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Institutional Reform for Public Administration in Contemporary Viet Nam

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Executive summary

The underlying argument of this policy research paper is that the PAR institutional reform program embodies tensions that are inherent in the dominant paradigm of the 'socialist rule-of-law' state. The result is a set of self-imposed limits to reform objectives and outcomes which has bred impatience and frustration among many reform advocates, both within Vietnamese circles and among external observers and donors. As a consequence, the development of effective institutions that would facilitate the operation of market mechanisms in furthering development and growth is inhibited. However, the current situation is that the PAR institutional reform agenda cannot deliver on its stated objectives without wider reforms to remove the constraints. Some aspects of the current PAR institutional reform agenda in fact lie outside public administration in legal, judicial, constitutional and political reform arenas. Were the Government of Viet Nam to follow through faithfully the logical and practical implications of development of a 'socialist rule-of-law state' (one where the norms of legality routinely trump other considerations in the use of state power), many new possibilities could be opened up for the institutional reform agenda.

As well as developing this argument through logical analysis of the normative framework itself, a review of the institutional arrangement associated with successful development in other countries, including in East Asia, supports the conclusion that a more consistent and deeper implementation of a rule-of-law basis for public administration is desirable. Detailed empirical analysis of achievements and shortcomings, and the reasons for them, through two case studies drawn from the PAR institutional reform agenda – one-stop-shops and administrative procedure reform – supports the view that there are considerable benefits to be drawn from a thorough and consistent application of these principles.

The conclusion focuses on change strategies, drawing on a theoretical discussion of how institutional change should be conceptualized, suggesting a 'dual-track' approach of bottom-up initiatives consistent with a long-term vision of a rule-of-law based public administration. Local PAR institutional reform projects which make explicit the links with this wider agenda of institutional reform have the potential to build momentum towards the desired objective of a 'rule of law state'.

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Introduction

The general objective of this policy discussion paper is to analyze how Viet Nam's administrative institutional system has been transformed and renewed and is contributing to the development of market institutions with a socialist orientation. The paper seeks to respond to this objective through both normative and empirical analysis. First, we undertake an analysis of the normative framework of institutional reform in Vietnam. In particular, we seek to understand the meaning of the 'socialist rule-of-law state' concept and its implications as the guiding framework for the scope and content of the institutional reform agenda. This discussion is set in a context of an international theoretical literature on the meaning of 'rule-of-law'. On the one hand, we note that there are important elements within the Vietnamese conception that stress the need for a 'rule-of-law' based system of public administration. On the other hand, we observe that there are political and administrative practices, embedded in alternative constitutional models of a socialist one-party democracy, which contradict these elements. It also notes the extent to which these issues are debated in Vietnam, and the considerable variety of views on the subject.

Second, we evaluate the Vietnamese conception of institutional reform with reference to international development experience. This part of the analysis seeks to assess the appropriateness for future development of the current meanings and applications of the 'socialist rule-of-law state'. We suggest that the internal contradictions pointed out in the first section set critical limits to establishing the kinds of institutional arrangements that have under-pinned the developmental trajectories of successful economies elsewhere.

To elaborate on this analysis of the normative framework for institutional reform, and its implications for the development of effective systems of public administration, we next discuss the experience and achievements of the PAR institutional reform agenda in Vietnam. We note the extent to which the analysis by the Vietnamese Government expresses frustration and disappointment with some aspects of the progress made. More detailed empirical analysis takes the form of two case studies of key areas of institutional reform – one-stop-shops and administrative procedure reform respectively. We note the considerable achievements as well as the shortcomings and link the latter directly to the failure to press fully ahead with the 'rule-of-law' agenda of institutional reform. We identify some potential areas for further extension of such reform initiatives which could greatly enhance the quality of public administration in Viet Nam.

The concluding section seeks to develop a broad strategy for institutional change within this context. It is clear that such an agenda faces political obstacles, which limit the possibilities for top-down initiatives. However, through a theoretical analysis of the manner in which institutional change actually occurs, we stress the significance of the potential for unexpected results from the unfolding of bottom-up initiatives and 'small changes'. Such changes are likely to be practical, local initiatives taken by actors seeking to deal with the pressures faced in the transition and marketization processes. We suggest a 'dual track' reform strategy which, on one track, encourages local, practical experimentation and, on the other, supports the development of alternative visions and frameworks for reform. Some of the latter

are already incipient in that part of the normative framework of the Vietnamese 'socialist rule-of-law state' that stress the importance of legality and separation of party and state.

The research methodology adopted was first, a review of local and international secondary literature on the normative framework of the socialist rule-of-law state; second, a review of primary documents such as party directives, government decisions, circulars and laws and internal working documents of both the Government of Viet Nam and of various international or national organizations active in public administration reform support activities; third, interviews with party and state officials and members of the 'donor community' (both Vietnamese and international); and fourth, 'site visits' to Ninh Binh Province, including the PAR Provincial Project Office, the District of Gia Vien and the Commune of Cuc Phuong[1].

The evidence and judgments contained in this report are the result of extensive participation by Vietnamese researchers, informants and experts. We benefited greatly from the input of two commentators on a first draft, Dr Thang Van Phuc and Mr Dinh Duy Hoa at the National Seminar on PAR organized by the Viet Nam Fatherland Front (VFF) and the Centre for Community Support and Development Studies (CECODES) on March 12, 2009 in Ha Noi. We relied heavily on the expert judgment and the detailed recall of interviewees. Our own interpretative frame has, however, shaped our analysis and conclusions. We do not attribute any of these to any of our interviewees. The process of research was a collective effort by the research team, as was the discussion and drafting of major findings and conclusions. In the final report writing, the lead author took responsibility for the form in which the material is presented.

1. What is the problem?

Institutional reform as defined in this paper (and elaborated in the next section) is not a technical matter, although this is how it is sometimes perceived in the official PAR discourse and in various implementation programs and projects. The subject matter is in large part normative, concerning the very assumptions on which the rules and structures of the Vietnamese 'socialist rule-of-law' state is based.

The underlying argument of this research paper is that the PAR institutional reform program embodies tensions and contradictions that are inherent in the dominant paradigm of the 'socialist rule-of-law' state. The result is a set of self-imposed limits to reform objectives and outcomes which has bred impatience and frustration among many reform advocates, both within Vietnamese circles and among external observers and donors. In this sense, the solutions to the problem cannot easily be addressed in a discussion focused solely on 'what next?' in the PAR institutional reform program, as they raise issues of fundamental political and constitutional reform. Indeed, we argue that some aspects of the PAR institutional reform agenda properly belong in other reform arenas.

Conventional constitutional analysis of Communist states depicts the dominant view of constitutionalism as an 'instrumental' one. The constitution is solely an instrument of rule but not in any meaningful sense a constraint on rule. However, constitutional debates in Viet Nam have increasingly raised questions about such a constitutional model. In debates on constitutional reform during 2001-2002 and in discussions leading up to the 10th Congress of the party (2005), issues such as the following were raised: How far should institutional reform go in pressing forward with a principle of legality that departed from traditional socialist legality? How should a law-based state regulate the party, if at all? Should there be a modification to Article 4 of the 1992 Constitution?[2] Should there be an 'independent judiciary' to protect individual legal rights and if so, what form should it take? In what form should constitutional review be institutionalized? And so on.

These debates are now frequent and on-going, albeit often stifled for political reasons. Mark Sidel depicts the current state of constitutional and political debate in Viet Nam as 'transitional and instrumental constitutionalism'.[3] Each episode presses the boundaries. Taboos – such as open discussion of Article 4 – are evident from moments when debate is shut off, but they are not fixed for all time. The discussion of many 'sensitive' issues is tolerated and even encouraged by the authorities, as the party is confident of being able to control final outcomes through 'post-debate, post-adoption implementation processes'.[4] Liberal constitutionalist intellectuals are no longer treated as 'dissidents', even if they are usually marginalized during such debates.[5] Sidel argues that the party's legitimacy is reinforced by allowing their voice to be heard, thereby even enhancing the party's capacity to control the outcomes. Nevertheless, the key point about the 'transitional' situation is that the agenda of the possible is steadily expanding.

By pointing out that there is a fundamental chasm between what is currently achievable in the PAR institutional reform agenda and what could be addressed under such alternative visions, the question: 'What next?' can be addressed in a new light.

This would draw our attention to remedies that stressed (as a case in point) more open and transparent systems of information dissemination about services and citizens' rights by government agencies and better public avenues for redress against arbitrary state actions (e.g. local legal aid and citizens' rights centres; local ombudsmen with 'teeth' who could guarantee confidentiality; freedom of information legislation; etc.) as distinct from (or rather, as well as) better drafted regulations and tighter bureaucratic discipline.

With these preliminary remarks in mind, the next section addresses the normative issues from the perspectives of official doctrine and internal debates. In particular, we address what is meant, and debated, as the 'socialist rule-of-law state'. The section following takes a comparative perspective, noting, however, the methodological and other traps that come from over-eager recourse to 'foreign models' and imports.

2. The normative framework of institutional reform in Viet Nam

Institutions are sets of rules that govern particular fields of social, economic and political relationships and processes. Institutional reform as an aspect of PAR is about establishing and implementing rules and procedures that will improve the quality of public administration, in particular in the relations of the state with society, so as to enable the 'socialist-oriented market economic mechanism' to work effectively. It is fundamental to all other aspects of PAR.

The PAR Master Plan (2001-2010) listed four main aspects of institutional reform, which was identified as 'national sub-program 1':

1) Reform of four sets of key institutions
    a) institutions that govern the market (laws about the operation of enterprises, the labour market etc);
    b) institutions which regulate the organization and operation of the public administration system;
    c) administrative institutions that regulate 'relations between the State and People', such as systems of handling complaints; and
    d) institutions specifically regulating the state's role in the economy as owner and operator of business operations.
2) Renovating the process of issuance of legal documents
3) Strict and transparent law enforcement by public institutions
4) Reform of administrative procedures

Thus, in the first place the PAR institutional reform agenda re-stated existing objectives to create the legal and institutional framework for a market economy by passing appropriate new laws and putting in place implementation mechanisms. In the context of *doi moi*, the challenge of creating favourable conditions for the development of market-based economic activities – that is the meshing of institutional reform with economic reform – is a top priority. One of the principal reasons for developing the conception of the socialist 'rule of law' was the need for

reforms to the legal system that would make it better suited to the operation of market mechanisms. In order to manage and steer market actors, it was generally accepted that the predictability and generality of clear legal instruments, along with efficient and effective enforcement mechanisms, was an advantage. At an accelerating pace, new laws and regulations have been adopted to regulate the market and the private sector. According to one source, Vietnam's National Assembly from 1946 to 1987 adopted 34 Acts; from 1987 to 2002 it adopted 105 Acts; and between 2002 and 2007 it adopted 125 Acts.[6]

Beyond the task of adopting new laws, the scope of the institutional reform agenda is potentially very large. It could conceivably cover all aspects of how the state organizes and regulates its own internal structures and processes of decision making and implementation, and also how it regulates private actors in the conduct of their daily lives and their businesses. There is a strong presumption in the formulation of this agenda that these matters will be dealt with through due process; that they will be handled in a manner that protects citizens' legal and other rights; and that they will improve both the quality and responsiveness of government in its dealings with businesses and citizens. Clearly, the import of these issues steps beyond the bounds of public administration alone.

Thus, the foundations of this reform agenda concern fundamental normative and political issues concerning the way the state is constituted in its relations with society. Indeed, it could be argued that this is the origin of one of the main problems with PAR institutional reform as conceived in the PAR Master Plan: it brought onto the PAR agenda issues that cannot be addressed solely within a public administration context.[7] We return to this point later when discussing future reform strategies and options. First, however, because these underlying constitutional and structural principles are so important for understanding the progress of PAR institutional reform to date, we set out the main features and explore their implications for practical aspects of reform.

What are the underlying principles and normative assumptions of the Government of Viet Nam's approach to institutional reform?

The guiding principles of the current reform strategy are:

1) Construct the legal basis for the operation of the socialist-oriented market economic mechanism
2) Build a system of government based on 'socialist rule-of-law'

Observation of the recent pronouncements made by the CPV on these matters demonstrates the extent to which institutional reform for public administration and legal reform (including judicial reform and even constitutional reform) overlap. Resolution 48-NQ/TW of 4 May 2005 on 'The Strategy for the Development and Improvement of Viet Nam's Legal System', Resolution 49-NQ/TW of 2 June 2005 on 'The Judicial Reform Strategy' and Resolution 17-NQ/TW of 1 August 2007 on 'The Acceleration of Administrative Reform' issued by the Politburo of the Communist Party of Viet Nam (CPV) are important recent landmarks in identifying the central role of institutional reform. Resolution 48 sets out a set of objectives that reflect the prevailing normative framework for institutional reform:

> "To develop and improve a consistent, comprehensive, viable and transparent legal system with the focus on the perfection of the legal

> regulations of a socialist-oriented market economy; on the building of a Vietnamese rule-of-law socialist state which is of the people, by the people and for the people; on the basic renovation of law-making and implementing mechanisms; and on the enhancement of the role and effectiveness of the law in contributing to good social management, maintaining social stability, developing the national economy, international integration, building a clean and strong state, implementing the human and democratic rights and freedoms of the citizens and making Viet Nam a modern, industrialized country by 2020."

