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Rapid Assessment of Vietnam's Labor Inspection System

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Rapid Assessment of Vietnam's Labor Inspection System

Abstract

[Excerpt] In July 2010, a team from the U.S. Department of Labor (USDOL) visited Vietnam to conduct an assessment of the Ministry of Labor, War Invalids & Social Affairs' (MOLISA) labor inspection system. This effort was requested by the SIIR project (funded by USAID) as part of its aim of identifying MOLISA's needs and providing assistance, per MOLISA's request. The Assessment focuses on: 1) assessing facts related to the labor inspection system; and 2) providing initial recommendations for improving the system.

Part I discusses MOLISA's history, legal and regulatory framework, structure and organization, Department of Labor Inspections (including workforce, forms and data collection, and IPZ). Part II discusses issues and presents recommendations related to data collection, labor inspector training, inspectorate staffing levels, educational outreach, research and networking, systems of continuous improvement, and coordination with international and private buyers.

Keywords

Vietnam, labor inspection system, working conditions, worker rights

Comments

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ASSESSMENT OF VIETNAM'S LABOR INSPECTION SYSTEM



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Bureau of International Labor Affairs

U.S. Department of Labor

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Rapid Assessment of Vietnam's Labor Inspection System

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SIIR Vietnam
Supporting Implementation of Labor Laws
and Promotion of Sound Industrial Relations in Vietnam
(Funded by the US Agency for International Development)

53 Quang Trung Street
17th Floor
Hanoi, Vietnam

SIIR Project Scope

SIIR is a multi-year project funded by USAID in cooperation with the tripartite organizations of Vietnam. The lead counterparts are the Ministry of Labor (MOLISA), the Vietnam Confederation of General Labor (VCGL), and the Vietnam Chamber of Commerce and Industry (VCCI). One of SIIR's key areas relates to MOLISA/DOLISA's labor inspection system to assess their structure and capacity and make recommendations for improving their operations. Other areas include improving systems of alternative dispute resolution (ADR) and building capacity in industrial relations education and in tripartite stakeholders for collective bargaining.

Note of Appreciation

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RAPID ASSESSMENT OF VIETNAM'S LABOR INSPECTION SYSTEM

OVERVIEW

In July 2010, a team from the U.S. Department of Labor (USDOL) visited Vietnam to conduct an assessment of the Ministry of Labor, War Invalids & Social Affairs' (MOLISA) labor inspection system. This effort was requested by the SIIR project (funded by USAID) as part of its aim of identifying MOLISA's needs and providing assistance, per MOLISA's request. The Assessment focuses on: 1) assessing facts related to the labor inspection system; and 2) providing initial recommendations for improving the system.

The team met officials from MOLISA and DOLISA (provincial Departments of Labor, Invalids & Social Affairs) and worker and employer representatives in Hanoi, Danang, and Ho Chi Minh City. They were accompanied by Mr. Lai, a domestic consultant and former MOLISA chief of labor inspections, who has provided his expert input. The timing of this effort is notable in part because the Government of Vietnam is hosting the ASEAN meeting on labor inspections on October 13-15, 2010.

The Government of Vietnam ratified the ILO Convention on Labor Inspections (No. 81) in 2008. ILO C. 81 requires a government's labor inspection system to effectively:

- *Enforce* laws protecting the full range of worker rights and regulating conditions of work with:
 - Adequate remedies and penalties;
 - Timely enforcement;
 - Inspectors who are well-trained, independent, properly equipped and credentialed;
 - An inspectorate that has the power to take steps to remedy violations; and
 - A central inspection authority coordinating with workers and employer representatives and other government offices to implement the law.
- *Educate and support* employers and workers with technical information and advice on the most effective means of compliance.
- *Improve* the law's coverage by identify defects and abuses not covered in existing laws and regulations; and
- *Report* on the inspectorate's performance on at least an annual basis.

