1. The State and Institutional Reform

The year 2009 brought a new set of challenges for Vietnam. Faced with a rapidly deteriorating world economy, the key focus of leaders and the public was how to wrestle with the domestic fallout from a crisis that began elsewhere. While the challenge of early 2008 was to control an overheating economy with rapidly accelerating inflation fueled by massive inflows of foreign capital, by 2009 the pendulum had swung the other way. Inflation concerns had eased and the real impacts of the financial crisis occurring overseas took center stage. As this report goes to press, growth forecasts are again on the rise and yet another macroeconomic challenge confronts Vietnamese policy makers.

While the macroeconomic pendulum swings, a wide range of other challenges, both long-term and emerging, call for reforms of a different sort. Citizens increasingly call for more efficient and transparent delivery of services for all, not only for those who can afford them. There is growing recognition of the need to ensure that public investments are selected properly, and that those who are displaced are fairly compensated. Corruption remains a concern of many, both within and outside of government.

This Vietnam Development Report (VDR) focuses on the somewhat longer term challenge of institutional reform. Institutions, the rules by which society and its constituents interact, have come to be understood as key factors that determine how a country develops in the longer term.

As institutional reform is a long-term agenda, framing the issues facing Vietnam today and for the next decade requires some understanding of how institutions have been evolving. The next section argues that one of the defining characteristics of Vietnam’s experience of the past decades has been the devolution of authority, not only along geographical lines, but in other dimensions as well.

A Devolving State

A standard analytical framework for exploring governance relationships has three discrete sets of actors: the state, the business community and civil society. This staple of many institutional studies implicitly assumes a great degree of independence between actors in terms of objectives and control, with institutions mediating the relationships.

In Vietnam, however, the bodies that comprise society have been more tightly linked than in most countries. This was especially so in the 1970s and 1980s prior to the opening of economic policies known as Doi Moi. Units of the state existed along geographical and functional divisions, the latter even including economic production including farms and industry, but all were viewed as part and parcel of the same whole. Accountability rested strongly in the system of administrative controls for complying with rules and for achieving targets.

In response to the disappointing performance in the post-war years, a series of “fence-breaking” experiments began to shift Vietnam’s economy toward a new model.1 Even before the start of the Doi Moi process in 1986, some units of this whole began to receive greater autonomy. Agriculture, which had been collectivized in fits and starts since the 1950s, began a transformation process in the 1980s that established basic property rights for farmers, allowing them to keep some of their output. The process accelerated with Doi Moi, which serves as a convenient starting point for examining the changes. In the enterprise sector, firms were given some autonomy to make production decisions. The incentive system no longer relied on selfless effort to advance society’s goals, but began to incorporate rewards for the economic producers themselves. In terms of accountability, the top-down system of accountability
through compliance with administrative rules began to give way over the next decades to an accountability system that was more strongly oriented toward bottom-up accountability for results. For economic production, such bottom up accountability came naturally through the market mechanism. By today, the agricultural and (private) industrial sectors resemble much more closely fully autonomous bodies whose arms-length relationship with the state must be mediated by new institutions. In essence, one of the central features of Doi Moi was the devolution of some types of power.

The devolution of decision-making power in the economic sectors has been followed by considerable devolution in other spheres. Figure 1 provides a snapshot of the devolving relationships. Sub-national governments have been given increased autonomy in selecting investment projects and allocating budget resources. In the first decade after Doi Moi, the planning process and decision making over land-use decisions saw considerable decentralization to the provinces. In the second decade after Doi Moi, provinces gained a larger role in the budget process and over public investment decisions, and devolution of land-use decisions continued. Local levels of government also gained more say over their human resource management decisions. And recent years have seen further decentralization of public investment decisions, expansions of public-private arrangements in investments, and further decentralization of human resource management at the local level.

Parts of the government that are directly involved in providing services to the population, particularly in health and education, have been given increased autonomy to perform, and finance, those functions on their own. In the first decade after Doi Moi, service delivery units gained the right to collect user fees, and private providers were authorized to provide some services. In the second decade, there was further delegation of financial authority to service delivery units and administrative units and engagement of non-state actors in service provision was broadened. More recently the process has continued, with further delegation of authority to service delivery units and deepened “socialization” of service delivery, allowing the engagement of non-state actors and even granting preferential policies to non-state providers.