The key phrase in this formulation is the concept of a 'Vietnamese rule-of-law socialist state'. What does this mean?

There are both similarities and differences between Western and Vietnamese ideas of the 'rule of law'. Both incorporate a basic idea of 'rule by law', that is the paramountcy of duly enacted laws in the exercise of state power. A 'duly enacted' law is, among other things, one that has come about following a process set out by a law or the constitution. Other notions in common include the neutrality of the law as to persons and equality before the law.

An additional and crucial feature is the importance not just of government through the law – the law as an instrument of rule – but also of the regulation of the use of state power by law.[8] Law constrains the use of power, for example to protect basic rights. The general understanding of the rule of law in most contexts also includes particular institutional arrangements such as mechanisms of accountability and transparency so that those who make and implement the law do so according to the law; an independent legal profession; a judiciary able to make decisions without political interference; and impartial law enforcement.[9] When we explore these institutional specifics the differences in the Vietnamese notion become apparent.

In Viet Nam, the concept of the rule of law has been articulated in various ways at different times. President Ho Chi Minh set out three 'principles of good government', the first of which was 'rule of law':

> 'There is a serious confusion between right and power… So, the general rule should be promulgated, to include those with power, that they must comply with the laws… In judging the person in charge and applying the criminal code, it is a must that the court be absolutely free and independent from the upper court and the Party'[10]

The second principle was 'separation between Party and state':

> 'No one has an idea other than the Party leads the state. However, the operations of these two bodies should be separated and the separation should be clear along the borderline… One body cannot hold the two leading functions.'[11]

The third principle was self-awareness of the party's capacities and its need for the support of the people.

The currently prevailing official concept of the 'socialist rule-of-law state' stems from debates preceding the redrafting of the Constitution in 1992, when (among other things) significant changes were made to elaborate on the role, function and organization of the state. The challenge was to adapt the organization and working relationships of the political, administrative and legal systems to the requirements of a complex, modernizing 'mixed economy' with a growing market sector. Inherited ideas and institutions from the era of the command economy needed to be adapted.

According to the concept of the 'socialist rule-of-law state' the party rules through law, using legal mechanisms and instruments which regulate the behavior of both state actors and private citizens. The state is a 'state of law'. As one commentator expresses it, echoing Ho Chi Minh, while the CPV remains 'the political force leading the political system'…, the party cannot replace the role of the state and its 'policy and ideology …cannot be substitutes for the law'.[12] According to this view, the party exercises its leading role by setting the directions of policy for the government to implement, by controlling the law's content and by directly overseeing its manner of administration, but not by overriding or ignoring the law or actually taking on the role of state management itself.

In the realm of judicial procedures, the socialist rule-of-law state is based on a clear statement of fundamental principles of legality, at least according to one Vietnamese legal scholar, Professor Dao Tri Uc:

> "The trial of courts is aimed at ensuring that all citizens are equal before the law, being conducted in a democratic and impartial manner."[13]

However, John Gillespie has argued that the 1992 changes did not in practice make a complete break with the past. In practice, the party and the state continued to adhere in some degree to inherited principles of what he labels 'socialist legality,' a concept imported from Soviet Russia, which is embedded in 'the will of the ruling class' and is viewed as an instrument of the party's domination in the name of revolutionary struggle.[14] In the most basic formulation of this inherited conception, 'law' was what the party decreed and was an instrument for achieving its objectives. Similarly, the constitution was also an instrument of party rule and socialist transformation, not an independent or transcendent set of rules.

The role of the party as 'the leading force' continues to loom large. Article 4 of the 1992 Constitution clearly states that the party is 'the force leading the State and society'. Moreover, as Resolution 48 of May 2005 says: 'State power is unified through the allocation of tasks and coordination between state agencies to carry out legislative, administrative and judicial functions'. As Dao Tri Uc states it:

> "…the state…can only be a rule-of-law state with the leadership of the Communist Party of Vietnam'… …(T)he organized operation of the state apparatus must be in line with the principle of united state authority …"[15]

These two basic political-cum-constitutional facts – the monopoly on power of the CPV and the unification of all forms of state power under its control – shape the

operation in Viet Nam of the 'socialist rule-of-law state'. They also fundamentally shape the parameters for all institutional reforms in contemporary Vietnam.

While the expansion of the realm of law through new legal instruments and powers has been a significant development in Vietnam, and has been particularly evident in matters relating to the operations of individuals, households and businesses, the manner in which the party exercises its 'leading role' in all state institutions sets potential barriers to the extent to which in reality the same rules and procedures governing the conduct of business apply equally to all. From matters of 'high politics' to issues of local discretion (for example, in granting land title), state actors who are party officials are sometimes seen to wield state power without full regard to the law. The party's own assessment of reform progress in Resolution 17-NQ/TW dated 1 August 2007 'On the Acceleration of Administrative Reform' stresses shortcomings in the way officials exercise their powers:

> 'The quality of officials, public servants has not met the requirement, bureaucracy, corruption, and wastefulness is still a serious situation. …discipline is not seriously obeyed by officials…' (p.1)

The party's diagnosis is a lack of 'leadership'; the remedy lies in redoubled efforts under more determined party leadership. But another diagnosis could be that the root of some of the problem is more systemic and lies in the special role the CPV claims for itself within the state.

The 1992 Constitution does suggest that the party has, indeed, subordinated itself to the law – Article 4, as well as stipulating that the party is 'the leading force in state and society,' includes the statement that 'all organizations of the Party operate under the Constitution and the Law'. However, the operation of the 'socialist rule-of-law' state embodies a basic ambiguity: the party's 'leading role' in practice is firmly and unequivocally applied in such a way that both the making and administration of laws may be controlled directly on a day to day basis by the party. As well as setting directions and issuing general policy statements, in practice the party's involvement spills over into day to day state management.

Under the ruling ideology of the Communist Party, the whole state apparatus is at the service of the people through the party, which exercises a total and permanent monopoly on state power as the vanguard of the people:

> "The nature of our state as stated in the Constitution 1992 is that "the State of the Socialist Republic of Viet Nam is a proletarian totalitarian State" which is clearly determined as "of the people, by the people and for the people."[16]

Moreover, while the organization of the state may be specialized and its roles differentiated between legislative, judicial and executive functions, the principle that these functions belong to independent arms of the state is not accepted.

"The state apparatus, which was organized in accordance with the principle of socialist centralized authority (in line with the model of socialist countries), is reorganized based on *the principle of united state authority* with a division and

coordination between state institutions in implementing the executive, legislative and judicial authority."[17] (my emphasis)

The 1992 Constitution clarified and separated out the various functions:

> …the Constitution 1992 restored the position of the Government… The redefinition of the Government position was a result of the improved view and perception on the division and coordination of three powers, namely the legislature, the executive and the judiciary within the overall unified powers of the State. With this position, the executive – the public administration – became a relatively independent branch in the cooperation with the legislature (National Assembly) and the judiciary (the court and supervising institution) that created a similarity to conceptions and regulation of other countries on government.[18]

But while in the 1992 Constitution rational specialization and coordination substituted for a more diffuse, opaque model of collective party leadership, the supreme authority of party over the state remained in place. Party control of the different organs of the state serves to unify them. Prime Minister Vo Van Kiet in 1995 expressed his view of the manner in which the 1992 Constitution separated state from party, at the same time expressing his frustration at how this was not being realized in practice:

> "Party and state functions need to be separated more clearly. The party must cease passing its directives through party committee secretaries and instead pass them through the government chain of command…. A 'law governed state' must supplant organisational structures that had originated in war…."[19]

An even clearer statement of the need to adhere to the underlying principle of the separation of the leading role of the party from the instruments of state rule has recently been provided by former National Assembly Chairman, Nguyen Van An:

> 'You can't run the country directly by using the Party's instructions and resolutions. The Party's instructions and resolutions are used to lead, not to rule. They can't take the place of laws.' (*The Vietnam Nation*, Monday 23 March, 2009, p. 2)

But in practice, party officials from top to bottom both set overall policy guidelines for each of the arms of the state to follow and also often intervene directly in their management and decision making. There are overlapping mechanisms and processes of both policy-making and administration at all levels in party and state.[20] Party policy, expressed in directives and resolutions of the Politburo and Central Committee and promulgated by lower level party organs, binds both party and state officials, at the same time as they are said to be bound by the law. Article 1 of the Ordinance on Public Employees 1998 requires state employees to obey state law and party resolutions and article 6 requires state employees to 'strictly abide by the Party's lines and policies, and the State's policy and law'.[21]

Political control is exercised on a day to day basis in two main ways: first, through the continuing control by the party central organs over all significant appointments to state positions (including the judiciary) as well as nominations to most elected positions; and second, through the day to day exercise of political control by party organs in all decision making in state organizations.

The party exercises its control of appointment through its continued application of its own version of the old Soviet-style *nomenklatura* system under which all appointments are approved by the Central Party Organizing Committee and a 'dossier' system managed by the party is in place to record the performance of junior officials. Under the party's personnel management system, loyalty to the party and evidence of adherence to the 'party line' are considerations alongside performance or technical qualifications (appointees to significant positions in all arms of the state – including the judiciary – are 'red' as well as 'expert').[22]

That this mechanism continues to be an instrument of party control is illustrated in the case of its recent assessment of the efforts needed to accelerate administrative reform. CPV's resolution 17/2007/NQ-TW (dated 1 August 2007) concerned with administrative reform, sets out ways in which the party can exercise strengthened leadership, including:

> ' – Making decisions on nominating qualified officials/party members to state authorities … for them to consider for appointment in the positions of the state machinery, thus ensuring that the implementation of administrative reform is compliant with the direction and viewpoints of the Party.'

As to day-to-day management, party affairs sections operate at different levels in all organizations. At the senior level of government ministries and departments, ministers, vice-ministers and department heads (and also senior judicial officers) participate in these mechanisms, serving to communicate and implement party directives and to report back to the party office on implementation.[23] 'Politicization' in such a system is not a matter so much of one sphere impeding on another (that is, politicians countermanding bureaucrats or judges; or 'politics' trumping 'legality') as the lack of separate spheres in the first place.

In practice, the party under current constitutional and political realities will ultimately determine what the procedures and mechanisms of 'rule of law' consist of and how they will regulate the exercise of power. Legality as a norm and legal reform as a strategy in these circumstances may become mechanisms of party rule. As Gillespie argues, one of the attractions to the party of the idea of a state operating through law is that law provides the party with a mechanism of discipline over subordinate officials who do not implement party policy faithfully, and a way of combating bureaucratic formalism and inertia – '…taming the bureaucratic juggernaut with laws', as he puts it.[24] The implication, however, is that the same unequivocal, universal 'taming with laws' does not necessarily apply to those ultimately wielding political control.[25]

The concept of the 'socialist rule of law state' at the same time provides a new set of legitimating principles and doctrines for the party to exercise its leading role. For example, criticisms of the corruption and other shortcomings of local officials are

countered within the discourse of 'rule of law' by a diagnosis of 'lack of transparency and impartiality,' for which the remedy is better rules and procedures (institutional reform).[26] The law and legal-rational forms of administration have become a new mechanism for the party leadership to discipline and control cadres (when the leadership acts) and to respond to public dissatisfaction over their indiscipline.

The irony in this situation is that the law is only one mechanism among others for the party to control policy and administration and (to the extent that it is merely one of several) its paramountcy is not certain. Indeed there are still competing modes of legitimizing discourse (for example, the mobilizational ideology of communism, which stresses loyalty and doctrinal conformity as control mechanisms), such that legality cannot be said to be uncontested and is incompletely institutionalized. In other words, institutionalization of the socialist rule of law is a 'work in progress'.

In sum, the normative framework for institutional reform in Viet Nam contains fundamentally ambiguous elements. One the one hand there is a clear statement of the need for a 'socialist rule of law state' that strictly separates the leading role of the party from the day-to-day operations of the state in its administrative and judicial spheres; on the other hand, the ruling party continues to adopt practices that inhibit this separation.

If we take some of the statements and principles of the 'socialist rule-of-law' at their face value (in particular, the principle of equality before the law and the impartiality of the judicial system; the separation of state and party; and the differentiation within the state of distinct political, administrative and legal functions and their allocation variously to legislature, executive and judiciary) we can see the basis for institutional reforms that would result in the institutionalization of legality and 'legal-rational' administration.

However, if we also take note of the doctrine of the 'proletarian totalitarian State', asserting the leading role of the party, and observe how this is put into effect, it is clear that these principles may be abrogated in practice. There remain competing and contradictory legitimizing principles and concepts by which the party continues to achieve compliance and control over and through the state. Government and party documents continue to express these ambiguities.

