



Institutional Reform: From Vision to Reality *

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PART I: The time has come to implement institutional reform

1. Economic underperformance and its consequences

For three decades since Economic Renovation (đổi mới kinh tế) from 1986 to 2015, Vietnam's economy has grown at an average rate of 6.5% per year.¹ Given the fact that since World War 2, only 13 countries have been able to sustain an average growth rate of 7% or more for 30 consecutive years, the rate of growth of Vietnam is very impressive.² However, if compared with the “dragons” and “tigers” in the region, this growth rate is still quite modest. In the three decades before the Asian financial crisis, Indonesia and Malaysia’s average growth is 7.3%, Thailand 7.7%, and South Korea 9.3%. As for China, for the three decades since “gaige kaifang” in 1978, China has achieved an average growth rate of 10%. Thus, although Vietnam’s economy grows rapidly, it still underperforms compared to the successful economies in the region.

Vietnam’s performance relative to other major economies in the region can also be measured by the income gap. To be fair, thanks to the recent relatively high growth rate, Vietnam has narrowed the *relative gap* in per capita income with major regional economies (except China). However, the *absolute gap* in per capita income has been widening, as reflected in the increasing divergence in per capita income between the Việt Nam and other countries in the last quarter century (except India whose growth path is markedly similar to that of Vietnam). The diagram also reveals that while Vietnam and China were at the same level in terms of PPP per capita income in 1990, by 2013 the difference between the two was 2.3 times.

Continuing economic underperformance and slowdown will induce serious consequences and intensify existing challenges. In particular, alongside the widely acknowledged economic challenges,³ Vietnam and the ruling Communist Party are facing three other major challenges: namely, a rising and assertive China, increasing public expectation for economic development and civil freedoms, and a diminishing legitimacy of the Party.

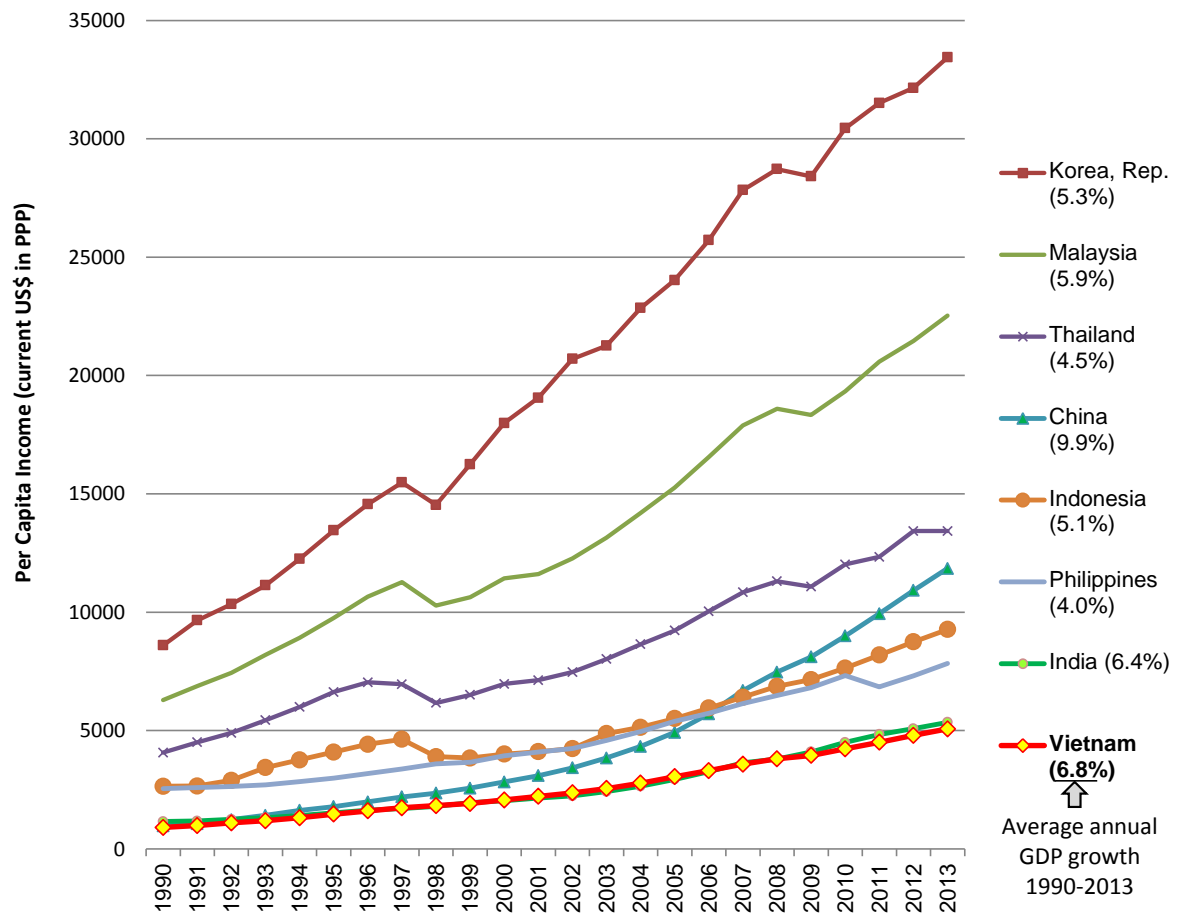
First, challenges from a rising and assertive China have intensified. Located next door to a huge neighbor and in a strategic and geopolitical position, it is unavoidable that Vietnam will face significant influences from the northern giant in all aspects, be it economic and political or cultural and social. In order to develop, Vietnam needs to maintain stable diplomatic relations with China. However, with China nurturing a strong desire to change the region and world order, the hope to keep this interaction stable is proving difficult. Unless Vietnam maximizes efforts to boost its growth and strengthen its economic potential, China’s economic dominance will subdue Vietnam further into its dependent path.

¹ Data from Vietnam General Statistics Office and the World Bank both produce the same average annual GDP growth rate of 6.5 percent during 1986-2015. The GDP growth rate for 2015 in the range of 6-7 percent will not change this 30-year growth average. (The 2015 GDP growth target as approved by the National Assembly is 6.2 percent.)

² The thirteen economies are Botswana, Brazil, China, Hong Kong, China, Indonesia, Japan, the Republic of Korea, Malaysia, Malta, Oman, Singapore, Taiwan, China, and Thailand. (Source: Commission on Growth and Development (2008). *The Growth Report Strategies for Sustained Growth and Inclusive Development*. Available at <https://openknowledge.worldbank.org>)

³ Such as growing old before growing rich, the low technology or low value-added trap, and the middle-income trap.

Figure 1. Per capita income of Vietnam and major countries in the region



Source: Authors' calculation from the World Development Indicators

Secondly, despite some fluctuations, the 20 years after the launch of Doi Moi reforms were a period of continued development for Vietnam marked by many laudable achievements. Millions of lives have changed for the better thanks to improved living standards, while hundred thousands of businesses mushroomed due to the establishment of the right to do business. These successes have led to higher expectations from the public for a more prosperous life, and from the business community for greater freedom to do business. Meeting this rising optimism is a challenge to the State and Party. However, since 2008, as the country has become more integrated with the outside world, both the business community and the public at large have increasingly sensed the lagging and underperforming nature of the economy relative to others in the region. If reform continues to stagnate, causing Vietnam to lag further behind, the public will eventually lose their patience and the Government and Party will suffer from diminishing legitimacy.

Thirdly, the legitimacy of the ruling Party is not limited to the economic sphere. A lack of understanding and representation of the people's desires can jeopardize the Party's political authority. Up till now, the Party has earned its legitimacy through its ability to abide by the desires of the people; this legitimacy in turn enables the Party to mobilize popular support at critical moments. Given current developments in Vietnam and in the international arena, the Communist Party of Vietnam is again facing a critical juncture, where right choices and decisive policies are needed to restore the people's faith in the Party.

In reality, the Government and Party are aware of these challenges. Yet, there is a long road from recognizing challenges to realizing the urgency of the threat to actually mobilizing political will to implement sound policies to deal with these challenges. The risk of backwardness that was warned of in the Midterm Conference of the 7th Party Congress (1994) has now become a reality. The three major growth bottlenecks, namely the quality of institutions, infrastructure and human resources, have been discussed for more than 10 years but have not yet been overcome in any significant manner. More recently, although restructuring the economy and reforming the growth model have been prioritized by the Government and Party following the recent macroeconomic instability, the actual implementation has been sluggish and ineffective, failing to improve the economy as per initial expectations.

At critical moments in the past thirty years, the State and Party have made bold and pragmatic reforms, starting with the adoption of Doi Moi, the Law on Encouraging Foreign Investment (1987), the Law on Private Enterprise (1990), and the Company Law (1990) in response to what the Party called the “comprehensive social and economic crisis” of the early to mid-1980s.⁴ A decade later, when the Asian Financial Crisis caused FDI, exports and thus growth to drop precipitously, the 1999 Enterprise Law was instituted; as a result, the domestic private sector became the leading force in Vietnam’s economic development. The question today is whether Vietnam’s leadership can again muster the political will to turn words into actions through the implementation of institutional reform.

2. About this paper

This paper is intended to provide context for the policy discussions that will take place during the fifth Vietnam Executive Leadership Program (VELP). Over the course of the weeklong VELP 2015, it is hoped that the arguments and ideas presented in this paper will be discussed, debated, and challenged, and that the paper will contribute constructively to the debate around critical questions facing the Vietnamese leadership and Vietnamese society more broadly today.

The paper consists of the introduction, four main parts, and the conclusion. Part 2 discusses the middle-income trap and different development models. Vietnam and several other countries in Southeast Asia have had periods of rapid economic growth. They have, however, failed to develop their institutions as rapidly as their economies. Since more sophisticated economies need better institutions to continue growing, some of these nations are likely to slow down well before they attain high-income status. To go back to the 7.5-8 percent growth path in the next 10 years, Vietnam has come to a critical juncture; it needs to transition toward a new development model, and the way to support that transition is to implement institutional reforms.

Part 3 defines the goals of inclusive growth and institutional reform, which includes three main elements, all of which have been laid out in the 2013 Constitution: enlarging political participation, enhancing the role of the National Assembly, and reforming the judiciary. It then discusses public governance, arguing that increased accountability, debate, and transparency can contribute to better policies. Finally, it examines the relationship between policymakers and private firms, arguing for increasing the voice and representation of the private sector.

⁴ Strategy for Socio-economic Stabilization and Development to 2000 adopted at the 7th Party Congress in June 1991.

Part 4 focuses on the National Assembly, analyzing how implementation of key provisions of the 2013 Constitution can transform the National Assembly into a productive check on the power of the Government, in particular by increasing transparency, oversight power, and responsiveness to constituents.

Part 5 analyzes the role of the judiciary in the economy, arguing that the politicization and unpredictability of the judiciary has become a binding constraint for Vietnamese firms. It then analyzes problems of fragmentation within the judiciary, and identifies the key elements of the new constitution that would increase the power and independence to the courts to deliver impartial justice to firms and citizens.