Effective implementation of these principles requires the following:

- For *enforcement*:
 - Clear mandates, goals, objectives and criteria for evaluating and improving inspectorate performance;
 - Motivated and supported inspectors with an ethical code;
 - Good management with effective direction, two-way vertical (supervisor-inspector) and horizontal (inspector-inspector) communication, and coordination;
 - Commitment to ensuring proper and timely treatment throughout the process to final resolution/remediation of violations; and
 - Data to understand the trends, guide inspection efforts, evaluate the effectiveness of inspection system, and determine gaps.
- To *educate* and *train* workers and employers using a variety of easily accessible means concerning 1) the law's requirements; 2) ways to prevent violations and mitigate hazards; and 3) how to respond to investigations and constructively engage in the investigation/enforcement process.
- For *improvement*, establish processes both internal (within the ministry) and external (with worker and employer stakeholders) for reviewing compliance gaps and inspectorate performance and making positive changes.

Timely data collection is essential to ensure efficient and effective enforcement, identify gaps and needs in training, improve the quality of inspections, improve management of inspections, develop appropriate educational and training programs, engage in a process of continuous enforcement, and report in a meaningful manner.

Part I discusses MOLISA's history, legal and regulatory framework, structure and organization, Department of Labor Inspections (including workforce, forms and data collection, and IPZ). Part II discusses issues and presents recommendations related to data collection, labor inspector training, inspectorate staffing levels, educational outreach, research and networking, systems of continuous improvement, and coordination with international and private buyers.

It should be noted that this rapid assessment is designed to start, rather than conclude, the process for evaluating labor inspection needs, developing goals and plans, and implementing activities for change. Also, the list of recommendations is not exhaustive; numerous other potential improvements could be discussed. To be successful, MOLISA officials and other key stakeholders will have to be engaged on a continuing basis.

I. MOLISA DEPARTMENTS AND LABOR INSPECTIONS

A. History

The Ministry of Labor, War Invalids & Social Affairs' (MOLISA), with its Labor Inspectorate, was established in 1946 by the Government of the Democratic Republic of Vietnam.¹ The National Assembly of the Socialist Republic of Vietnam adopted the comprehensive new Labor Code in 1994, consistent with the government's *doi moi* reforms, which involved a broad transition to a "socialist-oriented market economy." The 1994 Labor Code provided that "State labour inspection shall include general labor inspection, occupational safety inspection and occupational health inspection," with MOLISA and the local labor offices in charge of general labor inspection and occupational safety inspection and the Ministry of Health and local health authorities in charge of occupational health inspection (Art. 185). In 2002, the Labor Code was amended to provide that the "state labor inspection has functions of inspection in terms of labor policy, occupational safety and health" and that MOLISA is in charge of local labor administration and state labor inspection."

MOLISA's Labor Inspectorate's organization is established by Decree No. 31/2006/ND-CP (March 2006) by the Government and Decision No. 148/QD-LDTBXH (2008), signed by MOLISA's Minister.

B. Legal and Regulatory Framework: The Mandate

MOLISA enforces the following laws on substantive rights:

- Labor Code (1994, amended in 2002, 2006 and 2007)²
- Law of Social Security
- Law of Overseas Employment
- Law of Vocational Training
- Law of Gender Equality
- Law of Protection and Care of Children
- Law of People with Disabilities

MOLISA is also guided by the following:

- Law of Inspections (No: 22/2004/QH11)
- Law of Public Officials/Officers

MOLISA follows these key decrees, directives and ordinances on labor inspections:

- **Ordinance No. 44/2002/PL-UBTVQH10** on handling of administrative violations.

¹ For a more complete explanation, see Mr. Lai's paper on MOLISA's history and organization.

² **No. 74/2006/QH11** amended provisions on the settlement of labor disputes.

