

# GRADING REGULATORS: THE IMPACT OF GLOBAL AND LOCAL INDICATORS ON VIETNAM'S BUSINESS GOVERNANCE

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*International indicators are widely used as diagnostic tools for global governance. For the developing world, with scarce resources and complex social problems, indicators can help businesses, donors, and policymakers identify issues, tailor solutions, and measure impacts. This Note studies the dynamics between global and domestic indicators in Vietnam, particularly the ways they influence Vietnam's policy processes. It finds that while global indicators have advanced the notion of competitiveness and made it a priority of the national government, sub-national indicators—here, a ranking of Vietnam's provinces—play a significant role as a more tailored and focused tool to motivate internal competition for pro-business reforms. This Note therefore confirms the dominant viewpoint that global indicators influence a country's development agenda, but concludes that this effect is even more pronounced in the presence of robust local indicators.*

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INTRODUCTION

In the sphere of international development, indicators wield enormous power. Social problems from corruption to child mortality to business potentials each have their own indicators.<sup>1</sup> They come in well-known brands such as the United Nations, the World Bank, and the World Economic Forum.<sup>2</sup> They capture the attention of media, political leaders, international organizations, NGOs, and the public.<sup>3</sup>

What are indicators and why are they so popular? This Note seeks to answer these questions for a particular set of indicators: competitiveness rankings in the context of Vietnam. These indicators are interesting because, by purporting to measure national competitiveness in a region hallmarked by economic miracles and ambitious growth, they touch on a matter of pride and policy.<sup>4</sup> Vietnam presents a timely case study because

<sup>1</sup> See KEVIN E. DAVIS & BENEDICT KINGSBURY, ROCKEFELLER FOUND., INDICATORS AS INTERVENTIONS: PITFALLS AND PROSPECTS IN SUPPORTING DEVELOPMENT INITIATIVES 1 (2011) [hereinafter INDICATORS AS INTERVENTIONS] (noting that indicators for all types of social problems are ubiquitous in development policy).

<sup>2</sup> See *id.* at 6–8 (describing examples of indicators promulgated by well-known institutions).

<sup>3</sup> See, e.g., *Stand Up for “Doing Business,”* ECONOMIST, Mar. 25, 2013, at 16–18 (“Since 2003 ‘Doing Business’ has shone an annual spotlight on regulations. . . . Presidents and prime ministers do not like to be low in the league, so they demand that red tape be cut. In the past decade almost 2,000 liberalising reforms have been undertaken in areas covered by the report.”). See also sources cited *infra* note 92 (listing examples of news reports and speeches in Vietnam discussing competitiveness indicators).

<sup>4</sup> The dialogue on competitiveness is robust. See, e.g., MARN-HEONG WONG ET AL., ASIA COMPETITIVENESS INST., ASEAN COMPETITIVENESS REPORT 2010, at 2, 28, 44 (2011) (noting that the Association of Southeast Asian Nations (ASEAN), a regional economic and political organization comprised of ten member countries, is the fourth-largest trading entity in the world and has a GDP of about one-fifth that of the United States, but that none of ASEAN’s locally owned companies placed within the top one-hundred on the Forbes 2010 Global 2000 list); Andrew Critchlow, *Singapore Tops Asia in Competitiveness*, WALL ST. J., Sept. 8, 2011, <http://online.wsj.com/article/SB10001424053111904836104576556043210460126.html> (noting that Singapore ranked second in world competitiveness in the 2010–2011 Global Competitiveness Index, just behind Switzerland, and quoting the index’s chief economist as stating that “[t]he emerging markets are catching up”); *Prime Minister Welcomes Professor Michael Porter*, VIET. GOV’T WEB PORTAL (Nov. 30, 2010, 7:39 PM), <http://news.gov.vn/Home/PM-welcomes-Prof-Michael-Porter/201011/9471.vgp> (noting that “Viet Nam pays special attention to improving national competitiveness” and announcing the launch of Vietnam’s first national competitiveness report by Professor Michael E. Porter, a primary author of the World Economic Forum’s Global Competitiveness Index). Competitiveness is not a concern of Asia alone. See David Cameron, Prime Minister of the U.K., Speech at the World Economic Forum in Davos, Switzerland (Jan. 23, 2012), available at <http://www.guardian.co.uk/politics/2013/jan/23/david-cameron-eu-speech-referendum> (“[T]here is a crisis of European competitiveness, as other nations across the world soar ahead.”); U.S. Competitiveness, HARV. BUS. SCH.,

its dialogue on indicators is particularly lively: Despite representing one of Asia's remarkable success stories,<sup>5</sup> Vietnam still has not achieved the coveted "Asian tiger" status bestowed on neighboring peers such as Hong Kong, South Korea, Singapore, and Taiwan.<sup>6</sup> Competitiveness indicators, which diagnose Vietnam's attractiveness to businesses, therefore play a heightened role in the country's economic governance.

In order to understand the importance of indicators, we first need to understand what they are. In their most basic forms, indicators are report cards evaluating performances, usually of government actors.<sup>7</sup> Though each indicator varies in substantive goals, inputs, and methodologies, their production cycles often go through similar processes. They deconstruct a problem into smaller, easier-to-measure factors; collect data on each of these factors; calibrate these data through an economic model; and produce a ranking list.<sup>8</sup> The U.S. News & World Report's (USN) law school rankings is one such indicator: It purports to "solve" a social problem (which law schools are the "best"?) through a calibration process of both hard data (LSAT scores, grade point averages, and placement success) and soft data (reputational assessments by academics and practitioners).<sup>9</sup> Analogously, competitiveness indicators measure countries' business governance—the social problem of how well countries treat businesses. Well-known competitiveness indicators such as the World Economic Forum's (WEF) Global Competitiveness Index (GCI) and the World Bank's Doing Business Index (DBI) collect data on a wide range of hard and soft factors, including tax liability, property rights, effectiveness of

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<http://www.hbs.edu/competitiveness/overview.html> (last visited Oct. 27, 2013) ("The U.S. Competitiveness Project is a research-led effort to understand and improve the competitiveness of the United States . . .").

<sup>5</sup> See sources cited *infra* notes 52–56 (summarizing the economic development of Vietnam).

<sup>6</sup> These countries were known as the "Four Tigers" for their exceptional growth of output per person of at least six percent annually from 1960 to 1990. MICHAEL SAREL, INT'L MONETARY FUND, GROWTH IN EAST ASIA 2 (1996). Vietnam has the potential to become the next "true Asian tiger." See James Alver & Valentina Perez, *Vietnam: The Hidden Asian Tiger*, HARV. POL. REV. (May 23, 2012, 1:38 PM), <http://harvardpolitics.com/world/vietnam-the-hidden-asian-tiger/> (noting that, despite the need for institutional reforms, Vietnam has significant potential for continued economic growth).

<sup>7</sup> In technical terms, indicators can be defined as "a named collection of rank-ordered data that purports to represent the past or projected performance . . . through a process that simplifies raw data about a complex social phenomenon." Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Introduction: Global Governance by Indicators* to GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS 6 (Kevin E. Davis et al. eds., 2012).

<sup>8</sup> See *id.* at 6–7 (describing the indicator production process).

<sup>9</sup> See MICHAEL SAUDER & WENDY ESPELAND, LAW SCH. ADMISSION COUNCIL, FEAR OF FALLING: THE EFFECTS OF U.S. NEWS & WORLD REPORT RANKINGS ON U.S. LAW SCHOOLS 4 (2007) (describing USN's law school rankings process).

judicial institutions, and satisfaction surveys of company executives.<sup>10</sup> These data are then run through econometric models and finally a ranking emerges.<sup>11</sup>

By their existence and operation, indicators play norm-creating roles with implications far beyond benchmarking. As ready-made, free, and widely recognized benchmarks, they provide their audience with a form of efficient, data-backed, and therefore purportedly reliable, knowledge.<sup>12</sup> Furthermore, consulting the ranking is quick, convenient, and saves the trouble of time-consuming independent research. The USN rankings, for example, touch upon all aspects of the legal profession, from law schools' allocation of resources to employers' decisions on recruitment strategies.<sup>13</sup> As such, it is perhaps not surprising that USN rankings were found to exert greater influence on prospective law students' choices among law schools than guidebooks, friends, parents, or pre-law counselors.<sup>14</sup>

Indicators operating in the international development sphere exert similarly profound impacts. First, simply by their existence, competitiveness indicators frame the social problems at hand: They give life to "competitiveness" as a living phenomenon, implying that it is normative, achievable, and can be objectively measured.<sup>15</sup> The more policymakers and

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<sup>10</sup> See, e.g., Xavier Sala-i-Martin et al., *The Global Competitiveness Index 2012–2013: Strengthening Recovery by Raising Productivity*, in WORLD ECON. FORUM, GLOBAL COMPETITIVENESS REPORT 2012–2013 app. at 46–48 (2012) [hereinafter GCI REPORT 2012–2013] (explaining the computation of the GCI); WORLD BANK, DOING BUSINESS 2013: SMARTER REGULATIONS FOR SMALL AND MEDIUM-SIZE ENTERPRISES 15–17 (2013) [hereinafter DBI REPORT 2013] (describing the DBI's methodology).

<sup>11</sup> The usefulness of rankings is a contested issue. For example, a recent panel, initiated by the World Bank to review the Doing Business reports, recommended that the Bank eliminate the aggregate ranking entirely. WORLD BANK, INDEPENDENT PANEL REVIEW OF THE DOING BUSINESS REPORT 4 (2013) ("[Removing the aggregate ranking] would diminish the report's influence on policy and public discussion in the short term. In the long term, however, doing so may improve focus on underlying substantive issues and enhance the report's value."). But see *Stand Up for "Doing Business," supra* note 3, at 18 (arguing that the World Bank should retain the aggregate ranking because it "spurs countries to useful reforms").

<sup>12</sup> See Davis, Kingsbury & Merry, *supra* note 7, at 16 (reasoning that indicators are attractive because "decision-making processes that rely on indicators can be presented as efficient, consistent, transparent, scientific, and impartial"). But see WORLD BANK, INDEPENDENT PANEL REVIEW OF THE DOING BUSINESS REPORT, *supra* note 11, at 20–28 (arguing that the Bank's indicators are of limited use in shaping policy reforms because they can be manipulated and may not accurately reflect the business climate in a given country).

<sup>13</sup> SAUDER & ESPELAND, *supra* note 9, at 9–27, 30–32 (reporting the effects of USN rankings on the shaping of law schools' operations, prospective students' decisions to apply and attend schools, and how far down the graduating class employers recruit, among others).

<sup>14</sup> *Id.* at 30.

<sup>15</sup> See *id.* at 8–9 (noting that some law school deans interviewed value the USN rankings because they provide metrics that can help schools improve); see also INDICATORS AS INTERVENTIONS, *supra* note 1, at vi ("Indicators will succeed in influencing how people frame problems if people come to accept the indicator as the 'standard' or 'appropriate' way to measure the extent of the problem.").

the media cite competitiveness indicators as evaluative tools, the more they become a larger approximation of “what a good society is, or how governance should ideally be conducted.”<sup>16</sup> Sustained by technical analysis and scientific objectivity, indicators can bring legitimacy to policymaking that is otherwise viewed as controversial or unintuitive.<sup>17</sup> As evaluations of government actors, indicators can provide for greater transparency and accountability.<sup>18</sup> Finally, for countries without the technical capacity and resources for systematic studies, indicator projects—typically mobilizing multiple departments, personnel, and civil society groups—can be a powerful journey of self-exploration for local leaders and participants. Their participation can engender “sources of insight and pride, promoting good governance . . . through inspiration rather than coercion.”<sup>19</sup> A scholar sums up the power of indicators by likening them to soft law instruments: As self-made and self-imposed tools, free from the constraint of the legislative process, they have the ability to engage with and change policy outcomes without the need for enforcement mechanisms.<sup>20</sup>

Despite indicators’ role as instruments of power in the multibillion-dollar, multinational ventures of international development,<sup>21</sup> only a small, though growing, number of case studies<sup>22</sup> explore how they operate on the

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<sup>16</sup> Davis, Kingsbury & Merry, *supra* note 7, at 9.

<sup>17</sup> See *id.* at 25 (suggesting that the use of human rights indicators by supervisory committees under major UN treaties might lend greater legitimacy to these committees’ judgments).