In this paper, we choose to take at face value statements of the doctrine of the 'socialist rule-of-law state' in Viet Nam that assert the value of legality as the fundamental principle and also assert the need for the clear separation of the leading role of the party from the daily management of state affairs. We will proceed on the basis that these are underlying principles of institutional reform in Viet Nam.

The next section expounds on this position by taking account of international and comparative experience.

3. The normative framework from a comparative perspective

To recap, within the 'socialist rule-of-law' paradigm as prescribed by the CPV, the system of public administration, it is claimed, is being reformed with a view to ensuring uniformity of treatment, predictability, clarity and due process – that is, strict legality – in the day-to-day treatment of citizens and businesses. But what would ensure that these measures will bring about the consistent application of norms of legality by state actors in the use of state power, for example in matters relating to business?

Logically speaking, for legality to be institutionalized in the conduct of business in both government and the private sector, the exercise of political and bureaucratic power and authority by public officials who possess the mantel of state authority must be limited and regulated by one means or another. Otherwise, arbitrary, unjust and corrupt forms of rule will be possible. As we have seen, the Vietnamese rule-of-law state is still also a 'party state'. Party policies, personnel, rules and discipline are intertwined with the rules, regulations and procedures of the state apparatus. Moreover, party rules and policies are, in the final analysis, dominant. If the party does subordinate itself to the law, it is in effect a matter of party policy, decided internally and for itself. If party officials obey the law, it is because they obey the party's instructions to do so (that is, because it is party policy that there will be a rule-of-law state).

Leaving aside the logical flaws with the claim that a party state can also be a rule-of-law state, there is also a practical difficulty. In the absence of an external, non-party agency that has ultimate power to enforce legality, reliance must be placed on internal mechanisms such as discipline and moral suasion. The hope is that either from fear of party discipline, or from genuine commitment to the party policy, members of the party will 'lead by example' and obey the law. However, self-regulation and moral suasion as a way of ensuring public officials comply with norms of legality has universally proven to be unreliable. Moral codes and self-restraint are not enough. Moreover, inspection and control from within is a mechanism that is unlikely to work without other, parallel controls to prevent an organization from 'looking after its own'.

The most striking evidence for this comes from observing the experience of countries that have successfully combated high levels of corruption. In both Hong Kong and Singapore, for example, the key to successful anti-corruption measures was the institution of a powerful external, independent body able to investigate and prosecute all corrupt officials under the public gaze, without fear or favour. Institutional separation and transparency of proceedings (once investigations were complete) were critical ingredients in addition to moral suasion, education, codes of conduct, strict laws, severe punishment, strong investigative powers and generous resourcing.[27]

More generally, a key component of the application of rule of law is an 'independent' judicial system. The concept of judicial independence has a number of elements. We can distinguish between institutional and decisional independence: the first involves various mechanisms to guarantee that the judiciary is a separate set of institutions from other arms of the state and is not subject to their control; the second relates to

the ability of judges to make decisions without being coerced or interfered with, including by politicians and bureaucrats. Some of the mechanisms familiar in other systems of government include constitutional provisions setting up separate branches of government (as in the US 'separation of powers');[28] rules of appointment and tenure of judges that ensure they are not under the influence of any outside force; and a largely self-regulating legal profession.

Most of these conditions of institutional and decisional independence do not exist in Vietnam's institutions of government. Moreover, proposals for reform have not yet fully embraced this concept. For example, Resolution 49 on Judicial Reform issued by the Politburo in 2005 pointed to a wide agenda of reforms needed to improve the efficiency, professionalism and quality of the judicial process and judicial officers. As the statement of 'basic principles' made clear, 'modernization' would be on a 'step-by-step' basis 'under the leadership of the Party' as well as 'to ensure the unified power of the state, along with the distributions and collaboration between state bodies in the exercise of legislative, executive and judicial powers'. Additionally, on the 'leadership mechanism of the Party over judicial work', the Resolution states:

> "The Party guides judicial work and the operation of judicial organs closely, in terms of their political, organizational and personnel aspects. There is a need to prevent situations in which Party units neglect their lead role, or improperly intervene, in judicial activities."

The assertion of party power alongside a warning against 'improper' intervention illustrates the conflict between seeking a more 'professional' judiciary and at the same time keeping it under political direction and management. In this paradigm, the 'supervision' of legal power is also viewed from the point of view of 'peoples' ownership'. How this is implemented in practice is uncertain. Resolution 49 refers to 'strengthening legal advocacy, dissemination and education' and mentions a special role for the Fatherland Front in performing the task of 'encouraging people to detect the constraints and shortcomings of judicial organs and request these organs to redress and correct them'.[29]

Clearly, the notion of an 'independent judiciary' has a specific connotation in the Vietnamese 'socialist rule-of-law' state. The objective is a more efficient and professional system under the leadership of the party and the scrutiny of the citizenry, with a view to ensuring that is fit to implement the law faithfully and consistently and to adjudicate on legal disputes in an expert manner according to due process. Reforms in train cover such things as judicial training; streamlining of the court system; clarification of the powers and roles of investigative and prosecuting bodies; fostering of 'professionalism' within the legal profession; and so on. Meanwhile, the existence of a large number of party and state organs outside the judiciary proper, charged with various powers of surveillance, investigation and prosecution, is acknowledged and the need to rationalize the system is highlighted, without going into details. Resolution 49 emphasizes that the adoption of 'Western' models is not the aim:

> "Judicial reform must stem from Viet Nam's legal traditions and the past achievements of the socialist judiciary of Viet Nam, and selectively adopt

international experiences in line with the specific context of the country and the requirements of the proactive international integration and future social development trends."

Before jumping to conclusions about the appropriateness or otherwise of Vietnam's socialist rule-of-law state within the context of one-party rule as a foundation for future institutional reform and development, history shows that successful economic development through market mechanisms within a global capitalist system does not require that there be any particular model of legal institutions in place at any particular point in time. East Asian legal models and traditions differ markedly from those that emerged in the US or the UK, which in turn differ greatly from those that evolved in Continental Europe.[30]

For example, a feature of East Asian developmental states, in particular Japan, was their use of administrative discretion, 'guidance' and informal networks of state-business relations, not an Anglo-Saxon style set of 'rule of law' institutions or relationships in which businesses operate in markets at arms' length from the state, regulated by a powerful judiciary. In the East Asian developmental state, government policies and guidelines were negotiated in a 'corporatist' framework of state-business relations. The instruments used, such as licenses and subsidies, embodied formal legality while leaving large areas of discretion to bureaucrats. The bureaucracy, often dominant over political leaders, enjoyed a high level of autonomy; and the judiciary, while independent, was somewhat peripheral because most disputes were settled by other means within the overall framework of bureaucratic guidance.

While bureaucratic discretion and negotiated arrangements between state and business 'partners' were important tools of economic development policy, the constitutional frameworks of a 'state of law' and the existence of an independent judiciary were important elements underlying the legitimacy of bureaucratic authority.[31] 'Law' in this sense (following the Continental tradition, from which Japan borrowed its constitution and legal system in the late 19th century) was harnessed to the power of the state rather than set up as an autonomous sphere separate from the executive arm of government (as in the USA, for example). Yet the law in this '*Rechsstaat*' tradition still also regulated the state itself, even if large areas of discretion within the law were left for bureaucrats (most of them with legal training) to exercise. Recently, liberalization and market opening have set in train a process of 'judicialization' in East Asia, giving courts and judges a more prominent role in regulating how the state deals with citizens (in the process borrowing modles both from the European Continental, as well as the Anglo-Saxon, rule-of-law traditions).[32]

An additional point to note is that in all these historical examples, even in the absence of a constitutional doctrine of 'separation of powers', the separate roles, functions and 'skill-sets' of the different arms of government nevertheless evolved according to distinct sets of rules and norms that protected and nurtured their capacities. This applies to the bureaucracy as well as the judiciary. One of the key lessons of the emergence of successful, high-performing states and economies in East Asia is the importance of what Peter Evans called the 'embedded autonomy' of the state apparatus, in particular the bureaucracy. A strong state with a competent 'legal-rational' style of bureaucratic administration and strong technocratic-cum-administrative elites was a principal ingredient for development.[33]

In Taiwan, for example such a state emerged in the 1950s and 1960s under the authoritarian rule of a one-party system.[34] The trigger for bureaucratic modernization was US advice and aid. This assistance was given and accepted at a time when the cold war made the regime vulnerable and gave the United States reason to protect it. Measures to improve the efficiency and accountability of the bureaucracy were implemented. They became institutionalized (despite an inheritance under the one-party Kuomintang state of high levels of politicization, factionalism and corruption) for two reasons: first, there was a sufficiently strong pre-existing group of technocratically-minded officials within the bureaucracy to provide the basis for further strengthening; and second (and most important) the ruling elite recognized the importance of economic development to its survival and accepted the contributions such a set of autonomous, reformed institutions could make.

The trajectory of reform in this case was, in one respect at least, very similar to that set in motion in Viet Nam in the early 1990s by the attempts to separate party and state. Only if the organs of the state possessed the 'autonomy' to do their job (of which one element, as Prime Minister Vo Van Kiet put it, should be a 'government chain of command' separate from that of the party) would reforms to improve the technical capacities of the bureaucracy bring their desired results. As we have seen, this was an intention of the reformers in drafting those parts of the 1992 Constitution setting out distinct roles and functions for different arms of the state. However, as we argued in the previous section, contrary doctrines and pressures have yet to see the full realization of this model.

Evidence is available from many sources that both effective, independent legal institutions as well relatively autonomous, meritocratic, high quality national bureaucracies contribute in a significant way to development.[35] Moreover, in most cases these features tend to be found as a 'package'. Market economies have developed successfully in systems where the institutionalization of legality has been achieved alongside and in combination with an array of other institutionally separated mechanisms of performance, control and accountability.

The 'science' of measuring the relationship between various dimensions of 'good governance' and economic development is an imperfect one. The Quality of Government Institute of the University of Gothenburg has undertaken a 'meta-analysis' of a range of 'quality of government' indicators. The ratings used are drawn from numerous databases which measure perceptions over time by 'informed observers' of various dimensions of good governance arrangements in different countries. They do not, for the most part, measure 'objective facts' and hence may be subject to cultural or political bias and misperception. Moreover, many of the indicators (such as the World Bank's 'government effectiveness' indicator) are composite, statistical indexes derived from a large number of different, individual surveys of this kind. The separate surveys measure different aspects of government performance which are deemed to be related to the underlying attribute, such that the combination of their results sometimes makes it uncertain what exactly is being captured by the final number.[36]

Bearing in mind these reservations and qualifications, according to the Gothenburg study, three key indicators of quality of government are highly inter-correlated, namely two World Bank governance indicators of 'Government Effectiveness' and 'Rule of Law' and the Transparency International ratings of progress on anti-

corruption.[37] Statistical analysis on a cross-country basis of correlations between these quality of government indicators and aggregate measures of development, such as GDP and quality of life indexes, reveal interesting findings, some of which are summarized in Table 1.[38]

Table 1. Cross National Quality of Government Research Findings

Outcome Variables	Rule of Law	Government Effectiveness	Low Corruption	Effect of QoG
Life Expectancy	+ .62*	+ .44	+ .37	Positive ++
Env. Sustainability	+ .50	+ .51	+ .54	Positive ++
GDP / Capita	+ .88	+ .87	+ .87	Positive +++
GDP growth	+ .10	_ .00	+ .20	Positive
Inequality	- .44	- .44	- .46	Positive ++**
Human Dev. Index	+ .71	+ .73	+ .70	Positive +++
Good Society Index	+ .83	+ .84	+ .83	Positive +++

* Correlation (r) ** Less Inequality

Source: S. Holmberg, B. Rothstein, N. Nasiritousi. "Quality of Government: What you Get". QoG Working Paper 2008:21, Quality of Government Institute, University of Goteborg.

On the whole, 'successful' countries show high scores on quality of governance indicators, suggesting that in one form or another, development of good governance goes hand in hand with economic development. At the same time, while 'good governance' seems to be a common denominator in all countries with high standards of living, the pathway of development is less clear. The weakest correlation is between quality of government and rate of growth. That is, countries with less than good governance as defined by these measures can nevertheless get richer and improve the quality of life of their citizens. Moreover, as Mary Grindle argues, the finding that a bundle of good governance attributes positively correlates with various desirable outcomes is of no help in telling reformers 'what is essential and what's not, what should come first and what should follow…'.[39]

While all developed countries (including several in Asia such as Japan and South Korea) have achieved rapid development through market-oriented strategies accompanied by administrative and legal reforms to improve the quality of government, no one overall model or blueprint of specific institutions can be (or has been) copied to take a 'short cut'. Even in the most famous cases of 'borrowing' (such as Japan in the late nineteenth century), national traits and preferences were the dominant factor in selecting and adapting the models to emulate.[40] High levels of cultural and political variety are to be found in all national governance arrangements. National political institutions are different across developed, advanced economies, such as the UK, France, Japan, Singapore and the USA. Cultural and political factors affect how the institutions as legal-formal arrangements are manifest in norms, conventions and actual behavior by key actors. No system is 'perfect' or 'measures up' equally on all possible counts however one defines the 'ideal system'.