- **Decree No. 04/2005/ND-CP** on labor complaints and denunciations, covering rights, processes, procedures, and MOLISA’s responsibilities.
- **Decree No. 31/2006/ND-CP** on MOLISA’s Inspectorate organization and operations.
- **Decree No. 144/2007/ND-CP** on administrative sanctions on dispatching Vietnamese workers to overseas employment.
- **Decree No. 135/2007/ND-CP** on administrative sanctions for social insurance violations.
- **Decree No. 186/2007/ND-CP** on MOLISA’s functions, tasks, powers and organizational structure. It provides that MOLISA’s role is to address employment matters, vocational training, labor, wages and benefits, social insurance (compulsory social insurance, voluntary social insurance and unemployment insurance), labor safety, assistance to people with meritorious service, social security, child protection and care, among others.
- **Decision No. 148/QD-LDTBXH** by the Minister of MOLISA regarding roles, responsibilities, duties, authorities and structure of the MOLISA Inspectorate.
- **Ordinance No. 04/2008/PL-UBTVQH12** amending provisions of the Ordinance No. 44/2002/PL-UBTVQH10 on the handling of administrative violations.
- **Decree No. 116/2009/ND-CP** on administrative sanctions on violations in vocational training.
- **Decree No. 47/2010/ND-CP** on administrative sanctions on labor law violations.

C. MOLISA’s Structure & Organization

MOLISA has its headquarters in Hanoi and an office in Ho Chi Minh City (HCMC). Under MOLISA’s Minister are five Vice Ministers who are in charge of separate departments and subsidiary units. MOLISA has 16 departments and a general department in charge of state administration of labor and social affairs.³ MOLISA also oversees the Institute of Labor Sciences and Social Affairs, the Information Center, and the Labor and Society magazine and newspaper, among others. MOLISA also has about 40 other subsidiary units, including institutes, universities, colleges, and centers. MOLISA is responsible for providing technical support and monitoring services to 63 provincial departments of labor, invalids and social affairs (DOLISA’s) which belong to provincial People’s Committees.

D. The Department of Labor Inspections: MOLISA and DOLISA

The Department of Labor Inspections is composed of labor inspectorates in MOLISA at the central level and DOLISA offices at the provincial level. MOLISA’s Inspectorate is headed by a Chief Inspector and two Deputy Chief Inspectors and has six functional divisions: Labor Policy Inspections, OSH Inspections, Child and Social Affairs Policy Inspection, Inspections of “Policy for Meritorious People,” General Services and

³ See the MOLISA organizational chart in Appendix A, which identifies all its departments and units.

Administrative Inspections, Citizen Reception and Complaint and Denunciation Handling. MOLISA's Inspectorate is supervised by a MOLISA Vice-Minister.⁴

The DOLISA offices support and monitor 697 district divisions, with each district overseen by a People's Committee. Each commune has part-time or full-time staff in charge of labor, invalids and social affairs in the commune. DOLISA's inspectorate has inspectors in charge of different areas of inspections or functional groups of inspectors which is headed by DOLISA's Chief Inspector under the leadership of the DOLISA Director or Deputy Director. The labor inspectorates do the following: 1) resolve complaints and denunciations alleging labor law violations; and 2) conduct inspections per the MOLISA/DOLISA annual plans. It is also reported that the labor inspectorates are closely involved in facilitating the resolution of strikes, although they are not formally charged with this role. In the process, inspectors educate on the law and regulations and attempt to resolve differences.

Workforce: MOLISA/DOLISAs' inspectorates have about 470 staff in total, with only 140 conducting labor inspections for the entire country, covering three areas: 1) labor code/laws inspections; 2) policy (assistance) for "meritorious people" (primarily but not exclusively veterans) and 3) social affairs. Inspectors are specialized in MOLISA and the larger DOLISA offices. The smaller offices have too few inspectors to specialize.⁵

Inspector hiring qualifications: to be hired, each candidate must have an undergraduate degree in law, economics or a technical area pertinent to OSH, for example mining, manufacturing, construction, agriculture, or other such areas. Each candidate must 1) pass a general test for all new government officials; 2) complete a three month pre-service training program and pass a test; and 3) complete three months' training of specific inspection training and pass three tests and a final exam (six weeks for government training including state law and rule of law, general inspection skills, and six weeks for labor inspection). After two years of work, the candidate becomes an official labor inspector.