Some aspects of the legal and judicial system also have the earmarks of devolution. Lawyers have seen expanded rights to provide legal consultancy and participate in legal proceedings, and there has been devolution of jurisdiction to the courts to handle economic disputes. Devolution of powers continued in the second decade after Doi Moi, with lawyers becoming authorized to practice in law offices and law firms, and civil society organizations gaining the ability to provide legal consultancy services. There was further devolution of jurisdiction to the courts to handle some administrative cases,
and an expansion of the mandate of the district courts to handle economic disputes. The devolution of powers, particularly to lawyers and lawyers’ organizations, has continued in recent years. Civil judgment execution has been made more independent from the executive, and the jurisdiction of the courts over administrative cases has expanded, as has jurisdiction over criminal and civil cases. Experiments in socialization of some judicial and judgment execution activities are ongoing.

The National Assembly has been empowered to play an oversight role. In the first two decades of Doi Moi, devolution expanded the oversight powers of the National Assembly and the locally elected People’s Councils, a process which has continued in recent years. Oversight bodies such as State Audit of Vietnam now report directly to the National Assembly.

For some areas, the devolution that has taken place has been more limited, although still unmistakable. Civil society, as it exists in Vietnam, remains dominated by organizations that maintain close ties to the state, although there have been changes that somewhat ease entry and facilitate voice for civil society organizations. In the first decade after Doi Moi mass organizations received increased independence over their management and finance, and more forms of civil society organizations were allowed to be established and to operate. In the second decade, mass organizations have gained greater authority to undertake numerous public affairs activities, and additional forms of civil society organizations were allowed to be established and to operate, always based on the principle of self-finance. More recently, mass-organizations and other civil society organizations were devolved authority to undertake new public affairs activities, especially in the areas of anticorruption, service delivery, grassroots democracy, administrative procedure reform and law making.

The media, while still linked more closely to the state than in most countries, was given more autonomy in terms of financing and circulation, and to some extent over content. In the first decade after Doi Moi the reporting rights of the media and journalists were expanded. In the second decade, media agencies became financially and managerially more independent from their parent organizations and were allowed more flexibility in production.

While the devolution that has taken place has arguably brought many positive results, there is no presumption that devolution is always good. On the contrary, this VDR will argue that central controls are sometimes essential. When competition among provinces leads them to ignore the impacts of their policies on their neighbors, some encouragement of regional planning is needed. When national uniformity is needed, such as in the system of law making, less devolution is needed, not more. Recent changes in the law making process are improvements in part because they centralize who can make laws and how. When there is asymmetric information, such as for the quality of health care and the credentials of health care professionals, or when equity concerns demand equal access to services national standards are needed.

Even when devolution is appropriate, a new conundrum arises. To devolve powers is to also devolve responsibilities, and ensuring that newly empowered bodies perform their functions well is the duty of the accountability system.

### New Forms of Accountability

The Vietnamese terms for accountability and responsibility are very similar, but the meanings of the words are quite different. While being responsible for something implies whose job it is, being accountable calls for more. It assumes that there is accurate and accessible information on which to judge whether the job is being done well, and it assumes that there are mechanisms to reward good performance and discourage bad performance. This VDR distinguishes between two types of accountability.
- **Upward accountability for compliance**: The person or body focuses on the rules and dictates from above, emphasizing adherence to instructions coming from within the hierarchy.

- **Downward accountability for results**: The person or body focuses on the results they are entrusted to deliver, and mechanisms ensure that poor performance has consequences and good performance has rewards.

Like all models, this focus on two forms of accountability omits many nuances, such as variations and hybrids of forms of accountability. But models can be powerful precisely because they focus on the core aspects of an issue. In this case, the defining features of upward accountability are hierarchy and administrative rewards and punishment, while the defining features of downward accountability are feedback from clients, information for clients, and participation in decision making.

The type of accountability system that is most appropriate for a particular function depends on the features of that function or activity. If there were perfect information, then the two types of accountability would be very similar, since a top-down monitor could easily tell how well an organization is performing its role. But when information is not perfect, and of course it never is, then it is costly to play that monitoring role. In the case of service provision, those with the best information may be the clients—those who are using the services. The health sector provides a good example here. Being responsible to patients and their families through a bottom-up system of accountability for results can be more efficient than a purely top-down hierarchical approach. At the same time, some information may not be well known to the clients. To follow through with the health sector example, the quality of the doctors and pharmaceuticals cannot be easily detected by most patients—some measure of upward accountability is also needed.