To sum up: a considerable body of evidence on the development experience of countries across the world suggests that some basic 'design features' of the nature of public institutions are associated with better development outcomes. These include a rule-of-law state and a set of governing institutions that embody a rational

differentiation of roles, or division of labour between different functions (in particular, some degree of autonomy or independence for both the bureaucracy and the judiciary), enabling the institutionalization of different norms, skill sets and procedures according to the nature of the function. At the same time, the evidence also suggests that there are diverse paths to these 'end-points' and that (even then) the variations among real-world cases of judicial and bureaucratic autonomy and independence are considerable.

In a rule-of-law state with a meritocratic bureaucracy, institutional differentiation involves also a set of 'guarantees of independence' to enable these institutions to develop by their own logic. In this way, different modes and rationales of responsible, accountable decision making are able to develop. In so far as these logics clash – as, for example, when law confronts the abuse of power by the political executive – then there are ways of resolving this clash. In a rule-of-law state, these will consist of various forms of judicial or other oversight of the executive (for example, a court of constitutional review and a system of administrative courts or tribunals) and – equally – mechanisms (such as committees of the elected national assembly) which monitor the use of these judicial powers.[41]

Vietnam's model of institutional reform recognizes the importance of developing professionalism and specialization within the state, including the institutionalization of legality and civil service reform, but not the separation of these activities from continuous involvement by the party. The party's direct, simultaneous engagement with all arms of the state means that, where their separate work is required to achieve an outcome, their roles and functions are blurred and their separate logics of accountability and performance are undermined.

Without referring to specific real world or ideal models, we propose three very basic design principles relevant to institutional reform. Institutionalization of legality requires not only good laws and sound administrative procedures but also:

1) Institutional differentiation of a kind that allows the separate logics and skill sets of political, bureaucratic-cum-technical and judicial decision making to be developed and institutionalized.
2) Mechanisms that make public officials accountable for their actions by due process in the public realm, according to their performance.
3) Systems of independent monitoring and adjudication to ensure that public officials at all levels (including both political leaders and civil servants) are following norms of legality, especially impartiality in dealings with the public.

From this analysis and discussion, we present two broad conclusions:

a) The existing paradigm of institutional reform includes important elements of the principles that shape governance arrangements in successful advanced economies, but it clearly lacks others. Indeed, the paradigm contains features that contradict these elements. The case is strong for expanding the agenda of institutional reform to include these other elements, to the extent that is practicable in the light of current conditions in Vietnam.

b) Having noted this, it is immediately evident that these other elements of institutional reform lie outside the realm of public administration reform but concern constitutional reform and political renovation. That is, what we see as the necessary pathway to successful institutional reform is not provided by PAR reform alone; correspondingly, we must not expect too much of PAR *on its own* in achieving wider goals of institutional reform.

In sum, somewhat paradoxically, the agenda of PAR institutional reform under the PAR Master Plan is both too broad and too narrow. It is too broad because the matters raised lie outside the administrative sphere of government; it is too narrow because these structural or systemic matters must be addressed simultaneously with the administrative dimensions. Indeed, the former should come first, because without those basic elements of the socialist rule-of-law state clearly and unambiguously institutionalized, PAR will continue to make limited progress.

In what follows we focus on the existing and narrower agenda of PAR institutional reform rather than proceeding to discuss measures for advancing the wider agenda of constitutional or political reform. Nevertheless, we evaluate PAR institutional reform bearing in mind the necessary connections between the narrower and broader issues. The fact is that public administration is not an isolated world of technical or legal instruments; it is embedded in a broader set of state and political structures. The inter-connections that arise from this must be kept in mind when assessing the achievements of and prospects for PAR institutional reform.

4. Institutional reform and the PAR Master Plan

We may summarize the three main elements of the PAR institutional reform agenda as expressed in the PAR Master Plan as follows (see also page 5 above):

1) Improve the quality and responsiveness of the law-making process through reforms in the processes of producing, scrutinizing and authorizing legal documents, including clarifying who has authority to issue subordinate legal documents.
2) Streamline the mechanisms of implementation of laws through removing duplications, overlaps and delays, including abolishing unnecessary regulations and inefficient approvals and other administrative processes.
3) Refine mechanisms of direct accountability of public administrators to citizens, so that officials are responsive and public services are more 'customer-oriented.'

These three elements of reform have accompanied an intensive and extensive effort in making and implementing a wide range of new laws and regulations, all aimed at facilitating the development of the market economy within the Vietnamese context.

In this section we describe and appraise the achievements of the PAR Master Plan in the field of institutional reform as defined by the stated objectives, drawing in part on our critique of the current normative framework contained in the previous section and addressing them in the specific contexts set out by the Master Plan. We ask two sets of questions:

1) Have the measures achieved the targets and objectives set within the framework of the Master Plan? If not, why not?
2) Have the measures contributed significantly to moving Viet Nam down a pathway towards a socialist rule-of-law state? If not, why not?

The answers to these questions are sought through, first, a general overview of the rate of progress and the achievements to date and second, through a presentation of two case studies reviewing key aspects of institutional reform.

The report by the PAR Steering Committee on Review of the Mid-term (2001-2006) Implementation of the PAR Master Plan recorded progress in implementation and laid out further steps be taken. It reported significant progress on the number of laws passed and their wide coverage of key sectors. Attention was drawn in particular to legal documents on grassroots democracy, the Law on Complaints and Denunciations, the 'one-stop-shop' (OSS) mechanism, budget and financial registration and disclosure, and people's inspectorate regulations.

Sixty-four provinces and centrally-administered cities had implemented OSS mechanisms fully in four departments; 98% of districts and 78% of communes had implemented OSS mechanisms and met targets. Other specific achievements in administrative procedure reform were noted, including more simplicity and transparency in procedures of granting certificates of land use rights and more transparent and regularized fee collection principles and norms.

The Mid-term Review also reported a number of shortfalls:

1) Despite the growth in quantity of legal documents, their quality remained a serious problem.
2) In the production of these documents, coordination between the different agencies involved was weak.
3) Many new legal documents remained unimplemented because of delay in producing subordinate legal documents.
4) OSS had been implemented 'only in a formalistic way' in some places.
5) Administrative procedures were not always simplified: new types of 'sub-licenses' reappeared subsequent to administrative procedures reform.

The Review provided the following reasons for these shortcomings:

1) Lack of awareness of the reform program and its aims.
2) 'Compartmentalism' in the system of administration, leading to selfish behaviour and resistance.
3) Delays in key components of the planning and implementation process.
4) Lack of determination on the part of some administrative leaders.
5) Lack of clarity in administrative mandates leading to evasion of responsibility for reform outcomes.

The findings of the Mid-term Review (2001-2006) were somewhat limited by the fact that it was undertaken as an internal review without external reference or comparison. 'Evidence' included review of administrative returns and reports filed by PAR steering committees to MOHA and the Central PAR Steering Committee. These possibly reflected a 'compliance mentality', although no doubt they also included valuable on-the-ground details. However, there was no objective evaluation available to the Review at the program or project level.

As a consequence, the Review followed a familiar problem-identification and problem-solving framework in its analysis and recommendations, namely to identify problems only in terms of existing solutions, leading to a 'more of the same' set of recommendations. The 'shortcomings and reasons' are very similar to those already identified by earlier reviews as the basis and starting point for the PAR Master Plan. They do not in any direct or logical way flow from an objective evaluation of the reasons for specific successes and failures in either design or implementation of programs and projects.

Decisions subsequent to the Mid-term Review did not take any major new directions or initiatives in the implementation strategy in the area of institutional reform. Decision 17 dated 1 August 2007 by the Party Central Committee on 'The Acceleration of Administrative Reform' stressed the need to harmonize administrative reform with legal reform. It placed particular emphasis on the need to review administrative procedures. No new methodologies or strategies were proposed, however. Government Resolution 53 2007/NQ-CP to put this Decision into effect spelt out a list of activities and objectives, reiterating previous lists but not further prioritizing them.

The overall perception of our informants on the progress of institutional reform for PAR was frustration and disappointment. The PAR Master Plan promised a comprehensive program of reform, implemented through a centrally coordinated process with action plans, timetables and steering mechanisms. In the event, despite achievements, the shortcomings can be summed up as a failure of a system-wide, comprehensive, top-down strategy to achieve substantial change:

- 'Quantity' was not clearly separate from 'quality' in the assessment of outcomes: the reported progress on the number of new laws or roll-out of OSS mechanisms did not provide a complete measure of reform success.
- Top-down implementation of and reporting on achievement of targets and milestones across the board were possibly conducive to and indicative of a compliance mentality, which may be a substitute for commitment to and follow-up of on-the-ground reform achievements.
- There was a failure to draw lessons from reasons for local successes so as to put in place overall conditions for a successful reform program. 'Key success factors' for achieving stated objectives have not been clearly identified in the evaluation and monitoring of outcomes.

The PAR Steering Committee and MOHA had become bogged down in tracking compliance with a series of targets and sub-programs across-the-board as distinct from in-depth learning from local lessons.

Achievements in institutional reform should not be ignored, in particular the sheer quantity of new laws; the progress on simplification of some administrative procedures; and the progress made in some localities and departments in presenting a more 'citizen friendly' and responsive mode of delivery of services, especially where OSS has been implemented successfully. However, these improvements are not uniform and signs of 'reform fatigue' have become evident.

Consistent with the argument presented in the previous section, one reason for a lack of progress could be that the expectations for PAR institutional reform are unrealistic because the wider context of institutional reform was not also being addressed. By way of illustration, take the case of the legal drafting and law-making process. The diagnosis of the problem of 'quality' in legal documents (as distinct from achievement judged by their sheer quantity) could either be put down to 'technical' failures or to more systemic obstacles. A common reason cited for the poor quality of legal documents stems from difficulties encountered in the complex processes of law-making. A recent comprehensive report on the topic by the Policy Law and Development Institute found that there are not only technical deficiencies but also serious shortcomings in the coordination of different elements that make up the law-making process in the national system of government.[42]

The 'technical' deficiencies included not only shortage of the skills needed for the different stages of the law-making process – effective conceptualization of policy problems; identification of appropriate policy instruments; precise drafting of appropriate legal documents; and methods of appraisal and evaluation of impacts on society – but also factors such as the flow of work and the meeting of deadlines. The 'systemic' problems relate particularly to this latter set of shortcomings and include a lack of understanding and respect for the necessary but different roles of different technical experts in relation to the roles of members of the political executive and the

party; confusion (despite elaborate, detailed regulations) over which ministry or department in the government exactly is in charge of a particular part of the process and responsible for bringing different elements to play; and a lack of cohesion and determination in keeping to the prescribed law-making process and timetable among the political leaders:

> For instance, after the Government has approved the law making plan, immediately additional projects are added for special reasons…. After approval, an agency may withdraw a proposal or delay submission. Applications for variation and delay are the exceptions not the rule. Changes in the content of recommendations from the submitting departments leave the National Assembly helpless and unable to fulfill their tasks in the law making process.[43]

These problems are clear symptoms of the overlapping and confused roles of different sets of institutions and actors in the governing process. Location of executive authority and mandates for the effective fulfillment of tasks are not in harmony. For example, where party roles overlap with technical roles, the latter are less likely to be fully developed or realized in practice; where party and government roles are combined and overlap, different leaders in the executive call upon alternative sources of authority (party organ, Prime Minister, President, National Assembly and so on) when it suits, in order to countermand or interrupt a pre-decided process; and the opaqueness of the different channels and organs of decision making compounds the problem by inhibiting scrutiny, criticism and correction.

If this diagnosis is correct, PAR cannot address all of the issues involved in improving the quality of law-making; what is required are first, much enhanced technical legal drafting skills and their effective deployment in the respective central government organizations; and second, deeper structural reform to the way roles and authorizes are distributed between party and state and within the upper reaches of the political executive. Important aspects of PAR, such as civil service reform, organizational reform and technical training would help address some of the problems.

The question then arises: What PAR institutional reform strategies would offer the best opportunity of making some impact on the key structural issues while, at the same time, remaining within the realm of public administration and not hitting intractable structural obstacles?

The rest of this paper addresses this question. We take the view that the second and third areas of PAR Institutional Reform identified at the start of this Section ('streamline the mechanisms of implementation of laws' and 'refine mechanisms of direct accountability of public administrators to citizens') offer the best set of possibilities for advancing the system of public administration in a way that is consistent with the wider goals of a socialist rule-of-law state. This is where administrative reform, as distinct from legal reform or political reform, can best make a contribution.

In order to develop this argument, two case studies are presented in which we assess achievements, diagnose shortcomings and suggest priorities for the future. Case study analysis is always open to criticism. By its nature it is selective and does not 'present the whole picture'. This is true of any scientific methodology. But more to

the point, case studies are open to particular criticism for not being 'representative', or for being selected for partial and biased reasons so as to distort the truth.