Inspector development: inspectors are promoted through the following tiers:

- 1st Tier: Inspector – requires basic training with two years of work experience;
- 2nd Tier: Principal Inspector - requires advanced in-service training and six more years of work experience; and
- 3rd Tier: Senior Inspector - requires advanced in-service training and nine more years of work experience.

It has been reported that there is a relatively high turnover in labor inspectors, though the rate of turnover is not clear. Also, it is not clear at which stage turnover is highest or how MOLISA/DOLISA has addressed this issue.

⁴ See the MOLISA/DOLISA Inspectorate Organizational Structure chart in Appendix B.

⁵ Some information on the numbers of inspectors related to the numbers of employers, workers, and total amount of penalties assessed are set forth in a suggested template in Appendix E.

Labor inspector training: labor inspectors receive pre-service training for newly recruited government officers, which is provided by the MOLISA inspectorate, DOLISA inspectorate, the National Politics - Public Administration Academy (NPPAA), and the University of Labor and Social Affairs (ULSA). They also receive in-service training, which is provided by the MOLISA inspectorate, DOLISA inspectorate, NPPAA, Government Inspectors Training School, ULSA, others. In-service training plays a very important role in the development of the labor inspectors' careers. Therefore, as a practical matter, MOLISA plays a very important role in terms of training policy, planning, management and resourcing. For a summary description of Vietnam's labor inspection training systems, see Appendix C.

1. University of Labor and Social Affairs (ULSA) and the National Politics - Public Administration Academy (NPPAA)

ULSA is responsible for recruiting trainees from MOLISA and DOLISA and providing the training venue, and financial and attendance management while NPPAA provides trainers, training materials and programs, award of certificates. The role of ULSA in training of labor inspection skills has been quite limited so far.

Labor inspection training aims, in part, at global integration (see Decree 31/2006/ND-CP). ULSA was the first to include labor inspectors in general government inspection training. Its staff developed the first labor inspection training material in 1997-2000, with ILO assistance, producing a labor inspection manual and holding a "training of trainers" (ToT) course. Regarding the manual, while its coverage of basic principles and skills are reported to be good, the parts on practical aspects are reported to be weak. Moreover, there have been substantial changes in technology, labor law and policy and markets that have rendered it partly outdated and ULSA has not been able to update it.

Despite the ToT nature of the courses, many of the MOLISA trainers have since retired and have not been replaced, though six part-time trainers who received this ToT training remain. ULSA also has a 2001 labor inspection textbook for college students, which could be updated. ULSA is using 14 theme papers that were created by MOLISA. Senior inspectors provide on-the-job training to more junior inspectors. There appears to be no formal practices to incorporate the lessons and expertise of these senior inspectors into any training or informational systems.

ULSA instructors report that they need: 1) to develop better training materials to a high academic standard; 2) new ToT training; 3) a revised labor inspection manual; 4) workbooks with questions and case studies; 5) standardized training for all labor inspectors with a focus on practical inspection issues (for example, how to collection information and make a plan); 6) a modern, standard international textbook; and 7) more information on inspection practices in other countries.

2. The Government's Inspector School

This school was established in 1987 to provide inspector education and training for all provinces and ministries. It also provides training in general laws, with some coverage of inspections and social protection but with no training in technical areas. It does not teach practical inspection skills particular to labor. The courses range from one week to 2 months for different levels.

3. OSH training center

Each year, labor inspectors attend as “observers” OSH Training Center presentations by foreign consultants and on new safety and health regulations. In about 2005, the ILO provided training on OSH with a training manual and material. However, the manual is now out of date and the trainers have retired.