<sup>18</sup> See *id.* at 18 (observing that indicators’ reduction of complex data to a simple ranking makes it easier to communicate information to third parties but cautioning that this transparency can be superficial because the data and analytics behind rankings are in fact complex); see also Nikhil K. Dutta, *Accountability in the Generation of Governance Indicators*, in GOVERNANCE BY INDICATORS, *supra* note 7, at 437, 437–39 (suggesting two ways in which indicators can generate accountability: first through a “demand hypothesis,” in which third parties who use indicators demand higher levels of accountability, and second through a “supply hypothesis,” in which indicator producers offer higher accountability to attract users).

<sup>19</sup> Christopher Stone, *Problems of Power in the Design of Indicators of Safety and Justice in the Global South*, in GOVERNANCE BY INDICATORS, *supra* note 7, at 281, 281.

<sup>20</sup> René Urueña, *Internally Displaced Population in Colombia: A Case Study on the Domestic Aspects of Indicators as Technologies of Global Governance*, in GOVERNANCE BY INDICATORS, *supra* note 7, at 249, 255.

<sup>21</sup> The Organization for Economic Cooperation and Development (OECD) estimated that aid disbursements by public and private donors increased from \$127 billion in 2003 to \$499 billion in 2011. OECD, *Aid Statistics*, <http://stats.oecd.org/Index.aspx?datasetcode=TABLE1> (last visited Oct. 27, 2013). In 2011, the United States, the largest donor by volume, contributed \$30.7 billion, or 0.20% of its gross national income. OECD, *Table 1: Net Official Development Assistance from DAC and Other OECD Members in 2011 (1)*, available at <http://www.oecd.org/dac/aidstatistics/50060310.pdf>.

<sup>22</sup> See, e.g., Stone, *supra* note 19, at 281–84 (studying pretrial detention in various countries and arguing that global indicators measuring police performance are more effective when they enable local participation and reflect local priorities); Urueña, *supra* note 20 (documenting ways in which global indicators influence the domestic discourse on the internally displaced population in Colombia).

ground and impact domestic policymaking.<sup>23</sup> Such studies are needed because, once it enters the domestic scene, an indicator can take on “a life of its own”: “It is by looking at the intimacies of its domestic life that we get a better sense of the inner working of this technology of governance, the reasons behind its success, and the specific challenges it poses.”<sup>24</sup>

This Note responds to the demand in this area of analysis. As the first comprehensive study of Vietnam-focused indicators, this Note studies business governance rankings at both global and local levels in Vietnam. I hypothesize that, compared to global indicators, local ones are more accurate in measuring Vietnam’s business governance. If so, one might expect that local indicators would be more useful and reliable to business advocates and policymakers as instruments for business reforms. My research finds a more nuanced relationship: While local indicators indeed are more frequently updated and supply more robust data than global ones, the interactions between the two enable both types of indicator to encourage pro-business reforms through various platforms and at multiple levels of governance. A close look at the reforms espoused by each type of indicator explains their respective roles. Global indicators, such as the GCI and DBI, with strong institutional brands worldwide, were able to propel the idea of national competitiveness, thus making it a priority of the national government. Vietnam’s local Provincial Competitiveness Index (PCI)—which targets the provincial units of governance—contextualizes and adapts global indicators to the local context, thereby both improving upon and contesting global indicators’ results. As the PCI gains legitimacy, its methods and results are communicated upstream to producers of global indicators, which adapt and incorporate them into their indices. By interacting with and improving upon one another, both types of indicator enhance their legitimacy and deepen the norm of competitiveness. This Note therefore confirms the dominant viewpoint that indicators have the power to shape a country’s development agenda. Moreover, it finds that this effect is amplified when global and local indicators interact and compete.

With this writing I hope to contribute to two bodies of literature: the growing scholarship on the roles of global and local indicators as instruments for knowledge and policymaking<sup>25</sup> and the equally robust, longstanding efforts to understand and improve legal reforms in Vietnam.

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<sup>23</sup> See INDICATORS AS INTERVENTIONS, *supra* note 1, at viii (“[D]espite the vast effort that goes into production of indicators and growing frequency of their use, very little is known about the influence of most development-related indicators on decisions and actions.”).

<sup>24</sup> Urueña, *supra* note 20, at 250.

<sup>25</sup> For more information on the ongoing Indicators Project by the Institute for International Law and Justice at New York University School of Law, see *Indicators Project*, INST. FOR INT’L LAW & JUSTICE, <http://www.iilj.org/research/IndicatorsProject.asp> (last visited Oct. 27, 2013).

With these goals in mind, this Note proceeds in four parts. Part I introduces the literature on global and local indicators and argues that local indicators better describe the local contexts. Part II introduces the decentralized economic system of Vietnam, particularly the fence-breaking phenomenon, and Part III examines the global and local indicators operating in this distinct context. Finally, Part IV studies the interactions between local and global indicators along two specific dimensions: (A) local indicators as contestation of and adaptation to Vietnam's mediocre rankings in global indicators, and (B) the roles of both in motivating domestic business governance reforms.

## I

### GOVERNANCE THROUGH COMPETITIVENESS INDICATORS

This Part demonstrates that competitiveness indicators play a far broader role beyond being innocent aggregations of data. By commanding the field of thought in locational competitiveness, they refocus governments' priorities, advance ideologies of what good business governance should look like, and steer directions of reform efforts. Focusing particularly on the different characteristics of global versus local indicators, this Part hypothesizes that local indicators are more accurate than global ones because local indicators (1) better understand the local context, (2) better measure actual practices, (3) benefit from robust local feedback, and (4) respond to contextual changes in a timely manner. As used throughout this Note, global indicators refer to rankings such as the DBI and GCI, which study business governance in 183 and 144 economies, respectively.<sup>26</sup> Local indicators refer to single-country-focused indicators such as the PCI, which measures subnational governance units (here, provinces in Vietnam).

First, while all indicators “inescapably frame problems,”<sup>27</sup> local indicators are better able to tailor such framing to the local context. By their very existence, competitiveness indicators formulate an analysis of whether there is such a concept as “competitiveness,”<sup>28</sup> what it means to say that

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<sup>26</sup> WORLD BANK, *DOING BUSINESS 2012: DOING BUSINESS IN A MORE TRANSPARENT WORLD*, at i (2012) [hereinafter DBI REPORT 2012]; GCI REPORT 2012–2013, *supra* note 10, at 10.

<sup>27</sup> INDICATORS AS INTERVENTIONS, *supra* note 1, at v.

<sup>28</sup> Competitiveness is arguably a necessity: As globalization erodes the notion of “home,” in the sense that companies and capital increasingly become footloose, countries are increasingly compelled to become “good landlords” and “salesmen” to attract firms and investments. Tore Fougner, *The State, International Competitiveness and Neoliberal Globalisation: Is There a Future Beyond ‘the Competition State’?*, 32 REV. INT’L STUD. 165, 174 (2006); see also Stéphane Garelli, *Competitiveness of Nations: The Fundamentals*, in THE WORLD COMPETITIVENESS YEARBOOK 47, 48 (2000) (“Enterprises now benefit from an enormous choice in selecting their business locations. Consequently, nations need to compete to attract or retain

one state is more competitive than another,<sup>29</sup> and how to measure the extent of such phenomena.<sup>30</sup> The level at which an indicator operates is instrumental to framing because it implicitly identifies the agents and factors relevant to a particular “theory of change” to which the indicator ascribes.<sup>31</sup> For example, the DBI and GCI posit *national* governments—the measured entities—as the relevant agents for change.<sup>32</sup> By identifying factors comprising the index (for example, the GCI includes twelve pillars and more than one hundred variables ranging from “inflation” to “brain drain” to “public trust in politicians”<sup>33</sup>), competitiveness indicators implicitly communicate their vision of what causes the problem and how to overcome it. Similarly, by deconstructing business regulations into factors such as investor protections, contract enforcement, and property rights,<sup>34</sup> the DBI implicitly endorses the dominant, neoliberal view of the law and development movement that strong legal institutions are necessary for

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enterprises.”); Jacques Morisset, *Tax Incentives: Using Tax Incentives to Attract Foreign Direct Investment*, WORLD BANK VIEWPOINT POL’Y J., Feb. 2003, at 1 (“The increasing mobility of international firms and the gradual elimination of barriers to global capital flows have stimulated competition among governments . . .”). But see Tore Fougner, *Neoliberal Governance of States: The Role of Competitiveness Indexing and Country Benchmarking*, 37 MILLENIUM: J. INT’L STUD. 303, 316–17 (2008) [hereinafter Fougner, *Neoliberal Governance of States*] (arguing that national competitiveness is an unnatural, artificial characteristic of states, created by the proliferation of competitiveness indices).

<sup>29</sup> Compare Paul Krugman, *Competitiveness: A Dangerous Obsession*, FOREIGN AFF., Mar./Apr. 1994, at 28, 31, 39 (conceding that “[t]he competitive metaphor—the image of countries competing with each other in world markets in the same way that corporations do—derives much of its attractiveness from its seeming comprehensibility,” but arguing that “trying to define the competitiveness of a nation is much more problematic than defining that of a corporation”), with *National Competitiveness: Who Is Winning the Present?*, ECONOMIST (May 18, 2011, 3:57 PM), <http://www.economist.com/blogs/freeexchange/2011/05/national-competitiveness> (citing Hong Kong’s tie with the United States in the World Competitiveness Yearbook ranking and noting that critics such as Krugman “don’t live in places that have just topped a global league table for the first time”).

<sup>30</sup> As the pressure to compete increases, so does the proliferation of competitiveness indices. Scholars such as Tore Fougner, however, have argued that the causal relationship is reversed: Because competitiveness indicators backed by powerful institutions were able to generate large “buy-in” from the business community, government leaders gradually accepted the notion that countries should compete as a norm. Cf. Fougner, *Neoliberal Governance of States*, *supra* note 28, at 316–17 (pointing out that World Economic Forum (WEF) members represented the world’s 1000 leading companies and noting that “in a globalising world economy, responsible governments concerned with the welfare of their citizens are told that they cannot but attend to the competitiveness problem”). Regardless of the origin of competitiveness indicators, it is undeniable that the ability to compete is on the minds of leaders worldwide. See *supra* notes 3–4 (highlighting the public dialogue on competitiveness).

<sup>31</sup> See INDICATORS AS INTERVENTIONS, *supra* note 1, at vi (explaining that an indicator can implicitly embrace a specific theory of change).

<sup>32</sup> See DBI REPORT 2012, *supra* note 26, at i (indicating that the report covers economies at the country level); GCI REPORT 2012–2013, *supra* note 10, at 10 (same).

<sup>33</sup> GCI REPORT 2012–2013, *supra* note 10, app. at 46–48.

<sup>34</sup> DBI REPORT 2013, *supra* note 10, at 13.



economic development.<sup>35</sup> Not surprisingly, scholars have argued that the one-theory-fits-all approach of global indicators is too broad.<sup>36</sup> Local indicators, by virtue of focusing on a single country, are able to break through sub-national levels to focus on the myriad of actors below the national governments, thereby pinpointing the drivers of change particular to that country.

Second, global indicators tend to capture only information about legal practices that involve faithful compliance with applicable laws, whereas local indicators tend to measure actual practices.<sup>37</sup> This harkens back to practicality: In order to compare vastly different entities, indicators have to simplify and standardize.<sup>38</sup> Standardization (such as the USN rankings) eases decisionmaking but glosses over nuances and contexts that are critical to an in-depth understanding of the underlying social phenomena. While both global and local indicators are constrained by this occupational

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<sup>35</sup> See Sanjaya Lall, *Competitiveness Indices and Developing Countries: An Economic Evaluation of the Global Competitiveness Report*, 29 WORLD DEV. 1501, 1506 (2001) (“WEF indices assign uniformly higher values to freer trade, stronger intellectual property protection and more liberal capital accounts across countries.”); see also HERNANDO DE SOTO, *THE OTHER PATH* 132, 184 (1989) (arguing that “a law is ‘good’ if it guarantees and promotes economic efficiency and ‘bad’ if it impedes or disrupts it” and that the real cause of development is “an official set of legal and administrative institutions which encourages technical progress, specialization, exchanges, and investment”); Douglass C. North, *The New Institutional Economics and Third World Development*, in *THE NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT* 17, 17–26 (J. Harriss et al. eds., 1995) (pointing to institutions, including legal institutions, as the most critical element for the success of development efforts); cf. Frank K. Upham, *Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China*, 114 YALE L.J. 1675, 1692–95 (2005) (reviewing ZHU SULLI, SONG FA XIAXIANG: ZHONGGUO JICENG SIFAZHIDU YANJIU [Sending Law to the Countryside: Research on China’s Basic-Level Judicial System] (2000) (detailing the personal visits during which judges adjudicate conflicts in rural China and suggesting that arm’s-length legal norms are poor tools for Chinese rural life because rural disputes operate in “a web of obligations and expectations that constrains the bargaining process and narrows the range of acceptable outcomes”)).