What are the selection criteria that we have adopted? We chose two areas of the institutional reform agenda, one concerning one-stop-shops and the other administrative procedure reform (implementation of Decision 30), not with a view to analyzing a representative cross-section of the institutional reform program, but because these topics were identified in the course of our research as among those having high potential for further augmentation in the next phase of PAR. One reason is that they both offer clear 'technical' opportunities for success in the key area of institutional reform identified above, while also pushing against the boundaries of potential structural obstacles.

Thus, our two cases are not 'representative' of the full agenda of PAR institutional reform. The cases highlight different but crucial aspects of the issues brought to light in the previous section as those that need to be addressed if institutional reform is to take the next steps.[44]

Table 2 sets out some basic features of the two cases in terms of significant differences and similarities. One important common feature is the significance of local implementation; another is that these are fields of reform where bureaucratic resistance has been evident (especially in the second case). Addressing these two cross-cutting dimensions – local bureaucratic initiative and resistance – is especially significant for the future direction of PAR.

Table 2: Case Features

	Locus	**Technical Complexity**	**Political Stakes**	**Pilots**	**Bureaucratic Resistance**	**Lead Agency**
OSS	Local	Low	Low / Medium	Yes	Medium	MOHA
Administrative Procedure Reform	Local / Central	High	High / Medium	No	High	OOG

5. Case study: One-stop-shop (OSS) mechanism

OSS mechanisms are popular world-wide and have a long history. Currently in the United Kingdom, for example, many local government authorities operate through networks of local one-stop-shops in local neighbourhoods. As a case in point, the following is a description of a one-stop-shop mechanism given by Liverpool City Council:[45]

What is a one stop shop?

A one stop shop is a council building, situated within a community where Liverpool citizens can speak to a customer services adviser in person. Customers will be able to:

- *request a council service.*
- *access other partner services (where they are available).*
- *access information and advice.*
- *carry out any other council business.*
- *self-service using kiosks46.*

All One Stop Shop customer service advisers are specially trained in the wide range of services on offer and will wherever possible try to resolve your query on the spot. This means that all your council business can be dealt with in one place.

What types of services are in the one stop shops?

We are adding more services as we develop but currently you can obtain advice about the following services:

- *Housing Benefit (by appointment).*
- *Council Tax (by appointment).*
- *Education awards.*
- *Housing management.*
- *Disabled parking permit (blue badge).*
- *Taxi licensing (city only).*
- *Environmental Services including pest control & street lighting.*
- *Trading Standards.*
- *Electoral registration.*
- *Social Service - access to children's services.*
- *Registrars.*
- *Tourism.*
- *Football parking.*
- *Parking Fines (city only).*

Some general, universal principles of OSS mechanisms are:

1) Access at a local level, at one office, to several services;

2) Availability of advice and information from trained persons on basic requirements for obtaining or accessing services;
3) Co-location of staff from different services or departments to enable more than one service to be provided simultaneously; and
4) 'Customer-service' measures, such as 'pledges' of timely and efficient response.

In some OSS initiatives, the local office is not only a place where government services and staff are co-located but also a centre for community outreach and local community involvement and advocacy. One early experiment in Australia, the 'NOW Centre' in Coburg, Melbourne which opened in 1975, co-located a number of local, state and national government services and staff and also attached community workers and organizers to the one-stop-shop. Public meeting rooms were provided and the Centre set up a community advisory committee to hear views and opinions about local needs and to give feedback on the quality of services.[47] This experiment met many difficulties, principally due to the complexities of sustaining agreement across three levels of government in a federal system over continued resourcing, but also because there were tensions and conflict between technical service quality considerations (for example, the lack of sufficiently senior officers at the local level to determine cases) and local community outreach and accessibility considerations. The basic tension was between, on the one hand, facilitating individual access to impersonal government services and, on the other, encouraging community 'collective voice' to challenge or influence policy and provision.

A more recent initiative in the UK, the North Liverpool Community Justice Centre, which included a local magistrate's court, was favourably evaluated for not only processing cases more quickly but also for improving the effectiveness of related and follow-up services, such as rehabilitation and victim support. A key to this success was a high level of community engagement and awareness, achieved by obtaining the involvement in the Centre's work of local community groups.[48]

The OSS mechanism in Viet Nam is concerned solely with administrative co-location and provision of access points for individuals to government services. It was first piloted in Viet Nam during the mid-1990s, with subsequent replication across a number of provinces. Decision 181/QD-TTg of September 2003 made it a requirement for the 'single door mechanism' to be implemented in every Province and District by the end of 2004 and in every commune starting from 2005. MOHA was given the task of distributing a set of 'nation-wide guidelines' and of monitoring the implementation by Provinces in their districts and communes.[49] MOHA and provincial DOHA officials provided training and other support for the implementation of OSS in local offices.

Article 1 of the Regulations described the aims of the One-Stop-Shop mechanism:

1) "One Stop Shop" means a mechanism for settling citizens' and/or organizations' dossiers, which fall under the competence of State administrative agencies, from the reception of requests and dossiers to the return of results through one body being the "Request receiving and result returning office" in State administrative agencies.
2) The implementation of the "One Stop Shop" model aims to create a substantial change in the relationships and problem-settling procedures

between State administrative agencies and organizations as well as citizens, reduce troubles for organizations and citizens, combat red-tape, corruption and authoritarianism among State officials and employees, and raise the effectiveness and efficiency of the State management.

The basic requirements are:

1) Specific offices are designated as 'request receiving and result returning offices' (R & R offices) for particular services.
2) Procedures (for example, the documentation to be presented), fees (if any) and time-limits for settlement of dossiers are published (most commonly, on notices attached to the walls of the R & R office).
3) The administrative unit in charge of the office is responsible for seeing that the requirements of service are met, and that internal procedures are in place to bring this about (for example, ensuring dossiers are transferred to and reviewed by the proper office within the designated time limit).
4) Speedy, accurate and efficient service is 'guaranteed'.

Implementation of the OSS often requires setting up new offices in existing premises to receive and deal with people, complete with waiting areas, counters, notice boards and so on. Staff members may be trained in dealing with the public and (in some cases) a 'front office' culture and ethos develops to present a customer-friendly and efficient face to the public.

In fact, the actual procedures and service guarantees will differ from one R & R office to another and from one type of service to another, depending on the level of government at which the office is situated; the location of the relevant professional staff capable of making decisions; the physical remoteness of the office; the type and complexity of the decision and so on.

The 'ideal' situation of 'one door for many services' requires all the functional officers to be co-located behind one counter so that the client can get immediate advice and service at the one point of delivery. More common is the 'one door for one service', where the applicant submits an application and internal procedures are set in train to refer the dossier to the appropriate functional officer (usually located elsewhere) and deliver the outcome back to the customer at the same office.

Some typical mechanisms and procedures are as follows:[50]

- In a small, poor commune with limited office space, the OSS is simply a place where the application is lodged and acknowledged by a clerk, with no direct advice or feedback by a functional officer with knowledge of the matter.
- In a larger commune OSS, experts from the district are on hand at the office on advertised days so that they can deal with the case, if only to complete the first stage of receiving and authorizing the submission of the necessary information by the applicant and physically to take it back to 'head office'.
- In a typical district, functional officers may be on hand in or adjacent to the OSS counter to deal directly with clients. In some cases, the People's Committee Chairman or Vice-Chairman (who typically has to 'stamp' the final decision in many instances) may attend the OSS on some days to deal with some clients or with complaints.

The Mid-term Review in 2006 reported that:

- 64 provinces and centrally-administered cities had implemented OSS in the four required departments of Labour, War Invalids and Disabled; Natural Resources and Environment; Planning and Investment; and Construction;
- 95.7% of the four departments nationwide had implemented OSS;
- 52% of remaining departments had implemented OSS;
- 11 localities had implemented OSS in more than 80% of remaining departments and 6 in 100%;
- 98% of districts had implemented OSS;
- In all but 12 provinces, 100% of districts had implemented OSS; and
- 78% of communes had met the target of implementation set for 2005.

The Review claimed that among the overall benefits were:

- Publication of administrative procedures;
- Reductions in waiting time for citizens;
- Improved sense of responsibility for service delivery in officials; and
- Development of a service-oriented culture.

Much has been claimed for the OSS mechanism as if it were a 'magic bullet' to solve a whole range of problems with service delivery and the treatment of citizens seeking administrative decisions in a fair, open and efficient manner. For example, the MOHA 'Guidelines' document sets out the following aims:

- Reduction of harassment of citizens and organizations seeking services;
- Prevention of corruption and 'authoritarian behaviour' and enhancement of accountability;
- Improvement in service quality and efficiency;
- Clearer delineation of administrative responsibilities of different offices and officials in State administrative agencies in dealing with citizens and organizations; and
- Restructuring of the organization of State administrative agencies in order to improve simplicity and efficiency.

It is obviously the case that OSS on its own does not solve all these problems. For example, even if the OSS in a district is set up as a 'model' office, it will not prevent a citizen or organization from being offered or soliciting 'back-door', favoured treatment from an official who can intervene directly in the case. Additionally, many of the claimed benefits of the mechanism would require additional commitment and resources to achieve other outcomes – for example reorganization of service delivery responsibilities and re-engineering of tasks.

Most important of all, OSS is of little value as a mechanism to improve service transparency and efficiency unless at the same time the administrative procedures taking place 'behind the counter' are at a minimum stabilized and fully institutionalized or, in the best case, completely reviewed to ensure their legality and appropriateness, resulting in simplification. If there are illegal 'sub licenses' or fees in a locality, they will not disappear simply by setting up One-Stop-Shops.

OSS mechanisms have inherent costs and limits:

- 'Many doors' can become 'one door, many locks' because the R & R office is only the first encounter; the client has still to get past the real barrier to good service, which is often in the 'back office'.
- Co-location of functional officers from many departments at accessible 'point of service' delivery offices may be inefficient.
- Location of functional officers at OSS offices detaches them from their own 'head office' networks and support systems.
- Functional officers behind the counter may not enjoy the knowledge, experience or authority to complete the case successfully: should they also need to acquire the knowledge to deal with matters outside their own functional sphere?
- Communication becomes a problem as dossiers are collected and dealt with at points away from the 'head office'; expensive IT and other communication facilities need to be installed to maximize the benefits.

Nevertheless, it is not an exaggeration to say that the OSS mechanism is capable of bringing about, or triggering, a major transformation in the day-to-day relations of public officials with citizens and businesses. Setting up a customer-friendly front office; articulating and making public service delivery timetables, fees and other obligations and entitlements (for example, prominently-displayed posters in the office listing fees and setting our the basic procedures for getting a service, such as which documents to present) will do a great deal to create a 'service culture'. Training of staff to ensure that they adopt appropriate working practices in this setting also contributes to the same end. A properly functioning OSS provides one of the mechanisms by which public officials become accountable in the public realm for their performance of public duties and services.

OSS mechanisms, according to the guidelines, include such things as suggestion boxes prominently placed in the office; and complaints procedures that can be taken advantage of if pledges are not met. Because the citizen knows the official fee and the time that should be taken to complete a service, he or she may be able to resist the request for 'speed money'. Of course, where a culture of corruption is ingrained, the OSS mechanisms may become just one more set of administrative procedures that can be side-tracked or even exploited. However, OSS mechanisms can contribute significantly to undermining such a culture, even if the 'tipping point' by which such a culture crumbles is reached through some other route.

The research team's personal observation of OSS offices, as well as discussions with local officials, produced the following findings that support a positive view of the benefits of the OSS mechanism as currently applied in Vietnam:[51]

1) A well designed and functioning OSS has the effect of increasing citizens' knowledge of their entitlements and helps to ingrain in officials not only a culture of legality and impartial 'good service', but also a culture of performance.
2) Where the OSS also facilitates complaints and suggestions against poor service, it provides an impersonal access point for redress and improvement;

local leaders will work towards service improvements so as to minimize the number of complaints, in order to satisfy their superiors.

3) Local complaints, while not common, trigger responses to intervene to 'tidy up' the record book, so long as the OSS mechanism remains a key priority and performance goal across the country under the PAR process.
4) The local People's Committee Chairman and other leaders, conscious of the popularity of efficient services among their fellow citizens, become advocates and champions for further improvements so as to 'deliver' on promises.
5) The OSS becomes a focal point for communication and contact between local leaders and citizens, providing concrete mechanisms for enhancing their accountability to the public.
6) At the local level (particularly commune or ward), the introduction of OSS mechanisms can trigger or be part of a wider process of community engagement and education in the reform process. For example, as in some overseas cases mentioned earlier, public accountability and responsiveness can be enhanced through undertaking programs of outreach and education about complaints mechanisms and legal rights.[52]

In sum, the OSS mechanism has great potential for kick-starting a major improvement in the normative culture of State administrative agencies as 'servants of the people'. It promotes legality; impersonal treatment according to specified, universal service criteria and standards; a service culture; and accountability to the people for results. These are all core objectives of the institutional reform agenda.