Forms and data collection: MOLISA/DOLISA currently collects information related to the numbers of complaints, enterprises and employees in each province. They also provide information on the total fines and penalties assessed against employers for violations of the Labor Code. They develop annual inspection plans based on the numbers of employers in each province, largely based on this limited information.

The Labor Inspectorate has standard forms for: complaints, notice of acceptance of resolved complaints, and decisions on complaints. None of the forms appear to have fields allowing for aggregation of information on individual complaints and their processing. No labor inspection form was obtained for planned inspections. However, they are reported to be set forth in Decree No. 47/2010/ND-CP (previously Decree 113/2004/ND-CP). The ministry piloted a data collection in about 2006, which gathered additional data based on a self-assessment checklist regulation.⁶ However, the effort was not continued reportedly because there was no enforcement/sanction mechanism and no computer-based connection with the MOLISA Inspectorate's database. It was also reported that the MOLISA Inspectorate was planning to upgrade such a system, though the current plans are unclear.

Inspectorate functions:

1. *Planned Inspections.* Inspectors also conduct inspections per annual plans that are drafted by DOLISA and approved by MOLISA, focused on particular industries and identifying a set number of worksites to be visited. While it is not entirely clear what information is used to develop the plans, it appears that they are largely based on the numbers of enterprises in key industries in each province rather than based on aggregate data on kinds of violations in which industries. It has also been reported that the ad hoc reporting of violations, both through labor inspector

⁶ A Management Information Science (MSI) national consultant is currently writing a report on the self-assessment information system.

monitoring and public criticism, influences the listing of industries and enterprises to be inspected in the annual plans.

2. Accept and investigate complaints and denunciations, per Decree 04.⁷

a. *Complaints.*

- i. *Who files what:* a worker or labor collective (“LC”) may file a complaint that his or her right has been violated. Their names must be stated and are not confidential.
- ii. *Process:*
 1. Complaint must first be made to the employer (“labor user”);
 2. The employer must accept the complaint within 10 days and issue a decision within 30 days, unless it is a complicated case, then its 45 days. The employer must meet directly with the worker. If it’s an LC, then they must meet with the union representative and if there is no union, they must meet with representatives of higher level worker representatives (VGCL) and a labor conciliator or others from a “mass organization.” The decision must contain information identified in Decree 4, Art. 14(2).
 3. The worker or LC may appeal a decision in person, by phone or by mail to the DOLISA chief labor inspector within 30 days.
 - a. The complaint must follow criteria: properly signed and filled out form with nature of complaint and allege a violation of law within DOLISA’s jurisdiction.
 - b. DOLISA must meet timelines (same as employers above), keep case file with key information, and transfer to next level.
 - c. The complaint is investigated by a DOLISA official and at times by team or taskforce. DOLISA officials interview workers and managers and collect documents.
 4. The worker or LC may appeal to the MOLISA chief labor inspector within 30 days. MOLISA must also meet time targets.
 5. The DOLISA chief inspector may suspend an employer’s act or decision where it may harm a worker’s life or health or “severely harm the State’s interests,” pending a decision.

b. *Denunciations:*

- i. *Who files what:* A worker or labor collective may file directly with DOLISA and concerning a violation of a collective right or the rights of other workers. The names of the filing parties may be kept confidential.
- ii. *Process:*

⁷ See Appendix D for a flow chart on the labor complaint process.

1. The worker or LC files with DOLISA. The chief labor inspector or other inspector has the sole responsibility to resolve the matter (not a task force), following the required timelines.
 2. The worker or LC may appeal to MOLISA chief labor inspector, following required timelines.
 - iii. *Frequency*: denunciations are not common, with the total being about a few hundred. MOLISA's chief labor inspector deals with about 10. They can take 4 months to resolve start to finish or longer if far away. They address matters such as an employers' refusal to engage in collective bargaining, forced overtime and lack of basic benefits.
3. *Strikes*. In practice, MOLISA/DOLISA officials mediate resolution of strikes by coordinating government and tripartite task forces. The labor inspectorate is not charged by law to perform this function; however, it is reported that they are closely involved in doing so because they have respected skills and knowledge and because there is an absence of others who effectively perform this role. Doing this work can require substantial time and effort.