<sup>36</sup> E.g., Kevin E. Davis & Michael B. Kruse, *Taking the Measure of Law: The Case of the Doing Business Project*, 32 LAW & SOC. INQUIRY 1095, 1103–16 (2007).

<sup>37</sup> See *id.* at 1106 (noting, for example, that business registration norms included in the DBI “do not take into account the possibility of the entrepreneur paying a bribe . . . even if this is customary”).

<sup>38</sup> Davis, Kingsbury & Merry, *supra* note 7, at 8. Political scientist James Scott terms this process of simplifying and standardizing as “seeing like a state.” See JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* 2–3 (1998) (describing statecraft as seeking to simplify communities so that they could be more easily governed). Borrowing imageries from scientists learning to understand natural forests, Scott argues that the process of simplification and standardization—much of what indicators do—is an inescapable step for systematic planning. See *id.* at 22–23 (“No administrative system is capable of representing any existing social community except through a heroic and greatly schematized process of abstraction and simplification.”). Because societies more often than not comprise “a reality so complex and variegated as to defy easy shorthand description,” the state must first transform societies into “neatly arranged constructs of science” before it can govern. *Id.* at 15, 22. In this sense, as flawed as indicators might be, they provide valuable systematic knowledge to policymakers.

hazard, the context-conscious framing of local indicators automatically mitigates some of these limitations. As discussed below, feedback and contestation add additional safeguards.

Third, as they claim factual and scientific authority, indicators themselves are increasingly subject to local feedback, often in the form of contestation such as “demands for transparency, participation, reasoning, and review.”<sup>39</sup> Contestation by local authorities is part of an important process because indicators have the power to create a hierarchy of authority and networks that otherwise might not have existed. As they gain popularity, indicators enhance the “governor” position of index producers, which, in turn, involves a wide range of actors: donors who fund the projects; consultants, economists, and statisticians who determine the technical authority of indicators; governmental agencies and individuals who coordinate the project; and, often in the final stage, international and governmental entities who give indicators their brand names.<sup>40</sup> The production of indicators can also pull together actors from different sectors and spheres, creating a network of highly educated, technically trained individuals.<sup>41</sup> As they cooperate and develop ideas, members within a network tend to influence one another, resulting in an even broader dissemination of particular methodologies or schools of thought.<sup>42</sup> For example, even within the small subset of five indicators concerned in this Note, the methodologies and data of the GCI underlie both the ASEAN (Association of Southeast Asian Nations) and Vietnam Competitiveness reports.<sup>43</sup> The PCI, as it looked for a scientific foothold in its pilot year, also adopted the methodology established by GCI, though it quickly diverged.<sup>44</sup>

Indicators’ technocratic nature can reduce transparency and discourage participation by local policymakers, who often lack the scientific training and resources needed to process data or resist evaluative tools produced by foreign consultants.<sup>45</sup> Yet local support is a key ingredient in

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<sup>39</sup> Davis, Kingsbury & Merry, *supra* note 7, at 15.

<sup>40</sup> See *id.* at 11–14 (outlining a triangular model of governance that examines relations between “governors,” “the governed,” and “the public”).

<sup>41</sup> See *id.* at 13–14 (noting that the production of indicators is a collective process akin to manufacturing a consumer product).

<sup>42</sup> See INDICATORS AS INTERVENTIONS, *supra* note 1, at 18 (noting that new sets of more focused, specialized indicators have spawned from the Human Development Index and DBI networks).

<sup>43</sup> For details on these five indicators, see Table 1, *infra* page 2269.

<sup>44</sup> Telephone Interview with Edmund Malesky, Primary Author and Lead Researcher for PCI Reports (Dec. 1, 2012). Because it was designed with Vietnam specifically in mind, the PCI quickly evolved to adapt to the local context. *Id.* For specific ways in which the PCI tailored its methodology to the Vietnamese context, see *infra* Part IV.A.

<sup>45</sup> See Davis, Kingsbury & Merry, *supra* note 7, at 18 (noting that those with special expertise are better equipped to contest governance through indicators).

the soundness of indicator design. During the input stage, a local government's blessing can enhance the robustness, accuracy, and consistency of data collection, which comes from local businesses and government agencies and can span many years. In the output stage, feedback from these actors can improve the models used to generate indices, which inevitably suffer from idiosyncratic errors that those with understanding of the local context can spot and address effectively. This bottom-up approach of indicators—termed “active indicators”—has been found more effective than the common passive, top-down approach of global indicators.<sup>46</sup>

Lastly, as countries evolve, indicators need to adapt; as social problems expand and contract, so must the measurement. Timely revisions to policy changes are essential to sustain an indicator's credibility and accuracy. Thus, indicator projects are not one-time brainstorming events but an iterative process that constantly reframes the issues and takes into account new information.<sup>47</sup> Learning and revisions also occur across measured entities: Lower-ranked nations and provinces can now identify better-performing peers, to whom they can look to emulate.<sup>48</sup> For global indicators, because they normalize across cultures and political systems, identification of better practices is only the start. The critical steps are in the “transplanting” and adapting of such practices in different cultural and political contexts.<sup>49</sup> By contrast, having eliminated country-specific variations, domestic indicators such as the PCI are more conducive to cross-province learning.<sup>50</sup>

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<sup>46</sup> See Stone, *supra* note 19, at 283–90 (finding that active indicators, which take into account local feedback and incorporate local leaders' ambitions, more accurately reflect police performance in Jamaica and Nigeria as compared to top-down “passive” indicators).

<sup>47</sup> See INDICATORS AS INTERVENTIONS, *supra* note 1, at x (noting that while the business model of indicators might prefer stability, updating indicators can draw welcome attention to index producers).

<sup>48</sup> For an example of how a province benefits from its peer's governance philosophy, see the case of Binh Phước discussed in U.S. AGENCY FOR INT'L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2012, at 36 (2013) [hereinafter PCI REPORT 2012].

<sup>49</sup> Simply transplanting norms from one society to another has been found to be ineffective. See, e.g., Daniel Berkowitz et al., *The Transplant Effect*, 51 AM. J. COMP. L. 163, 188–90 (2003) (finding that transplanted institutions achieve more success in countries which have endogenous demand for such institutions). For a thoughtful treatment of the process and results of transplanting commercial law in Vietnam, see generally JOHN STANLEY GILLESPIE, *TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A 'RULE OF LAW' IN VIETNAM* (2006). For a historical perspective of why certain transplanted institutions from China spread quickly in Vietnam while others were rejected, see generally ALEXANDER B. WOODSIDE, *VIETNAM AND THE CHINESE MODEL: A COMPARATIVE STUDY OF NGUYEN AND CH'ING CIVIL GOVERNMENT IN THE FIRST HALF OF THE NINETEENTH CENTURY* (1971).

<sup>50</sup> However, as the subnational model has been piloted in Cambodia and Sri Lanka, similar cross-country concerns arise and demand careful treatment before the model can be replicated. Telephone Interview with Edmund Malesky, *supra* note 44.

Recognizing that indicators are tremendous instruments of power, the next two Parts explore the business governance landscape in Vietnam and the set of global and local indicators that measure and shape this landscape.

## II

### GOVERNANCE WITH VIETNAMESE CHARACTERISTICS

An essential part of any case study is to understand the unique character of its subject. Yet to understand a country is a monumental task. This Part sketches a modest outline of Vietnam's business and economics governance structure, focusing on its decentralized nature and the "fence-breaking" practice<sup>51</sup> prevalent among provinces. This fence-breaking practice is noteworthy because it signals brewing competitions, legal deviations, and varied economic directions under the seemingly homogenized one-party state. Valuation of governance without accounting for provincial variations misses this critical characteristic.

Emerging from decades of war, Vietnam has transformed itself into one of Asia's success stories.<sup>52</sup> Since the introduction of the comprehensive economic reform *Doi Moi* ("Renovation") in 1986,<sup>53</sup> its economy has expanded faster than any other Asian economy except China's.<sup>54</sup> From 2005 to 2010, amidst the global economic downturn, Vietnam managed to sustain an average growth rate of 7% annually.<sup>55</sup> This furious pace of development has helped lift thirty-five million people (over a third of the Vietnamese population) out of poverty, knocking the poverty rate from

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<sup>51</sup> "Fence breaking" refers to the tendency of provinces to violate restrictive central government regulations. See *infra* notes 67–71 and accompanying text (describing this practice and its consequences).

<sup>52</sup> For an overview of Vietnam's modern history from the French colonial period to the war with the United States, see generally LIEN-HANG T. NGUYEN, *HANOI'S WAR: AN INTERNATIONAL HISTORY OF THE WAR FOR PEACE IN VIETNAM* (2012). For a recent assessment of Vietnam's economic performance and high growth, see Marco Breu & Richard Dobbs, *The New Asian Tiger?*, FOREIGN POL'Y (Feb. 23, 2012) [http://www.foreignpolicy.com/articles/2012/02/23/the\\_new\\_asian\\_tiger](http://www.foreignpolicy.com/articles/2012/02/23/the_new_asian_tiger).

<sup>53</sup> *Doi Moi* is a comprehensive reform policy to transform Vietnam from central planning to a "socialist market economy under state guidance." Melanie Beresford, *Doi Moi in Review: The Challenges of Building Market Socialism in Vietnam*, 38 J. CONTEMP. ASIA 221, 221 (2008) (documenting the success and shortcomings of *Doi Moi* in stimulating private sectors). For sample literature on the history, evolution, and results of the reform, see generally Susie Jacobs, *Doi Moi and Its Discontents: Gender, Liberalisation, and Decollectivisation in Rural Vietnam*, 13 J. WORKPLACE RTS. 17 (2008); SOCIOECONOMIC RENOVATION IN VIET NAM: THE ORIGIN, EVOLUTION, AND IMPACT OF *DOI MOI* (Peter Boothroyd & Pham Xuan Nam eds., 2000); Adam Wagstaff & Nga Nguyet Nguyen, *Poverty and Survival Prospects of Vietnamese Children Under Doi Moi* (World Bank Policy Research, Working Paper No. 2832, 2002).

<sup>54</sup> MARCO BREU ET AL., MCKINSEY GLOBAL INSTITUTE, *SUSTAINING VIETNAM'S GROWTH: THE PRODUCTIVITY CHALLENGE* 10 (2012).

<sup>55</sup> *Id.* at 9.

58% in 1993 to 14% in 2008.<sup>56</sup> As Vietnam's economy rapidly expands, the country's legal system struggles to keep up. Membership in ASEAN in 1995 and the World Trade Organization (WTO) in 2007 marked a series of major legal reforms, from land law to business registration to investment procedures,<sup>57</sup> which aim to make Vietnam's economy more accessible to foreign investors and foster trade liberalization.

That Vietnamese leaders increasingly realized that the private sector and trade play an important role in economic development is a well-documented paradigm shift.<sup>58</sup> By contrast, the complex internal development patterns and roles of local leaders are often less well understood.<sup>59</sup> Twenty years of decentralization has afforded local leaders—once subject to strong central economic planning and Soviet-style five-year plans—considerable space in shaping their provinces' economic directions while operating under a one-party government.<sup>60</sup> Redefining central-local

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<sup>56</sup> *Results Profile: Development Progress in Vietnam*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/VIETNAMEXTN/0,,contentMDK:22539306~pagePK:1497618~piPK:217854~theSitePK:387565,00.html> (last visited Oct. 27, 2013).

