings and highlights the areas or “gaps” in human rights research that need further examining. In sum, the theoretical framework allows this study to address the latter half of the research question that asks “what is the effect for the full implementation of human rights for all?” by discussing different approaches to human rights implementations in this context.

²⁰⁴ Wood, *op. cit.*, p. 535.

²⁰⁵ *ibid.*, p. 535.

²⁰⁶ *ibid.*, p. 540.

4. Method

4.1 Constructivism & Qualitative research

The ontological position of this thesis is constructivist, which builds on the premise that social phenomena and their meanings are constructed through social interaction.²⁰⁷ According to constructivism the social reality is in a state of constant change, whereby endless social constructs are continually created, revised and renewed.²⁰⁸ To interpret the phenomenon being studied, a hermeneutic epistemological approach is applied. A hermeneutic approach does not intend to find an absolute truth, but rather with the help of collected material attempt to interpret it.²⁰⁹ This epistemological approach welcomes the methodology of field research, which produces primary empirical material and situated knowledge. *Situated knowledge* is defined here as the conscious reflection of the researcher over their situation and research field in order to reach partial insight about the reality from the perspective of his/her localisation in the field.²¹⁰ As a result of increased control of Internet-use and reprimands toward regime critics, a field study to Viet Nam is a prime method to access information that is otherwise difficult to attain on the topic of democratic space. This field research will entail qualitative interviews in order to gather empirical material and gain situated knowledge of the phenomenon being studied.

The qualitative nature of this study allows for context-specific knowledge to be collected, its purpose is therefore not to be generable to all situations but rather to give insight to the chosen case of civil society in Viet Nam. A qualitative study such as this can be compared to other similar case studies, possibly with countries exhibiting similar characteristics or experiencing challenges to democratic space. The knowledge produced by this study can therefore contribute to human rights research with a deeper understanding of the situation in Viet Nam.

²⁰⁷ A. Bryman, *Samhällsvetenskapliga Metoder*, 2nd edn, Liber AB, 2011, p. 37.

²⁰⁸ *ibid.*, pp. 37-38.

²⁰⁹ G. Bergström and K. Boréus, *Textens mening och makt: Metodbok i samhällsvetenskaplig text- och diskursanalys*, 3rd edn, Lund, Studentlitteratur AB, 2012, p. 31.

²¹⁰ D. J. Haraway, *Apor, cyborger och kvinnor – att återuppta naturen*, Stockholm, 2008, cited in A. K. Lindeborg, 'Where Gendered Spaces Bend: The Rubber Phenomenon in Northern Laos', PhD Thesis, Uppsala University, 2012, p. 66.

4.2 Contextual & Semi-structured Interviews

Two contextual interviews were held in the beginning of the field research in order to gain an overview of the situation for human rights and civil society from experts working in Viet Nam. These respondents are based in Hanoi and have current information on political and social affairs, but they also work with the topic of civil society. These contextual interviews gave an overview of civil society in Viet Nam but also acted as an entry point for reaching vital interview respondents. The respondents gave information regarding relevant reports and other published material and also touched upon questions of a more practical nature, such as interview locations and encrypted messaging. The overview and context received from these two interviews facilitated the formation of future interview guides with representatives from civil society.

The primary method for material collection was semi-structured interviews. This interview type is qualitative in nature and is both flexible and dynamic in its approach. According to methodological research, “a qualitative interview seeks qualitative knowledge expressed in normal prose and doesn’t seek to quantify results”²¹¹ and ultimately aims to gain nuanced descriptions of the respondent’s perspectives and understanding of the world.²¹² Semi-structured interviews allow for follow-up questions and natural deviations, while still providing a semi-structured interview guide.²¹³ An interview guide is used to structure the conversation conducted during the interview, while allowing for spontaneous responses from the respondent or follow-up questions from the researcher.²¹⁴ Natural deviations from the guide such as discussions on topics or events not related directly to democratic space but to other events, facilitated a deeper understanding for the context surrounding the respondents’ opinions and the current situation in Viet Nam. While these deviations gave context, the use of a similar interview guide for the interviews enabled later comparison and analysis. Furthermore, the choice of interviews as a method allowed for direct interaction between the researcher and the respondent, unlike other possible methods such as surveys, online

²¹¹ S. Kvale and S. Brinkmann, *Den kvalitative forskningsintervjuen*, Lund, Studentlitteratur AB, 2014, pp 46-47.

²¹² *ibid.*, pp. 34-35.

²¹³ K. Höglund and M. Öberg, *Understanding Peace Research- Methods and Challenges*, Routledge, 2011, p. 130.

²¹⁴ *ibid.*, p. 1008.

polls or mere text analyses. The collected responses were therefore detailed and specific for the thesis topic. Given the internet restrictions and sensitive nature of the topic democratic space and civil society in Viet Nam, carrying out interviews gave access to first hand and detailed information of experiences that is otherwise difficult to attain from abroad. Few methods allow for a “close up perspective” in the way that interviews do, allowing this study to obtain detailed and situated primary material.

The interviews followed a semi-structured interview guide that presented questions thematically. The use of a similar thematic approach to the interviews allowed for later comparison of interview responses. The themes were selected on the basis of their relevance for the research questions and with help from the reports presented in the background of this thesis. The reason for using current reports was to ensure that the questions asked were relevant and specific for the respondents’ occupation and role in civil society. The following themes were used:

- The current democratic space
- The freedom of expression, assembly and association
- Development and trends for the democratic space

The interview guides were divided into three categories, one for civil society organisations, one for human rights defenders and another for researchers and contextual interviews. These interview guides were accustomed to each interview and were followed to varying extents depending on the length of each interview. Prior to each interview the purpose of this thesis was presented and room was given for questions or remarks from the respondent. In general, almost all interviews followed its own unique structure, which allowed the interviews to cover a broad range of relevant topics, while still covering the intended interview questions.