Another key distinction to be made in examining systems of accountability is between the reasons for good and poor performance. There is a world of difference between intentional errors, errors of negligence, and innocent errors. An accountability system that treats them all the same will not achieve the desired effects. Similarly, if making a mistake is punished more severely than failure to do something good, the result could be overly risk-averse behavior, long delays in getting things done, the ubiquitous need for higher approvals, and so forth. On the other hand, an accountability system that focuses entirely on the negatives—punishing mistakes or poor performance—is only half of an accountability system. Ensuring rewards for positive performance is equally important. All too often, the penalties for acting without official authority outweigh any benefits for making the right decision, a feature that is evident in many areas in Vietnam, from the release of information to making even small decisions. As Vietnam advances to become a middle-income country, one of the toughest challenges will be to get the accountability system right.

One way of thinking about a system of accountability was provided by the World Development Report 2004 which distinguished between the long route to accountability and the short-route to accountability. The long route to accountability involved citizens holding service delivery organizations accountable indirectly through the election process.

Such a system also has an important information aspect, providing the system with feedback about the types of services that the population feels are most important.

In Vietnam one mechanism by which preferences and concerns are revealed is through the Vietnam Fatherland Front, which collects opinions, petitions, and grievances through consultations with its network of mass organizations. These are reported every year at the opening of the National Assembly. With the Vietnam Fatherland Front’s status as an official organization, even one with constitutional rights and duties, this report to the National Assembly carries weight. Box 1 summarizes some of the issues that are on people’s minds, and even highlights areas where the accountability systems seems to be coming up short.
This system helps satisfy the information aspects of accountability—that is, the system provides information to leadership about the concerns and preferences of the population. But it does not fully satisfy the central role of accountability of ensuring that those concerns and preferences are addressed—if they are not addressed, what are the consequences? The same World Development Report that introduced the long-route to accountability also introduced the short-route to accountability. The short route to accountability focuses on specific services emphasizing the direct interactions between service providers and their clients. Such a system is only emerging in Vietnam, in some places and for some functions, but will become ever more important as responsibilities are devolved.

The shifting landscape of devolution and accountability is neither linear nor predetermined. Indeed, the Vietnamese approach to reform, searching step-by-step for solutions to society’s problems, is one of experimentation. And experimentation, pushing boundaries in one way or another, continues to occur. Yet, the fundamental tension between autonomy and accountability is not self-correcting. Accountability mechanisms will not automatically evolve to mediate these new relationships. Rather they need to be consciously created. Collective action problems, in which the benefits for an action accrue to a diffuse group while the costs are borne solely by the one carrying out the action, are evident in many places in the report and may also stymie progress.

The annex of this VDR contains a series of devolution and accountability timelines highlighting key changes in both. The purpose of the timelines is not to provide an exhaustive list of actions; indeed, it is a subjective judgment when identifying the dates for a change in devolution or accountability. Rather the value is in the entirety of the timelines, for the visual depiction of a changing system they represent.
In its May 2009 report to the National Assembly the Vietnam Fatherland Front reported that it had collected 2,446 opinions and petitions of the voters and the people throughout the country. While praising the leadership for achievements in many areas the report also cited areas of concern. A summary of some of these concerns is instructive both for the concerns themselves and for the weaknesses in accountability they identify:

- The lack of good data on what is happening in terms of labor and employment during the economic downturn. The report notes that statistics on the number of people losing jobs and economic areas and fields, types of production and business “remains inaccurate and inconsistent which causes difficulties for the implementation of support solutions of the government.”

- The problems related to resettlement are discussed in several places in the report. While noting that the government has launched many policies on agricultural and rural development, the report also states that such policies “fail to satisfy the growing and emerging needs and requirements, and the gaps between the rich and the poor are still widening. Reclamation of farming land and forestry land to build industrial parks/zones, urban centers and golf courses/courts in many localities is still irrational leading to a situation where the agricultural land reserves are declining continuously; and many units that have been allocated land to launch projects fail to do so, leave the allocated land unused, or use such land for wrong purposes, or trade such land for illicit earnings which causes discontent and dissatisfaction on the part of the people.”

- While appreciating the cash bonuses distributed during Tet, the report also notes the regrettable mistakes that took place in many places. They note that in some localities the policy was implemented in an arbitrary, irresponsible and undemocratic fashion. They note that many poor people have not benefited from the policy or benefited only with delays or reduced amounts. “Huge numbers of voters petition to the government and levels of administration to pinpoint the responsible officials to deal strictly with wrongdoers.”

- While applauding achievements in the area of preventing and combating corruption and waste the report notes that the situation of corruption and waste still takes place. “Many cases of corruption have been brought to light which won support and attracted a lot of interest and attention of the general public. However, responsible functionary agencies were still slow to take action or failed to deal satisfactorily with certain cases of corruption, below expectations, thus fading away trust and confidence of the people in the fight against corruption.”