<sup>57</sup> For a comprehensive study of Vietnam's commitment to join the WTO, see *Accessions: Vietnam*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_vietnam\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_vietnam_e.htm) (last visited Oct. 27, 2013). For a practical guide on WTO reforms relating to business and investment registrations, see MAYER BROWN JSM, *GUIDE TO DOING BUSINESS IN VIETNAM* (2011), available at <http://www.mayerbrown.com/files/Publication/d50296ec-1a78-426f-bb80-19f26d82e709/Presentation/PublicationAttachment/6eeb39de-959d-42fa-ab19-1ff1b31fd815/Mayer%20Brown%20JSM%20Guide%20to%20Doing%20Business%20in%20Vietnam.pdf>.

<sup>58</sup> See, e.g., Muthukumara Mani & Shreyasi Jha, *Trade Liberalization and the Environment in Vietnam 2* (World Bank Policy Research, Working Paper No. 3879, 2006) (noting that Vietnam's increasing trade liberalization is fueled by its commitment to multilateral and bilateral treaties with ASEAN and the United States); Nguyen Phuon Quynh Trang & Jonathan R. Stromseth, *Business Associations in Vietnam: Status, Roles and Performance* (Asia Found., Paper No. 13, 2012) (documenting the rise of business associations in Vietnam, particularly the Vietnam Chamber of Commerce and Industry (VCCI)).

<sup>59</sup> The lead economist of the PCI, Edmund Malesky, pioneered this area of study by documenting the post-*Doi Moi* economic breakthrough. By cooperating with foreign investors, provincial leaders were able to exceed the mandatory fiscal targets set by the central government and keep surplus revenues for their provinces. See generally Edmund J. Malesky, *Straight Ahead on Red: How Foreign Direct Investment Empowers Subnational Leaders*, 70 J. POL. 97 (2008) (finding that increases in foreign direct investment correlated with increases in provincial leaders' economic reform experiments); Edmund Malesky, *At Provincial Gates: The Impact of Foreign Direct Investment on Local Autonomy and Economic Reform* (Aug. 2004) (unpublished Ph.D. dissertation, Duke University) (on file with the *New York University Law Review*) (analyzing the role of foreign direct investment in empowering pro-reform provincial governments against Vietnam's more hesitant central government).

<sup>60</sup> Some scholars credit this local-central dynamic to the observation that provinces were more eager than the central government to transition from central planning to a market economy. E.g., Hubert Schmitz et al., *Who Drives Economic Reform in Vietnam's Provinces?* 14 (Inst. of Dev. Studies, Research Report No. 76, 2012). Faced with increasingly robust private activities and lacking centralized procedures to regulate and collect tax, the central government adopted a pragmatic solution: slowly diffusing private sector management power to provinces. See *id.* at

relations has been a core element of the public administration reform program, officially endorsed by the National Party Congress in 1995.<sup>61</sup> The reform program advocated for the informal decentralization of power in administrative tasks and fiscal responsibilities, culminating in formal decentralization by law.<sup>62</sup> As a result, provincial leadership, while supervised by the central standing committee, was granted wide liberty in fiscal reforms. Local leaders now have the authority to make long- and short-term plans on economic development, as well as regulations on land use, business registration processes, and education.<sup>63</sup> In addition, the Budget Law of 2002, which outlines the formulas for revenue-sharing between local and central government, created clear incentives for provinces to attract enterprises and investment.<sup>64</sup> Provinces were also given discretion in determining expenditure assignments, previously pre-specified in budget laws, within their sub-units (districts and communes).<sup>65</sup> Fiscal and administrative decentralization thus afforded provincial leaders the control and flexibility to manage their provinces and the incentives to strive for fiscal surplus.<sup>66</sup>

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14–15 (documenting the political debates leading to a law formalizing administrative decentralization).

<sup>61</sup> See Thaveeporn Vasavakul, *Rebuilding Authority Relations: Public Administration Reform in the Era of Doi Moi*, ASIAN DEV. BANK, 7–9 (May 24, 2002), available at <http://www.vietnamconsult.de/elib/data/76.%20Theveporn%20Authority%20Relations%20%20%202002.pdf> (documenting the process of power sharing after *Doi Moi* was announced in 1986). For the motivations behind decentralization, including efficiency advantages due to local knowledge and proximity, poverty reduction, and greater accountability, see Hoang-Phuong Nguyen, *What Is in It for the Poor? Evidence from Fiscal Decentralization in Vietnam*, 19 J. PUB. & INT'L AFF. 69, 71–73 (2008).

<sup>62</sup> See Decree 60/2003/NĐ-CP (Viet.) (specifying the revenue-sharing formulas between central and provincial government); Resolution 08/2004/NQ-CP (Viet.) (formally transferring public management power of private sector development to provincial governance units); Decree 108/2006/NĐ-CP (Viet.) (the central government retains approval rights over certain infrastructure and mining projects).

<sup>63</sup> See sources cited *supra* note 62 (describing the relative power of central and local governments with respect to revenues and expenditures, management and planning, and promotion and regulation of investment).

<sup>64</sup> Provincial budgets are not obligated by law to share with central budgets tax revenues from land use fees, land rental, license fees, and registration fees (including business registration fees), among others. PHAM LAM HUONG, VIETNAM CENT. INST. FOR ECON. MGMT., *FISCAL DECENTRALIZATION FROM CENTRAL TO SUBNATIONAL GOVERNMENT IN VIETNAM* 7 (2006). Significantly, provinces are allowed to retain a share of collections that exceed the targeted tax amounts, including not only local and shared taxes but also the taxes assigned 100% to the central government. See Jorge Martinez-Vazquez, *Making Fiscal Decentralization Work in Vietnam* 26–29 (Georgia State Univ., Working Paper 04–04, 2004) (charting revenue sources for subnational governments in Vietnam).

<sup>65</sup> See Martinez-Vazquez, *supra* note 64, at 11 (charting assignment of expenditure responsibilities in Vietnam).

<sup>66</sup> International organizations operating in Vietnam have learned to adapt to this power structure. See, e.g., Dejana Popic & Mahesh Patel, *Decentralization: Equity and Sectoral Policy Implications for UNICEF in East-Asia and the Pacific* 17 (UNICEF, Working Paper, 2011),

Decentralization amplifies a local-central dynamic: the tendency to violate restrictive central government regulations, known as the “fence-breaking” phenomenon.<sup>67</sup> Vietnamese provincial leaders, endowed with management authority over land use and tax administration, compete for investment by offering businesses tax holidays and quicker land access.<sup>68</sup> Fence-breaking became so widespread that in 2006, the Prime Minister publicly denounced thirty-two provinces found to be engaging in extralegal incentives and mandated a stop to the practice.<sup>69</sup> On the other hand, as some scholars put it, “when there is fence-breaking on so large a scale, the real problem may not lie in the act of breaking the fence, but with the fence itself.”<sup>70</sup> There is thus a need to evaluate the current legal framework governing provinces’ economic management and determine whether extralegal incentives indeed harm national interests (in which case enforcement mechanisms should be put in place) or whether they prove to be beneficial (in which case the restrictive fence should be fixed or dismantled, as the government has done before).<sup>71</sup>

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available at [http://www.unicef.org/eapro/1\\_Decentralization\\_and\\_Equity\\_Working.pdf](http://www.unicef.org/eapro/1_Decentralization_and_Equity_Working.pdf) (“UNICEF Vietnam has correctly shifted . . . to engage with provincial government levels instead, due to the realization that the real power over resource allocations rests with provinces (50-70% total government spending is done at the provincial level).”); *id.* at 39–40 (noting that because the Vietnamese health system operates in a four-tiered structure, “[a]ppropriate assignment of health functions and responsibilities to the right levels of government and health system entities is a huge challenge and an ongoing effort”).

<sup>67</sup> Fence breaking (*xé rào*) was originally used to describe local authorities’ violations of rigid central planning policies pre-*Đổi Mới* in the early 1980s, such as leasing cooperative farmlands to households or engaging in free-market selling of goods. OECD, SHAPING POLICY REFORM AND PEER REVIEW IN SOUTHEAST ASIA: INTEGRATING ECONOMICS AMID DIVERSITY 224–25 (2008). Amusingly, when such then-illegal practices led to economic success, they were reclassified as “pilot projects” and adopted nationally. Dennis Arroyo, *The Political Economy of Successful Reform: Asian Stratagems* 13 (Stanford Ctr. for Int’l Dev., Working Paper No. 356, 2008).

<sup>68</sup> See U.S. AGENCY FOR INT’L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2010, at 58–59 (2011) [hereinafter PCI REPORT 2010] (noting that sixty percent of surveyed foreign firms received tax incentives from competing provinces); VU THANH TU ANH ET AL., UNITED NATIONS DEV. PROGRAM, PROVINCIAL EXTRALEGAL INVESTMENT INCENTIVES IN THE CONTEXT OF DECENTRALISATION IN VIET NAM: MUTUALLY BENEFICIAL OR A RACE TO THE BOTTOM? 15 (2007) (citing a Ministry of Finance audit finding extralegal incentives relating to land and tax in thirty-two out of forty-eight provinces surveyed); cf. Edmund J. Malesky, *Push, Pull, and Reinforcing: The Channels of FDI Influence on Provincial Governance in Vietnam*, in BEYOND HA NOI: LOCAL GOVERNMENT IN VIETNAM 289–90, 292, 304 (Benedict J. Tria Kerkvliet & David G. Marr eds., 2004) (arguing that fence-breaking encourages foreign direct investment, which in turn promotes greater provincial proactivity and dynamism in solving problems not covered by central laws).

<sup>69</sup> Resolution 1387/2005/QĐ-TTĐ art. 2, ¶ 1 (Dec. 29, 2005) (Viet.); see also VU ET AL., *supra* note 68, at 18–19 (noting that only six provinces acknowledged violations).

<sup>70</sup> VU ET AL., *supra* note 68, at 18.

<sup>71</sup> See Arroyo, *supra* note 67, at 13 (noting instances when once-illegal practices were reclassified as “pilot projects” and adopted for national reforms).

## III

## VIETNAM THROUGH THE LENS OF COMPETITIVENESS INDICES

This Part introduces the three most significant indices that shape the conversation on business governance in Vietnam. At the macro level, well-known competitiveness rankings such as the DBI and the GCI rank Vietnam's business environment against more than 140 other countries worldwide. By contrast, the PCI, the most micro-level index in this study, ranks the business governance of sixty-three provinces within Vietnam. Two other evaluators, the ASEAN Competitiveness Report and the Vietnam Competitiveness Report, are both under the direction of Professor Michael E. Porter, a primary author of the GCI. These evaluators do not rank. The former repackages GCI data under Porter's methodologies to assess economic performances of countries in the ASEAN compact, while the latter uses data from various sources, including the GCI and the PCI, to assess national management of the economy. This Part explores how the DBI, GCI, and PCI rankings portray Vietnam.

A. *Global Assessments*

Both the DBI and GCI currently place Vietnam below the international average. In the assessment by the GCI, Vietnam struggles to stay above the median. Its ranking slipped from a record high of 59th in 2010 to 65th in 2011 to 75th in 2012.<sup>72</sup> According to the report, the drop resulted from its macroeconomic environment indicator tanking due to high inflation. Most pessimistically, “[p]ublic institutions are characterized by rampant corruption and inefficiencies of all kinds” while “[p]rivate institutions suffer from poor ethics and particularly weak accountability.”<sup>73</sup> The drops in ranking were reported in an alarming tone in Vietnamese media, which tartly pointed out that Vietnam trumped only Cambodia—a country with much lower GDP per capita—in the ASEAN member group.<sup>74</sup> An outspoken economist from the Central Institute for Economic Management, a think tank under the Ministry for Planning and Investment

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<sup>72</sup> WORLD ECON. FORUM, GLOBAL COMPETITIVENESS REPORT 2010–2011, at 16 (2010) [hereinafter GCI REPORT 2010–2011]; WORLD ECON. FORUM, GLOBAL COMPETITIVENESS INDEX 2011–2012, at 30–31 (2011) [hereinafter GCI REPORT 2011–2012]; GCI REPORT 2012–2013, *supra* note 10, at 30.

<sup>73</sup> GCI REPORT 2012–2013, *supra* note 10, at 30.