4.3 Interview Respondents

4.3.1 Sampling Method

In order to reach the target group for interviews, human rights defenders in Viet Nam, a purposive sample technique was used. A purposive sample is strategic in nature as it intends to reach agreement between research questions and the chosen sample.²¹⁵ Therefore, the researcher makes their sample group with an intention to interview persons that are relevant for the research questions at hand.²¹⁶ A suitable, purposive approach to sampling for this study was the use of a snowball sampling technique. Snowball sampling is a method used when a specific sampling frame cannot be determined beforehand.²¹⁷ The intended sample group for this study was human rights defenders and civil society organisations in Viet Nam. A snowball technique was used, whereby key persons were contacted in order to reach potential interview respondents. Respondents were also asked if they had information of other persons that could be contacted in regards to an interview.

4.3.2 Human Rights Defenders & Civil Society Organisations

Category 1: Human Rights Defenders

The first target group for interviews was human rights defenders in Viet Nam. The term *human rights defender* has different meanings depending on the context in which it is used. According to the United Nations the term itself has a broad definition that includes many civil society actors: activists, organisations, media, journalists, among others. The Office of the United Nations High Commissioner for Human Rights uses the following description:

“To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights

²¹⁵ Kvale and Brinkmann, op. cit., p. 434.

²¹⁶ *ibid.*, pp. 184-185.

²¹⁷ *ibid.*, pp. 184-185.

defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.”²¹⁸

The internationally recognised organisation Front Line Defenders works to protect human rights defenders around the world. This definition is broad and is also inclusive of journalists who are at risk of reprimands for their work with human rights. The following definition is used:

“People who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights.”²¹⁹

In the Vietnamese context however, the term human rights defender refers to a specific group of independent actors in civil society that differs from the group “social activists”. The context interviews conducted with the Swedish Embassy and EU Delegation reveal the use of a more narrow definition of a human rights defender in Viet Nam. Human rights defenders are often associated with activists and non-conformists, which sometimes results in some distance being taken from registered CSOs and other actors within civil society.

Human rights defenders and social activists can be described as two separate lines of work in Viet Nam. Although human rights defence can encompass some social activism in the form of public demonstrations or published material online, it requires a greater understanding of what human rights are and how to act accordingly to them. Social activists can be either peaceful or violent, but they may also pursue their own cause. Taking the Vietnamese context into consideration, *human rights defenders will refer to people who work non-violently to promote and protect any or all of the human rights enshrined in the Universal Declaration of Human Rights in Viet Nam.* This category is exclusive of activists or other independent actors such as journalists present in Viet Nam. However, given the global reach of the issue of reprimands toward human rights defenders, the broader discussion carried out at the end of this study refers to all those working according to the UN definition stated above.

²¹⁸ United Nations, 'Human Rights Defenders: Protecting the Right to Defend Human Rights', Fact Sheet No. 29, Geneva, 2004, p. 1.

²¹⁹ Front Line Defenders, 'Who We Are: The Front Line Defenders Story', (website), <https://www.frontlinedefenders.org/en/who-we-are>, (accessed 17 April 2018).

Category 2: Civil Society Organisations

The EU adopts a broad definition of the term *civil society* according to the following: “The sphere of non-coercive association between the individual level and the state level. This definition embraces formally organised Non-Governmental Organisations (NGOs), more loosely structured social movements and individual activists.”²²⁰ However, in Viet Nam it is not possible for organisations to register as “civil society organisations” or as “non-governmental organisations”. The term civil society organisation will include both *Vietnamese and international organisations that work to promote and protect the full implementation of human rights in Viet Nam*. The specific areas of work vary depending on the organisation, but have been selected based on their knowledge of work with one or more human rights in Vietnamese civil society. This definition does not include state owned, so-called “mass organisations” or state-owned media and journalists. Although journalists are particularly vulnerable in Viet Nam, the media and journalists are unable to work independently and therefore they are not considered a part of civil society in Viet Nam.

To attain a broader perspective on the situation for civil society organisations, while maintaining the qualitative nature of this study, a wide range of organisations have been contacted for interviews. The interview respondents are key persons at each organisation that work with civil society and human rights in some capacity. Amongst the knowledge and achievements of the respondents is the production of the Freedom House Index national reports on democracy in Viet Nam, published books and benchmark reports on civil society in Viet Nam, participation in the draft law on associations, contact and collaboration with foreign Presidents, Embassies and Ministers on the topics of human rights and civil society, as well as large followings and influence via social media. Although the interviews are few in quantity, these respondents have great knowledge on the current situation for democratic space and human rights in Viet Nam and their responses contribute with situated and qualitative knowledge to this area of research.

²²⁰European Parliament, op. cit., p. 8.

4.4 Reliability & Validity

The environment in which the interviews were conducted varied depending on the respondents' profession but was an important factor to consider prior to the interviews given the topics sensitive nature. The most important factor to consider was privacy to ensure that respondents could speak freely and in a discrete location. If the interview environment is not comfortable for the respondent, for example if the respondent feels that they risk being overheard, then the responses given are at larger risk of being modified or even self-censored, which in turn would affect the reliability of the results. To ensure that interview responses were as reliable as possible the interview environment was chosen with care. Therefore, the majority of interviews that were conducted with Vietnamese and international NGOs took place in meeting rooms at the offices of these organisations. This is often an environment that is natural and of course familiar to the respondent, increasing the possibility that they are at ease during the interview. The interviews conducted with human rights defenders, journalists and researchers however, took place at public cafés. These interviews took place at a point in time where these cafés were quiet, so that the interviews could take place undisturbed.