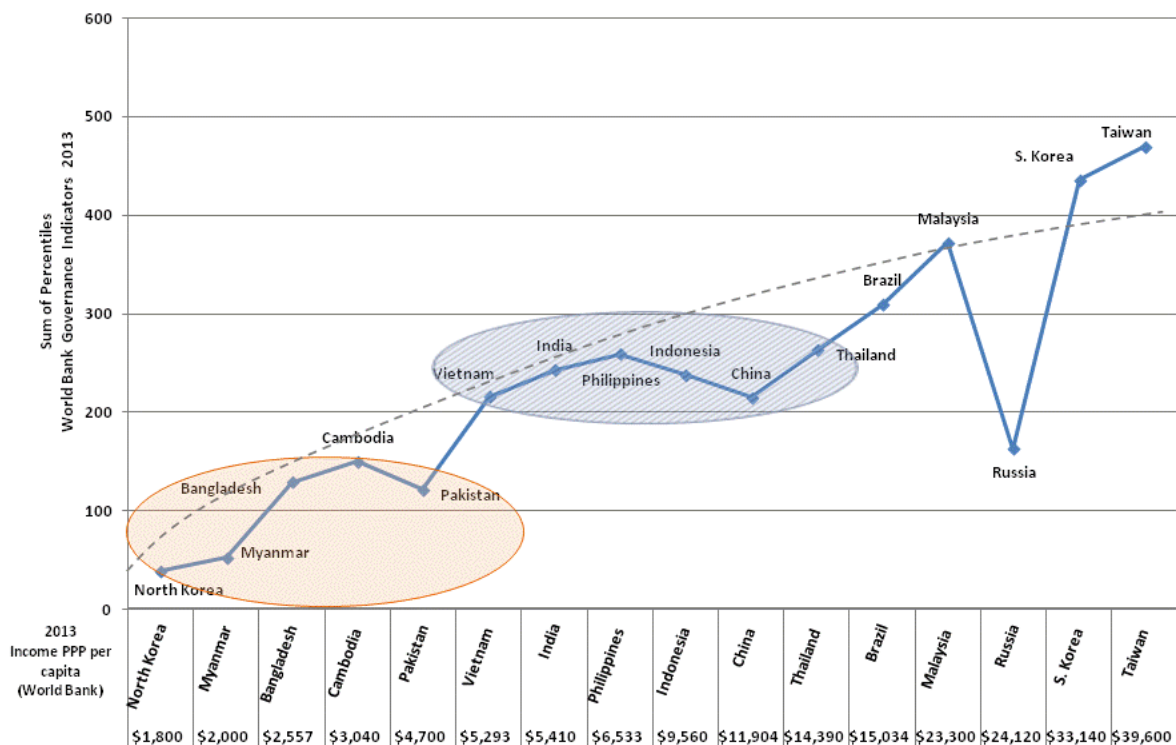
The final section summarizes the institutional reform agenda outlined in the paper, and discusses the challenge of mobilizing political momentum for further reform.

PART II: The middle-income trap and options for development models

1. The middle income trap

There is a phrase used by political economists more than economists – the “middle-income trap.” It refers to economies that grew fast for a decade or more and reached middle-income status but then slowed down well before they reached high income status. The diagram below illustrates this growth pattern.

Figure 2. World Bank governance indicators/Income per capita (PPP): Low and middle income traps



Source: Vietnam Program at Harvard Kennedy School based on data from the World Bank

From Figure 3, one group of countries at very low per capita incomes risks being caught in a bad governance trap – their instability and corruption so deters investment that they fail to manage rapid growth.

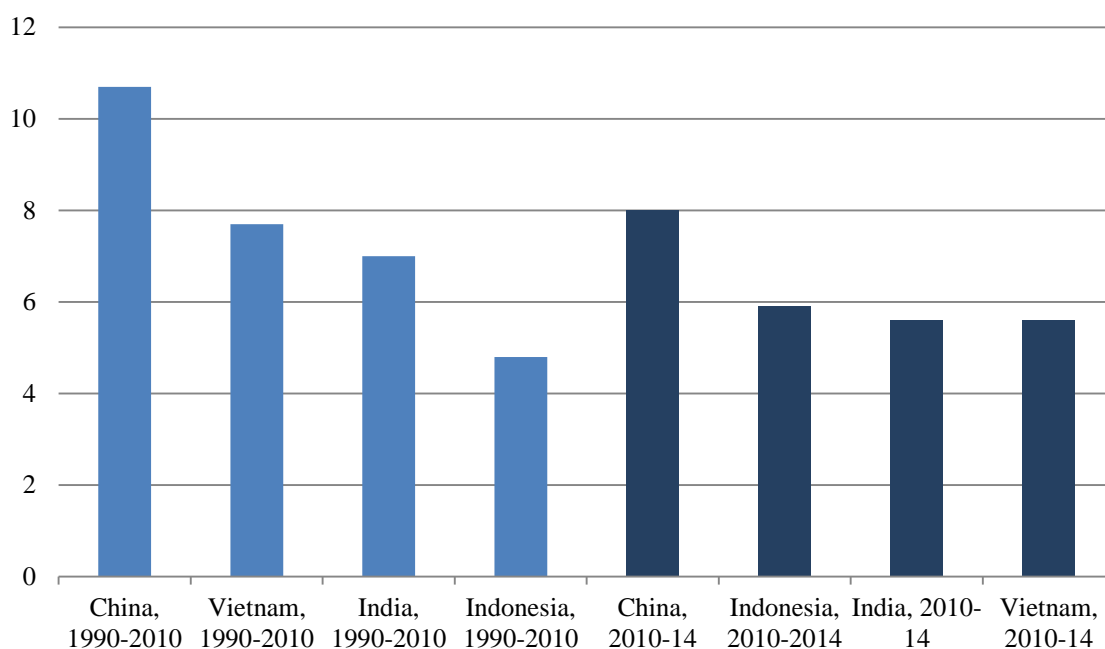
A better known example is the “middle-income trap” – the second oval – in which nations that had grown rapidly fail to develop their institutions as rapidly as their economies. Since more sophisticated economies need better institutions to continue growing, some of these nations are likely to slow down well before they attain high-income status.

Up to 1945, no country maintained a growth rate more than 3% per capita for decades. Japan managed to grow at 8-10% from the early 1950s up to 1973 with 1% or so population growth. It was closely followed by South Korea and Taiwan, who managed to grow fast for three decades or more. In the late 1970s, China began its reforms and started its decades of rapid growth, only now ending. Vietnam, starting in the later 1980s managed to grow fast for

nearly two decades but then slowed to the 4-6% range for GDP growth (deduct 1% or so for population growth) more typical of richer ASEAN economies such as Thailand or Malaysia.⁵

The comparison between Vietnam and three other populous countries in Asia offers some interesting points in terms of the middle-income trap. The initial expectation is that India and Vietnam would grow the fastest; Indonesia would be in the middle; and China would be growing the slowest. Yet Figure 3 clearly shows that China grew the fastest in both periods, though it slowed down the most too – from 10.7% to 8%. Vietnam, though much poorer, grew only 7.7% in the first period and then slowed to 5.6% in the second. India also slowed from 7% to 5.6% while Indonesia actually accelerated from 4.8% to 5.9%. The slow early Indonesian rate reflects the huge 1997-98 crisis and resulting output collapse. Given that Vietnam was just starting its reforms in the 1980s and then taking advantage of more trade and investment opportunities, it is not surprising it did well initially. It is more surprising that it slowed down so much while Indonesia sped up.⁶

Figure 3. Annual GDP growth rate in 1990-2010 and 2010-2014 (%)



Source: World Investment Review 2014, Annex Table 1

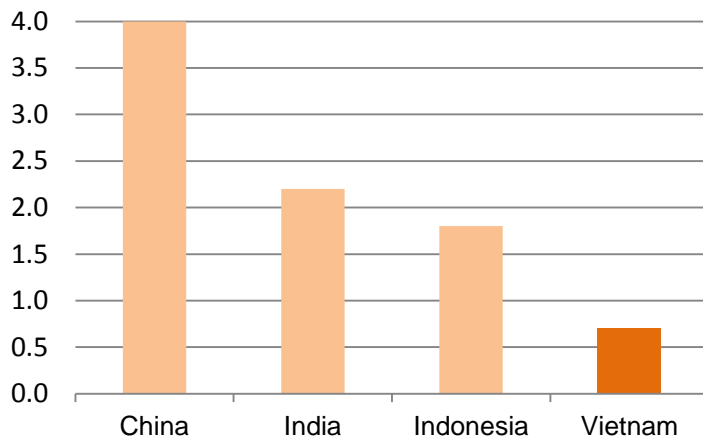
An important part of growth analysis is to see where growth came from. Basically, you can grow by increasing labor (including the quality of labor, not just the number of workers), capital, or productivity. The IMF looked at several Asian economies and found that Vietnam's improvement was shockingly low, less than half of Indonesia's and a sixth of that of China (see Figure 4). Low TFP growth means that growth will mainly come from increasing inputs; so, if labor growth is slowing and investment to GDP is dropping, then there is no driver to boost growth. A lot of what looks like TFP growth comes from switching sectors. If people produce less in farming or petty services, and more in factories or higher level services, then switching workers from the low to the high productivity sector will boost

⁵ The cases of Singapore and Hong Kong are excluded from this analysis. They are city-states and exempt from many of the issues that larger nations with significant rural areas have to deal with. Outside of Asia, very few nations have sustained rapid growth over decades.

⁶ To get per capita GDP growth, population growth rates need to be deducted from GDP growth. China's population growth is less than ½ of 1% now and the other three are close to 1% a year.

growth, even if neither sector has increasing productivity. It will look like productivity is growing when in fact people are changing sectors. If Vietnam has largely completed that transition – or if it will move more slowly now – then that source of productivity growth is lost.

Figure 4. Annual Total Factor Productivity Growth, 2008-2013



Source: IMF, “Potential Growth in Emerging Asia”, January 2014

In 2014, Vietnam’s economy entered 7 years of continuous slowdown, but with a positive signs in macroeconomic stability. Vietnam’s General Statistics Office announced the economic growth estimates for 2014 at 5.98%, compared to 5.42% GDP growth in 2013 and 5.25% in 2012. The lion’s share of growth in 2014 was contributed by manufacturing. Manufacturing value-added increased by 8.5% in 2014. However, the immediate challenge is to improve health of domestic private business, because growth in manufacturing will not be sustainable if contributed by the FDI sector alone. As for aggregate demand, the two factors driving growth were the trade balance and investment. In 2014 Vietnam’s trade surplus was almost \$2 billion, achieving a very high export growth rate compared with other emerging economies. Also notable is investment. Inflation is low (1.8%), but total investment in nominal terms increased 11.5% in 2014. Investment growth was especially robust in the state sector due to borrowing through investment credit, government bonds, and SOEs’ borrowing and equity.

The macroeconomy in the first quarter of 2015 has also shown positive signs. A GDP growth rate of 6.03% in Q1 is the highest achieved in the last five years. Official statistics on manufacturing, total retail sales and electricity consumption for production, and also other market indicators are all in favor of this overall picture. Consumer Confidence Index shows that Vietnam had the highest improvement in Asia in the first quarter.⁷ The Purchasing Managers Index (PMI) reflects strong domestic business confidence to expand production, at least in the short term.⁸ Despite this short term improvement, however, the economy has not yet returned to the high growth rate trajectory of 7-7.5% that it had upheld during 2001-2007.

⁷ The Consumer Confidence Index is from ANZ - Roy Morgan.

⁸ The PMI is from HSBC - Markit.

Clearly, the potential for fast growth obviously exists in Vietnam. But the absence of institutional reforms makes these forces for growth uncertain. It is time for Vietnam to transform to a new growth model and implement needed institutional reforms to support a growth trajectory that is sustainable in the long-term.