<sup>74</sup> E.g., *Không Nên Để Năng Lực Cạnh Tranh Rớt Mãi* [Let's Not Let Vietnam's Competitiveness Ranking Drop Again], VNEXPRESS.NET (Sept. 8, 2012, 4:05 AM), <http://vnexpress.net/gl/kinh-doanh/2012/09/khong-nen-de-nang-luc-canhh-tranh-vn-rot-mai/>; *Việt Nam Tụt 10 Hạng Về Năng Lực Cạnh Tranh Toàn Cầu* [Vietnam Drops 10 Rankings in Global Competitiveness], VNECONOMY.VN (Sept. 5, 2012, 9:09 PM), <http://vneconomy.vn/20120905084319871P0C9920/viet-nam-tut-10-hang-ve-nang-luc-canhh-tranh-toan-cau.htm>.



TABLE 1: INDICES MEASURING BUSINESS GOVERNANCE IN VIETNAM

Index	Publisher	Years in Operation	Level	Stated Purpose	Assessed Entities
Doing Business Index (DBI)	World Bank	2003 to Present (10 annual reports)	Global	"provides objective measures of business regulations and their enforcement . . . at the subnational and regional level" <sup>75</sup>	185 economies
Global Competitiveness Report (GCI Report)	World Economic Forum	1979 to Present	Global	"assesses the competitiveness landscape . . . , providing insight into the drivers of [the assessed countries'] productivity and prosperity" <sup>76</sup>	148 economies
ASEAN Competitiveness Report	Asia Competitiveness Institute (Singapore)	2010 (1 report)	Regional	"inaugural assessment of the region's competitiveness" using raw data collected by the World Economic Forum <sup>77</sup>	8 ASEAN member countries
Vietnam Competitiveness Report (VCR)	Vietnam Central Institute for Economic Management & Asia Competitiveness Institute (Singapore)	2010 (1 report)	National	"broad assessment of Vietnam's current competitiveness, an analysis of the key challenges and opportunities ahead, and a proposal for an economic strategy" <sup>78</sup>	Vietnam
Provincial Competitiveness Index (PCI)	Vietnam Chamber of Commerce and Industry & USAID	2005 to Present (8 annual reports)	Provincial	"collective voice of private entrepreneurs in Vietnam regarding economic governance in their province and the country" <sup>79</sup>	Vietnam's 63 provinces

(and sponsor of the Vietnam Competitiveness Report), concurred with the WEF's assessment of Vietnam's grim macroeconomic outlook, noting that the central government's overly aggressive credit-tightening measures resulted in a detriment to access to credit.<sup>80</sup> Despite its recent unfavorable assessments, the GCI is still prominently featured in Vietnamese media, op-eds, and political speeches.<sup>81</sup> Its strongest influence is manifested

<sup>75</sup> *About Doing Business*, DOING BUSINESS: MEASURING BUSINESS REGULATIONS, <http://www.doingbusiness.org/about-us> (last visited Oct. 27, 2013).

<sup>76</sup> *Global Competitiveness*, WORLD ECON. FORUM, <http://www.weforum.org/issues/global-competitiveness> (last visited Oct. 27, 2013).

<sup>77</sup> ASEAN COMPETITIVENESS REPORT 2010, *supra* note 4, at xiv–xv.

<sup>78</sup> PORTER ET AL., *infra* note 163, at 14.

<sup>79</sup> PCI REPORT 2012, *supra* note 48, at xiii.

<sup>80</sup> *Let's Not Let Vietnam's Competitiveness Ranking Drop Again*, *supra* note 79.

<sup>81</sup> For frequently cited op-eds, see, for example, Lê Đăng Doanh, *Phân Cấp Mạnh Nhưng Năng Lực Cạnh Tranh Không Tăng* [Strong Administrative Decentralization but Competitiveness Stalls], SAIGON TIMES (Nov. 22, 2009, 9:44 AM), <http://www.thesaigontimes.vn/Home/diendan/sotay/25542/> (noting further decentralization

through the commissioning of the Vietnam Competitiveness Report and the establishment of a national competitiveness-oversight body, both arising from a rapport between Prime Minister Nguyen Tan Dung and Professor Michael E. Porter.<sup>82</sup>

The DBI is more optimistic, noting improvements relating to business governance, such as allowing businesses to use self-printed value added tax invoices,<sup>83</sup> and requiring higher standards of accountability for company directors.<sup>84</sup> While 2010 seems to be the best performing year for Vietnam in both indices, their proffered reasoning differed. The DBI mentioned Vietnam's implementation of one-stop-shop business-registration procedures,<sup>85</sup> cost savings in construction permits,<sup>86</sup> and an improved credit-rating system.<sup>87</sup> The GCI, on the other hand, cited general factors such as an "efficient labor market," "impressive innovation potential," and "relatively large market size."<sup>88</sup> While the highlights reflect the different focuses of the two reports (firm-level impact and macro-level analysis, respectively), both treat Vietnam as a monolithic entity—as they must, to be able to cover a broad swath of economies. At the same time, in light of

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regarding foreign direct investment and industrial zone management post-WTO entry in the face of slipping competitiveness rankings); Vũ Xuân Tiền, *Lại Tụt Hạng! [Another Ranking Drop!]*, SAIGON TIMES (Sept. 18, 2009, 12:00 PM), <http://www.thesaigontimes.vn/Home/toisu/sukien/23550/> (noting that Vietnamese officials have attempted to contest the World Economic Forum's assessment without being able to point out the technical mistakes of the GCI, and that the best response by Vietnam is to respect and internalize feedback). For news articles, see, for example, *Năng Lực Cạnh Tranh Toàn Cầu và Khả Năng Thu Hút Đầu Tư Việt Nam [Global Competitiveness and Vietnam's Ability to Attract Investment]*, VIET. FIN. EXPRESS (Sept. 7, 2012), <http://vfpres.vn/threads/nang-luc-can-tranh-toan-cau-va-kha-nang-thu-hut-dau-tu-viet-nam.3775/> (discussing the World Economic Forum's analysis of Vietnam's competitiveness based on twelve criteria); *Năng Lực Cạnh Tranh Toàn Cầu: Việt Nam Chỉ Còn Hơn Campuchia ở ASEAN [Global Competitiveness in ASEAN: Vietnam Only Ranks Higher Than Cambodia]*, SONGMOI.VN (Sept. 5, 2012, 11:08 PM), <http://songmoi.vn/kinh-te-thi-truong/nang-luc-can-tranh-toan-cau-viet-nam-chi-con-hon-campuchia-o-asean> (discussing Vietnam's drop in competitiveness and listing specific categories where Vietnam struggled, including inflation, infrastructure, and corruption); sources cited *supra* note 79 (discussing Vietnam's drop in GCI rankings).

<sup>82</sup> See *infra* notes 163–65 and accompanying text (describing the Vietnam Competitiveness Report and its recommendations).

<sup>83</sup> DBI REPORT 2013, *supra* note 10, at 144 (noting that allowing businesses to use self-printed value added tax invoices makes starting businesses easier).

<sup>84</sup> DBI REPORT 2012, *supra* note 26, at 76.

<sup>85</sup> See WORLD BANK, DOING BUSINESS 2011: MAKING A DIFFERENCE FOR ENTREPRENEURS 143 (2010) [hereinafter DBI REPORT 2011] ("Vietnam eased company start-up by creating a one-stop shop that combines the processes for obtaining a business license and tax license and by eliminating the need for a seal for company licensing.").

<sup>86</sup> See *id.* ("Vietnam made dealing with construction permits easier by reducing the cost to register newly completed buildings by 50% and transferring the authority to register buildings from local authorities to the Department of National Resources and Environment.").

<sup>87</sup> See *id.* ("Vietnam improved its credit information system by allowing borrowers to examine their own credit report and correct errors.").

<sup>88</sup> GCI REPORT 2010–2011, *supra* note 77, at 30.

the decentralized nature of the economy,<sup>89</sup> fence-breaking practices,<sup>90</sup> and the fact that the criteria measured sometimes fall under the authority of both national and provincial leadership,<sup>91</sup> these broad descriptions are less helpful for identifying key responsible actors, thereby making it difficult to provide the correct incentive and pinpoint accountability.

### B. Local Assessments

The launch of the PCI was named one of Vietnam's top ten most important economic events in 2005.<sup>92</sup> Its promulgation was part of an overarching initiative funded by the U.S. Agency for International Development (USAID).<sup>93</sup> USAID launched the Vietnam Competitiveness Initiative (VNCI) in two phases.<sup>94</sup> Phase I (2003–2008) aimed at studying Vietnam's economic governance, which includes the development of the PCI as a diagnostic tool to “increase the competitiveness of small and medium-sized enterprises (SMEs) in Vietnam.” Phase II (2008–2013) targeted the implementation of the reforms identified in Phase I.<sup>95</sup> Project

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<sup>89</sup> See *supra* notes 58–66 and accompanying text (describing administrative and economic decentralization).

<sup>90</sup> See *supra* notes 68–71 and accompanying text (describing the fence-breaking practice and its consequences).

<sup>91</sup> See *infra* notes 120–22 and accompanying text (explaining that property rights fall under national authority but procedures relating to land-use rights are provincially controlled).

<sup>92</sup> U.S. AGENCY FOR INT'L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2007, at 5 (2007) [hereinafter PCI REPORT 2007]. Since then, PCI statistics have been quoted in speeches by the former Prime Minister and hundreds of domestic news articles and cited frequently in provincial documents to introduce legislation. *Id.*; see also PCI REPORT 2012, *supra* note 48, at 30–31 (noting the trend in which provinces increasingly reference PCI scores in legislative documents). Most recently, the *Economist* cited a PCI finding in an article concerning Vietnam's corruption crackdown. *Vietnam: Is Thanh the Man?*, *ECONOMIST*, Jan. 26, 2013, at 39 (citing a VCCI finding that fifty percent of businessmen admitted to bribery). As the index producer amusingly noted, the PCI even found its way into the final question of a popular television game show, “[r]eflecting the extent to which the PCI has entered into wider social awareness.” PCI REPORT 2007, *supra*, at 5.

<sup>93</sup> See *About VNCI*, VIETNAM COMPETITIVENESS INITIATIVE, [www.vnci.org/about-us](http://www.vnci.org/about-us) (last visited Oct. 27, 2013). Created by an executive order issued by President John F. Kennedy after the passage of the Foreign Assistance Act of 1961, the U.S. Agency for International Development (USAID) has provided over \$200 million of aid to Vietnam since 2000. *USAID History*, USAID, <http://usaid.gov/who-we-are/usaid-history> (last visited Oct. 27, 2013); *USAID/Vietnam: A Growing Development Partnership*, EMBASSY OF THE UNITED STATES, HANOI, VIETNAM, <http://vietnam.usembassy.gov/usaid.html> (last visited Oct. 27, 2013).

<sup>94</sup> VIETNAM COMPETITIVENESS INITIATIVE, <http://www.vnci.org/> (last visited Oct. 27, 2013). The Initiative was launched after a two-year pilot study of five countries in Southeast Asia: Cambodia, Indonesia, the Philippines, Thailand, and Vietnam. J.E. AUSTIN ASSOCS. VIETNAM REPRESENTATIVE OFFICE, VIETNAM COMPETITIVENESS INITIATIVE (VNCI) 1 (on file with the *New York University Law Review*). The Initiative funded a series of conferences to introduce the concept of competitiveness and test reception among entrepreneurs, business stakeholders, and government leaders in these countries. *Id.*

<sup>95</sup> *About VNCI*, VIETNAM COMPETITIVENESS INITIATIVE, *supra* note 93 (explaining the

30, a major element of Phase II, would create the first systematic inventory of all business regulations at four governance levels (national, provincial, district, and commune), followed by a process to eliminate unnecessary regulations.<sup>96</sup> The development of the PCI was intended to create a diagnostic tool to identify problematic procedures from business perspectives and, among other uses, a feedback channel to evaluate the success of Project 30.<sup>97</sup>

Significantly, the PCI represents the first systematic, standardized study of Vietnam's highly decentralized economy, thereby enabling local leaders and business communities in Vietnam to "see like a state."<sup>98</sup> In its most basic form, the PCI seeks to represent "the collective voice of private entrepreneurs in Vietnam regarding economic governance in their province and the country."<sup>99</sup> The annual PCI reports collect business opinions of nearly 7000 local small and medium enterprises (SME) operating in Vietnam's sixty-three provinces. It then ranks these provinces on nine business-attractiveness axes, including legal institutions, access to land, informal charges, business registration processes, and leadership creativity.<sup>100</sup> Controlling for initial endowments such as infrastructure and proximity to major markets, the PCI "necessarily focuses on policies and initiatives that could be changed in a relatively short period and for which

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major goals and components of VNCI Phases I and II).