The use of a snowball sampling method meant that the order in which the interviews were conducted could not be predetermined. The initial context interview was conducted with the Swedish Embassy, which lead to a further meeting with the EU Delegation. These initial meetings gave insight to the Vietnamese context from an international perspective and provided an entry point to respondents within civil society. The natural order in which the interviews took place allowed for triangulation between interviews, whereby any topics or issues that were raised by respondents in the earlier interviews could be followed up or compared during interviews later in the week. This method of triangulation, although somewhat unstructured, allowed the interviews to explore topics outside of the prepared interview guide while still remaining consequent between interviews. This semi-structured nature also allowed freedom within interviews to discuss topics that were not foreseen in the interview guide.

Conducting interviews in a cultural environment that is not native to the interviewer themselves can be described as cross-cultural.²²¹ To ensure correct

²²¹ Kvale and Brinkmann, *op. cit.*, pp. 184-185.

interpretation of interview responses it is important to consider possible differences in communication across cultures. The level of cultural understanding often dictates the relation between the interviewer and the respondent in their interaction with one another.²²² The field research conducted allowed for first hand experience of the Vietnamese culture and daily life prior to the scheduled interviews that took place. This minimised the risk for misinterpretation. It was noted during the interviews that respondents often preferred to explain the democratic space and civil society in Viet Nam with the use of metaphors and analogies. This linguistic tendency was pedagogical in terms of understanding the respondents' thoughts and ideas, but also required a perquisite understanding for the context and culture that surrounded these descriptions.

4.5 Ethical Considerations

The general restrictions made to human rights in Viet nam entail that this is a topic of sensitive nature and therefore some ethical considerations have to be made. To ensure that interview respondents are not reprimanded for their participation during or after this study, their names are kept anonymous. A discussion regarding anonymity can be found in the results of this study. Furthermore, all participants have received information of the purpose and aim for this study, including information on the opportunity for follow up questions and withdrawal of answers. Informed consent to participate in this study was given in written form via e-mail or a messaging app prior to beginning the interview. The informed consent implies that participants are aware of the purpose of the study, as well as the implications and contributions of their participation.²²³

Prior to each recorded interview, the respondent was asked whether the interview could be documented, with full disclosure of how collected material was handled after the interview. The recordings were transcribed if necessary and used solely for the purpose of the results of this study. Recorded material was encrypted and stored using coded names to inhibit that the recordings were easily accessed or traced by unauthorised persons. Furthermore, times and dates of interviews conducted with persons vulnerable to reprimands were communicated via encrypted messaging platforms so as to avoid unauthorised monitoring.

²²² Kvale and Brinkmann, *op. cit.*, 184-185.

²²³ *ibid.*, pp. 106-107.

4.6 Processing of Material

After each interview was conducted, the collected notes and recorded material were transcribed. Upon listening through the recorded material, time marks and central themes were noted for the purpose of the analysis. Each interview was listened to a minimum of once after the interview took place, in order to make sure that responses were correctly understood and that direct quotes were correct. The common topics that appeared during the interviews were seen as common themes, which have contributed to the sub-headings in the results chapter.

Once the common themes were identified, these results were considered in relation to the wider theoretical entry point to this study of human rights implementation. Theories from previous research were compared to the collected results in order to contribute to the research field of human rights and to draw larger conclusions.

5. Results

A total of ten interviews were conducted with two human rights defenders, four civil society organisations, two international representatives, and two research institutes. The collected material is of a qualitative nature and so the results give insight to the situation and context in Viet Nam, but are representative only for the views of the respondents and the organisations. This study can therefore produce specific and situated knowledge and does not intend to be representative for civil society in its entirety, but can give an indication as to the development and trend in this context. The collected material is presented thematically below, with relevant themes that emerged during the interviews presented under sub-headings. Interviewed persons are coded in the presentation of results, with human rights defenders referred to as “HRD X” and civil society organisations and researchers as “respondent X”.

5.1 The current democratic space

Anonymity vs. Safety in the public eye

Prior to interviews, it was expected that human rights defenders would be more cautious to publish their names in comparison to other respondents that were working for an organisation. The preconception was that human rights defenders would prefer anonymity as a result of greater risk for reprimands from authorities for their participation in such a study, whereas persons working for organisations would be more willing to be cited directly as they enjoy greater protection from belonging to an establishment. However, the results were quite the opposite. The first interview took place with one of two interviewed human rights defenders; let this person be known as HRD 1. The interview lasted almost two hours and gave insight to the respondent’s work and background, but most importantly gave insight to the perception of the democratic space in Viet Nam. Although this respondent often operates under a pen name, this respondent did not request anonymity. However for ethical reasons and the purpose of continuity in this thesis, all respondents’ names are kept confidential.

The interviews with both human rights defenders revealed a mentality that individuals are more protected in the open. HRD 1 described the risks of reprimands such as beatings, incarceration and surveillance from state authorities for openly publishing or demonstrating sensitive topics such as human rights and democracy. However the public nature of posting information online can in fact provide security, explained the respondent. HRD 1 described the harassment that they had endured after participating in a public demonstration just some years ago, showing pictures taken of the bloody wounds that they had received to their face and head after being beaten by the police, ironically as a result of their peaceful participation. Both respondents gave accounts of colleagues that had participated in demonstrations and passed away shortly after enduring torture and incarceration by authorities as a result of their activism. According to the police, these persons were harassed by authorities on account of “violating the law and subversion of public order” explained HRD 1. This event marked a turning point for HRD 1 in their activism. The respondent described how they began to learn about the UDHR, which later became “a secret weapon” for their activism, allowing them to discuss and post these topics online. Jokingly, the respondent explained that the Vietnamese government sees them as “a stubborn boy”, a citizen that could not be tamed. The respondent acknowledged the authorities’ wish to quiet them down, “they even want to kill me, but it is not easy for them to do so” they added. By posting online, human rights defenders have the possibility to influence and inspire many hundreds and thousands of people to learn about democracy and human rights they explained. This influential power threatens the state, but it also makes human rights defenders with large followings more difficult to reprimand, as they cannot simply be made to disappear.