2. Three development options for Vietnam

Faced with economic underperformance and the three critical challenges discussed in Part 1 of Chinese influence, increased public expectations, and diminishing Party-state legitimacy, the question for Vietnam's leadership is how to achieve the country's full economic growth potential and how to prevent Vietnam from falling further behind. In determining the development model for Vietnam, experience of successful countries in the region suggests three viable options.

The first two options are the development models of Northeast Asia and Southeast Asia. In our paper titled "Choosing Success: Lessons from East Asia and Southeast Asia for the future of Vietnam" published in 2008, we have analyzed the fundamental differences of the growth models in Northeast Asia and Southeast Asia. A defining characteristic of the East Asian development model – as in South Korea and Taiwan – was the government's ability to discipline economic interests by means of both state regulations and market competition. Access to state favors were linked to performance more than political connections, and investments in education, infrastructure and industrial upgrading were prioritized. In contrast, the "crony capitalism" of Southeast Asia is in fact the failure of the state to achieve a clear separation of economic from political power.

Another important difference between the two models lies in the relationship between state and society. At critical junctures that require decisive political changes, Northeast Asian countries carried out political reforms to deepen social participation and expand individual freedom for people –those institutions that Acemoglu and Robinson call "inclusive"– thereby creating a virtuous circle toward development. In contrast, until now, the institutional system of the majority of the Southeast Asian countries is still heavily extractive and favors the elite groups that enjoy privileges on the back of most people, evidenced in high inequality and high FDI dependence, resulting in some cases in chronic social instability. As a result, growth declined and these countries fell into the middle-income trap.

In "Choosing Success", we pointed out that Vietnam has followed the footprints of the Southeast Asian countries. Developments from 2008 to date confirm this assertion. The Southeast Asian path is thus, effectively, the status quo. But in order to become a country in which the people are rich, the nation is strong, the society is democratic, fair and civilized, Vietnam needs to break with the current development model and reorient toward an inclusive development model. In line with the spirit of the policy discussion prepared for VELP 2013, we believe that institutional weaknesses, which is the consequence of waning reform efforts, delayed implementations, and missed opportunities, all make the fundamental institutional problems difficult to resolve, and are the root causes of the recent macroeconomic instability as well as the underperformance in the last three decades.

In raising the Northeast Asian model as the paradigm for Vietnam, it must be recognized that Taiwan and South Korea were upper middle-income, industrialized countries in the 1980s when they underwent democratic reforms. But two key differences between Vietnam and these states that suggest that Vietnam would benefit from initiating institutional reform at a lower income level. First, Taiwan and Korea both had strong, unified central states, which

allowed them to pursue top-down development strategies more successfully. In Vietnam, experience has shown that institutional fragmentation and decentralization impede the ability of the central state to impose a similar state-led development strategy. Second, Vietnam faces a very different economic and social context: economically, the globalization of production, de-integration of most major industries and the spread of global supply chains across countries mean that the challenge of industrialization has become more complex than in was in the 1960s and 1970s, complicating the task of industrial policymaking.⁹ Socially, Vietnamese citizens are now globally connected and well informed. To the Vietnamese government's great credit, it has allowed an open Internet and encouraged competition in the telecommunications sector, which have made mobile phones and the Internet widely accessible.¹⁰ In combination, these factors suggest that Vietnam will need to introduce institutional reforms oriented toward inclusive governance sooner than its East Asian predecessors did. As is emphasized in this paper, the need for these reforms has already been clearly articulated by senior Vietnamese leaders, in Party and Government policy documents, and in the 2013 Constitution. The task now is to put words into action.

There is a third model that Vietnam could theoretically pursue, suggested by the recent Chinese experience. Of course, there is no single "Chinese model." At the start of their terms, Jiang Zemin and Zhu Rongji faced serious economic challenges including a backward economy, low productivity, and a crisis of state capacity. In the face of these pressures, Zhu Rongji resolved to push a series of comprehensive reforms to discipline interest groups, namely local governments and SOEs, and to force SOEs to compete on the domestic and international market. By contrast, Hu Jintao and Wen Jiabao started their terms in an atmosphere of complacency rather than crisis. Inflation was controlled, the country joined the WTO, and the economy grew quickly. It is unsurprising, then, that with the economy running smoothly, some market reforms were slowed or even reversed under Hu Jintao and Wen Jiabao.

Marking a sharp break with China's gradual movements toward more openness and public voice, President Xi Jinping has asserted himself as a supreme leader intent on establishing an ironclad grip on the party and society. On the one hand, the role of the market economy has elevated to the "decisive role", rather than its "fundamental role" as under Hu Jintao and Wen Jiabao. On the other hand, Xi has pursued a sweeping anticorruption campaign; rolled back reforms that had opened the party and state to more participation, merit promotion and transparency; and cracked down on political dissent and even lawyers in an attempt to strengthen and discipline the Party-state while silencing any other voices. In 2013, 182,000 officials were punished for corruption; in 2014, the number was more than 100,000. The success of this massive campaign to strengthen and enforce the will of the Party-state over hundreds of thousands of officials and the world's largest economy is far from assured.¹¹ More pointedly, nothing in the modern history of the CPV suggests that it possesses the political mettle to move as aggressively as China has done to prosecute high-ranking officials.

⁹ Edward Steinfeld, 2004. "China's Shallow Integration: Networked Production and the New Challenges for Late Industrialization." *World Development* 32 (11): 1971–87. 2004.

¹⁰ As of 2013, 43% of Vietnamese used the internet. See ITU, 2015: <http://www.itu.int/en/ITU-D/Statistics/Pages/default.aspx>.

¹¹ A 2014 *Foreign Affairs* article referred to Xi's efforts as "Singapore on Steroids", and observed that "more than 65 percent of Chinese citizens with assets of \$1.6 million or more have emigrated or plan to do so." Elizabeth C. Economy, "China's Imperial President." *Foreign Affairs* November/December 2014. See also Evan Osnos, "Born Red", *The New Yorker*, April 6, 2015.

Vietnam could attempt the Chinese path of hardened central control and discipline. It could also continue on the current path, without reforms, and follow the Southeast Asian trajectory of an extractive economy side-by-side supported by an FDI-dominated export sector. But this paper argues that the path of institutional reform – of more open and participatory governance that gives private business and civil society a voice, and of a strengthened, more independent and more transparent National Assembly and judiciary – is the only viable way to get back on track to achieving the Party and Government’s economic goals, to returning legitimacy to the Party, and ensuring social stability and national sovereignty.

PART III: Taking the path of inclusive growth: What does institutional reform mean for Vietnam?

1. Enlarging political participation

In previous VELP policy papers, we extensively discussed the role of institutions in economic performance. The reasons for Vietnam's economic underperformance – significantly under its potential – are to be found, first and foremost, in the rules under which resources of the country are distributed. This is widely acknowledged. Party and Government statements have repeatedly recognized the key role of institutional reform to further economic development.¹² Choosing success means preventing Vietnam from falling into a “vicious circle”¹³, in which extractive institutions emerge, oligarchy and interest groups dominate, and society does not share broadly in national wealth. Institutional reform, on the other hand, can break the iron law of oligarchy and create more inclusiveness into the rules that govern the country.

The crucial question is then how to create inclusive institutions in Vietnam's economic and political context. Scholars provide theoretical hypotheses, analysts provide an empirical basis for analyzing public policy, but Vietnamese policymakers – in our experience, through many policy dialogs in recent years – expect very concrete, feasible, actionable policy plans and options. Year after year, looking at various sectors of the economy, VELP policy papers already provided a wide range of policy choices for consideration. For example, at VELP 2013, looking at the four wheels of Vietnam's economy – namely the SOEs, the FDI, agriculture and the private business sector – we conclude that the quality of institutions matters seriously for economic performance in Vietnam.¹⁴ The paper called for subjecting SOEs to market discipline, transparency requirements, and strict supervision of SOEs' asset use. The private sector needs clear property rights, enforceable contracts and predictable law enforcement. It is the common wisdom that good governance, good law, transparent and reliable law enforcement will be necessarily to transform the country into an industrialized nation. But, the road to implementation remains elusive.

In his 2014 New Year's Message, Prime Minister Nguyen Tan Dung clearly highlighted his vision of Government's institutional reform, namely, in his words, “The State must guarantee and promote the genuine rights of the people, especially the right to participate in the policymaking process, the right to choose their representatives, and property rights.” The Prime Minister stated that institutional reform means ensuring the functional independence of legislative, executive and judicative state agencies, so that they may check and cooperate with each other in according to the law.¹⁵

For 2015 and the years ahead, the role of the Government must be redefined to facilitate and to enable the market. The market and competition shall discipline the economy, and not the Government's command. “Socialist orientation” will mean orientation toward a welfare state, in which the State shall have the role to regulate and to distribute and redistribute resources

¹² XI Party Congress Documents, Party Central Committee Resolution, PM Annual Message 2013.

¹³ Robinson and Acemoglu, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, Crown Publishers, 2012.

¹⁴ Vietnam Program at Harvard Kennedy School and Fulbright Economics Teaching Program, *Unplugging Institutional Bottlenecks to Restore Growth*, VELP 2013 Policy Discussion Paper, downloaded at: <http://www.ash.harvard.edu/extension/ash/docs/VELP.pdf>

¹⁵ Website of the Government of Vietnam, downloaded at: <http://baodientu.chinhphu.vn/Cac-bai-phat-bieu-cua-Thu-tuong/Thong-diep-nam-moi-cua-Thu-tuong-Nguyen-Tan-Dung/189949.vgp>

for the purpose of social equity and reducing poverty. In the Prime Minister's words, "socialist orientation doesn't mean how many state hospitals there are nor how large the state owned enterprise sector is, but rather how all people may enjoy fundamental social services."¹⁶ In essence, institutional reform means to foster the market economy, to enlarge popular participation, and to build a state that enables business.¹⁷ Once more, the Prime Minister said, "In order to give meaning to the sovereign rights of the People, the State must play the role of facilitator of development. The State cannot replace the people but must concentrate on creating an appropriate institutional framework and create the conditions for every person to develop their capacity and create strength for the betterment of themselves and society."¹⁸

As for the Government, the tasks to implement the business environment reform agenda are clearly provided for by the Government Resolution 19/NQ-CP dated March 12, 2015. This policy should be implemented expeditiously. The success, however, of this ambitious Government reform plan depends significantly on societal support and further political and institutional reform in the legislative and judicative agencies.

If the Government's concrete action plan to introduce inclusive development, at least for 2015-2016, is quite clearly defined, an actionable reform plan is still needed for the legislature and judiciary. The main question is how to expand inclusiveness. In other words, what does institutional reform for elective bodies and for the court system concretely mean? These two branches of state power need also to be "restructured", to use the current Vietnamese term, in order to reach some functional independence, thus helping them to cope with the requirements and expectations of a rapidly changing society.

After three decades implementing the Renovation Policy, Vietnam is now at a crossroads where it has the opportunity to rebalance the interaction between the state, market, and society. The implementation of the 2013 Constitution opens the chance for far-reaching reform in building an efficient state, one that provides public service in a fast changing world. The Constitution also opens chances for the market to play greater role in Vietnam's economy. The private sector's role as the new engine of economic development is widely recognized; domestic private business should also become the focus of public policy. Vietnam also faces a steadily growing civil society, which reflects the diversity of popular interests.