<sup>96</sup> See OECD, ADMINISTRATIVE SIMPLIFICATION IN VIET NAM 40 (2011) (explaining the methodology of Project 30). Project 30 was so named because it aims to "[s]implify at least 30% of administrative procedures and reduce administrative costs by at least 30%." *Id.* In late 2008, the Vietnamese government announced the launch of a government website, created with USAID technical assistance, that enables individuals and organizations to track the progress of Project 30 and submit their own suggestions. See Press Release, Embassy of the United States in Hanoi, Vietnam, Vietnam Unveils Administrative Reform Website with U.S. Assistance (Dec. 31, 2008), available at <http://vietnam.usembassy.gov/pr123108.html>; see also VAN PHONG CHINH PHU CUC KIEM SOAT THU TUC HANH CHINH [GOV'T VIET. OFF. ADMIN. INSPECTION], <http://www.thutuchanhchinh.vn/> (last visited Oct. 27, 2013) (detailing the Prime Minister's description of the project as simplifying administrative procedures). As of 2009, over 5700 administrative procedures, 9000 regulating documents, and 100,000 administrative procedure inventory forms have been categorized and made available online. OECD, *supra*, at 50.

<sup>97</sup> See Tran Huu Huynh, Head, VCCI Legal Dep't, Presentation on the Provincial Index (on file with the *New York University Law Review*) (noting the PCI supports Project 30 by seeking to "identify troublesome administrative procedures" and "[s]erve as [a] monitoring tool to the implementation of administrative procedure reform in localities"); see also Lam Quang Minh, Director, Da Nang Inv. Promotion Ctr., Presentation Report on Recommendations to Improve the Provincial Competitiveness Index of Da Nang City (May 2010), at 7 ("Project 30 is a reform agenda in which 'people know, people discuss, people implement.' Meanwhile, PCI focuses on the stage when 'people supervise.'").

<sup>98</sup> See generally SCOTT, *supra* note 38, at 11 (describing how states can benefit from studies that systematically organize and simplify information). I thank Professor Frank Upham for this thought.

<sup>99</sup> U.S. AGENCY FOR INT'L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2011, at xiii (2012).

<sup>100</sup> *Id.* at 11.

the provincial leadership is primarily responsible.”<sup>101</sup> In other words, the study attempts to be “a theoretical exercise where provincial leaderships are interchangeable,” such that PCI scores and rankings essentially rate provincial leaders’ performance when they are constrained by similar resources.<sup>102</sup>

Its findings, the PCI asserts, show that “good economic governance can improve the private sector performance of any province, regardless of its initial endowment.”<sup>103</sup> The PCI findings that big, rich cities such as Ho Chi Minh City and Hanoi trailed mountainous provinces such as Lao Cai in leadership performance triggered surprise and renewed pride in traditionally poorer, isolated locales.<sup>104</sup> Furthermore, by identifying good governance already found in Vietnam (as opposed to measuring local performance against other countries’ practices), the PCI seeks to identify realistic and nearby role models for other provinces, many of which have sent delegates to study their high-ranking peers.<sup>105</sup>

Though it is sponsored by a U.S. agency and headed by an American economist, the PCI is known to local businesses and government leaders mainly through its powerful local sponsor, the Vietnam Chamber of Commerce and Industry (VCCI). The VCCI is a national business association with roots under the Ministry of Commerce; it has a permanent seat on the National Assembly and participated directly in drafting the 2005 Enterprise Law—a major business governance reform.<sup>106</sup> The PCI is able to achieve a credible reputation thanks in large part to the VCCI’s proactivity. After the launch of the PCI reports, the VCCI team traveled to provinces—especially low-ranking ones—and organized diagnostic workshops to explain the index’s methodologies and findings.<sup>107</sup> This facilitated an immediate dialogue between index producers and, many times,

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<sup>101</sup> U.S. AGENCY FOR INT’L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2005, at 7 (2006) [hereinafter PCI REPORT 2005].

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> See, e.g., PCI 2011: Lào Cai và Bắc Ninh ‘vượt vũ môn’ ngoạn mục [*Lào Cai and Bắc Ninh Pass Spectacularly Through a Difficult Gate*], VCCI (Feb. 23, 2012, 10:58 AM), <http://www.vcci.com.vn/tin-vcci/201202231056822/pci-2011-lao-cai-va-bac-ninh-vuot-vu-mon-ngoan-muc.htm> (reporting the surprising triumph of two poorer mountainous provinces in PCI rankings over big cities).

<sup>105</sup> For an example of how a province benefits from its peer’s governance philosophy, see the case of Bình Phước discussed in PCI REPORT 2012, *supra* note 48, at 35–37.

<sup>106</sup> See Nguyen & Stromseth, *supra* note 58, at 33 (“During the drafting of the landmark Enterprise Law, . . . the government facilitated more extensive business participation in law-making by including VCCI officials on the drafting bodies themselves.”).

<sup>107</sup> After the release of PCI reports, VCCI has consistently traveled to between twenty-five and thirty provinces, many of them in the bottom quartile. Telephone Interview with Edmund Malesky, *supra* note 44.

disheartened government officials. Such communications both improve the indicator and generate “buy-in” by provincial leaders, who felt that their concerns were heard and their opinions incorporated.<sup>108</sup> In fact, one such dialogue was credited for the cooperation of Ha Tay, the bottom-ranked province during the PCI’s first report, in a time of tension when the legitimacy of the PCI was on shaky ground.<sup>109</sup> The strong presence of the VCCI is no doubt a key factor in the high participation rate of SMEs and provincial support. Attempts to replicate the PCI models in Cambodia and Sri Lanka, in the absence of similar strong sponsorship institutions, never quite achieved the same robustness that the PCI did in Vietnam.<sup>110</sup>

In sum, the influence of the VCCI and PCI reports on provincial governance should not be underestimated. In less than a decade since its inauguration in 2005, the PCI has become a major propeller for pro-business reforms promulgated by provincial leaders: At least twenty-eight, or nearly half of Vietnam’s provinces, have issued economic reforms that cited the PCI reports, many of which were devoted to remedying specific PCI-highlighted problems.<sup>111</sup> Reforms encouraged by the PCI include creative efforts such as publicizing provincial leaders’ personal cellphone numbers to provide businesses with immediate access when need arises.<sup>112</sup> One province even directly incorporates the PCI into its promotion criteria of provincial cadres.<sup>113</sup> The PCI producers themselves told an anecdote about the great benefits and potential dangers of the PCI’s operations in Vietnam: In 2007, when an entrepreneur threatened publicly to give an unsatisfactory rating to the province of Binh Duong—which had just topped the PCI twice in a row in 2005 and 2006—unless it repealed an import restriction on technology, the provincial officials rescinded the offending legal document within the month.<sup>114</sup>

The above story illustrates how indicators are commonly double-edged swords: It is undeniable that the PCI has given bargaining power and leverage to once-marginalized small businesses and entrepreneurs in Vietnam. At the same time, the index producers themselves recognized that numeric rankings have the potential to be “manipulated by interest groups

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> See PCI REPORT 2012, *supra* note 48, at xv, 33–38 (documenting case studies on PCI-related reforms).

<sup>112</sup> See *id.*

<sup>113</sup> See *id.* at 35 (“[T]he Binh Phuoc People’s Committee made PCI scores a criterion for the internal evaluation and promotion of its officials.”).

<sup>114</sup> See Edmund J. Malesky & Nina Merchant-Vega, *A Peek Under the Engine Hood: The Methodology of Subnational Economic Governance Indices 1* (Asia Found., Occasional Paper No. 5, Mar. 2011).

and other actors for political or personal gain.”<sup>115</sup> The index producers assert that sound and transparent methodologies ameliorate this risk because the PCI will lose its credibility if it does not accurately depict the provincial reality.<sup>116</sup> At the same time, as argued above, indicators have the power to *become* reality as they gain recognition and influence.<sup>117</sup> The PCI has tremendous power to shape local policymaking in areas (for example, in land access) that affect many stakeholders, business and non-business communities alike. Thus, sound and legitimate provincial reforms need to take into account not just an immediate, short-term change in ranking but also the long-term, multi-faceted effect of such reforms.

The next Part argues that in addition to acting as a major propeller for pro-business reforms, the PCI has also become an important way to contest much larger, well-known global indices.

#### IV

##### INTERACTIONS OF INDICATORS AND THEIR EFFECTS ON DOMESTIC POLICYMAKING

This Part seeks to provide a Vietnam-focused case study on the interactions among global and local indicators and the ways in which they affect local leaders’ thought processes in formulating legal norms and policies. I study this global-local dynamic along two specific dimensions: (A) local indicators as contestation of Vietnam’s mediocre rankings in global indicators, and (B) the roles of both in motivating domestic business governance reforms.

##### *A. Indicators as Technical Contestation*

Once modeled after GCI methodologies, the PCI, as it evolves with and incorporates local contexts, can be considered a local contestation of the technical validity of its international counterparts. This section discusses ways in which the PCI interacts with the GCI and DBI, resulting in local-specific improvements.

##### *1. The Local Indicator Employs Methodologies That Reflect Local Context*

In its pilot year, the PCI adopted the weighting methodology of the GCI and questionnaire wordings from the World Bank’s Investment

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<sup>115</sup> *Id.*

<sup>116</sup> *See id.* (noting that indicators “can only have . . . a profound influence if they are believed to provide an accurate description of the subnational environments they rank”).

<sup>117</sup> *See supra* notes 15–20 and accompanying text (describing ways in which indicators can shape the local understanding of a social issue).

Climate Surveys.<sup>118</sup> However, because its mandate from the start was to focus on Vietnam's provinces, its method immediately evolved away from that of the GCI.<sup>119</sup> First, the index had to reformulate the measurements to describe factors that provincial leaders can actually control, not those in exclusive hands of national leaders.<sup>120</sup> For example, property rights—measured by both the GCI and DBI—fall under national legislative power. However, the procedure for issuance and renewal of land use rights certificates,<sup>121</sup> takings, and processes for compensation are controlled at the provincial levels.<sup>122</sup> These procedures, not the general measure of property rights, are thus used as a factor in the PCI. Second, the questionnaires and measurements need to be tailored to the population concerned. The PCI noted that regulatory and business environment indicators, which varied to the highest degree in Vietnam, accounted for less than a third of WEF's analysis.<sup>123</sup> On the other hand, WEF reports included microeconomic factors such as company operations and strategies.<sup>124</sup> While helpful for cross-national comparisons, such measures of company sophistication would be premature for the majority of survey respondents in an economy like Vietnam's, where a large number of firms are family-owned. Another bias, a critic points out, is that the GCI methodology rewards free market economies and trade liberalization, automatically favoring developed countries whose systems are more attuned to such philosophies.<sup>125</sup> Furthermore, the GCI's survey of business owners—for which only ninety-six answers were collected for Vietnam compared to nearly 7000 for the PCI—provides few details of the methodologies of the questionnaire, and its translations into thirty languages raise questions of cross-cultural and

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<sup>118</sup> See PCI REPORT 2005, *supra* note 101, at 11 (explaining that sub-indicies were given different weights); Telephone Interview with Edmund Malesky, *supra* note 44.

<sup>119</sup> Telephone Interview with Edmund Malesky, *supra* note 44.

<sup>120</sup> See *id.*

<sup>121</sup> While all properties are owned by the "entire people," citizens and businesses are conferred land use rights certificates—colloquially called "red books" because they come in red jackets—which give title-holders the right to use, transfer, mortgage, and pass inheritance to land. Law on Land art. 5, 26, 13/2003/QH11 (2003) (describing land user rights and obligations).

<sup>122</sup> See *supra* notes 58–66 and accompanying text (describing the authority of provincial leaders under decentralization).

<sup>123</sup> See WORLD ECON. FORUM, GLOBAL COMPETITIVENESS REPORT 2005–2006, at 8–9 (2005) [hereinafter GCI REPORT 2005–2006] (providing Vietnam's 2005 rank and score for the Growth Competitiveness Index, Technology Index, Public Institutions Index, and Macroeconomic Environment Index).