At the same time, there is a danger that the OSS mechanism will become a ritual of compliance and reporting unless the potential is developed and built on through other initiatives. Such may already be the case in some parts of Vietnam. Reform fatigue, withdrawal of attention and diversion of resources elsewhere could result in reversal of some of the gains.

We observed some local successes in Ninh Binh Province and noted the reasons:

- A strong reform team within the Provincial Government that encouraged and supported local initiatives;
- A bottom-up approach to reform in which local administrators were asked to nominate PAR projects based on local need and to bid for resources;
- A clear identification of responsibility for project goals and outcomes as a result of local 'ownership';
- Active participation at local levels by key groups and stakeholders in shaping local projects to be responsive and appropriate to local needs; and
- An objective monitoring and evaluation mechanism to record achievements and disseminate results.

One strategy would be to continue to fund and support replication and reinforcement of the same model. This is desirable, but alone would not achieve the potential. Other initiatives to support and reinforce the successes of OSS should be implemented in those communes, districts and provinces where successes have already been achieved, and then replicated if successful. These might include:

- IT investment to improve communications (for example, electronic transmission of documents between offices) and other 'modernization' initiatives;
- Training and other measures to enable local functional officers to 'multi-task';
- Co-location of administrative counters and offices with 'community' functions in the OSS building, such as legal education centres, thereby involving not only government agencies but also local community organizations in the management of activities associated with creating a responsive, citizen-friendly, administrative system;
- Further measures to enhance the direct accountability of local leaders to the people (for example, direct election of Commune People's Committee Chairs under competitive nomination and election regimes);
- Organizational restructuring of 'back office' divisions and units; and
- Re-engineering of administrative procedures to reduce the number and complexity of sub-licences, fees and other regulations in conjunction with OSS mechanisms, with aims and outcomes incorporated in improved service targets and timetables.

These measures include both 'technical' reforms and also wider institutional reforms that address the core values identified earlier. In sum, the OSS mechanism can be a launch-pad and trigger for a range of initiatives at the local level to achieve the goals of creating effective, service-oriented government bureaucracies; and making public officials accountable for their actions by due process in the public realm.

6. Case study: Simplification of administrative procedures (Decision 30)

Reform of administrative procedures was listed as point (4) in the 'National sub-program Number 1' of the PAR Master Program, with responsibility under the PAR Steering Committee assigned to MOHA and MOJ. In the mid-term review, it was reported that administrative procedure reform was 'combined with OSS implementation', while the area had 'attracted special attention and guidance of the Prime Minister and Government'. It is not surprising that the reform of administrative procedures has received such special attention. The success in creating a set of state institutions conducive to economic development rests in large part on how local officials perform in the tasks of business regulation and provision of economic services.

Reform of administrative procedures is not only a matter of high priority; it is also an issue of continuing intractability. Complaints about the cost and burden of administrative procedures for doing business in Viet Nam remain a constant 'drumbeat' in the media, in discussions with foreign donors and within government and party circles. The issue has been a touchstone for on-going debates over the pace and direction of further economic reform.

In some case these debates have ideological elements, for example during debates over the Enterprise Laws (1999 and 2005), during which 'conservatives' argued that private and foreign enterprises needed continuing tight oversight and surveillance by the state through licensing and other provisions, in order to ensure they complied with 'socialist market' objectives. Ministry of Industry officials, for example, argued that strict licensing was necessary to prevent companies exploiting the 'working class' and that too much market liberalization challenged party paramountcy.[53] Pro-reform advocates argued that what was required was a more hands-off approach to allow enterprises to flourish in the market.

In spite of these political differences, it is widely acknowledged that institutional reform in the shape of administrative procedures reform and improvement in local services generally is an essential component in developing an efficient market economy. As the authors of one recent study of inter-provincial differences in the quality of government services provided to business concluded:

> 'The results indicate that good governance practices… are both statistically and economically significant in explaining differences in firm economic performance among provinces. …(A) one percentage point improvement in government practice could increase the value-added of the sample mean firm by an amount equal to a nearly three times increase in the Vietnamese daily per capita GDP.'[54]

The complexity and intractability of the issue of administrative procedure reform is in large part endemic to deep-seated structural characteristics of the Vietnamese system of government. As we outlined earlier, party authority and legal authority remain in large degree intertwined and indistinguishable, particularly at lower levels.

A system of 'government by decree' produces an avalanche of regulations, guidelines and decisions, from both party and state organs, at all levels. Some of them (in particular party directives) are written in exhortatory or declamatory style as befits their partly mobilizational purpose, and to that extent they lack detailed administrative direction. 'Legal documents' of various kinds issued by government bodies – circulars, decisions and so on – are meant to fill in the gaps. But the messages in party directives have traditionally been interpreted by party functionaries, who enjoy privileged access to the internal processes by which the party line is communicated, such as by verbal messages at exclusive party gatherings attended by the leadership. A lack of openness and clarity (from the point of view of the citizen or subject) are one consequence of this.

Distinguishing between the power and status of a 'legal document' and a 'party directive' has in the past been problematic. Moreover, the varying origins and lack of coordination among legal documents sometimes results in contradictory rules. Thus, in the hands of some party officials the decisions, directives and decrees can be not so much instruments of 'rule by law' as of personal power. Exercise of local administrative discretion in day to day matters has frequently involved local party officials exercising personal powers of patronage and dispensation, rather than anonymous, legal-rational forms of bureaucratic decision making.

Thus, the failures in the area of simplification of administrative procedures are not only illustrations of the ideological resistance offered by some policy makers to a 'business-friendly', 'pro-market' view of regulation but also a case of the classic conundrum of administrative and policy reform in Viet Nam – a chronic 'implementation gap'.[55] Thaveeporn Vasavakul has argued that this stems in part from the way in which local governments 'filled the vacuum' caused by dismantling the command economy, when laws and regulations concerning entering the market and doing business were not yet in place. Local officials issued their own regulations and took numerous local initiatives in the absence of clear central laws and policies.[56] Measures were taken in the 1990s to integrate the local and provincial administrative structures into the national hierarchy of the state, but 'the reform policy… did not eliminate the old model of power relationships altogether, and the Vietnamese administrative state continued to be fragmented and diversified'.[57]

In recent years the Government has shown its on-going commitment to simplification of administrative procedures through a series of decisions, culminating in Decision 30 of 10 January 2007. It is significant that the 'lead' in these matters was taken not by MOHA but by the Office of Government under the direct initiative of the Prime Minister. One practical reason for this was that the Prime Minister exercised direct powers of supervision and control over provincial affairs under the Constitution.[58]

The tone and content of the titles of these documents give some hint of the significance of the implementation gaps:

- Decision 181/2003/QD-TTg on the application of one-stop-shops;
- Decision 23/2005/QD-TTg of 26 January 2005 setting up a joint working group for handling problems and petitions of enterprises regarding administrative procedures;

- Decision 22/2006/QD-TTg of 24 January 2006 assigning the task of handling complaints and petitions of individuals, organizations and enterprises;
- Directive 32/2006/CT-TTg of 7 September 2006 on urgent measures to re-establish administrative discipline and order in the settlement of affairs of citizens and enterprises;
- Official Letter No.1877/TTg-CCHC of 15 November urging the implementation of Directive 32;
- Resolution No.01/2007/NQ-CP of 3 January 2007 on the Government's 2006 December regular meeting; and
- Decision 30/QD-TTg of 10 January 2007 approving the 2007-2010 scheme of simplification of administrative procedures in state management domains.

For the most part, the official party and government line in the policy pronouncements on regulatory reform agreed with the reform camp's presumption that the core of the problem was that over-regulation and administrative inefficiency were holding back economic development. The state should facilitate market-led economic development, even while regulating it. The inherited 'micro-management mentality' of the command economy needed sweeping away. The overall design and intent of the Enterprise Law reflected this viewpoint, as did the policy pronouncements in the PAR Master Plan.

More concretely, for the CPV the problem has presented itself as a matter of internal control and discipline. That is, the party in one sense viewed administrative procedure reform as a concrete way in which 'legality' could be put to use in order to reassert control and discipline. Local party and bureaucratic interests in some cases sought to protect their domains of administrative power and discretion and resisted reform by dragging their feet or through 'undermining stratagems'. For some corrupt public officials, complex administrative procedures were a source of wealth through the opportunities they presented for 'speed money' and other forms of bribe-taking. Even when measures such as the Enterprise Law seemingly reduced such opportunities, some local officials found ways of restoring them through inventing and implementing 'sub-licenses' or 'baby licenses'.

Often, these provisions were strictly speaking illegal, yet hard to police given the limited oversight and monitoring capacities of the central ministries, not to mention the complicity of their own local departments in benefiting from them. But when these local acts of arbitrary power created local resistance or resulted in denunciations and complaints, the party felt compelled to act. In this connection, some of the measures taken were directly focused on improving the mechanisms for making and dealing with these complaints as a way of creating a form of citizen-monitoring of official malfeasance (this is a feature of Vietnamese political culture that has great potential for future democratic forms of checks and balances on administrative malfeasance).

Decision 30 described the problems in the following manner, explicitly highlighting the reasons for implementation gaps:

- '…administrative bodies create convenience for themselves but difficulties for individuals, organizations and enterprises'
- '…the ideology of subsidy and sectionalism among ministries and branches…'

- '…lack of responsibility in inspection of implementation…'

The preamble to Decision 30 also bemoaned the lack of enforcement and action on the part of local administrative agencies even when in receipt of reports and petitions about inappropriate administrative procedures.

Decision 30 outlines an ambitious program to review and simplify all administrative procedures over a three-year period, so as to eliminate those that are irregular, cause inconvenience and lead to abuse of power or corruption. Donor support (including USAID funding) is provided through a project located in the offices of the Viet Nam Chamber of Commerce and Industry (VCCI). The methodology replicates other exercises in regulatory reform – using the so-called 'Guillotine Approach' – implemented in some Eastern European countries. Following this model, which involves the active oversight of a strong central regulatory review body, a Task Group has been set up within OOG (which has the lead role under the direction of the Prime Minister) to provide support for the national program and to create a statistical data base or inventory of all administrative procedures. Task groups are also being set up at provincial level.

All departments and agencies are required to review each administrative procedure over a three year timetable and ask three basic questions: Is it legal? Is it necessary? Is it 'citizen friendly'? These three very innocent-looking questions are heavily laden with significance for the further development of PAR in Vietnam. 'Is it legal?' gets to the heart of what the institutional reform program of PAR is seeking to achieve. Given that creating the 'socialist rule-of-law' is a work-in-progress, one can expect such a simple-looking question to cause some pause for thought. If we accept the point argued in this paper that governing processes continue to feature ambiguities between legality and party rule, there are bound to be disputes and ambiguities in answers to this question.

However, if authoritative answers can be given based on strict legality criteria, this will be a major step towards consolidating the groundwork for system-wide conformity to a legality norm in both the promulgation and implementation of legal documents and administrative procedures. The second question is also of great significance for putting into the minds of public officials the importance of assessing and moderating the economic costs of government in a market economy. Finally, the third question is clearly at the core of attempts to create a public administration that is both legal and externally accountable for its actions.

A common form will be used for each regulatory body to make the primary input by addressing the three questions for each administrative procedure. Task groups at provincial and national level will be able to check these inputs. The questions are to be asked in relation to the content of regulations such as permits and licenses; handling processes; information dossier requirements; fees and charges; time limits; coordination and transfer mechanisms; and so on.

In implementing Decision 30, agencies are required to amend or abolish inappropriate provisions if it is within their power to do so. Provincial and municipal People's Committees are required to coordinate and oversee the process of review and also to take action to amend or abolish (if they have the power) or to refer them upwards for action. They will publicize all administrative applications and declaration

forms and establish their own publicly accessible databases, consistent with the national data base being set up by OOG. Biannual reports to the Prime Minister are required to demonstrate progress on all these matters. The proposed inventory or registry of administrative procedures is also designed to be a mechanism for monitoring new regulations and their impact.

This is an elaborate and resource-intensive scheme, requiring parallel, coordinated action in all provinces, local bodies, departments and ministries. The dissemination of the skills and knowledge required alone is a formidable task, not to mention maintaining momentum and overseeing compliance. Both vertical and horizontal coordination capacities will be stretched to their limits. In particular, while it may be possible to create an inventory and achieve 'paper compliance' with the review process, whether it can be sustained beyond the initial exercise into an on-going system of control and monitoring is another point. If experience is anything to go by, local officials will wait for the heat to be taken away and the attention to wander; and they will once again engage in issuing a plethora of 'baby licenses' and local rules.

On a more positive note, one important element in the program is an advisory committee drawn from the private sector. It will feed advice to the Prime Minister on the progress of implementation and provide a direct channel for disseminating information to businesses and organizations directly affected by the scheme. Such bodies at provincial level might also evolve. In that case, along with the publicly available inventory, 'civil society' and individual businesses will play a role in monitoring the implementation of review of administrative procedures while, in the longer run, providing continuing feedback on the efficiency and quality of regulation. Given the considerable political capital and administrative resources required to see a reform process such as this through, the existence of external business pressures and media monitoring could be critical. Such monitoring will be encouraged and enhanced by the transparency provisions that have been enunciated in Decision 30.