Returning to the topic of anonymity, the preconception that individual defenders would be more careful with their identities than the interviewed organisations was incorrect. The interviews conducted with international and Vietnamese NGOs revealed that organisations also risk reprimands as a result of their work. In order to operate legally, then organisations must register and receive official licensing, explained respondent 3. If such organisations choose to work with topics that are considered “sensitive” by the state, then they risk losing their licensing all together said the same respondent. Although the respondents from civil society organisations were willing to partake in interviews and were open to discuss most issues related to civil society and human rights, some preferred not to be quoted directly on sensitive issues or to remain

anonymous. Since the respondents felt more comfortable discussing sensitive topics when protected by “the public eye” or when represented by a larger organisation, these results suggest that when working with human rights within civil society the individual is perceived to be more vulnerable than the collective.

Sensitive topics and the Freedom of speech

A general trend emerged among the interviews, revealing that the term *human rights* is regarded as very sensitive in Viet Nam and that there lacks an inclusive translation of the word in Vietnamese. The term can be directly translated as “the rights of human”. Instead of addressing the inherent rights one has as a human being, the inverted order of words instead focuses on the rights *given* to humans, which is more subjective. However, the interviews also revealed that the attitude toward human rights has begun to change in society. Both HRD 1 and HRD 2 depicted the “hush-hush attitude” that has surrounded the terms *human rights* and *democracy* in Vietnamese society. According to both respondents, the use of these words would cause even friends and family to look over their shoulders; “they would look for secret police” HRD 1 explains, but adds that this attitude has changed. Thanks to the work of activists online that use these words more freely, these terms have become normalised, HRD 1 explained. Respondent 1 also suggested that although some words have been eliminated from official documents, the word “human rights” is more openly used, adding that “there even exist master programmes in human rights today”, which can be seen as a positive development in Viet Nam according to respondent 1. However, the respondent from another organisation, respondent 2, added that although it was impossible for NGOs to work with the topics of human rights, transparency or democracy in the past, they are still treated with some care. The difficulty to work with these topics was described by respondent 2 as relevant for all actors- local and international NGOs alike.

The careful approach by organisations to sensitive topics can be noted on the official websites of the organisations interviewed. Few organisations choose to use the words human rights explicitly on their websites, instead opting for terms such as “good governance”, “resilience” or simply “rights” even though the nature of these organisations can be perceived as directly human rights related. A third respondent suggested that although the “sensitivity has become diluted” during the last ten years that certain words have been removed from official government documents and

policies. As of 2017, the term *civil society* is no longer officially recognised by the Vietnamese state. The terms *democratisation* and *separation of powers* are also disallowed by the state. Instead, organisations often register as “social organisations” or “social enterprises” instead of as CSOs. Organisations such as iSEE, an abbreviation for “Institute for Studies of Society, Economics and Environment”, need to register as technological or environmental organisations although such organisations work within civil society. According to respondent 2, projects that are conducted by CSOs in Viet Nam are to be sanctioned on a ministerial level prior to their commencement. Respondent 3 expressed that 2017 has seen the highest amount of rejected projects by state ministries. These rejections have largely concerned organisations that use sensitive topics in contrast to those projects conducted by organisations “whose work is safe”, i.e. non-controversial, explained respondent 3. The effect of these project rejections is the need to “reframe the language under their (the government’s) agenda” to have the project or publication approved.

“You have to learn to dance with the system”, said respondent 3. In order to work with their main topics of corruption and transparency, the publication must first include a foreword in the beginning of the publication that states its non-intention to criticize the state. “We must use a neutral tone and not engage in antagonistic or hostile discourse in order to cooperate and build a partnership with the government”, said respondent 3 and added “we have to use our own language to frame activities”. Thus, the freedom of opinion and expression in regard to the topics of human rights, democracy and civil society seem to have become increasingly difficult during the past year for civil society organisations and human rights defenders alike.

Western imports

The concepts of human rights, democracy and civil society are “Western imports to begin with”, explained respondent 4. Essentially it is a matter of “who picks these terms up first”. Either imported terms are shaped first by the Communist party themselves or banned from oppositional use, explains the respondent. The party is currently opposed to the words *human rights* the respondent says, but not to the concept in itself to the same extent. This results in CSOs omitting sensitive topics or words more frequently from their work, the respondent explained. *Civil society* is therefore approached and discussed as something non-governmental and never as something civil or political as

the government would not accept this, said respondent 4. Respondent 1 explained state control and their way of thinking about human rights as a “zero-sum game” way of thinking. According to such a perspective, either the state has total power and control over rights, or it doesn’t. The topic of corruption is an example of this. Working with anti-corruption is perceived as an indirect criticism of those who are in power, which is currently only one party, explained respondent 4. Therefore, civil society’s work with anti-corruption is perceived as a direct threat to state power and legitimacy. “Currently the government policy toward civil society feels very strict” explained respondent 4. However, topics such as the environment are more neutral and accepted. That is, until they become political of course, the respondent explains, for then the democratic space becomes more limited to work with these topics.

Given space

A term and concept that emerged during the interviews in relation to civil society was *given space*. This terminology is unfamiliar to international human rights discourse but appears to be common amongst the interviewed organisations present in Viet Nam. The given space refers to the policy and legislation of the Vietnamese government that provide the rules of which organisation must comply with in order to operate legally. The concept of given space is deeply rooted within the Vietnamese society explained respondent 1. The centralised, one-party system entails that the government is considered a main provider of services for Vietnamese citizens, including the space in which civil society can work. *“The government provides everything for you. That means that everything you have is given by the government, the space that you work in is also given by the government. They give you more space to work and they give you more food to work. If they do not like you then you get less. That is given space”* explained respondent 3. By working within the given space, an organisation also conducts their work within the given organisational framework created by the state.