<sup>124</sup> See *id.* at 6 (describing corporate practices, including the adoption of new technology and spending on research and development, that were observed in several highlighted countries).

<sup>125</sup> See Sanjaya Lall, *Competitiveness Indices and Developing Countries: An Economic Evaluation of the Global Competitiveness Report*, 29 WORLD DEV. 1501, 1506 (2001) ("WEF indices assign uniformly higher values to freer trade, stronger intellectual property protection and more liberal capital accounts across countries.").



linguistic bias that could impact survey responses.<sup>126</sup>

Notably, the PCI index producers reevaluate their methodology every year to update for contextual changes. In 2009, for example, the sub-index on state-owned enterprises bias was removed when time series data revealed that the measurement was no longer statistically significant. In other words, local SMEs no longer felt that they were disadvantaged against provincially managed state-owned companies.<sup>127</sup> Additionally, the PCI's questionnaires clearly documented adjustments made over time to drop non-actionable issues outside the scope of provincial leaders' power and to respond to new laws and regulations that came into effect.<sup>128</sup> Validating their context-tailored methodologies, the PCI producers reported that they have been approached by the World Bank Investment Climate team to consult on the latter's country-specific survey.<sup>129</sup> The PCI index producers and VCCI team further reported that they have met with the DBI producer team at least four times over several years to discuss and

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<sup>126</sup> See GCI REPORT 2012–2013, *supra* note 10, at 73 (providing descriptive statistics and weightings of the Executive Opinion Survey). The executive opinion survey is a survey form produced by WEF and sent to business owners in its surveyed countries. In its latest report in 2013, the GCI collected 14,059 executive opinions worldwide, for an average of one hundred surveys per country. *Id.* at 69.

<sup>127</sup> See U.S. AGENCY FOR INT'L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2009, 57–59 (2010) [hereinafter PCI REPORT 2009] (explaining the removal of the bias toward local state-owned enterprises (SOEs) sub-index). This attitude change is explained by the rapid rate of privatization of provincially managed SOEs: Sixty-five percent of these SOEs have been privatized since 2000. *See id.* at 57 (noting that SOEs have been widely “equitized”). In Vietnam, “equitization” refers to the conversion of a public enterprise into a private entity. *Id.* at 11 (noting that equitization is the Vietnamese form of privatization). Lest readers rejoice too early, the author draws a distinction between *provincially* managed SOEs and *centrally* managed SOEs, the latter being conglomerates in critical industries such as banking, oil, and shipping under ownership of the national government, with little to no access to provincial leaders. *See id.* at 58 (explaining that problems of bias are worse for centrally-managed SOEs). Problems with large central SOEs are by no means moot. *See* Phuong Thao, *The Unlearned Lesson*, SAIGON TIMES (May 26, 2012, 10:59 PM), <http://english.thesaigontimes.vn/Home/features/friday/23653/> (highlighting the recent default on state-financed debts by Vinashin, Vietnam's largest shipbuilder, and the criminal prosecution of the CEO of Vinalines, a state-owned shipping company). Because the goal of the PCI is to measure the conduct of provincial leaders, and because SMEs rarely compete directly with large central SOEs, PCI REPORT 2009, *supra*, at 58–59, bias against provincially-owned SOEs is the relevant measure.

<sup>128</sup> See PCI REPORT 2009, *supra* note 127, at 66–91 (documenting the changes made to sub-indices such as land access and time costs of regulatory compliance, and explaining the underlying reasons for the change).

<sup>129</sup> Telephone Interview with Edmund Malesky, *supra* note 44. Unlike the GCI, which uses the same survey for all sample countries, the World Bank Investment Climate's Enterprise Survey includes both a general questionnaire and a country-specific questionnaire. *See Methodology for Enterprise Survey*, WORLD BANK, <http://www.enterprisesurveys.org/Methodology> (last visited Oct. 27, 2013) (noting that “[a]ll [Enterprise] surveys have country-specific questions” in addition to questions common to all countries).

reconcile the differences in the reports' respective findings.<sup>130</sup>

The PCI also contests the technical validity of the World Bank's DBI. The PCI 2007 report noted that its measurement of Vietnam's entry cost (the number of days it takes to obtain business premises and permits) improved from 231 days in 2006 to 90 days in 2007, directly contradicting the World Bank's measurement.<sup>131</sup> While the PCI results showed improvements, the World Bank showed Vietnam slipping from 90th to 97th over the same period.<sup>132</sup> First, the PCI pointed out that the absolute measurements in the World Bank reports actually remained the same in 2006 and 2007; Vietnam's ranking dropped not because it performed worse, as some news media reported, but because other countries improved.<sup>133</sup> The DBI's (and GCI's, by extension) focus on relative rankings ignores a country's absolute improvements, which still indicate progress, albeit at a slower pace than its peers. By contrast, to capture absolute improvements, the PCI reports use "tiers" from "Excellent" to "Low" with score thresholds, such that even top-ranked provinces must strive to achieve certain absolute scores to reach the "Excellent" tier.<sup>134</sup>

## 2. *The Local Indicator Measures Practices on the Ground*

More problematically, the DBI, by surveying lawyers and business consultants, maps out the business registration processes as they exist on paper, whereas the PCI, with its on-the-ground approach, documents the actual implementation of these processes.<sup>135</sup> Because of the prevalent fence-breaking practices, provinces will often expedite registration processes in practice to provide incentives for companies to invest.<sup>136</sup> For example, one study by the Ministry of Finance found that thirty-two out of forty-eight provinces surveyed engaged in violations of legal processes.<sup>137</sup> A subsequent PCI survey of foreign direct investment firms found that more than half the time these firms reported receiving some sort of extralegal incentives from provinces, most often in the form of tax holidays.<sup>138</sup> By documenting the business registration process as it should

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<sup>130</sup> Telephone Interview with Edmund Malesky, *supra* note 44.

<sup>131</sup> PCI REPORT 2007, *supra* note 92, at 20–21.

<sup>132</sup> *Id.*

<sup>133</sup> *See id.* at 21 ("Vietnam apparently dropped in the *Doing Business* rankings because other economies registered improvements, not because the Vietnam economy worsened considerably.").

<sup>134</sup> *See id.* at 15–16 (discussing the PCI's tiers and placement of provinces within them).

<sup>135</sup> *See id.* at 21 ("*Doing Business* focuses directly on actual policies . . . . The PCI focuses directly on implementation.").

<sup>136</sup> *See supra* notes 67–69 and accompanying text (describing the fence-breaking practice and the provision of expedited land access).

<sup>137</sup> VU ET AL., *supra* note 68, at 15.

<sup>138</sup> *See* PCI REPORT 2010, *supra* note 68, at 58–59 ("[M]ore than 60 percent of the []

be, the DBI ranking failed to capture the deviating nature of the business regulation regime in Vietnam, and arguably in other transitional, rapidly growing countries. This finding confirms the oft-cited criticism that international indices are too theoretical and generalized.<sup>139</sup> Furthermore, the DBI is slower to update: In 2008, the national government issued legislation that established the advisory one-stop-shop policy for businesses,<sup>140</sup> eliminated a cumbersome application for obtaining a company seal,<sup>141</sup> and reduced the maximum waiting time for registration and tax certificates to five days nationwide.<sup>142</sup> Capturing this momentum, more than 50,000 new SMEs registered nationwide compared to 26,000 the

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respondents received some form of tax incentive. Of those 60 percent, 94 percent received a tax holiday . . .”).

<sup>139</sup> See Davis & Kruse, *supra* note 36, at 1104–16 (offering a comprehensive critique of DBI methodologies, including the lack of details of its data, the opaque process through which certain legal norms were included in DBI analysis, and the theoretical nature of data description as opposed to actual practices, among others).

<sup>140</sup> See Approval of the 5-Year SME Development Plan 2006-2010 (Decision No. 236/2006/QĐ-TTĐ) (Viet.) (including the development of one-stop-shops in the five-year plan for SMEs); Circular No. 02/2007/TTLT-BKH-BTC-BCA (Viet.) (assigning registration responsibilities to provincial Departments of Planning and Investment); see also U.S. AGENCY FOR INT’L DEV. & VIET. CHAMBER OF COMMERCE & INDUS., THE VIETNAM PROVINCIAL COMPETITIVENESS INDEX 2008, 23–27 (2008) [hereinafter PCI REPORT 2008] (discussing the implementation of one-stop-shops in the business registration process). One-stop-shop refers to the idea that businesses need only visit one agency to process their registration applications. PCI REPORT 2008, *supra*, at 23.

<sup>141</sup> The seal (*con dấu*)—used to imprint red stamps on documents—has long been considered a symbol of inefficiency and bureaucracy. Under Vietnamese law, all legal entities, including governmental agencies, companies, and organizations, are required to have a seal. See Decree on Management and Use of Seals (No. 58/2001/NĐ-CP) art. 1 (Viet.) (“The seal expresses the legal status of the agency, organization or State title and affirms the legal validity of its documents.”). In other words, valid contracts require a stamp of the company seal across the signature of the undersigned, theoretically to prevent fraudulent signatures. Exceptions to this requirement are scattered through several bodies of law, creating confusion in lower courts. See Ho Chi Minh City Supreme People’s Court, 08/KDTM-GĐT (Aug. 12, 2005) (on file with author) (reversing the appeal panel’s holding that a contract is merely an offer and therefore not binding because plaintiff CEO’s signature was not stamped with the company seal, and reprimanding the panel for failing to consult the various laws containing exceptions to the requirement of the seal). Furthermore, obtaining a seal is a cumbersome process, not least because it involves trips to the local police office. See *Processes to Obtain Seals*, DEP’T PUB. SEC., <http://csqllhc.bocongan.gov.vn/vi-VN/Home/Con-dau-29/20/Thu-tuc-lam-con-dau.aspx> (last visited Oct. 27, 2013) (stating that the local police office is the relevant authority to approve company seals). In some provinces, businesses needed to obtain official approval before a seal was made. PCI REPORT 2008, *supra* note 140, at 23. Once approved, they would need to find a seal maker to make the physical seal, and then return it to the provincial Department of Public Security for registration. *Id.* at 23–24. Effective December 15, 2007, the Department of Public Security abolished the application, though other requirements to have a company seal remained. *Sê Bỏ Giấy Phép Khắc Dấu [Abolishment of the Seal Application]*, PHÁP LUẬT TP (Oct. 31, 2007, 12:36 AM), <http://phapluattp.vn/202086p1014c1068/se-bo-giay-phap-khac-dau.htm>.

<sup>142</sup> See PCI REPORT 2008, *supra* note 140, at 75 (“According to the new one-stop sho[p] procedures cited in Joint-Ministerial Circular 05-08, provincial departments of planning and investment are required to complete registration procedures in five days or less.”).

previous year.<sup>143</sup> The PCI data validated the assertion that the reform is significant: While the one-stop-shop procedure is not mandatory, when adopted it can significantly reduce the waiting time for registration.<sup>144</sup> The DBI's 2008 indicator for business registration waiting period, however, did not indicate an improvement over previous years.<sup>145</sup> The DBI process map for business registration did not note the abolishment of the company seal application until the 2011 report, three years after its termination.<sup>146</sup> Despite its shortcomings, the DBI has been praised for its shaming power: By citing the company seal as a reason for Vietnam's low ranking, the DBI drew outcries against it from foreign and domestic businesses, who called for abolishing the seal altogether.<sup>147</sup>

### 3. *The Local Indicator Uses More Robust Data*

It is not surprising that global indicators, because of their broad scope and cross-national focus, devote less attention to each country than do local indicators. But the difference in the robustness of their data might be less obvious. Survey data—which reflect businesses' opinions of the governance environments—are much more robust in the PCI than in the GCI and DBI.<sup>148</sup> Although the DBI also focuses on SMEs, it only looks to limited liability companies in large business cities that have up to fifty national employees one month after the commencement of operations,

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<sup>143</sup> *Id.* at 24 (citing data from the General Statistics Office and the Tax Authority).