IPZ Inspections: the management boards in Industrial Processing Zones (IPZ's) are regulated by Decree 29/2008/ND-CP on Industrial Zones, Export Processing Zones and Economic Zones. The boards address a wide range of issues, including the issuance of environmental licenses and employment of foreign workers. Because no decree regulates labor inspections in the IPZ's, MOLISA tasks the boards with responsibility for monitoring compliance in their zones, per Circular No. 12/2009/TT-BLDTBXH. Each IPZ board reports to central IPZ authority and each IPZ board hires its own labor inspectors, who are recruited through the Ministry of Home Affairs and receive government training. All IPZ labor inspectors are generalists and work in task forces. Each IPZ board has its own development plan and where it overlaps with DOLISA labor inspections, they discuss it with DOLISA. The terms of the relationship between the IPZ's and MOLISA/DOLISA are not defined in detail in writing; rather, they appear to address particular issues as they arise.

E. Other Key Departments and Subsidiary Units

Other key departments in charge of administration of labor include the following:

1. The Department of Employment directs the unemployment program, manages employment services in 63 provinces; tracks labor market information (LMI) (for example, related to the labor force); administers laws and regulations for foreign employees; and works with the Labor Inspectorate to develop annual monitoring plans. They also oversee the process related to labor books, which all workers are required to keep. It has six divisions: 1) Labor Administration and the National Employment Program; 2) General Services; 3) Personnel & Organization; 4) Planning & Finance; 5) Center for Labor Market Information and Forecasts; and 6)

Unemployment Insurance. Each year they develop a workplan. This department has 90 full-time officials.

2. The Department of Occupational Safety & Health has the following divisions: 1) Policy & Labor Protection, which provides guidelines on laws, working time and leave; 2) Advocacy & Training: providing labor statistics on accidents; 3) the Center for OSH training, which provides training to labor inspectors, employers and workers; and its 4) Office on Logistics & International Cooperation. They have had a number of technical assistance projects supported by Japan, ASEAN, OSHnet, and Korea. The problems MOLISA officials identified: 1) regulations on compensation should be improved because a substantial number of employers do not pay and enforcement is difficult; 2) their need to develop workers compensation with an employer rate paid based on risk rather than the current standard contribution rate of 1%; 3) the need to collect statistics on accidents; and 4) need of a separate OSH law or laws. It has 60 full-time officials, including those at the OSH Training Center.
3. The Department of Labor and Wages enforces the following Labor Code chapters: labor contracts (Chap. III); collective bargaining agreements (CBA's) (Chap. V); salary and wages (Chap. VI); labor discipline and compensation (Chap. VIII); trade unions (Chap. XIII); and labor dispute resolution (Chap. XIV). This department serves for MOLISA on the National Industrial Relations Committee (NIRC) with the employers' federation (VCCI) and the trade union confederation (VGCL). It has 21 full-time employees. Although they do not conduct labor inspections, they cooperate with the Labor Inspectorate in handling grievances/complaints. The problems they identified: too few inspectors to cover too many enterprises results in infrequent visits and inspections taking too long. Since many inspectors are new, they must seek assistance from other state agencies/departments.
4. The Department of Gender Equality was established in 2008 with just one office (in Hanoi) and covers eight fields: politics, labor, health, education, culture, sports, family and technology. It produces an annual report on gender equality related to national goals and strategies. However, it is not based on labor inspection data on violations but on reports from concerned agencies. It has 13 full-time officials.

Additional key departments include those of Overseas Employment, the General Department for Vocational Training, and Social Security.