Similar to the opening-up and desensitisation of the terms *human rights* and *democracy* amongst Vietnamese citizens, the respondents in general suggested that the mentality in society is also changing regarding the topic of democratic space. HRD 2 challenged the notion of given space, questioning the very concept that a government rather than safeguard a strong and pluralistic civil society, grants permission for organisations and individuals to work independently. The capacity of civil society itself

is the biggest factor for contributing to his or her own space, said respondent 1. In the past there was a belief that the government was the most important factor to provide given space, explained respondent 1. If the government did not provide the appropriate legislature, then democratic space for civil society was assumed to be closing, explained the respondent. The opposite of being *given* space, is to *claim* space, explained respondent 1. Respondents also referred to this concept as “un-given space”. Claiming space implies that you are not waiting for the government to provide space, but instead to identify the space needed and to operate accordingly to that. “As a human being, you have the right for space to work and to act. It is not about demanding space, but knowing your rights”, said respondent 1. We will continue to work with government legislation, respondent 1 explained, but we must also continue to focus on supporting the capacity of civil society.

5.2 Freedom of expression, assembly and association

Informal networks

The increased difficulty for human rights activists to officially organise themselves means that they must find other ways to gather and meet. The interview respondents suggested that many informal networks and unofficial organisations exist for a plethora of social causes throughout Viet Nam. For human rights causes, it is especially difficult for defenders to meet. Both HRD 1 and HRD 2 talk of ways to send hidden messages and signals online and to communicate their messages without risking reprimands. It is described as considerably more difficult for defenders in Ho Chi Minh city in the south of Viet Nam to meet without the interference of police.²²⁴ The monitoring of both social activists and human rights defenders is described as more trying in the south in comparison to the capital. However, the risk for surveillance and harassment is also prominent in Hanoi and therefore there is need for hidden messages through abbreviations and symbols, as well as informal networks to arrange ways in which to meet. The right to peaceful assembly and to create associations appeared to be heavily restricted and monitored, which has increased the importance of tactical thinking amongst individuals and unregistered organisations that wish to meet.

²²⁴ B. Le Quang, op. cit., p. 14.

Tactical thinking

For human rights defenders to enjoy their freedom of expression they must “think in tactics” both HRD 1 and HRD 2 explained. The police often summon human rights defenders that are active online to meet with them to explain their work and “to accept responsibility” explained HRD 1. “They are looking for evidence”, explained the respondent, forcing human rights defenders and online activists to “own up to” their work, which facilitates an arrest.

The question is asked whether the risk of incarceration affects what HRD 1 chooses to publish online? “Oh no, I keep going” HRD 1 replied. However, the respondent added they do accustom their written work to the online platforms that they are using. The same human rights topic is reported in different ways depending on the audience explained the respondent, comparing it to serving two variations of the same dish. Given the widespread use of Facebook in Viet Nam, this platform is used to communicate predominantly with Vietnamese citizens. They have a deeper understanding of the context explained the respondent, whereas foreigners often have a different focus and understanding. Foreigners often focus on certain topics at a time explained HRD 1, often human rights related, but they lack focus on other surrounding issues, making their overall understanding more narrow. “However, it is important to keep the outside world informed”, said the respondent, therefore the communication platform Twitter is used to communicate news in English to international diplomats, journalists and academics for example. This method has been the modus operandi for HRD 1 only as of recent. The tension between Viet Nam and China regarding water territory is very important for the Vietnamese people explains HRD 1, but this is not covered to the same extent by international journalists. “They have their own problems and issues, they do not pay territorial issues much attention. They focus on human rights and therefore I focus more on these issues when I address foreigners”.

The restrictions on the freedom of expression and freedom of speech seem to be extended even to the use of Internet in Viet Nam. Both HRD 1 and respondent 4 agree that the use of social media platforms is with great awareness of their target group and with awareness of online surveillance from authorities. Aside from using online platforms differently to reach different target groups, personal profiles are no longer used. “It is increasingly easy to track people online,” respondent 4 explained, adding, “It has almost become public space”. The concept of human rights online has become more

topical in the international community, with concerns being raised that human rights breaches are being extended to the internet, putting human rights defenders, journalists and similar at risk. The interview responses suggested that the democratic space could also be discussed in terms of social media and the Internet.

Draft law on associations and international funding

The pending draft law on associations is an important law that could enable civil society to work with human rights and enable organisations to create their own democratic space, explained respondent 1. However, this law has been pending for 25 years. This current lack of legislation on associations, non-profit organisations and non-governmental organisations mean that the current organisations present in Viet Nam have to fit their work into other existent terms, such as “social enterprises” or “research institutes” explained respondent 3. These civil society organisations need to be “resilient in order to survive independently and financially” respondent 3 explained. As an alternative to official recognition, local organisations can register with umbrella organisations such as The Vietnam Union of Science and Technology Associations. However, registering with VUSTA is described as a long process that requires extensive legalistic procedures in order to receive licensing. As an established company under the National Law on Enterprises, respondent 3 doesn’t have to go through this often long and bureaucratic procedure. As a result registered enterprises can organise their work more promptly than local organisations that await approval.

Moreover, INGOs and NGOs are described as competing for international funding. The lack of a law on associations makes it difficult for local organisations to receive financial support for their work, which necessitates the aid of international actors. However, the competition between project and core funding for these organisations has a straining effect on their work. The need for international funding is not a sustainable financing method either, said respondent 4. For a civil society organisation to be truly independent and representative for grass root perspectives then it needs to be financially independent, the respondent added, which must be worked toward in the future. The approval of the Law on Associations is vital for this.

5.3 Development and trends for the democratic space

Democratic space and the sine wave

Previously, there was a belief amongst Vietnamese citizens that civil society was synonymous with government influence, explained respondent 1. “However, today there is an increasing understanding for the many roles of civil society and its contribution. So there is progress, even though the government is still trying to limit the influence of civil society”, the same respondent explained. Though in terms of legislation, the capacity of civil society is still limited in comparison to government power and control, explained the respondent. Legislation and capacity are described as interrelated and of the utmost importance to support, to make sure that civil society will expand and ultimately be able to contribute to develop.