2. Governance: Accountability, State Effectiveness, and Transparency

Looking back over Vietnam's economic performance in the last decades, many disastrous economic policies have been repeated over time. This tragedy occurs because the country lacks workable accountability mechanisms. There are few channels for the people to hold politicians and state officials accountable for their success and failure. According to the World Governance Indicators, during the time period of 1996 to 2013, in comparison to the

¹⁶ Website of the Government of Vietnam, downloaded at: <http://baodientu.chinhphu.vn/Tin-noi-bat/Kinh-te-thi-truong-va-cau-tra-loi-cua-Thu-tuong/221732.vgp>

¹⁷ Vietnam Competitiveness Forum, downloaded at: <http://canhtranhquocgia.vn/Box-canh-tranh/Nam-2015-phai-co-chuyen-bien-thuc-su-trong-cai-cach-TTHC/223190.vgp>

¹⁸ Website of the Government of Vietnam, downloaded at: <http://baodientu.chinhphu.vn/Cac-bai-phat-bieu-cua-Thu-tuong/Thong-diep-nam-moi-cua-Thu-tuong-Nguyen-Tan-Dung/189949.vgp>

other five indicators, the indicators voice and accountability were and remain extremely low, and has registered almost no improvement.¹⁹

Yet despite its exclusion from the governance system, the reality is that voice and accountability do matter in Vietnam, as illustrated by the widespread participation in the 2013 constitutional debate (by some estimates, 30 million people, or a third of Vietnam's population). Indeed, the recent constitutional debate shows there is a wide social consensus that state power needs to be controlled and constrained, and that the Party, as the leading force of Vietnam's State and society, shall be responsible, politically, before the people for its decisions. This consensus is now recognized, and explicitly provided for by the 2013 Constitution.²⁰ Checking state power and enhancing political responsibility all aim to increase the accountability of politicians and public servants to their constituency, to the people, i.e. the ultimate owner of all public power in Vietnam, according to the most quoted doctrine of the state by the people, of the people and for the people.

In implementing the Constitution, to enlarge public participation in the policymaking process, it is inevitable to talk about means and ways to establish political, administrative and legal accountability in Vietnam's context. One key theme, which used to be sensitive in the past, may now emerge into the political discussion: how to hold the Party accountable to the people, as provided for expressly by the new Constitution.

The East Asian experience indicates that in the early phases of state-led development, it is not democracy, rule of law or pluralism per se, but a functioning and capable state that may ensure economic development.²¹ By contrast with these experiences, though, the effectiveness of the state in Vietnam tends to be low, for two key reasons. First, the system has no mechanism to hold individual leaders accountable for their performance. "Collective responsibility" is the same as non-responsibility, because no individual leader is accountable for policy failures. Second, the efficiency of Vietnam's state suffers seriously from fragmentation. Provinces, line ministries, and large state-owned corporations have developed their own policymaking power, yet they lack incentives or mechanisms to cooperate, resulting in vague, overlapping, and ineffectual policies.²² If establishing political accountability is the long-term goal, overcoming the institutional fragmentation will need to be a policy priority.

We understand that establishing political accountability of the Party and State and overcoming institutional fragmentation with the current stakeholders will require immense political willingness and skillful coalition building to push for political reform. It is easy to say but extraordinary challenging to implement this reform in Vietnam's social, political and cultural context. But where far-reaching reform is not yet in sight, a piecemeal approach may help, specifically by making incremental improvements in transparency in public administration, transparency in local governance, and transparency in elected bodies and the court system, as discussed in more detail below. Increased transparency will help people to realize their right of access to information, and increasing the voice of the public will help the State to make better policy. In sum, transparency will help to make the Party's slogan a

¹⁹ World Bank Governance Index, downloaded at:
<http://info.worldbank.org/governance/wgi/index.aspx#reports>.

²⁰ Articles 2.3 and 4.2, Constitution of SR of Vietnam 2013.

²¹ Milhaupt and Pistor, *Law and Capitalism*, 2008.

²² See VELD 2012, "Structural Reform for Growth, Equity and National Sovereignty"; and Nguyen Xuan Thanh and Jonathan Pincus, "Ho Chi Minh City Sea Port Relocation: A Case Study of Institutional Fragmentation", 2011.

reality – the people shall know, the people shall debate, and the people shall supervise in public affairs.

3. 2015 – The Year for private business: what need to be done?

In an interview with *Tuoi Tre* Newspaper in February 2015, Minister of Planning and Investment Bui Quang Vinh said that domestic enterprises, especially private enterprises, have become the driving force of the economy. He suggested that the year 2015 should be “The Year for Enterprises”, and that the state transform itself to become an enabler for domestic private enterprises. This is an important idea that is essential for moving from the current development model toward an inclusive one. However, as with increasing accountability, it is easier said than done. The translation of this strategic orientation into consistent and effective policies will need to rest on three basic preconditions.

The first precondition for the inclusive development model is to enlarge and deepen the participation of all economic sectors – the exact policy that brought about economic breakthrough and the early successes of Doi Moi. By changing the status of the private sector – from “target of rehabilitation” in the early 1980s, it became a formal “economic sector” in the early 1990s and then became “a policy interlocutor” from the late 1990s until the mid-2000s – the state has added vitality to the economy. However, until now, domestic private enterprises are not systematically included in many policymaking decisions, even for policies that are directly relevant to them.

Sectoral policymaking is a very clear example of this. Even in Vietnam’s highly market-oriented, largely private export sectors such as garments and seafood, the state-led mode of sectoral policymaking continues to predominate. Yet for sectoral policies to truly support Vietnamese firms moving into higher value-added niches in global markets, the private sector must have a greater voice in policymaking. There is a great deal of evidence from a variety of agricultural and manufacturing industries in other countries that the most effective form of “open economy” industrial policy involves close consultation between the private and public sectors, wherein companies, associations and the state jointly identify “binding constraints” to growth and upgrading in a particular sector, related to technology, human resources, infrastructure or capital, and provide the public goods and coordination to help firms overcome these barriers.²³ Arbitrary and unrealistic numerical targets, or sweeping general goals, for example about agricultural value chains or linkages with FDI, are useless as industrial policy tools if they are not accompanied by very detailed input from the private sector and specific mechanisms to support firms in those industries.

As is often observed in the press, Vietnam is a top global exporter of manufactured and agricultural goods including garments, footwear, cell phones, coffee, fish and shellfish, cashews, rice, and pepper. But in its leading manufactured export industries, it is reliant on foreign investment and imported inputs to generate exports; and, in agriculture, exports occupy a low-end niche and lack of national brand name recognition.²⁴ To build linkages between FDI and Vietnamese businesses or to upgrade Vietnam’s agricultural value chains, both local and national policymakers have to include business in the policymaking process. In any country, entrepreneurs know far more about the constraints facing them than the government; this is a compelling economic reason to institutionalize the participation of firms

²³ Work by Rodrik 2008, Sabel 2012 and Schneider 2013 identifies many successful models and concrete features of successful public-private collaboration to support export industries.

²⁴ Thanh Nien, “Bi kịch của ‘người khổng lồ’”, 10/18/2014. <http://www.thanhvien.com.vn/site/bi-kich-cua-nguoi-khong-lo-503555.html>

– generally through their collective representatives, business associations – in the policymaking process.²⁵

Some business associations are already starting to have an important voice in policymaking in Vietnam. For example, in the recent debate over how to address falling quality and prices in Vietnam’s catfish exports, VASEP and the Vietnam Pangasius Association have played a very active role in contributing ideas to the drafting of the government’s Decree 36, which aims to upgrade the catfish supply chain by applying new the “VietGAP” standard to farms and instituting new quality standards for fish processing factories.²⁶ The Ministry of Agriculture and Rural Development has held many meetings with the associations and firms over the course of several years to discuss the policy’s specific provisions.²⁷ Even here, however, the tendency is for central policymakers to draft policy and then “ask the opinion” of businesses and associations, rather than including business associations in the policy discussion from the very beginning of drafting. But in export sectors with diverse and sophisticated markets, demanding international buyers, and innumerable technical requirements, the old style of policymaking will simply not work. The private firms that produce most of Vietnam’s major exports can neither be regulated nor supported through national sectoral plans (nor can SOEs be used as instruments of industrial policy, as they have been in the past and still are in some industries). New modes of policymaking are needed.

In that vein, the second precondition for an inclusive development model is that the Party should ally itself with the most dynamic and efficient sectors. Unfortunately, so far, the Vietnamese state’s alliance with the private sector has been viewed more as a temporary concession than a coherent strategy. More fundamentally, because of the orthodox ideology at the beginning of reforms and later on due to a symbiotic economic relationship with the SOEs, the Vietnamese party-state has chosen to rely on the SOEs, which are persistently the least efficient sector in the economy. Additionally, the fragmentation of power and inherent lack of effectiveness render the state incapable of imposing hard budget constraints on the SOEs or sanctions them for underperformance. Without effective ‘sticks’, and an over reliance on ‘carrots’ for political support rather than development goals—the state-business relationships run the risk of being degraded into clientelism and corruption. As a result, the success of Doi Moi is incomplete as evidenced in Vietnam’s underperformance in terms of economic growth and backwardness in terms of per capita income.

The third precondition is what the economic sociologist Peter Evans calls “embedded autonomy”. For Evans, “embeddedness” implies “a concrete set of connections that link the state intimately and aggressively to particular social groups with whom the state shares a joint project of transformation.”²⁸ When this embeddedness is lacking, the policy apparatus runs the risk of being isolated from economic life, with the consequence that policies are subjective, aspirational and divorced from reality. “Autonomy” here implies the relative independence of the state from its economic allies as well as with respect to other interest groups, ensuring that government policies serve the common development goals and are not manipulated to the benefit of particular interest groups.

²⁵ Some provinces have a good record of cooperation with their private sectors, resulting in improved overall local business environment. A 2012 report by VCCI and the Institute of Development Studies identifies public-private sector cooperation as driving higher PCI scores in Bac Ninh and Dong Thap (Schmitz et al., “Who Drives Economic Reform in Vietnam’s Provinces?” 2012). Binh Duong is another example.

²⁶ ND36/2014/ND-CP: On farming, processing and exporting catfish products. See <http://cafef.vn/nghi-dinh-36.html>.

²⁷ <http://cafef.vn/nong-thuy-san/gan-1-thang-nghi-dinh-36-ve-ca-tra-co-hieu-luc-2014071808452292312.chn>

²⁸ Evans 1995.

This “embedded autonomy” was a major factor contributing to the industrial miracle of Japan and South Korea after the Second World War. The experience of these countries shows that in order to maintain a productive collaboration between agents of the state and business, it is necessary to have a Weberian or professional model of bureaucracy in which selection and promotion are on the basis of merit and salary levels are competitive. In addition, the broadly defined national development goals should be shared by both state and private business, which is organized and has capacity for collective action.

In Vietnam, “embeddedness” in the sense of a state-business alliance toward shared economic development goals exists only between the state and the SOEs. After nearly three decades of Doi Moi, despite its inefficiency and lack of dynamism, the state sector is still regarded as the leading sector of the economy. In contrast, the domestic private sector has been discriminated against, despite being the most important contributor to employment and growth.