The transparency and stakeholder consultation provisions reflect a much wider trend that could be of great significance for Vietnam's political culture and governance arrangements. Secrecy remains the standard operating procedure for many aspects of government in Vietnam, but transparency provisions are gradually, if almost imperceptibly, becoming 'normal', even if they apply only to a very small segment of government operations, such as publication of budgets and legal documents. This trend is in part a result of WTO and BTA pressures. For example, under the 'Law on Laws', all new legal documents must now be published for at least 15 days in the Official Gazette. As a result (combined with the increasing pace of law-making activity) the number of pages in the Official Gazette increased 16-fold between 2001 and 2007.

Similar provisions for local normative legal documents have resulted in the publication for the first time of provincial level Official Gazettes. As outlined in the previous section, the requirement to publish fees and charges and other details in OSS offices is another example of the trend. Surveys done for the Viet Nam Provincial Competitiveness Index (PCI) show some improvement in the level of transparency over the years: for example, firms report that access to provincial planning documents is getting easier.[59] The transparency requirements of Decision 30 will, if implemented, be yet another important step. Access to information by citizens is clearly a pre-requisite of public accountability of public officials.

The PCI is also a significant development in creating mechanisms that hold governments and officials to account. It is a joint initiative of the Vietnamese Chamber of Commerce & Industry and external donors, including the Asia Foundation and USAID. Indexes showing the performance of provincial governments in meeting certain standards of 'good economic governance' are now available for 2006 & 2007. Not only does this information on the quality of provincial economic governance give important information to businesses and to citizens about the quality of government and the ease of doing business in different parts of the country (and hence may influence some business decisions), it also puts provincial government leaders 'under the spotlight' for their compliance with and progress on important government policy objectives. Internal Party measures and criteria remain the key determinants of their political careers, but publicly available 'league tables' of the 'leaders and laggards' in providing good economic governance indicate the possibility of a subtle but significant shift in the way leaders can be held to account for their performance.

Simplification of administrative procedures is an area where the Government and Party have admitted serious failures and shortcomings. From observing the Government's own response, and that of significant stakeholders such as the VCCI, we can draw some important conclusions:

- As a high priority but an intractable area of reform due to internal resistance and other obstacles, the need emerged for central coordination and control by a central agency to 'steer' reform in the national government. The PAR Steering Committee was, in the process, by-passed and the matter was taken up within the Prime Minister's own direct domain.
- When this occurs, the indications are strong for both the need for external support and the chances of success.
- Successful implementation of Decision 30 through one or more mechanisms is a key 'litmus test' for successful PAR in Viet Nam in the short- and medium-term. If it fails, it will be a major setback to the institutionalization of legality, emboldening 'anti-reform' vested interests.
- Some of the elements of the implementation model of Decision 30 demonstrate significant potential for further development and application in other fields. In line with the principles enunciated earlier in this report, of particular significance are the transparency provisions and the role for monitoring by civil society, as they advance the core principle of making public officials accountable in the public realm for their performance.
- Other elements of the implementation model do not bode so well, in particular the need to disseminate technical requirements and skills across all government ministries, departments and provinces; the highly resource intensive nature of the data collection, inventory-building and monitoring processes; and the high administrative and coordination costs of the reporting and action requirements.

7. Conclusion: What next?

We concluded in the first part of this paper that institutional reform in Vietnam requires addressing some important structural issues concerned with government as a whole, as well as reforms to the system of public administration. PAR institutional reform not only overlaps with legal reform, it is also inter-dependent with structural reforms, that is, with constitutional and political change.

At the same time, the two case studies have illustrated that PAR institutional reform narrowly defined does contain the potential for making inroads on the wider institutional reform agenda if certain change strategies are followed.

'Institutional reform' as a goal and a program sounds almost like a contradiction in terms. Institutions as systems of norms and rules are almost by definition stable and unchanging, or at least resistant to change. 'Institutionalization' as a concept is often taken to mean the solidification of practices into rules and norms. Theories of institutions tend to be very good at explaining why they do not change, but less useful for understanding why and how they do change.

Institutional reform can arise from a series of processes and steps that in the long run overcome contradictions. How might this come about? What explains institutional change? One approach to that understanding is found in sociological theories of 'historical institutionalism.[60] The assumption underlying historical institutionalism is that the initial choices made at the time of initiating a program or a structure creates a pattern or a 'path, and subsequent choices to some extent simply follow that path. The initial choices in question may have been made some time ago, and these choices may have been unwitting as to their consequences, but the 'path dependencies' they set in train remain in place.

This approach presents some problems in explaining change. One answer is to note that 'punctuations' have occurred in the on-going flow of events, such as an external crisis (for example defeat in war and foreign occupation). The logic is one of large-scale, discrete change. But this does not square with what we observe in the way systems of government and administration actually change. Most observers tend to describe incremental changes in public sector institutions and perhaps especially in public bureaucracies.

Some recent studies have questioned the deterministic nature of path-dependency.[61] Several scholars have suggested that robust institutions can also produce gradual and internally generated patterns of far-reaching change. Others have stressed that institutions are not made 'in one piece' but juxtapose different logics and orders, each with their own temporal underpinnings.[62] Certain institutional components within an administrative system may be less robust than others (weakly entrenched or less tied to solid coalitions) and thus more 'mutable' and more easily transformed through reforms.[63]

There is a paradox: we can see, looking back, how institutions have changed dramatically and irreversibly over time, for example by new elements being introduced that were at the time acceptable within the institution because they solved a pressing problem; but we could never be certain at the time of their introduction

that they would have a lasting effect of introducing 'new orders and logics'. These sorts of explanations do not give much role to 'grand design' in the process of institutional change. Or if they do, the design emerges to justify the practice as the latter comes to be appreciated, rather than preceding it.

Consistent with this perspective on institutional change, some valuable and relevant lessons about change processes can be drawn from recent studies of reform in local government in China. These studies suggest that particular measures – such as a central government initiative to reduce the burden of local taxes and charges on peasants – can trigger developments that result in the institutionalization of some unexpected results.[64] This happens when local agents responsible for implementing the change in policy become committed to new ideas and practices in their own sphere, while others around them may still be 'dancing to the old tune'. The clash of logics and friction between them that generally occurs produces tensions that can be productive for further change and institutionalization. This might happen from unexpected sources. In one locality, cost-cutting measures involved 'sending off cadres' to coastal cities as a way of both removing them from the payroll and upgrading their skills. They now had new horizons and new interests. When they returned, they became change agents and supported wider fiscal reforms, which were subsequently implemented.

These sorts of processes, with juxtaposition of new and old and disjuncture between past and future, are occurring constantly and as a matter of routine in all spheres of state and society in transitional situations, such as those faced by Viet Nam and China. Explanations for the processes of change and reform in Vietnam, in particular for the emergence of forces and interests supporting marketization and *doi moi* more broadly, use terms like 'fence-breaking' (partial, unofficial relaxation on constraints following spontaneous action) and stress the interactive, bottom-up nature of change.[65] However, such engines of change can be both 'good' and 'bad' (for example they may lead to the emergence of chronic corruption).[66] From the point of view of reform, the fundamental issue is to achieve institutionalization of the former.

To sum up the argument to this point: evidence from Vietnam and elsewhere suggests that small changes can be decisive in setting institutions and institutional change on a new path, often through a local experiment or a new practice that serves as a way of coping with immediate problems inherent in the existing system. As we identified in our case studies, OSS mechanisms and administrative procedure review carry with them the seeds of cumulative changes that might bring deeper institutional change – for example, in the case of OSS mechanisms, new norms and expectations about the integrity and accountability of local officials. Correspondingly, in tackling such areas of PAR institutional reform as these, the potential exists to connect with the broader agenda of institutional reform and the deeper structural questions highlighted in the first part of this Report.

It is here that 'grand designs' come into the picture. As argued earlier, the model or end-point of institutional reform in Viet Nam is stated within the policies and programs of the party as the achievement of a socialist rule-of-law state. Particular programs of legal document reform, improvements in access and accountability at the interface between citizen and state, and so on, have been elaborated within this paradigm. However, as we also argue, this end-point is immediately clouded and obscured in Viet Nam by ambiguities in party policy and doctrine that deny its

achievement. Debates and discussions are on-going as to how to resolve these ambiguities.

Our main conclusion is thus a paradoxical one: future PAR institutional reform priorities should obviously target themes and projects that are practical in scope within the administrative sphere; yet they will not achieve the underlying objectives of institutional reform unless they are also explicitly connected with the wider agenda.

Basic mechanisms of legality and accountability in the face-to-face encounters between citizens and the public administration (and within the hierarchy of the administrative system itself) provide the common thread in connecting PAR institutional reform projects to the wider institutional reform agenda.

The conclusions and lessons drawn from our review of PAR institutional reform implementation and from the case studies of OSS and administrative procedure review indicate that future PAR institutional reform measures (and projects in support of them) should be appraised as follows:

- Do they improve consistency and clarity in rules and procedures so that citizens can know their legitimate expectations under government policies and programmes?
- Do they offer the possibility that citizens' legitimate expectations will be better satisfied about good service delivery and impartial treatment under prevailing government policies and programmes?
- Do they provide mechanisms not only for informing citizens about their legitimate expectations but also facilitating their making of successful claims (including appeals) based on these expectations?
- Do they identify and empower particular local officials who will have a stake in seeing these claims pursued and satisfied?
- Would such local officials receive direct support and encouragement in a simple and effective manner from higher levels, in the event of obstruction and obstacles?

A range of measures in addition to implementation of OSS mechanism and administrative procedure reform could be considered for appraisal under these criteria, such as various access-to-information and related 'transparency' reforms; citizens' complaint mechanisms; a system of 'administrative tribunals' for specific service areas or fields; 'citizen charter' and 'scorecard' mechanisms involving citizen and client input into service quality assessment; and so on. Some of these would link together aspects of PAR and legal system reforms. Others might tie in with managerial or financial reforms in government departments and local bodies.

To sum up: In terms of *scope*: The full and effective implementation of the socialist rule-of-law state cannot be realized in isolation within the realm of PAR. The institutional reform agenda will not be addressed successfully unless it is broadened from considering particular administrative or legal techniques and capacities to connect with wider structural issues that define multiple mechanisms of accountability of public officials. Here, a 'grand design' based on Viet Nam's aspirations for a socialist rule-of-law state, drawing as well on relevant international

experience, is important for articulating goals, ideals and possible ‘end-points’. If PAR institutional reforms are to succeed, they must not only be associated with legal, judicial and civil service reforms but also be accompanied by wider structural reforms.

In terms of *strategy*: The pace and direction of reforms in the wider realm will continue to shape and restrict PAR institutional reforms. However, a focus on the ‘narrower’ issues and on ‘local’ projects of PAR institutional reform can still bring significant results ‘on the ground’ (particularly at the local level where administration meets the public). So long as these initiatives have potential for energizing and resourcing agents (citizens and public officials) who see the benefits of new institutional arrangements consistent with the longer term and wider goals, they will advance the wider reform and institutionalization process ‘from the bottom up’.

Endnotes

[1] List of Interviewees include: Dr. Đào Minh Châu, Senior Programme Officer, SDC; Dr. Trịnh Tiến Dũng, Assistant Country Director-Head of Governance Unit, UNDP; Dr. Karin Voigt, Senior Technical Advisor, Helvetas; Dr. Thang Văn Phúc, Former Deputy Minister, MoHA; Ms. Nguyễn Thị Kim Liên, Governance Adviser, DFID; Dr. Vũ Phạm Quyết Thắng, Former Deputy General Inspector, State Inspectorate; Prof. Dr. Trần Hậu, Member of the Central Committee, Vietnamese Fatherland Front; Dr. Nguyễn Đăng Vang, Vice Head of Committee for Science, Technology and Environment, National Assembly; Ms. Trần Thị Lan Hương, Programme Coordinator, Embassy of Finland; Ms. Vũ Thị Yến, Senior Development Officer, CIDA; Mr. Andrew Smith, Head of Aid, CIDA; Mr. Nguyễn Minh Nhạn, Director, MARD PAR Project; Dr. Jim Winkler, Director, VNCI; Mr. Phạm Văn Bằng, Director, Ninh Binh PAR Project; Mr. Alf Persson, Senior Technical Advisor, Ninh Binh PAR Project; Mr. Bùi Văn Hòa, Vice Chairman, Gia Vien District; Mr. Đinh Thúc Chiến, Chairman, Cuc Phuong Commune.

[2] Article 4 reads: "The Communist Party of Vietnam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and society. All Party organisations operate within the framework of the Constitution and the law." The critical section is the statement '*the* force leading the State and society' (my emphasis) which is interpreted to justify the monopoly on power of the party and the prohibition of political dissent.