<sup>144</sup> *See id.* at 26 (“[I]ncreasing the percentage of firms using [one-stop-shops] from zero to 50 percent decreases the median registration period in a province by 1.3 days. . . . One day . . . represents a 9 percent improvement.”). User-feedback validation, here from PCI-surveyed businesses, of data from government agencies responsible for the implementation of legal reforms is particularly relevant because of the inherent conflict of interest of these national governmental agencies. Furthermore, official numbers tend to underestimate the actual number of days spent because they only record successful registrations, not the time lost due to returned or abandoned applications. *See id.* at 24 (viewing government-provided data with reservations for these reasons).

<sup>145</sup> *See id.* at 24 (“Clearly, something significant has occurred that is not captured in the World Bank's Doing Business measure of the official waiting periods for business registration, which have barely budged since 2004 despite the new [one-stop-shop] procedures.”).

<sup>146</sup> *See* DBI REPORT 2011, *supra* note 85, at 143 (“Vietnam eased company start-up by . . . eliminating the need for a seal for company licensing.”).

<sup>147</sup> *See* Ho Huu Hoanh, *Con dấu doanh nghiệp có thực sự cần thiết?* [*Company Seal—Is It Really Needed?*], *TẠP CHÍ DOANH NHÂN VÀ PHÁP LUẬT* [JOURNAL OF BUSINESS AND LAW], No. 11 (Oct. 25, 2008), available at <http://www.vietfranchise.com/index.php?Module=Content&Action=view&id=268> (noting that the company seal affected Vietnam's rankings in the DBI report and lamenting the inconvenience it creates in validating contracts with foreign companies, which often do not have company seals).

<sup>148</sup> In 2012, the PCI surveyed 8053 domestic firms in Vietnam. PCI REPORT 2012, *supra* note 48, at xiii. The GCI, in contrast, collects an average of one hundred opinions from business executives from each of its ranked countries. GCI REPORT 2012–2013, *supra* note 10, at 69. From 2012–2013, the GCI collected ninety-six executive opinions from Vietnam, though no details were provided on respondents' geography, firm size, or industry type. *Id.* at 73.

among other qualifications.<sup>149</sup> Applying only the DBI's criteria for legal form and employee size to the PCI pool would eliminate forty-one percent of the nearly 8000 SMEs that responded, because a significant number are family-owned sole proprietorships.<sup>150</sup>

Although the PCI's lead researcher is from the United States, the project is largely local. The rest of the technical team members are Vietnamese, the publications are made under the VCCI brand name, and the VCCI is in charge of collecting data and leading diagnosis workshops with local leaders. In fact, the strength of the VCCI as an institution has been cited by the PCI producer as a key factor in the index's success.<sup>151</sup> Notably, Vietnamese researchers from the VCCI's economics and legal departments have written and published academic papers using PCI data, focusing on provincial best practices.<sup>152</sup> As the goal of the PCI is to create a diagnostic tool for Vietnamese leaders to "see like a state,"<sup>153</sup> the robust interest and participation of Vietnamese regulatory advocates—albeit limited to the VCCI at this time—appears encouraging.

Further evidence indicates the remarkable success of the PCI: Starting in 2013, USAID has decided to eliminate the middleman—an American development company—and contract directly with the VCCI for the production of the PCI reports.<sup>154</sup> USAID's decision signifies the achievement of "a developmental economist's dream"<sup>155</sup> that the local institution has become technically competent to direct internationally-funded reforms on its own. The growing strength of the VCCI as an institution underscores the positive externalities of local indicators, through which local institutions gain skills and ownership, and bring legitimacy to what would otherwise be an outsider's project.<sup>156</sup>

### B. *Indicators as Homegrown "Competition"*

As demonstrated above, local indicators such as the PCI are able to provide valuable feedback to and contestation of global indicators because the latter's descriptions are too general by virtue of operating from a

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<sup>149</sup> See DBI REPORT 2012, *supra* note 26, at 43 (listing assumed characteristics for companies in the DBI's analysis of business start-ups).

<sup>150</sup> See PCI REPORT 2008, *supra* note 140, at 6 (noting that forty-one percent of PCI respondents are sole proprietorships).

<sup>151</sup> Telephone Interview with Edmund Malesky, *supra* note 44.

<sup>152</sup> See, e.g., Schmitz et al., *supra* note 60 (studying the driving forces behind business reforms in four provincial case studies).

<sup>153</sup> For the significance and necessity of "seeing like a state," see *supra* note 38, 98 and accompanying text.

<sup>154</sup> Telephone Interview with Edmund Malesky, *supra* note 44.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* The index producer noted that within Vietnam, few people knew of his involvement as an American economist, as the PCI is exclusively published under the VCCI's authority. *Id.*

bird's-eye view. This section describes another effect: The interaction between global and local indicators drives Vietnam's ambition to create its own homegrown competition to global rankings.

In 2012, Prime Minister Nguyen Tan Dung announced the creation of a competitiveness-oversight council chaired by the Vice Prime Minister<sup>157</sup>—evidence that improving Vietnam's competitiveness rankings is a high priority for the national government. The council includes two members from VCCI as well as representatives from SME business associations, private companies, and large SOEs.<sup>158</sup> It is tasked with coordinating competitiveness efforts nationwide,<sup>159</sup> building a national report on competitiveness, and organizing national conferences on enhancing competitiveness.<sup>160</sup> At its first meeting in late 2012, the council announced its intention to “actively exchange with and propose to the World Bank [] and the World Economic Forum (WEF) technical and capacity assistance programmes for creating reports and sets of competitiveness indicators for Vietnam.”<sup>161</sup> The former Minister of Industry and Trade articulated a need for an internally produced indicator: “The indicators [produced by the WEF and World Bank] already existed . . . but they are too general to be applied to all countries in the world. . . . We can perfect on these criteria and formulate a set of indicators around Vietnam's level of development and real practices.”<sup>162</sup>

The recommendation for a national competitiveness council originated from the Vietnam Competitiveness Report,<sup>163</sup> which evaluates Vietnam's

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<sup>157</sup> See Press Release, Vietnamese Government, *Lập Hội Đồng Quốc Gia về Phát Triển Bền Vững và Nâng Cao Năng Lực Cạnh Tranh* [Creation of the National Council on Sustainable Development and Competitiveness] (June 5, 2012), available at <http://baodientu.chinhphu.vn/Home/Lap-Hoi-dong-Quoc-gia-ve-Phat-trien-ben-vung-va-Nang-cao-nang-luc-can-h-tranh/20126/139958.vgp>. The council was not created as a new body. Rather, the competitiveness-oversight function was added to the jurisdiction of an existing organ, which was subsequently renamed the National Council on Sustainable Development and Competitiveness. See Decision 112/QĐ-HĐQGPTBV&NCNLCT art. 2 (Mar. 10, 2012) (expanding the substantive scope of the existing committee to include national competitiveness oversight).

<sup>158</sup> See Decision No. 873/QĐ-TTG art. 1 (2012) (Viet.) (listing the forty-one approved members).

<sup>159</sup> Decision 112/QĐ-HĐQGPTBV&NCNLCT Guideline art. 3(1)(a) (Mar. 10, 2012) (describing the responsibilities of the competitiveness council).

<sup>160</sup> *Id.* art. 3(1)(c).

<sup>161</sup> *Enhancing Competitiveness of Vietnamese Businesses*, VIET. BUS. FORUM (Feb. 18, 2013), [http://www.vccinews.com/news\\_detail.asp?news\\_id=27941](http://www.vccinews.com/news_detail.asp?news_id=27941) (interviewing Vice Prime Minister Nguyễn Thiện Nhân, Chairman of the National Council on Sustainable Development and Competitiveness).

<sup>162</sup> *Việt Nam nâng cao năng lực cạnh tranh và phát triển bền vững* [Vietnam Enhances Competitiveness and Sustainable Development] (Radio Vietnam broadcast Feb. 22, 2013) (transcript on file with author).

<sup>163</sup> See MICHAEL E. PORTER ET AL., CENT. INST. FOR ECON. MGMT., VIETNAM COMPETITIVENESS REPORT 121–22 (2010) (recommending the establishment of a

“competitiveness fundamentals,” including social infrastructure, political institutions, and macroeconomic policy.<sup>164</sup> Headed by a primary author of the GCI, Professor Michael E. Porter, the report conducts original interviews and tabulates data from various sources, including the GCI and PCI, to sketch a national economic mosaic of Vietnam.<sup>165</sup> In this sense, local contestation in the form of a forthcoming Vietnam-focused national indicator happens not in isolation from, but under the indirect influence of existing global indicators—here the GCI.<sup>166</sup> The PCI, having been widely accepted, read, and used by provincial leaders,<sup>167</sup> provides a legitimate data foundation for this national coordination effort. Because the national competitiveness council was only recently created, it still needs to cultivate a relationship with its constituents, namely business associations and provincial leaders nationwide, in order to successfully implement its mandates for a national competitiveness program. Usage of PCI data and the VCCI’s strong foothold among provinces<sup>168</sup> can help facilitate this relationship-building process.

The council’s creation highlights the central government’s recognition that national coordination is needed to support provinces when a problem is beyond provincial reach. The province of Ninh Thuận’s ongoing construction of Vietnam’s first nuclear power plants—a major development for the province and for Vietnam as a whole—is a prime and pressing example. The project would not have been possible without quick action by the national government to promulgate a new body of nuclear law, including waste management, environmental protections, and relocation of

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competitiveness council with membership from both the public and private sectors based on the experience of other countries and proposing that the council be led by the Prime Minister because “[g]iven the complexity and comprehensiveness of the Council’s mission, it is essential for the Council to be led by the top leader(s) of the government”). The choice of the Vice Prime Minister instead of the Prime Minister as leader might have been politically driven. *See Vietnam’s Communist Party Admits Mistakes as Dung Keeps Jobs*, BLOOMBERG NEWS (Oct. 16, 2012, 1:26 AM), <http://www.bloomberg.com/news/2012-10-15/vietnam-s-communist-party-admits-mistakes-as-dung-stays-in-power.html> (noting that recent corruption scandals tarnished the reputation of Prime Minister Nguyễn Tấn Dũng and other party leadership, prompting General Secretary Nguyễn Phú Trọng—leader of the Communist Party—to publicly apologize on state radio and television).

<sup>164</sup> PORTER ET AL., *supra* note 163, at 4.

<sup>165</sup> *See id.* at 23–25, 45, 61 (describing methodology and noting sources).

<sup>166</sup> *See supra* notes 42–44 and accompanying text (describing how the network effect of indicators can result in even broader dissemination of the same technical method or school of thought).

<sup>167</sup> *See* PCI REPORT 2012, *supra* note 48, at 30–38 (studying provincial laws and regulations from a sample of twenty-eight provinces and finding prevalent use of PCI reports in business governance reforms, including its direct use as promotion criteria for provincial officials in Bình Phước).

<sup>168</sup> *See supra* note 107 (noting the continual collaboration between the VCCI and provincial leaders after PCI reports were issued).

ethnic minority populations.<sup>169</sup> Such coordination is also needed to address the prevalent fence-breaking practice observed among more than half of the provinces, which calls for addressing not just the practice, but the “fence” itself.<sup>170</sup> Again, the PCI reports can prove to be useful tools in diagnosing the impact of fence-breaking, thereby leading to an evidence-based and more transparent decision-making process.

#### CONCLUSION

This Note seeks to demonstrate ways in which global and local indicators affect the development agenda in Vietnam. The close domestic attention paid to competitiveness rankings, the popularity of the PCI, and the creation of the national competitiveness council all point to the fact that Vietnam’s policymakers have embraced competitiveness as a goal of development. While international indicators such as the GCI and DBI pushed competitiveness to become a priority of the national government, the domestic indicator, PCI, transformed Vietnam’s sixty-three provinces into a competitive model not unlike that in a free market system. The creation of the national competitiveness council signifies a recognition that national coordination is needed to combat Vietnam’s decentralized governance structure and address the externalities that provincial competition created. As the subnational-indicator model of the PCI has been piloted in several other countries in the region, the benefits and effects of this model, as highlighted in this Note, are relevant to index producers, donors, and policymakers in their continual perfection of the development model that befits the local context.

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<sup>169</sup> See PCI REPORT 2012, *supra* note 48, at 37–38 (describing the province of Ninh Thuận’s experience in building Vietnam’s first nuclear power plants).

<sup>170</sup> See *supra* notes 67–71 and accompanying text (describing the fence-breaking phenomenon and its impact on provincial business governance).