As for the state’s autonomy, until the mid-2000s, state agents retained a relatively high degree of autonomy vis-à-vis the business sector, including the SOEs. However, since the mid-2000s, the internal structure of the state has been altered by decentralization, and the status of the SEGs has been adjusted. In terms of supervision, the SEGs have increasingly moved away from the line ministries and become economic means for building political support. Decentralization has also intensified competition among provinces. On the one hand, this competition increases the leverage of those who now can use SEGs as their ‘investment vehicles’ in provinces. On the other hand, it encourages local governments to stay closer to businesses, especially the larger ones. Consequently, while the local business climates have generally improved across provinces, clientelism and collusive behavior between the state and business at both the central and local levels has become widespread.

The deterioration of the institutional and business environment has serious implications for private sector development. While in the early stages of Doi Moi, most businesses grew by means of capacity building and market development, many businesses are now focused more on finding investment privileges, rent-seeking, and building relationships with politicians, government officials and state-owned enterprises, as has come to light in a number of recent economic lawsuits. In the most recent Provincial Competitiveness Index (PCI) survey conducted by VCCI and Vietnam Competitiveness Initiative (VNCI) in 2013, 8,093 domestic private firms in all 63 provinces were asked to comment on the following statement: “Contracts, land and other economic resources mostly fall in the hands of enterprises that have strong connections to local authorities.” The result is not very surprising: the ratio of respondents who agree with this statement in the median province is 96.6%.

In conclusion, it is useful to note that interest representation is at the core of every political-economic system. Although the term often has a negative connotation in Vietnamese, “interests groups” are not inherently bad – on the contrary, businesses naturally have economic and policy interests, which they legitimately represent to the state through both personal and collective channels. The question is whether the state provides an institutionalized and transparent system for these interests to be represented, weighed against the public interest, and incorporated into public policy. In many countries, both developing and developed, insiders exercise undue influence over policymaking. The key point made in this section is that in Vietnam, inclusive growth will require creating transparent mechanisms for the private sector to collectively represent its interests to policymakers, and that the current system favors connected insiders at the expense of the rest.

PART IV: Redefining the role of elected bodies for inclusive development

1. Implementing the 2013 constitution: How the National Assembly can check and balance the power of the Government

In 2015-2016, as a part of the implementation of the new Constitution, fundamental laws concerning state-building will be debated and passed by the National Assembly. Most notable are the Laws on Government Organization, Local Government, Election, State Budget, Parliamentary Supervision, and Issuance of Legal Documents (Lawmaking Law).²⁹ These important bills are now reaching the final drafting stage and will be debated and voted on in meeting sessions in 2015.

The text of the new constitution offers Vietnam a historic chance to initiate fundamental institutional reform toward more inclusiveness. If this chance is not seized by the current generation of Vietnam's leadership, decades could pass before the next major opportunity, and the iron law of oligarchy will set in. Like the middle-income trap, this is the trap of extractive institutions.

As in any country in the world, the executive is the most important branch within the system of state power. Leading the national public administration with millions of public servants, authorized with operational power to enforce the law, and being the legal representative of the nation's assets and property, the central Government is by nature the most powerful part of the state apparatus. Its power becomes more pronounced, however, when the legislature and judiciary are weak. In Vietnam's current development model, which relies heavily on public investment, SOE dominance, and exploitation of natural resources – which are by law de facto state property (ownership of the whole people) – the power of Government is understandably even more far-reaching. Personal influence, a network of informal rules and relations among State and Party leaders and various other factors add further to tilt the balance toward the executive power in Vietnam.

To create an inclusive state apparatus, the legislature must be able to constrain, or at least to effectively supervise, the executive power in Vietnam's political context. In order to do so, the National Assembly needs to be independent or functionally independent, as the Prime Minister emphasized in his 2014 New Year message.

Increasing the power of the National Assembly is a challenge because, in contrast to the public administration system, which operates with bureaucratic rules and traditions inherited over generations, the power of elected bodies in Vietnam is relatively new in historical perspective. In essence, the power of the National Assembly and local people's councils rest with their political mandates, authorized by their voters. Parliamentarians are only powerful if they can act independently to represent the will of their constituency. The Parliament can only operate efficiently if its tasks, organization and parliamentary procedures are designed appropriately, fitting to the nature of representative bodies.

Parliamentary independence will be hard to achieve if three-quarters of the NA's members work part-time or serve both as deputies and as public servants within the state hierarchy. Professionalism is also damaged by the fact that three-quarters of the NA's members are newcomers, i.e. elected for the first time, which makes it hard to sustain parliamentary rules

²⁹ Resolution of National Assembly No 70/2014/QH13 on Legislative Plan for XIII Legislature, as revised on May 30, 2014, <http://vietlaw.gov.vn/LAWNET/docView.do?docid=28147&type=html>

and habits, personal experiences and institutional memories. Institutional fragmentation will be hard to overcome when the NA's members are organized into 63 Delegations, corresponding to 63 provinces; this discourages the majority of delegates from taking actions that contradict the interests of local and central governments.

The representativeness of the National Assembly is also limited. First, generally speaking, the MPs don't actually represent their designated constituencies. Second, the majority of deputies are members of the CPV and state agencies, while the representation from the business sector and civil society remains low. CPV members occupy about 92% of seats in the current legislature. Moreover, among 500 current deputies, nearly two-thirds are central or local government officials or SOE executives, implying that representation of the non-state sector is negligible. This delegate structure makes it difficult not only for the National Assembly to be truly representative, but also for it to maintain its functional independence. To professionalize the National Assembly, more distance will need to be introduced between the executive and legislative branches, including reducing the proportion of MPs who are officials from the executive branch.

Selection methods also affect the ability of the National Assembly to fulfill its critical functions under the Constitution. The National Assembly's elections are not competitive, which means that the most qualified candidates might not be elected. Under the current electoral mechanism, the structure, composition, and number of candidates are all decided through vetting rounds managed by the Fatherland Front Committee at both central and local levels. This mechanism has the effect of hampering electoral competition, as evidenced by the fact that ratio of independent candidates has been very low.³⁰

Clearly, empowering elected bodies will require far-reaching, long-term political reform, with the aim of implementing the constitutional provision that the National Assembly shall be the supreme organ of state power in Vietnam.³¹ This is an aspiration that will not be achievable within a short period of time. In the more immediate term, though, a piecemeal approach will help. The National Assembly shall reserve some exclusive power, which cannot be delegated to the Government under any circumstance. Naturally, lawmaking shall be one of the exclusive powers of the National Assembly, and control over the budgeting process should be among the first National Assembly's priorities.

For instance, the protection of citizens' rights is one of most important values of the new Constitution. But in the course of carrying out their daily functions, the legitimate rights of citizens and businesses may be unreasonably limited and constrained, and in worse cases even violated by public officials. Citizens' rights may also be limited by numerous administrative regulations. Therefore, only the National Assembly shall have the right to adopt laws, and this power cannot be delegated to the Government, particularly in cases where citizens' rights may be restricted by Government regulations. If the 2013 Constitution is interpreted in that way³², the power to issue so-called *under-law regulations*, such as governmental decrees, ministerial circulars, decisions and resolutions of local governments will be drastically narrowed. The Laws on Government Organization, Local Government and Lawmaking will be discussed, with a focus on reserving for the National Assembly the exclusive power to make law.

³⁰ In the most recent election for the National Assembly that took place in May 2011, of 832 candidates vetted by the VFF, only 15 were self-nominated.

³¹ Article 69 Constitution 2013

³² Article 14.2 Constitution 2013

Controlling the budgeting process and ensuring the strict implementation of budget discipline is the prerogative of the National Assembly. The National Assembly shall use this power effectively to constraint the Government according to the law. There is extensive research and literature, with concrete policy recommendations on how to improve the role of the National Assembly in the budgeting process. Notably, for instance, off-budget expenditures need to be reduced, the National Assembly should be involved earlier in the budgetary process, and the annual budget plan should be adopted in the form of a law in compliance with the lawmaking process.

2. Professionalizing lawmaking in Vietnam: How to ensure accountability, effectiveness and transparency in the National Assembly member's work

Parliamentarians should be responsible for representing the will of their constituencies. In implementing the 2013 Constitution³³, it is therefore of essential importance to discuss the means and channels that make representatives politically responsible to voters. Making parliamentarians and local council representatives accountable for doing their representative work requires a wide range of prerequisites and improvement of parliamentary organization and procedures. Most of the reforms being discussed are common wisdom; the crucial question is therefore how to implement them in Vietnam's political context.

First, the work of National Assembly deputies needs to be professionalized. Civil servants are trained systematically in schools of public administration to prepare for their work. This is not true for the legislative branch. But, once elected, being a representative is also a profession. As already mentioned, this challenging work cannot be conducted by part-time deputies. Undoubtedly, the percentage of the National Assembly's full-time members needs to be increased; or, better, the National Assembly needs not only more full-time members, it needs professional parliamentarians. Vietnam should consider reducing the number of parliamentarians and local councilors and professionalizing them by providing them with appropriate compensation and adequate facilities and support, including funding for research and advisory staff.³⁴

Like parliamentarians in any country, National Assembly deputies should be expected to be professional in political campaigns, in articulating voters' concerns, in persuading and leading public opinion, in maintaining their constituency, and when needed, in building coalitions to protect the voters' interests. Parliamentarians' ultimate responsibility is to their constituency, which is what differentiates them from public officials serving in the administration.

Maintaining a constituency means that parliamentarians should retain offices in their respective electorates; they should meet and listen to their voters regularly, ideally weekly. Parliamentarians should explain to their voters why they oppose or support certain policies

According to current law, leaders of ministries and provinces must receive citizens regularly, on a monthly basis.³⁵ However at present, parliamentarians only participate in a handful of meeting sessions with voters, usually once before and once after the National Assembly's annual sessions in spring and fall. In recent years, the Government initiated a variety of

³³ Article 79, Constitution 2013.

³⁴ According to the last Election in 2011, the total number of parliamentarians and local councilors in Vietnam are 307.000 representatives, including 500 NA' members, 3832 members in provincial people councils, 21.131 members in district's councils and 281.491 in ward's councils, on average: there is one representative for 300 Vietnamese citizens. Large in number, but only few of them work full-time as people representative.

³⁵ Law on Reception of Citizen, Luật Tiếp dân (2013)

innovative reforms to measure public servants' performance within the public administration. However, in the legislative branch, little has been done to measure the performance of the people's representatives. In a modern and plural society, it is normal that voters' interests may differ and contradict each other. Representing voters' rights is not always an easy decision for National Assembly members, particularly in cases of conflict between different interests. The immunity of parliamentarians should be ensured in order to protect dissenting deputies, particularly when they criticize policies presented or implemented by the Government.³⁶

In addition, the efficacy of elected institutions depends on their organizational structure and procedures. For example, law and policies cannot be effectively debated in plenary meeting with some 3000 members, meeting for some 9 days, twice a year. Instead, the key elements of law and policies are considered within the parliamentary committees. Public hearings should be held frequently by National Assembly committees in order to involve more voices into the policy debate. Lawmaking would also benefit from substantial law and policy debates conducted within the National Assembly committees that involve the participation of civil society and business associations.