HRD 1 described the trend for democratic space as a mathematical sine wave, swerving both upwards and downwards. So that even if the current trend of reprimands and repression for civil society has become worse during the past two to three years, then it is bound to go upward and get better again. The respondent predicts that progress will be slow, it may take three to five years, but then the space will start to expand.

If you look back thirty years to 1988, said respondent 1, “you can see that the democratic space has obviously widened”. The “Doi Moi reforms” in 1986 were described as a turning point for this development, if you compare civil society to the situation then, you can see that “the democratic space has opened up in almost every aspect” the respondent states, “in terms of economic development, governance and even people’s participation”. With this said, respondent 1 explained, if you make a shorter comparison to the last two years between 2015 and 2017 then “the civil society space has gone down, a lot”. The most recent party congress in 2016 marked the beginning of this downturn, but it is difficult to understand the exact reason for the shrinking space said the respondent. Most probably, the government has become afraid of the civil society movement the respondent adds, “...they are afraid of the strong influence that civil society can have”, especially keeping in mind what can be learned from international democratic movements. Moreover, there is a fear of internal revolutions, said respondent 1. If party members themselves are influenced from a strong civil society movement to stop believing in the Communist party then their power can start to

slip away. The result is more tight control and legislature for civil society, respondent 1 concluded.

Democratic space and the seed of thought

Human rights and democracy were described in a similar manner by HRD 1, as a seed of thought that once sewn, can be cultivated to spread amongst civil society. The thought of a free man, who can live and work as a free man, *that* is a thought that today can inspire thousands, and one day maybe even inspire millions explained the respondent. Subsequently, by promoting democracy and human rights, the knowledge is spread and the space for civil society can expand, HRD 1 explained.

The culture of demonstrations has more or less always been present in Viet Nam, HRD 2 explains. It began with the war veterans and workers who went on strikes for better working conditions. Often these strikes were not explicitly about government policy, but about workers conditions and rights. However, the Vietnamese government is both prompt and responsive, said HRD 2. These strikes died down for a period of time, but “when you quiet us down, we will come back and there will be more of us” said HRD 2, and so, the tendency to strike and demonstrate has always been present during the last twenty years, but the nature of these demonstrations has changed to become more political.

HRD 2 also gave insight to the current trend for democratic space, which the respondent described as expanding. This defender has many years of experience within the field of human rights and democracy and explains that the last quarter of a century has in fact seen an expansion of space for civil society in Viet Nam. Civil society in Viet Nam however, is “both dynamic and broad” the respondent explains, and the human rights portion of this space is small in comparison to many others. Human rights activism and advocacy has only emerged during the past ten years, explains HRD 2, but slowly the movement for human rights and democracy is increasing. This development, like any other, explained the respondent, moves both up and down, but it is not currently moving down. This expansive development may not be described as rapid or strong, it may not be described with terms of “success” or as “prosperous” the respondent says, but explains that the democratic space is *de facto* expanding.

All interview respondents were asked to predict the coming development for the democratic space in Viet Nam. “It is hard to give a concrete answer of whether

the democratic space has expanded or become narrower because it depends on the activities you are working on and who you are” said respondent 3. “It depends on what language you choose to use and if you receive funding from non-recognised or international organisations, because then the risks may be higher” said respondent 3, adding that “in some areas it is expanding and in others shrinking.” However, “the crackdown on activists” is very evident said the same respondent, referring to the recent trial of six human right activists in Hanoi, accused of “taking advantage of the fight for ‘democracy, human rights, civil society’” to “challenge the political system and eventually overthrow the government”.²²⁵

Respondent 1 also expressed optimism regarding the long-term development of democratic space in Viet Nam. The respondent believed that organisations could continue to work in the direction that they have in order to create more open space. However, in the short term, the same respondent expressed some reservation, describing the development of democratic space in the coming two to three years as “unclear”. Once again the metaphor of a sine wave was applied, describing a trend that moves both upwards and downwards. “We cannot yet know if we have reached the very bottom and turning point of the curve” said respondent 1, but added that in the long-term the development is sure to improve.

Respondent 6 described the freedom online as having greatly developed, resulting in an increased freedom of expression and speech online, meanwhile the authorities use targeted repression of “dissidents” of Vietnamese law in reality. Those who express non-political opinions enjoy the greatest amount of freedom online, while perceived dissidents such as religious groups and environmental or human rights activists experience great repression. The space for freedom of expression is predicted to continue to widen, but with harsher targeted repression for individual human rights defenders explained respondent 6, depicting a sobering view on coming development of democratic space.

²²⁵ The Associated Press, *Vietnam puts 6 activists on trial for alleged subversion*, (website), <https://wtop.com/asia/2018/04/vietnam-puts-6-activists-on-trial-for-alleged-subversion/>, 5 April 2018, (accessed 25 April 2018).

6. Analysis & Discussion

Universalism and Cultural Relativism

This study began with a discussion regarding the Universalist and Cultural relativist approaches to human rights implementation. These arguments were further nuanced with perspectives of an overlapping consensus approach and contextualised with several cases of previous research. In this final analysis and discussion, the results that were produced from interviews will be anchored within the larger theoretical approaches to human rights. As presented in the background chapter, many international human rights reports criticize the current lack of human rights in Viet Nam and describe the occurrence of a global trend of shrinking democratic space. To investigate this phenomenon in the context of Viet Nam the following research question was posed: *To what extent is the democratic space for civil society expanding or shrinking in Viet Nam and what is the effect for the full implementation of human rights for all?* This question has been approached from several perspectives.