II. RECOMMENDATIONS

Set forth below is a discussion of key labor inspection areas with the key principles, problems, potential goals and activities.

A. Improve Labor Inspection Data Collection to Better Enforce, Educate, Improve and Report

Premise: Labor inspection resources will be used more efficiently and effectively if data management systems are improved. If the ministry has more precise information on which violations are common in which industries it will be able to more effectively respond to them. Timely data collection supports better planning; focuses ministry resources; helps identify strengths and weaknesses in the system; captures information on new and evolving problems in labor compliance; identifies areas needed for training labor inspectors and educational outreach; and helps build a case for why a government should fully fund and support labor inspections. Data collection systems can and should be tailored for effective implementation in developing countries.⁸

Problem identification: MOLISA and DOLISA currently collect information related to the numbers of complaints, enterprises and employees in each province and develop plans largely based on just the number of enterprises. However, adequate data is not collected and evaluated regarding the following:

- The numbers of each type of violation alleged, investigated, found and remedied;
- These numbers broken down by industry; and
- Numbers on how often time targets for processing of complaints are achieved at each stage in DOLISA, MOLISA and related dispute resolution processes;

Additional information gathered could include: numbers of repeat violations and time taken for each inspection. The labor inspection forms are designed for inspectors to write in information but they are not designed for easy data collection, for example with numbers/codes that may be aggregated and reported.

Specific goals: Develop and implement a scalable data collection system, starting small and simple and expanding it over time. The first phase should establish a working system in one year or less. Ensure success by involving key persons and offices that know: 1) technical hardware and software capabilities in MOLISA; and 2) the labor inspection law and process at an advanced level. Two sets of data points should be identified in coordination with MOLISA/DOLISA committees: 1) the most important or primary data

⁸ For example, the small Eastern European country of Latvia developed an effective internal information system for communication and data exchange between the central and regional offices. The data gave direction to the ministry's strategic plan, annual action plans and regional quarterly and monthly inspection plans. See *Good Practices for Business Inspections: Guidelines for Reformers*, Small and Medium Enterprise Department, World Bank Group, pp. 100-114. Similarly, the Malawi Ministry of Labor revised its labor inspection forms for data collection with the assistance of an ILO program funded by ILAB/USDOL.

(such as the types of industries inspected and the types of violations reported, found and resolved), which should be collected by the labor inspectorate's in the first stage of the system's implementation; and 2) other secondary data that could be added once the system's first stage has been successful.

An example: the labor inspectorate may collect information that finds gender discrimination in a particular industry in one part of the country. In response, the Department of Gender Equality could work with the labor inspectorate to develop and implement a plan that focuses on that specific problem.

Means:

1. Revise forms for better data collection. Add new forms (individual inspection, follow up inspections, monthly tally forms, etc.) for labor inspectors to do monthly summaries with data fields to be entered into the data collection system. The new forms and an explanation of how to fill them out should be included in the new labor inspector manual and ToT training.
2. Implement new data collection system that, at first, will be limited in coverage and relatively easy to start.
3. Establish a data collection committee composed of software/hardware experts, senior MOLISA inspectors, and possibly others from the university. SIIR could advise and perhaps Better Work could also provide advice and assistance.

B. Improve Labor Inspection Training for Better Enforcement & Inspector Retention

Premise: With proper training, labor inspections will improve in terms of quality and numbers of violations resolved; reduce the time taken to resolve reported violations; and resolve more claims at earlier stages. Also, improve the worker and employer perception of/ respect for the labor inspectors' role. Proper training includes a focus on labor inspection skills (investigation, people skills, ability to resolve disputes); and knowledge of law, regulations, policies and procedures. Training systems should be internalized and made sustainable at the ministry and provincial level.