Finally, the Parliament is only powerful if its activities are transparent. It is important that plenary sessions are already public.³⁷ But the transparency should also extend to activities in the National Assembly committees. The voting procedures should be transparent, so that the public may know who votes for which policy and why. For example, the National Assembly could publish vote records online, or air committee hearings, debates and votes over the Internet, thereby allowing the Vietnamese public to follow its proceedings. The right of the media to access to information needs to be improved.³⁸ If the voice of parliamentarians echoes only within the narrow meeting hall, its impact is limited. But when parliamentarians' voices are transmitted to and shared by millions of people through the media, it creates a powerful public force to increase the Government's responsibility. Through this means, a more open National Assembly also becomes a force for stability, by making citizens feel that their voices are heard, and that they are truly represented through official channels.

3. Direct democracy and civil society: increasing accountability to voters

Inclusiveness means enlarging participation of broader society into political life. In addition to representative democracy, the 2013 Constitution recognized both direct popular participation and political rights including freedom of speech, freedom of the press, the right to access to information, the freedom to assemble, to associate and to demonstrate.³⁹ In implementing the Constitution, major laws protecting political rights are currently being drafted, such as the Laws on Association, Access to Information, Election, and Demonstration.

Now is time to put words into action. In his 2014 New Year Message, the Prime Minister supported the policy, at least in some pilot form, of allowing people to directly elect their

³⁶ Article 81, Constitution 2013 needs to be improved toward providing immunity to parliamentarians.

³⁷ Article 83.1, Constitution 2013 provides for that the National Assembly shall meet publicly.

³⁸ TBKTSG, 14/11/2014, Vì sao có chuyện được “đưa tin”?, <http://www.thesaigontimes.vn/122694/Vi-sao-co-chuyen-duoc-%22dua-tin%22.html>

³⁹ Articles 6 and 25, Constitution 2013.

ward's leader. During 2014, the Prime Minister also reaffirmed that the drafting of the Law on Demonstration should not be postponed.⁴⁰

Inclusive development in Vietnam will require rebalancing relations between the state, the market, and the civil society. In the last three decades, undoubtedly, the role of the market has grown remarkably in Vietnam. In the near-term future, the Government envisages further securitization of SOEs, selling state assets to private investors, promoting public-private partnerships in infrastructure projects, and transforming public service providing agencies into corporations. Joining the Trans-Pacific Partnership (TPP) will add external pressure to continue this shift toward the market.

On the other hand, the recognition of civil society seems to face much more complicated ideological and political constraints. Like the immune system in our body, a vibrant civil society enables societal critical review of public policies. Regarding the merging of state power with market power, civil society helps to detect or forewarn interest groups and vested oligarchy; it protects people from the abuse of power. Of course, a vibrant civil society also means being to some extent vulnerable to disorder, so a strong civil society also needs a strong and capable state. But suppressing civil society also carries risks. The reality is that Vietnam already has a strong civil society. The question is whether public governance can adapt to accommodate developments in Vietnamese society, or whether there will be a growing imbalance between public governance and social reality.

In Vietnam, civil society is often associated with the notion of “peaceful evolution”, namely the gradual undermining of control of the Party and State through growing tolerance of social organizations and dissent. But as evidenced in the recent incidents with tree cutting in Hanoi, or worker strikes over social insurance policy around Ho Chi Minh City, Vietnamese citizens are already highly informed, and they will find ways to express their views, both on and off-line. Governing a modern society and economy is complex, technical, and requires making tradeoffs among a wide variety of groups with different interests. Allowing society more voice, including more official channels for both societal and business groups to provide input into policy, will improve governance and state effectiveness in Vietnam – not diminish it.

4. The National Assembly's role in inclusive development

According to Article 70 of the 2013 Constitution, the National Assembly decides on the objectives and fundamental socio-economic development policies of the country. The National Assembly also decides on national financial, monetary and tax policies; the division of revenues and expenditures between the central and local budgets; the safe limits for national, public and government debts; the central state budget and its allocation.

Entrusted with these powers and responsibilities, if organized properly – so as to ensure its representation and functional independence – the National Assembly will not only play a decisive role in institutional reforms towards inclusive development, but also help create a stable macroeconomic foundation, which is the basic premise for inclusive economic policies.

In recent years, the National Assembly has increasingly become more influential in raising public issues and shaping government policies, especially thanks to the proactivity of its committees. However, it is still far from being able to check and balance the power of the

⁴⁰ Vietnam Net, downloaded at: <http://vietnamnet.vn/vn/chinh-tri/214721/thu-tuong-khong-dong-y-rut-luat-bieu-tinh.html>

government. In fact, the implementation effectiveness of the most important functions of the National Assembly is very limited. For instance, the National Assembly generally does not draft but only comments and passes laws proposed by the government. Although the National Assembly has the power to allocate state budget, in reality it merely serves as a rubber stamp for the government's budget proposal. In terms of monitoring the management and use of the budget and state assets, although the State Audit Office was moved from the government to The National Assembly in January 2006, the State Auditor has always been late to detect serious violations, as evidenced in the recent cases of Vinashin, Vinalines, Petro Vietnam, Electricity Vietnam, and the Song Da Group. These limitations of the National Assembly have many causes. Obviously, the lack of resources and capacity is one,⁴¹ but the fundamental causes are institutional.

A key challenge facing the National Assembly is that while its resources and capacity are quite modest – and only a quarter of MPs are full-time – it is responsible for a wide range of responsibilities as stipulated in Article 70 of the 2013 Constitution. Consequently, the quality of lawmaking is not very high (reflected by the high frequency of law amendments and replacements), the supervision over government activities tends to be superficial (as evidenced by the National Assembly's agreement with most of the decisions made by the government), and the authority to decide on important policies is often a formality (e.g., strategic restructuring, transforming the growth model, and institutional reform are not discussed thoroughly).

Faced with this situation, to improve the efficiency and effectiveness of its functions, the National Assembly needs to have maximal focus on a minimal list of the highest priorities. For example, among the many economic policy responsibilities of the National Assembly, the authority over the national budget is arguably the most important one. In fact, the power to decide the structure of income as well as the allocation of expenditure is synonymous with the power to define the national economic priorities and the ability to influence the welfare of all strata of society. To attain the “power of the purse”, the quality of the operations of specialized committees –not at the plenary session of the National Assembly – that will play a decisive role. The specialized focus of the Financial and Budget Committee gives it a comprehensive and in-depth knowledge of the entire budgeting process, which in turn should allow it to examine the budget proposed by the government and make necessary adjustments. It is also necessary to proactively use hearings as an effective tool in the legislative process as well as to monitor activities of the government.⁴²

⁴¹ Indeed, most in-depth research and specialized symposium of the National Assembly mainly thanks to the funding from international organizations as well as the involvement of external experts.

⁴² There are three main forms of hearing, including legislative hearings, oversight hearings, and investigative hearings. The National Assembly of Vietnam has mainly only used oversight hearings.

PART V: Judicial reform to provide justice and expand inclusiveness

1. Why the judiciary matters for private firms in Vietnam

Analyses and discussions in the previous sessions have pointed to the critical role that public institutions play in promoting economic development. From an economic perspective, reforming judicial institutions becomes hugely important for an emerging-market economy like Vietnam because young and growing local companies increasingly need to use the courts to enforce economic contracts and resolve disputes. In order to make long-term strategic corporate investments to become globally competitive firms, they need the services of an effective and efficient judicial system.

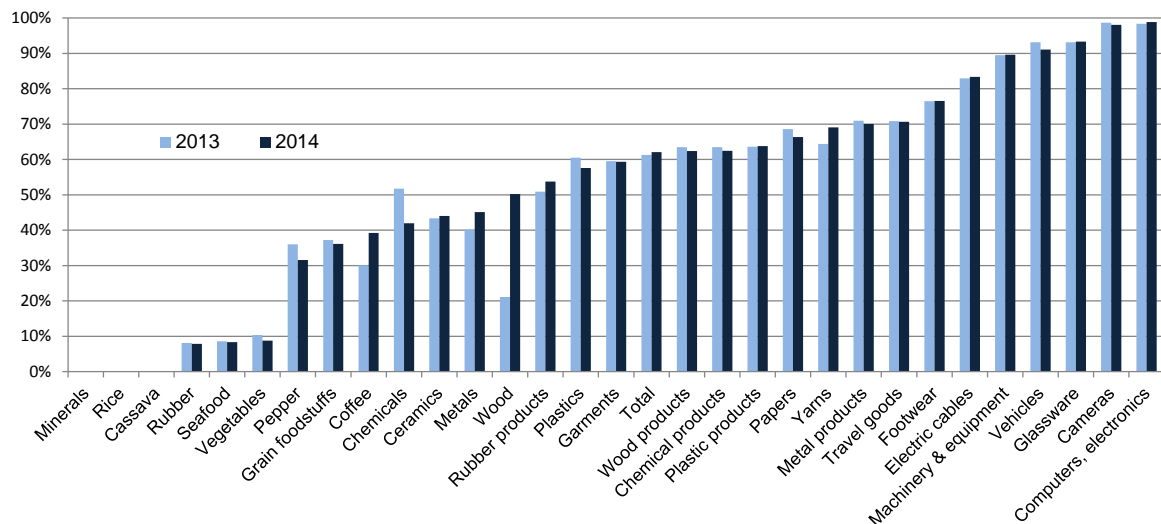
The Vietnamese economy was able to grow rapidly during 1992-2007⁴³ as a result of many successful reform initiatives under the government's "Doi Moi" program. The main reason that Vietnam became a powerhouse in exports of rice and many other agricultural produce was the implementation of the household contract system in the mid-1980s. The emergence of the first private companies was a result of the government's acceptance of an economy with multiple ownership forms. Prudent macroeconomic management, reduction of red tape, trade liberalization, and "fence-breaking" policy innovations of some provincial governments allowed for the expansion of the private sector during the 1990s. The Enterprise Law, improvements in infrastructure, financial sector development, and economic integration led to the formation of competitive industrial clusters with the presence of larger local and foreign firms during the 2000s. A high concentration of labor-intensive garment companies is found in the southeast. Outdoor furniture products and animal feeds are concentrated in Binh Dinh in the south central coast. Food processing is vibrant in the Mekong Delta. Large-scale investments by Samsung, LG, and Nokia/Microsoft in the Northern provinces surrounding Hanoi are signaling the rise of the electronics and IT clusters. Tourism in several coastal regions in Vietnam still has a lot of potential for growth.

However, the process of industrial upgrading, moving up the value-added chain, and gaining a strong foothold in global supply chains is slow. Value-added from the manufacturing sector as a percentage of output declined steadily from 31 percent in 2000 to 21 percent in 2005 and to only 13 percent in 2013.⁴⁴ As shown in Figure 5, while local companies account for 60-100 percent of exports value in mineral extraction and agricultural produce, FDI companies account for 90% of exports in electronic products, and machinery and equipment. In China, Malaysia, Thailand and the Philippines, foreign firms produce billions of dollars' worth of electronic components for export, but local firms are also emerging as brand manufacturers (in China at least) and contract manufacturers and suppliers. Supporting industries for sophisticated manufacturing are still lacking in Vietnam.

⁴³ The annual average GDP growth rate during this period is 7.5 percent. The average rate for the last seven years (2008-2014) is only 5.8 percent and that for 1986-1991 is 4.7 percent. (The growth rates are calculated based on official GDP data provided by Vietnam General Statistics Office.) While this decline is inevitable given the fact that Vietnam continues to attract new manufacturing projects based on simple assembly, the rate of decline as observed from 2000 to date is very steep.

⁴⁴ Vietnam General Statistics Office, Vietnam Statistical Yearbook 2013.