To begin with, Banchoff argued that essential to the Universalist approach and the Universal Declaration is that all humans are born free and equal in dignity and rights, but this approach also brings with it a normative approach that is heavily influenced by western norms.²²⁶ In response to critique of UN conventions as a “global human rights regime” Banchoff added that some limitation to human rights practices is permitted in the face of public order and national security. The interview results revealed that Vietnamese authorities often arrest human rights defenders and demonstrators to preserve public order, but at what point does the possibility of such limitations undermine the foundational principle of equal human dignity and rights? The official perspective from the Communist party of Viet Nam suggested that human rights in fact are implemented in accordance with international conventions and that any deviations are a necessity to maintain public order and prevent the overriding of state authority. Given that the national makeup of laws and regulations vary to a large extent between countries, the factors of public order, general welfare and democratic society remain undefined and seem to fall under quite a large margin of appreciation. It is not the purpose of this thesis to try to “solve” this gap in interpretations of the Declaration,

²²⁶ Banchoff, op. cit., pp. 25-26.

but the current situation in Viet Nam suggests that if human rights are to be limited in this context, then the terms “public order” and “general welfare in democratic society” need further specification to make sure that governments cannot sidestep the Declaration to reprimand human rights defenders and still withhold status as a ratifying convention state.

Moving forward, how then should human rights best be implemented in the face of such limitations? Sachedina suggested that human rights in fact could be implemented in consideration of cultural and regional values.²²⁷ The premise for this cultural relativist approach was that an underlying moral foundation that is applicable to many regions, traditions, religions and beliefs would ensure a common and adequate implementation of human rights. The interview results suggested that amongst Viet Nam’s many ethnic and religious groups, there was a common moral and collective belief in the importance of personal wellbeing. This moral understanding implied that although some human rights could be infringed, such as the freedom of expression, those rights related to “health and wellbeing” could not be compromised. The presence of this common moral understanding could possibly explain the lack of controversy regarding topics such as climate action, rights of LGBTI persons or the right to education from the perspective of the Vietnamese government, that are otherwise highly controversial in many other regions of the world. The lack of controversy for these human rights cannot be said to be universal at this point in time, however it is likely that some human rights are uncontroversial in Viet Nam as long as they do not challenge the politics and power of the state. It was also suggested that those issues that cannot give economic gain to the government are perceived as uncontroversial. This argument implies that it is not the presence of “common morals” but the consideration for the economic wealth and power of authorities that decides which human rights are implemented or not.

If, as Sachedina suggested, human rights conventions could instead be culturally relative from the beginning and take greater account for culture and traditions, had the human rights implementation in Viet Nam possibly been more inclusive of all rights? Given the many significant factors such as the sheer size of the Vietnamese population, the plethora of religions and beliefs, and the long background of conflict and colonialism, which are likely contributors to Vietnamese culture, it seems

²²⁷ Sachedina, *op. cit.*, p. 5.

reasonable that policy implementation would look differently to a country with another background. Can one expect a country that has not had the opportunity to participate in the Drafting of the Universal Declaration to follow its articles without question? It would seem, as Donnelly explained, that some human rights in Viet Nam are in fact accepted and allowed by the government as principles of shared morality, which is an indicator that greater allowance for cultural variation in human rights implementation could loosen the grip on other rights too.²²⁸ Davis suggested that the need for power and security amongst states accelerates the consolidation of power, which the historical background of conflict in Viet Nam could have contributed to, that is, a need to regain national integrity through control.²²⁹ This could explain the described sensitivity regarding the topics that are too politically critical in civil society. However, the situation remains that human rights defenders and civil society organisations are experiencing repercussions and violations as a result of their human rights work.

A vibrant and pluralistic civil society that has the space to operate independently is an important contributor to democratic society and the protection of many human rights.²³⁰ The interview results suggested that the government in Viet Nam violates the freedom of speech, of expression, of peaceful assembly and association through means of harassment, incarceration, online monitoring and surveillance. A Universalist perspective would argue that these actions breach the premise of inalienability of human rights. For, one cannot be said to have the right to health and personal wellbeing (Article 12, ICESCR) if one has the right to medical service but not to the freedom of speech, which arguably is just as important for mental health and wellbeing. Human rights cannot be mutually exclusive. Similar to the global trend that was reported by International IDEA, while democracy and the rule of law experience decline, the participatory engagement of civil society starts to incline.²³¹ Although the risk for reprimand is increasing for human rights defenders and CSOs increasingly risk losing licensing, there was no inclination that civil society would cease to conduct their work promoting and protecting human rights.

²²⁸ Donnelly, *op. cit.*, p. 131.

²²⁹ Davis, *op. cit.*, p. 152.

²³⁰ Government offices of Sweden, *op. cit.*

²³¹ International IDEA, *op. cit.*, p. 71.

The current democratic space and human rights

To further understand the specific situation for civil society in Viet Nam, the following is a summary of the four sub-questions that were posed: *What is the current democratic space for human rights defenders and for civil society organisations and to what extent do they experience restrictions to their human rights?* The interview results suggested that the democratic space in Viet Nam is not static but rather in constant movement, the question remains in which direction this development is moving? From the perspective of human rights defenders themselves, i.e. those who risk the greatest personal reprimands for their work, it would seem that the space is in fact expanding, albeit slowly. Rather than a linear development in one direction, the interviews with human rights defenders depict a democratic space that instead waxes and wanes continually.

The interview responses depicted an environment that is harsh for individuals that organise themselves to promote and defend human rights and a space that has become harsher even for civil society organisations to operate. It seems that human rights defenders draw a distinction between increased reprimands and the democratic space as a developing entity. Therefore, even if the harassment of defenders and activists has increased, and will probably continue to do so, the reaction is an increased resistance from civil society and an expansion of democratic space. The amount of petitions and demonstrations has increased, the spoken and written word has become more accessible online and the interview results suggest that knowledge of human rights is increasing in both urban and rural areas. As terminology such as human rights, democracy, rule of law, and civil society become desensitized in Vietnamese society, the knowledge of these concepts has also spread. Subsequently, as the political demonstrations occur more often, so has the pressure from civil society increase upon the government to fully implement human rights. The human rights defenders describe a community that is no longer afraid to demonstrate or go on strike when forced to cease demonstration and instead continues to advocate for human rights and democracy in other forms: on social media, through informal organisations, and secret meetings. In turn, this persistence in human rights defence and advocacy actively expands the democratic space for civil society.