[3] Mark Sidel, Law and Society in Vietnam: The Transition from Socialism in Comparative Perspective, Cambridge: Cambridge University Press, 2008, p.44

[4] Sidel, op.cit., p.44

[5] The 'dissidents' reflect many strands of thought, and should not be depicted as being advocates only of 'western', 'American' or 'liberal' views of law. Most make primary reference to diverse strands of thinking within Vietnam's own socialist traditions – see Sidel op.cit., pp.3-16.

[6] Evaluation of the Legal Document Making Process: Current Status and Solutions, Policy Law and Development Institute, no date

[7] This point was made by Mr Dinh Duy Hoa, Director General, the Department of PAR, Ministry of Home Affairs in his commentary on the first draft of this paper: '…if Vietnam is preparing to evaluate the 10 years of PAR then should the institutional reform component be included in what is meant by PAR?'

[8] Randall Peerenboom (2004), 'Varieties of Rule of Law', in Pareenboom (ed.) Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S., London: Routledge, p.2.

[9] Geoffrey de Q. Walker, *The Rule of Law: Foundations of a Constitutional Democracy*, Melbourne: Melbourne University Press, 1988

[10] Quotations from a discussion between Professor Nguyen Manh Tuong and President Ho Chi Minh, Spring 1952, *The Magazine of History* (*Tap chi Xua va Nay*), 286, June 2007

[11] Ibid.

[12] Truong Tong Nghia, 'The Rule of Law in Vietnam: Theory and Practice', in *The Rule of Law: Perspectives from the Pacific Rim*, Mansfield Papers, 2000, p.131. Truong Trong Nghia, attorney and member of the Bar of HCMC, was vice-president of the Foreign Trade and Investment Development Centre and a member of the Executive Committee of the Viet Nam Lawyer's Association.

[13] Dao Tri Uc, 'The Socialist Rule-of-Law State of Viet Nam – Major Achievements over a Sixty-Year Process of its Building and Development', *Social Sciences Information Review*, 1(2),

2007, p.9. Professor Dao Tri Uc is Director of the Institute of State and Law, Vietnamese Academy of Social Sciences. We discuss the importance of 'judicial independence' more fully in the next Section of this paper.

[14] John Gillespie, Transplanting Commercial Law Reform: Developing a 'Rule of Law' in Vietnam, Aldershot: Ashgate, 2006, pp.75-6

[15] *Ibid*., pp.7-8.

[16] Dao Tri Uc, op.cit., p.8

[17] Ibid.

[18] Government Steering Committee, *Report of the Group 1: Stances and Guidelines of the Party and the State of Viet Nam on Public Administration Reform*. Hanoi: Government Steering Committee for Public Administration Reform, 2001, p.12. This study was one among several prepared by Vietnamese experts, with the assistance of UNDP, as part of the lead-up work to the 2001 PAR Master Plan.

[19] Quoted in J. Riedel & S. Turley, *The Politics and Economics of Transition to a Market Economy in Viet Nam* (Technical Paper No. 152), Paris: OECD, 1999, p.37

[20] Nguyen Van Thuong, Continue Revising the Managing Function of the State to Meet the Demand for the Socialist-Oriented Market Economy and Active Integration of Viet Nam into the World Economy, Assistance Project for Reviewing 20 Years of Doi Moi in Vietnam, Hanoi 2006, p.71

[21] Gillespie 2006 op. cit., p.116

[22] The precise mechanisms and coverage of Vietnam's version of the old *nomenklatura* system in Viet Nam (and how it currently operates) remain un-researched by western scholars, but for glimpses see Gillespie 2006 op.cit., pp.117-8, John Gillespie, 'The Political-Legal Culture of Anti-Corruption Reforms in Vietnam', in Tim Lindsey and Howard Dick, eds. *Corruption in Asia: Rethinking the Governance Paradigm*, Sydney: The Federation Press, 2002, pp.180-81; and Adam Fforde, 'Strategic Issues in Vietnamese Development Policy: State Owned Enterprises (SOEs), Agricultural Cooperatives and Public Administration Reform (PAR)'. Paper presented at the Political and Social Change, RSPAS, ANU, Canberra, 1998, fn.39)

[23] Dang Phong & M. Beresford, *Authority Relations and Economic Decision-Making in Vietnam: An Historical Perspective*. Denmark: Nordic Institute of Asian Studies (NIAS), 1998

[24] Ibid, p.110

[25] This is a universal problem in all states, both ancient and modern. We do not in any sense wish to claim that any system has once and for all solved this problem, but we highlight it here in the context of contemporary Vietnam because of the evident relevance of the issue to the current dilemmas of institutional reform.

[26] Dao Tri Uc, op.cit., p.11

[27] John S. Quah, Curbing Corruption in Asia: A Comparative Analysis in Six Countries, Singapore: Eastern Universities Press, 2003

[28] 'Separation of powers' in this sense is not applicable to many European and East Asian systems, although other forms of institutional and decisional independence exist.

[29] Similar tensions and debates occur in the US over judicial independence, as in some states and localities judges are elected, or appointed for fixed terms by legislatures.

[30] Kanishka Jayasuriya, 'Introduction: A framework for the analysis of legal institutions in East Asia; in Jayasuriya (ed), *Law Capitalism and Power in Asia*, London: Routledge, 1999, pp. 1-27

[31] On the role of the legal system in Japanese development, see Haley, J. O. 'The Rule of Law in Japan', Conference on Comparative Conceptions of the Rule of Law in Asia, University of Hong Kong, 21-21 June 2001; and Haley, J. O. 'Japan's Postwar Civil Service: The Legal

Framework' in H. K. Kim, M. Muramatsu, T. J. Pempel and K. Yamamura (eds.) *The Japanese Civil Service and Economic Development* (Oxford: Clarendon Press, 1995.

[32] Tom Ginsburg and Albert H.Y. Chen (eds), *Administrative Law and Governance in Asia: Comparative Perspectives*, London: Routledge, 2008

[33] Peter Evans, *Embedded Autonomy: States and Industrial Transformation*, Princeton: Princeton University Press, 1995. The phrase 'embedded autonomy' captures the idea of a state that is both connected with society through key elite networks (especially with business) but also, at the same time, autonomous within society as a result of its capacities and its institutional independence, to the extent that it can develop long-term developmental strategies over and above the clamour of sectional interests.

[34] This brief account draws on Tak-Wing Ngo and Yi-Chi Chen, 'The Genesis of Responsible Government under Authoritarian Conditions: Taiwan during Martial Law', *The China Review*, 8(2), 2008, pp.15-48

[35] Peter Evans and James E. Rauch, 'Bureaucracy and Growth: A Cross-National Analysis of the Effects of 'Weberian' State Structures on Growth', American Sociological Review, 64(5), 1999, pp.748-65; Daniel Kaufman, Aart Kray and Massimo Mastruzzi, *Governance Matters VII: Aggregate and Individual Governance Indicators 1996-2007*, Policy Research Working Paper 4654, World Bank Institute, 2008

[36] Christopher Pollitt, 'Moderation in All Things: Government Quality and Performance Measurement', Conference on New Public Management and Quality of Government, Quality of Government Institute, University of Gothenburg, November 13-15, 2008. See also Jak Jabes, *On the (F)utility of Governance Indicators: Lessons from Countries in Transition*, International Institute of Administrative Sciences Second Specialized International Conference, New Delhi, 2002.

[37] 'Government Effectiveness' measures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies; 'Rule of Law' measures perceptions of the extent to which agents have confidence in and abide by rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts as well as the likelihood of crime and violence (Daniel Kaufman, Aart Kray and Massimo Mastruzzi, *op.cit.*, pp. 7-8).

[38] The definition of the variables is provided in the original source, available on line at http://www.qog.pol.gu.se/working_papers/2008_21_Holmberg_Rothstein_Nasiritousi.pdf

[39] Mary Grindle, 'Good Enough Governance: Poverty reduction and Reform in Developing Countries', *Governance*, 17(4), 2004, pp.525-48

[40] Martin Painter, Legacies Remembered, Lessons Forgotten: the Case of Japan' Conference on *Governing By Looking Back: How History Matters in Society, Politics and Government,* Research School of Social Sciences / College of Arts and Social Sciences, The Australian National University, 12-14 December 2007

[41] Many would argue that these safeguards and mechanisms include a free press and an active, autonomous 'civil society'

[42] Evaluation of the Legal Document Making Process: Current Status and Solutions, Policy Law and Development Institute, no date

[43] Ibid., p 9

[44] The system of law-making and the legal drafting process was also considered for detailed study, but time and resources did not allow for the completion of a third case study. For valuable analysis of this topic, see Policy Law and Development Institute, nd, *op.cit.*

[45] http://www.liverpool.gov.uk/One_stop_shops/index.asp, accessed 18 January 2009

[46] 'Kiosks' which contain on-line computer terminals offer e-government services, ideally enabling transactions to take place on-line; more commonly, they provide a lower level of e-government services limited to access to information and sending messages by email.

[47] Martin Painter, 'Access: the Public Service and the Public", in R.F.I Smith and Patrick Weller (eds), *Public Service Inquiries in Australia*, Brisbane: University of Queensland Press, 1978, pp. 236-48. The pilot was not replicated

[48] Katherine McKenna, ECOTEC Research & Consulting, *Evaluation of the North Liverpool Community Justice Centre*, Ministry of Justice Research Series, 12/07, 2007

[49] MOHA, Guidelines on "One Stop Shops" Implementation at the People's Committees of Communes, Wards and Townships, Hanoi, October 2004

[50] MOHA/SDC, Review of One-Stop-Shops at Communes and Wards, Hanoi 2003

[51] These observations are made following inspections and interviews in Gia Vien District and Cuc Phuong Commune in Ninh Binh Province.

[52] We learnt, for example, of the initiative taken in Cuc Phuong Commune to set up a 'Centre for Continuing Education', which facilitates visits and lectures from the Vietnamese Lawyers Association on the significance of legal reforms for the daily lives of local people.

[53] Gillespie, 2006 *op.cit*., p. 160

[54] Thi Bich Tran, R. Quentin Grafton and Tom Kompas (2009) 'Institutions Matter: The Case of Vietnam' *The Journal of Socio-Economics* 38 pp.1-12

[55] On the chronic situation of 'unimplementability' in Viet Nam see Adam Fforde, Strategic Issues in Vietnamese Development Policy: State Owned Enterprises (SOEs), Agricultural Cooperatives and Public Administration Reform (PAR). Paper presented at the Political and Social Change, RSPAS, ANU, Canberra, 1998

[56] Thaveeporn Vasavakul, 'Rethinking the Philosophy of Central-Local Relations in Post-Central-Planning Vietnam', in Mark Turner (ed.), Central-Local Relations in the ASIA-Pacific, London: Macmillan, 1999, pp. 166-195

[57] *Ibid*., p.189

[58] The Prime Minister has powers both to approve election of and to dismiss members of Provincial People's Committees. The Prime Minister can also suspend implementation of resolutions of People's Councils and propose to the National Assembly Standing Committee that they be annulled.

[59] VNCI (Viet Nam Competitiveness Initiative), *The Viet Nam Provincial Competitiveness Index 2007*, p. 50

[60] Thelen, K. (2003) 'How Institutions evolve: insights from comparative historical analysis' in J. Mahoney and D. Rueschemeyer (eds.) *Comparative Historical Analysis in the Social Sciences* (New York: Cambridge University Press); Peters, B. G. (2004) *Institutional Theory in Political Science: The New Institutionalism*, 2nd edn (London: Continuum).

[61] Pierson, P. (2004) Politics in Time: History, Institutions and Social Analysis (Princeton, N.J.: Princeton University Press); Streeck, W. and Thelen, K. (eds.) (2005) Beyond continuities: Institutional Change in Advanced Political Economies (New York: Oxford University Press).

[62] Orren, K. and Skowronek, S. (1994) 'Beyond the Iconography of Order: Notes for a New Institutionalism' in C. D. Lawrence and C. Jillson (eds.) *The Dynamics of American Politics : Approaches and Interpretation* (Boulder: Westview Press). Bezes, P. and Le Lidec, P. (2007) 'French Top Civil Servants Within Changing Configurations. From Monopolisation to Challenged Places and Roles?' in E. C. Page and V. Wright (eds) *From the active to the enabling state. The changing roles of top officials in European Nations* (London: Palgrave MacMillan).

[63] Clemens, E. S. and Cook, J. M. (1999) 'Politics and institutionalism: explaining durability and change', *Annual Review of Sociology*, 25, 441-466.

[64] This section draws on the work of Linda Li on fiscal reform in local China. See Linda Chelan Li, 'Embedded institutionalization: Sustaining Rural Tax Reform', in Linda Li (ed), *The Chinese State in Transition: Processes and Contests in Local China*, London: Routledge, 2009, pp. 55-73

[65] S. De Vylder and A. Fforde, *Vietnam: an Economy in Transition*, Stockholm: SIDA, 1988

[66] Linda Chelan Li, 'Introduction: the State in Transition', in Li *op.cit*. pp.8-9