Figure 5: Export Value by Product (Percentage Share of FDI companies)



Source: Authors' calculation based on data provide by Vietnam Customs Authorities

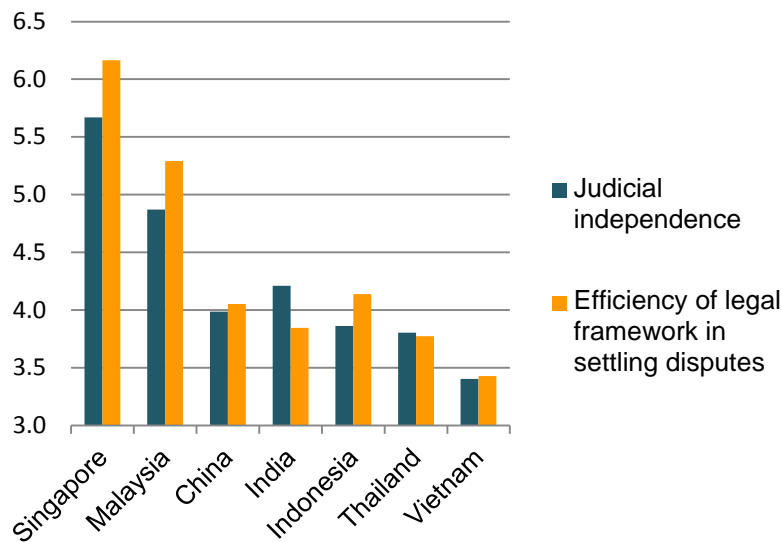
As Vietnam becomes a lower middle-income country and an open and emerging economy, deregulation, administrative reforms, and fiscal incentives are no longer enough to encourage private companies to make long-term investments and engage in large-scale production.

Interviews with several large Vietnamese companies listed in the Ho Chi Minh City stock exchange have revealed that in the past they did not use the courts in Vietnam because their small-scale production made non-judicial dispute resolution mechanisms more efficient. Furthermore, the non-transparency of their financial accounts and the uncertainty over the legality of many of their business transactions made the court approach very risky for them. As they are now listed companies with a more transparent financial structure and business lines involving large-scale investments and long-term contracts with both other companies and government agencies, there is a real need for the courts to protect their property rights and resolve disputes according to pre-existing legal commitments. The problem that these companies face is that the court system fails to provide dispute resolution services of acceptable quality.

As discussed in the 2013 VELP paper, FDI firms, although established in Vietnam to make use of the cheap labor, resources, and some policy advantages, are relying on external institutions, particularly court and arbitration systems abroad, to conduct business. Local firms facing a costly local judicial system can choose to either become larger by cultivating special relationships with the authorities as a form of protection, or remain small even though they may now have access to other critical resources for growth including land, labor and capital. The recent trend of Vietnamese entrepreneurs selling their businesses to foreign investors and pursuing a second citizenship – that is, choosing “exit” rather than “voice” – is not a positive development.

The World Economic Forum (WEF) ranks countries annually in terms of national competitiveness based on various indicators using executive opinion surveys and hard statistical data. In its latest report (2014-15), Vietnam ranks 68th out of 144 countries in the overall competitiveness index. However, it stands at 88th and 89th for judicial independence and efficiency of the legal framework in settling disputes respectively. Figure 6 shows that Vietnam is quite far behind the ASEAN-5, India and China in the quality of the judicial system.

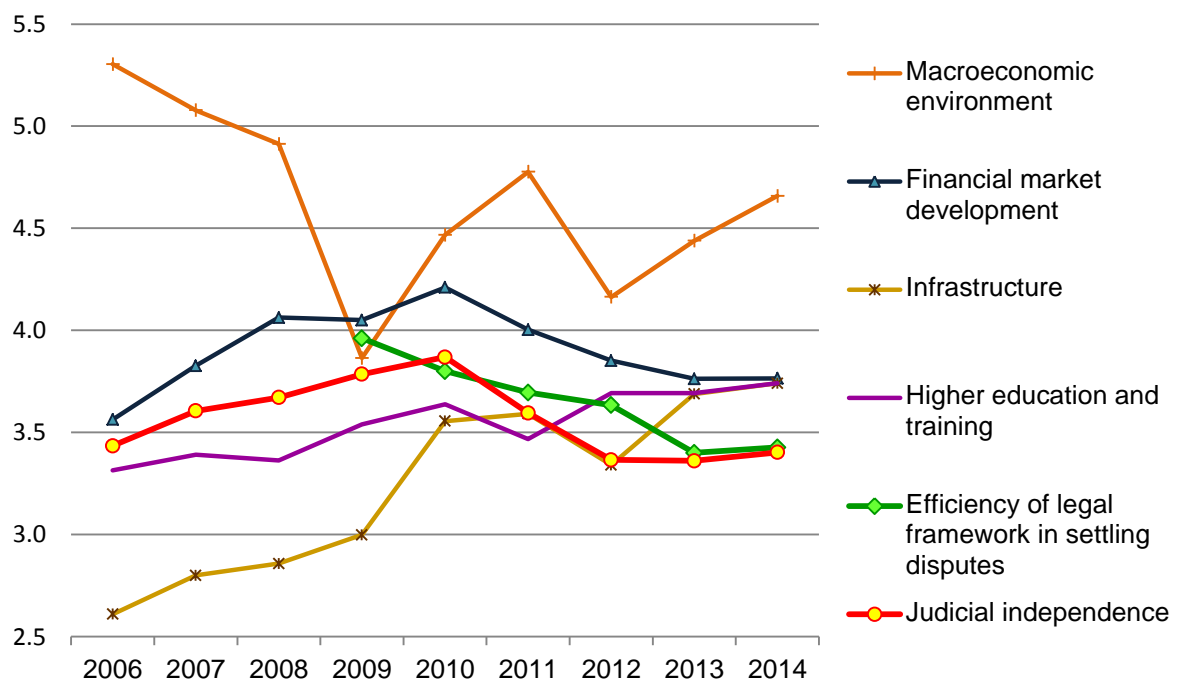
Figure 6. Global Competitiveness Index: Quality of the Judicial System for Selected Asian Countries, 1 (worst) – 7 (best)



Source: World Economic Forum, Global Competitiveness Index 2014-2015

Beside the quality of the judiciary and other measures of institutional effectiveness, national competitiveness also rests upon other pillars such as macroeconomic policies, education, financial system, and infrastructure. In 2006, infrastructure was the weakest pillar affecting the competitiveness of businesses in Vietnam. In 2014, however, the lowest scores were in institutional quality in general and judicial quality in particular. As evidenced in Figure 7, the degree of judicial independence and the efficiency of the courts in resolving disputes are not only the lowest of the competitiveness pillars but have been declining in the past five years.

Figure 7. Global Competitiveness Index: Vietnam During 2006-2014, 1 (worst) – 7 (best)



Source: World Economic Forum, Global Competitiveness Index, various years

The following sections will discuss the role of the judiciary in more detail as well as the constraints and opportunities for judicial reforms in Vietnam.

2. The context of judicial reform in Vietnam

Judicial reform has been implemented in Vietnam for nearly a decade.⁴⁵ In implementing the 2013 Constitution, the central imperative of judiciary reform will be to make the court system able to exercise judicative power, including effective control over the executive and legislative power.⁴⁶ By constraining state power and providing justice, the court system is the last resort for individuals and business to protect their rights. Without a predictable court system, the highly praised Chapter II of the 2013 Constitution recognizing human rights may be only of declaratory importance.

The predictability of the court system matters seriously to the business environment and to economic performance. The East Asian experiences, most recently in Singapore and China, reconfirm the hypothesis that in the state-led stage of development, a capable, reliable court system is a prerequisite for people to invest in economic activities. In Singapore, and increasingly in China, although courts do not have complete autonomy, they have been allowed to rule impartially on most criminal, economic and civil disputes, without having complete autonomy. China is also working to reduce the influence of local governments and local interests over the courts.⁴⁷

In Vietnam's context, the Law on Organization of the People's Court and the Law on the People's Procuracy have just been adopted as part of implementing the 2013 Constitution. In 2015-2016, significant legislative work will continue in crafting the fundamental law on civil and criminal procedures. This important set of legislation will impact Vietnam's judiciary system for decades to come.

Like the legislative power, in historical perspective, the judiciary system is relatively weak in comparison to the executive power of the Government. In feudal Vietnam there was no tradition of lawyers, independent courts, nor advisory litigation. This tradition endured through the colonial period, and to some extent, also through the period of central planning economy. Creating a functioning, workable court system that provides justice to all, with fair and predictable, and reliable outcomes, is therefore a very long-term target.

However, meaningful reforms can be pursued through a piecemeal approach, as in China. In the following sections, we discuss the need to overcome the institutional fragmentation in the judiciary system. Next, we discuss the need to extend the scope of jurisdiction of the court, with a view to how to exercise judicial review over the legislative and executive power in Vietnam's context. Finally, we discuss the role of lawyers and other stakeholders in creating and providing justice to all.

3. Overcoming institutional fragmentation in the judiciary system

Fragmentation is evident in Vietnam's judicial system. Local courts – people's courts at district and provincial level – can only reach functional independence if, to quote the Prime Minister's 2014 New Year Message, their personnel, budgetary, organizational, functional

⁴⁵ Resolution 49/TW adopted by CPV Central Committee on June 02, 2015.

⁴⁶ Article 2.3, Article 102.1 Constitution 2013.

⁴⁷ For a discussion, see Jerome A. Cohen, "Struggling for Justice: China's Courts and the Challenge of Reform." *World Politics Review*, Jan. 14, 2014: <http://www.worldpoliticsreview.com/articles/13495/struggling-for-justice-chinas-courts-and-the-challenge-of-reform>

and legal independence from the local Party and local government are ensured. District judges are understandably reluctant to make judgment, for instance in administrative litigation, against the same district administration that pays their salaries and assesses their performance. The local Party organization and local government influence the local courts through many means and ways.⁴⁸ Priority must be given to discussing breaking the influence of provinces over the court system in order to create an independent court system. As with regional agencies in public administration, for certain legal disputes – such as administrative, environmental, labor or commercial cases, or for industrial property or bankruptcy cases – it is worth considering creating regional courts, to ensure that local Party organizations and governments cannot be in a position to obstruct the court's activities.

Sectoral interests also exist within the judiciary system. Indeed, the term “judiciary system” in Vietnam includes activities of several separate line-ministries and other central powers, such as the Ministry of Public Security, Ministry of Justice, Vietnam Procuracy, and the Court System, and in cases relating to military personnel and property, the Ministry of Defense. For instance, preventing criminality, investigating criminal offence, holding suspects into custody, arresting suspects for investigative purpose, and retaining the prison system, this kind of power belongs to the authority of the Ministry of Public Security. Any feasible reform needs to be based on consensus among all of these stakeholders. That makes judiciary reform, in contrast with public administration reform, a significantly more complicated process.

For instance, paragraph 5 of article 103 in the 2013 Constitution “guarantees the principle of adversarial litigation.” This is also envisaged by the Law on Organization of the People's Court. In order to have adversarial litigation, accused persons must have the right to counsel. Whether this right is enforced or not will depend on whether and how the Ministry of Public Security is willing to abolish the policy of granting permits to defense lawyers to have access to defendants or to witness interrogation sessions. Litigation also means that lawyers need the power to review evidence, not only to witness proceedings or speak in court, which is all that is currently allowed.