Regarding the discussion of “given” space and its counterpart, the results suggest that the two respondent categories are affected differently. Civil society organisations are present in many forms, international-, Vietnamese-, non-profit-, non-

governmental-, governmental-, etc. This means that they not only play a role as both dependants on government legislation and gatekeepers for civil society to the state, they are also struggling to register legally and survive financially. The results suggest that organisations are more inclined to be affected by government policy, and therefore more dependent on the notion of “given” space. Human rights defenders however, do not enjoy the possibility of registering or receiving governmental financing and so their struggle occurs in a personal capacity, also affecting their private economies and standards of living. However, this detachment from governmental subsidies also creates independence for individual actors, allowing them to actively carve out and expand the democratic space in which for them to work. Essentially, human rights are inherent from birth and the democratic space in terms of human rights cannot simply be “given”, rather they are inherently present for every human being. With this said, the interview results suggest that restrictive laws and legislation in Viet Nam are currently restricting human rights and limiting the democratic space.

Human Rights Development

The third theoretical approach to human rights implementation was an overlapping consensus approach, whereby moral and traditional foundations can meet international human rights conventions to find consensus. This approach seems most plausible when looking at the current human rights development in Viet Nam and keeping in mind the country’s political and historical background. With this said, the argument that “Asian values” are not compatible with human rights that are perceived as sensitive or controversial does not appear to be conducive to the full implementation of human rights. The interview results suggested that the concepts human rights, democracy and civil society are Western imports, which the Vietnamese state appears to characterise as incompatible with national law. The current and repressive situation for the freedom of speech, expression, assembly and association in Viet Nam for both human rights defenders and civil society organisations suggest that there is need for further democratic development and proper implementation of the UDHR. For, while being critiqued for being “foundationless”, the Universal Declaration provides extensive descriptions of the human rights and freedoms that are to be promoted and safeguarded by all member states.

The past six-month period has been described as particularly repressive for human rights defenders, with increased jail sentences for human rights defenders and unpredictability in the repercussions faced for defending and promoting human rights. The trend during the past 20 years however, has been described as a widening of democratic space. Looking forward, the democratic space is predicted to continue in the same restrictive fashion for another three to four years, but is then expected to expand once again according to respondents. This expansion will occur provided that civil society continues to claim its space and build its capacity to protect and promote human rights and democracy.

7. Concluding Remarks

In conclusion, the interview results suggest that a quick economic development in Viet Nam has not been matched by an equal momentum in human rights. As a result of increased economic opportunities in the country, the economic, social and cultural rights appear to have developed at a quicker rate than civil and political rights. As the theoretical approach presented by Amartya Sen suggests, there is no guarantee that an economic system will continue to thrive through non-democratic leadership.²³² This appears to also be the case for the context of Viet Nam, where the market opportunities have grown, but as Viet Nam has developed to become a middle-income country, so has the need and demand for full implementation of human rights and a functioning democratic space and society.

The empirical results from this study suggest that Viet Nam need to improve their current legislation on human rights in order to ensure proper human rights implementation that is in line with their international commitments. The implementation of the ICCPR, ICESCR and the providing of a law on associations would work to expand the democratic space for civil society. With this said, it seems difficult that the universal conventions on human rights be incorporated fully into Vietnamese law in the coming three to five years. A method of overlapping consensus could therefore be beneficial to the situation in Viet Nam, allowing for cultural and traditional contributions to the application of human rights. Looking forward, it is crucial that Southeast Asia are included in the drafting of future international human rights conventions and similar to ensure that these largely populated countries can contribute, but also to ensure a sense of obligation amongst all member states to properly implement and follow up on these conventions.

Furthermore the results suggest that as Viet Nam continues to develop so does the relationship between civil society and international financiers need to grow. For civil society organisations to achieve full independence in their research and work it is important that international donors avoid a “carrot and stick effect” in their support, instead allowing for local input and ideas to flourish independently from grass roots

²³² Sen, op. cit. pp. 5-6.

level.²³³ Moreover, the financial independence of civil society organisations could avoid the perception of human rights and policies as Western imports that do not coincide with Asian values. From a perspective of international development cooperation it is vital that human rights dialogue moves away from the dichotomies of “West vs. East” or “Asian and Western values”, to instead find common foundational values between countries and aim to achieve an overlapping consensus in human rights implementation.

From a Western perspective, the democratic space in Viet Nam is currently restricted in comparison to the Universal Declaration and is currently shrinking as restrictions increase. Results suggest that human rights defenders and civil society organisations are both affected by strict laws and regulations, while defenders are also at risk for other reprimands. Both respondent categories experience restrictions to their freedom of speech, opinion and expression, assembly and association today, which have resulted in forms of self-censorship and difficulty to conduct projects and reports on the topics of human rights for these respondents. The current situation has also entailed a need for anonymity in participation of this study, tactical thinking in relation to their work and the need for informal networks. In spite of this, there is optimism amongst all interview respondents that the situation will change and that the democratic space will continue to expand in the long term, although there is no definite time line. From the perspective of respondents it would seem that the democratic space has expanded during the previous twenty years, despite increased targeted repression and legislative changes during the past two to three years. In conclusion, the results suggest that the capacity of an independent civil society needs to be strengthened to increase the democratic space and ensure proper human rights implementation.

²³³ Wood, *op. cit.*, p. 535.

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