- To help improve the battle against corruption and waste the report noted that voters petition the government “to speed up the public administration reform, to strengthen and to promote openness and transparency in order to stop and to roll back corruption and waste, especially in such fields as land administration, investments, capital construction, use of public assets, etc. Voters also petition the National Assembly to strengthen and to enhance effectiveness of its oversight in this regard.”

- In the area of legal development the report applauds the increased work that is going into legal development. It notes that more law development projects are approved and commented upon and each session of the National Assembly than in the past. But it also notes that laws are slow to be developed. There seems to be a particular issue with the development of secondary legislation. The report calls on the National Assembly and the standing committee of the National Assembly to gradually reduce the number of articles and laws stipulating that the government and line-ministries are responsible for issuing concrete and specific under-laws. In other words the practice of leaving the details for secondary legislation is something that the voters seem to think contributes to the slowness in developing the secondary legislation.

- Finally, the Vietnam Fatherland Front report to the National Assembly neatly summarized the challenge of building accountability for a devolved system: “Many voters petition the government to... ‘grasp those difficulties and obstacles in the real running and governance of socio-economic activity of the country, especially regarding administrative procedures, attitudes, sense of responsibility of public officials and civil servants in the course of performing official functions and duties in order for timely issuance of correct and appropriate solutions and mechanisms, thus solving difficulties and obstacles, speeding up economic development, meeting expectations of the people.’”

The central theme of this VDR is that devolution of authority over the past decades has covered a wide range of activities and services and is also calling for new mechanisms of accountability. While the fact of such devolution can, in most cases, be determined through readings of laws and a review of history, the impact of the changes requires a different sort of analysis. And that analysis requires data that captures how citizens and firms assess the institutional environment, about their experiences with the state, and about the problems they face. Such governance data has always been sparse compared to economic data, but whereas a few decades ago there was a veritable information vacuum on such topics, in Vietnam and elsewhere, there is a growing body of survey data that help to fill this void.

This VDR makes extensive use of several key sources of governance data. (Box 1). First, an important innovation took place in the 2008 round of the Vietnam Household Living Standards Survey (VHLSS) conducted by the General Statistics Office (GSO). A new Governance Module was attached and administered to more than 9,000 households across Vietnam. Sample sizes ranged from 72 in Kon Tum to 300 in Ho Chi Minh City, and most provinces had over a hundred respondents. The availability of more than 9,000 observations on citizen satisfaction with government services, participation in policy making, access to information, and other issues, is an important asset for any researcher attempting to understand Vietnam’s institutional development. The fact that this data was collected and is now informing debates on governance reform represents an important milestone for Vietnam.

A second source of data is familiar to many researchers: The annual survey conducted by the Vietnam Competitiveness Initiative (VNCl) and the Vietnam Chamber of Commerce and Industry (VCCI) has, since 2005, been used to construct the popular Provincial Competitiveness Index (PCI). The PCI is widely acknowledged to have been a positive influence on the competitive spirit of the provinces, all of whom would like to see themselves ranked higher year after year. It is also a somewhat unique source of data on the institutional environment facing firms. With over 7,000 firms participating in the survey in 2008, a rather large number for such a survey of enterprises about business environment issues, the annual PCI survey represents a valuable cross-section of firms’ views. In addition, the fact that some of the same firms were included in the survey at different points in time makes it possible to examine changes over time in a fairly powerful way. This VDR will draw on both the 2008 round of the full PCI survey and the panels of firms that participated in the survey in both 2006 and 2008 in order to better understand the dynamics of Vietnam’s institutional environment. In addition to these two large-scale surveys of firms and households, a broad range of other survey data will be examined.

The data provide for a rich source of information to move beyond guesses and assertions about Vietnam’s governance challenges. The producers of the data, GSO and VNCl-VCCI and the thousands of citizens and enterprises that participated in the surveys, have provided a valuable service. As with any data, however, their responsibility ends with the quality of the data. The subsequent conclusions and analysis in this VDR are not their responsibility, but that of the authors of this VDR.
Box 1. Key data on governance and institutions

The General Statistics Office (GSO) conducted the Viet Nam Living Standard Survey (VLSS) in 1993 and 1998, and since 2002, the survey, whose name was changed to the Vietnam Household Living Standards Survey (VHLSS), has been repeated every two years. The VHLSS Governance Module* was appended to the much longer household survey questionnaire for the first time in 2008, collecting governance data from 9,189 households. The basic features of the survey are as follows:

- The questionnaires were administered through face-to-face interviewing, and quality control was supervised by GSO. As respondents are mandated by law to participate, the response rate for the VHLSS is extremely high.
- The households selected to be administered the Governance Module were chosen at random from among the households sampled for the broader VHLSS. Sample sizes for each province were approximately proportional to the population of the provinces.
- The VHLSS is not a simple random sample of respondents, but rather a sample of households within the sites that were chosen for each province. As long as the sites are representative of the population in that province, then the Governance Module sample can be considered a representative sample at the provincial level. If, however, the sites are not representative of the province as a whole, then the sample may not fit the strict definition of representativeness. In addition, the well known challenge of properly sampling certain respondent groups, especially un-registered migrants, are present for the Governance Module as they are for the broader VHLSS.

The VNCI-VCCI Provincial Competitiveness Index Survey** has been conducted every year since 2005. Sample sizes and response rates have grown over the years as the popularity of the PCI has grown. The 2009 round of the survey, whose results are expected to be released about the same time as this VDR, received responses from more than 10,000 firms. This VDR will draw on the 2006-2008 rounds of the PCI Survey whose main features include:

- The PCI survey is a mail-in survey. Each year the team at VNCI and VCCI mail out tens of thousands of questionnaires, and follow up with additional letters. As a voluntary mail-in survey asking sensitive questions, the response rate was initially very low. As the PCI became better known, the response rate has increased to about 30 percent for the 2008 round of the survey. In order to examine how well the final sample matches the population it is drawn from, the team compares the PCI data against median data from the Tax Authority or Enterprise Census. After re-weighting the PCI survey to reflect differences in province population, the sample generally “looks like” the population, with a few exceptions. PCI firms tend to be slightly older (15% vs. 10% registered before Enterprise Law) and slightly bigger (30% vs. 16% greater than 5 employees) than firms in the overall population of enterprises, and to be slightly more profitable. As a whole, however, the large sample size and general similarity to the overall population of firms, makes the PCI data very useful for examining a wide range of governance and institutional issues.
- While the increase in the response rate makes the PCI survey increasingly valuable for examining the cross-section of governance challenges reported by firms, it poses challenges for examining changes over time if the increase in response rate is due to changing levels of confidence that responses will be held confidential. For this reason, the panel element of the sample, that is the set of firms that answered the survey in different years, is particularly valuable. There were more than 2,000 firms that participated in the PCI survey in both 2007 and 2008, and 635 that responded in 2006, 2007, and 2008.
- The data for the PCI survey can be found at http://www.pcivietnam.org/.

Organization of the VDR

This Vietnam Development Report, like its predecessors, draws on the contributions of many development partners. The VDR series provides a vehicle to communicate not only with government and the broader community, but also among donors that contribute to its preparation. The VDR series aims to influence the reform agenda, build consensus among thinkers and the public at large, harmonize upstream with donors, and position those involved as substantive contributors of knowledge and expertise. The present VDR, focused on Modern Institutions, represents a joint statement of the donor community on progress and prospects for Vietnam's development and aspirations for a devolved, yet accountable, system.

To examine the extent and nature of devolution, and the mechanisms of accountability that are being developed and need to develop, this VDR will examine five broad parts of the state apparatus. Chapter 2 examines the central state apparatus that governs society even after other functions are devolved, focusing on two key resources that the state has at its disposal: human and financial. Chapter 3 examines the system of governance at the sub-national level. Chapter 4 centers on the interface between governmental bodies that interact most closely with the general public, providers of services, and examines the mechanisms of accountability that have come to exist after these service providers were granted measured autonomy. Chapter 5 focuses on the legal and judicial system, for which the lines of devolution are not as clear-cut—the law making process arguably needs less devolution, while the judicial system needs greater independence in order to be able to do its job effectively. Chapter 6 examines the institutions of oversight. These include the bodies whose job descriptions include, but are not limited to, providing a form of external oversight over the rest of society. Whether it is a purely governmental function, such as investigating and prosecuting corruption, or a non-binding role in bringing information to the public's eye, as could be played by the media and civil society, or a mixture of both, as with the National Assembly, these institutions of oversight can play a crucial role for Vietnam's system of accountability in the next decade. The centrality of information for accountability systems, and some challenges going forward, round out the report.

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iii Martin Gainsborough (2007) argued that a mixed approach, with features common to Asia as well as emerging elements from the liberal democratic tradition would be more fruitful than relying solely on the latter.