Take another example in civil and commercial litigation. A favorable environment for doing business requires that the courts enforce contracts. If litigation remains cumbersome, consuming both money and time of investors, or if the outcome is not predictable based on the law and facts of the case, these factors will worsen the business environment. For the rest of the world it is not easy to understand why a public prosecutor shall attend and interfere into commercial cases being disputed purely among private persons for civil obligations. But in Vietnam, policy aiming to reduce the role of the public prosecutor in civil and commercial litigation needs to be approved by the Procuracy.

Just as sectoral planning and the desire of provinces to achieve GDP growth at any price undermine the efficiency of the national economy, so do sectoral interests and fragmentation within the judiciary system weaken the system as a whole. To overcome this fragmentation, the power of the court as the center of the judiciary system needs to be reestablished. The Procuracy should focus solely on being a public prosecutor that presents the public interest in criminal cases. At the same time, the power of Public Security in the whole judiciary process, from preventing crimes, to investigating suspects, to maintaining the prisons should be constrained, for instance by increasing the supervisory power of the court.

⁴⁸ Looking back at the case of Ba Ba Suong, it is clear how local governments can influence the functioning of the courts.

4. Judicial review: The role of the court system in improving accountability and constraining power

Accountability in Vietnam will be improved when people can push policymakers and public officials to be responsible politically, administratively or legally for their actions. The court should be the last resort for people to protect their rights, particularly when these rights are unreasonably restricted by laws, regulations or by daily operations of the public administration.

The 2013 Constitution entitled the Court to exercise the judiciary power.⁴⁹ It would be a reform of historic importance for Vietnam to bring the court into the center of state power. This would involve the court exercising judicial review over the executive and legislative power. The adaptation of this important legal doctrine into Vietnam's political context would be a milestone for the judiciary reform.

Currently, the court system in Vietnam is only allowed to accept cases provided expressly by procedural law. For instance, courts can only accept a limited number of administrative cases; not all acts of public administration are under judicial review. The court is not allowed to hear cases in which individual and business claim that local government- and ministry regulations violate their rights. Under the new constitution, however, the court will be allowed to declare a governmental decree or ministerial circular to be void.

Not only is the power of the court limited, but the role of judges in Vietnam is also seriously limited. Judges are bound by the letter of the law; they are not allowed to interpret the law. In the absence of written law, lower courts frequently ask higher courts for instruction. Of course, case law is a tradition, not a reform per se, and it is unfeasible to transplant a new tradition from one country to another. However, in some form, higher courts should initiate the first steps as how to introduce case law in their practices.

To foster judicial reform, it is essential to make courts more powerful. In order to do so, the scope of jurisdiction must be widened. That is a long road to travel, but at the end of that road, Vietnam needs to consider setting up some form of constitutional review, allowing people to protect their rights granted by the Constitution. Only by doing this will the rights granted by the laws on the books materialize in practice.

5. Creating an inclusive judiciary: The role of lawyers and adversarial litigation

Judicial reform will only be successful if this process gains societal support. The court must win the trust and respect of the people. Its legitimacy is based on people's confidence in its ability to provide justice. To this end, means, procedures and structures must be in place to avoid arbitrary judgment, to make the litigation process transparent, to push judges to be accountable, and to allow lawyers to play a more active role in the process leading to justice.

As with legislative reform, many concrete suggestions have been made about judiciary reform. Now is the time to implement them. The transparency of the court system may be increased significantly if court decisions (verdicts and reasoning) are published and accessible to the public. The misbehavior of judges will be reduced immensely if court proceedings are recorded and the minutes of this record are made publicly accessible. These technical improvements will help to increase the accountability of the court, as well as people's trust in the institution.

⁴⁹ Article 102.1, Constitution 2013.

The legitimacy of the court depends ultimately on people's respect for the judges. Being a judge must be a profession that is attractive to talented lawyers. Therefore, compensation and the working environment for the judges must be competitive, as the private sector and the public sector fiercely compete for talented personnel. The selection process to appoint judges should be open to practicing lawyers. Lastly, judges must be independent in their judgment.⁵⁰ This independence can be ensured through political, economic and legal means. Among others means, extending judges' appointment terms, as provided for recently by the new Law on Organization of the People's Court, is a first step toward this direction.

Finally, a strong judiciary system needs space for more active participation from lawyers, lawyers' associations, and other professional organizations. This will require gradually incorporating the principle of litigation and building up the power and capabilities of judges, prosecutors, lawyers and related services to supply and weigh evidence. All sides will need to be allowed to consider evidence and participate in cross-examination. Sentencing will be based solely on evidence and evaluations by judges through open arguments by all sides.

⁵⁰ Article, 103.2 Constitution 2013.

PART V: Conclusion

In the three decades since Doi Moi, the relationship between the Party-State and business and society has experienced important changes. While the state sector is shrinking in importance, the private business sector has expanded and become the most critical driving force in the economy. From “target of rehabilitation” in the early 1980s, the private sector became a formal “economic sector” in the early 1990s and then became “a policy interlocutor” from the late 1990s until the mid-2000s, and recently a “state partner”. Similarly, civil society has steadily grown thanks to the Internet, policies to increase openness and integration, and growing public awareness of citizens’ rights.

In response to these fundamental and profound changes, the Party-State is well aware of the pressing need to implement structural and institutional reforms. This need becomes all the more urgent in light of Vietnam’s twin goals of industrialization and firmly defending national independence and sovereignty. However, so far efforts to implement reforms have been inconsistent and ineffective.

The goal of this policy analysis is to present institutional reform measures in a systematic manner, focusing on the legislative and executive branches, and aiming to create an inclusive development model in Vietnam. We have argued that this is the most feasible way for the Party-State to attain its development goals, to ensure social stability and to retain national sovereignty, thereby restoring its legitimacy.

One fundamental advantage held by institutional reformers in Vietnam is that they have ready sources of support from both political documents and the entire society. In fact, the 2013 Constitution, resolutions of the Central Party’s Executive Committee and the Government, and the Prime Minister’s statements together comprise a comprehensive institutional reform agenda. Therefore, what is missing is not ideas, proposals or legal support, but rather political will and momentum for reform, and the determination to put words into concrete action. What concrete actions are needed to implement institutional reforms in the legislative and executive branches in Vietnam?

Before discussing recommendations for legislative and executive reforms, it is useful to reiterate the two principles discussed in the paper. First, as a comprehensive leading force for the state and society, the Party must be politically accountable to the people for its decisions. This idea has wide popular support and is officially recognized in the 2013 Constitution. Secondly, in Vietnam the executive branch is the most important organ of state power, but to attain inclusive development, its power must be checked and balanced by the legislature and judiciary, as is clearly articulated in the Prime Minister’s own statements.

The reform priorities for the National Assembly and elected bodies are to enlarge participation and to strengthen representation and operational effectiveness. The following reforms are needed to reach these goals:

- Establishing offices for parliamentarians in their respective electorates; parliamentarians should meet and listen to their voters regularly, ideally weekly, and should explain to their voters why they oppose or support particular policies.
- Enhancing representation from the business sector, social organizations and associations; changing structure, components, and number of representatives to increase the number of independent/self-nominated candidates.

- Reducing the proportion of part-time representatives while increasing the proportion of full-time ones; reducing the number of parliamentarians and local councilors and professionalizing the National Assembly by providing lawmakers with appropriate compensation and adequate facilities and support.
- Enhancing transparency and publicity of the National Assembly's activities. It is important that plenary and partial sessions are already public. But transparency should also extend to activities in the National Assembly's committees. The voting procedures should be transparent, so that the public may know who votes for which policy and why. Substantial law and policy debates conducted within National Assembly committees should involve the participation of civil society and business associations.
- Respecting the basic rights of citizens as recognized by the 2013 Constitution, including freedom of speech, freedom of the press, the right to access to information, the freedom to assemble, to associate and to demonstrate. In implementing the Constitution, major laws protecting political rights are currently being drafted, such as the Laws on Association, Access to Information, Election, and Demonstration.
- Promoting direct democracy starting with grass-root democratization. In the near-term, allowing people to directly elect their ward leader as indicated in the Prime Minister's 2014 New Year's Message.
- Ensuring parliamentarians' immunity in order to protect dissenting deputies, particularly when they criticize policies presented or implemented by the Government.
- The National Assembly needs to have maximal focus on a minimal list of the highest priorities. For example, among the many economic policy responsibilities of the National Assembly, the authority over the national budget is arguably the most important one. In fact, the power to decide the structure of income as well as the allocation of expenditure is synonymous with the power to define national economic priorities and the ability to influence the welfare of all strata of society.
- Improving the capacity and resources of National Assembly committees. It is also necessary to proactively use hearings both as a tool in the legislative process and to monitor activities of the government.

The emphasis on judicial reform should be on enhancing the system's capacity to control state power and protect justice. The following reforms would help realize these goals:

- In implementing the 2013 Constitution, the central imperative of judiciary reform will be to put the court at the center of the judiciary system. This includes independence and ability to exercise effective control over state power and protection of justice and individual freedoms.
- Ensuring functional independence for the district and provincial court system by eliminating the influence of local Party organizations and governments on the court's budgeting, personnel appointments and staffing. For certain legal disputes – such as administrative, environmental, labor, commercial, intellectual property or bankruptcy cases – it is worth considering creating regional courts, to ensure that local Party organizations and governments cannot obstruct the court's activities.

- Reducing sectoral separation and increasing coordination among line-ministries in the judiciary system (including the Ministry of Public Security, Ministry of Justice, Vietnam Procuracy, and the Court System, and Ministry of Defense).
- It would be a historical achievement to make the courts a central institution of the state power. The court system would become a reliable means to exercise judicative power, including effective control over the executive and legislative power.
- Authorizing the court to administer cases in which businesses and citizens sue local governments or ministerial agencies for violations of rights through “under-law” regulations; increasing the court’s authority to review government and legislative decisions or regulations.
- Increasing transparency of the court system by publishing and making court decisions (verdicts and reasoning) accessible to the public.
- Making judges’ compensation and working environment competitive, as the private sector and the public sector fiercely compete for talented personnel. The selection process to appoint judges should be open to practicing lawyers.
- Promoting the role and encouraging the active participation of lawyers, lawyers’ associations, and other professional organizations, and incorporating the principle of litigation. Sentencing will be based solely on evidence and evaluations by judges through open arguments by all sides.

By nature, institutional reform means changing both the rules of the game and how they are enforced. These reforms will inevitably lead to changes in the relationship among the state, market, and society, as well as a reallocation of power and resources among social groups. Beneficiaries will support reforms, while those affected will resist them. In every political system in the world, successful reform requires political determination and leadership as prerequisites for mobilizing the support to overcome forces that oppose change and benefit from the status quo.

In Vietnam, the social conditions for a fundamental and comprehensive reform have matured. Vietnamese businesses have been under severe strain and struggled with macroeconomic instability and economic slowdown since 2008. They now expect realistic improvement in the business climate. The growing middle class and intellectuals -wish for a broader civil space. If the Party and State can carry out the institutional reforms they have promised, the majority of businesses and people will collectively support these reforms. Otherwise, people and businesses’ trust in the Party and State will teeter, and the legitimacy of the Party’s leadership will continue to deteriorate. Reforms will surely be tough, yet the price to pay for postponing reforms would be tougher. It is time for the Party and State to walk the talk of institutional reforms, regaining the trust of society and solidifying their legitimacy.