Problem identification: Vietnam has three sources of training relevant to inspections: MOLISA's ULSA (with NPAA assistance), the Government Inspectorate training school; and MOLISA's Inspectorate role in mentoring. The ULSA courses focus on training students about labor inspections rather than training labor inspectors. They are reported to be of good didactic (teaching) quality but do not directly teach many of the practical daily skills that labor inspectors need. The government inspection training school teaches general inspection skills but has only a limited focus on specific labor inspection skills needed. ULSA/MOLISA's training system relies on a labor inspection manual with six modules that are reportedly comprehensive but out of date and most or all of the trained trainers have retired. Also, all new inspectors need a short introductory course. MOLISA's seeks to expand its training materials beyond its recently produced set of 14 themed training materials for all new inspectors. In addition, ULSA seeks new textbooks on labor inspections and related matters.

Specific goals:

- 1) Develop practical tools for training labor inspectors;
- 2) Restart and establish an effective labor inspection training program; and
- 3) Ensure that a system is in place to maintain and continue to improve and provide training on a regular basis.

Means:

1. Produce new/updated training material including a labor inspection manual or manuals, with chapters in the following areas:
 - a. Brief summaries of key i) laws; ii) regulations; and iii) administrative policies/rules;
 - b. Outline of basic labor inspection skills;
 - c. Inspection checklists and guidelines by issue and industry; and quick answers with references to other source material. Also, what type of information and documents should be reviewed;
 - d. Forms for labor inspectors to complete (inspection and incident forms, monthly tally sheets, etc.); and sample forms for employers and workers to use;
 - e. Ethics of labor inspection;
 - f. Information on international and private labor compliance (ILO/IFC's Better Work and others); and
 - g. Educational pamphlets or materials that may be given to employers and workers.
2. Establish the following two committees:
 - a. A "training of trainers" (ToT) committee composed of senior labor inspectors and including, either as members or advisors, instructors from ULSA and the government inspection training school, SIIR, and possibly others. Organizations such as SIIR will help build the capacity to provide the training, which they may continue at the provincial level.
 - b. A labor inspection manual committee composed of members with the same background as the ToT committee, with more of a focus on writing skills. This committee would review SIIR's recommended outline, suggest changes, and help determine the content of the chapters. They would also be responsible for periodically reviewing and revising the manual.
3. Conduct ToT courses, led by the ToT committee coordinated with the SIIR project. The aim should be to 1) provide all new inspectors with a short training course based on the new manual; and 2) provide a short course of training to all inspectors on the manual and forms and provide courses on technical areas.

4. Develop a formal mentoring program in which senior inspectors mentor newer ones.
5. Survey labor inspectors to determine what they believe are their training needs. Their input could also inform annual strategic planning.
6. MOLISA's Labor Inspectorate could take the initiative to enter into a partnership with the Government Inspectors School to provide labor inspection officers with three month specific training on labor inspection skills.

C. Improve Labor Inspections Staffing for More Comprehensive Enforcement

Premise: To be effective, improvements in labor inspection systems require an adequate number of labor inspectors to be recruited and retained.

Discussion: ILO Convention No. 81 calls for a “sufficient number” of inspectors to do the work required (Art. 10). There is no official definition for a “sufficient” number because each country assigns different priorities of enforcement to its inspectors. Factors to be considered include the number and size of establishments and the total size of the workforce. No single measure is sufficient as in many countries the available data sources are weak. In its policy and technical advisory services, the ILO has taken as reasonable benchmarks that the numbers of labor inspectors compared to workers should be about: 1/10,000 in industrial market economies; 1/15,000 in industrializing economies; 1/20,000 in transition economies; and 1/40,000 in less developed countries. (Source: ILO, GB.297/ESP/3).

Other factors include the scope of laws enforced by the inspectors (labor, employment, health & safety, pension, etc), the geographical concentration of employers, and the access to high technology tools for education, investigation and enforcement. In 2006, the ILO stated that Vietnam was a “least developed country” but in 2010, the World Bank designated it as a “lower middle income country.” From these numbers, a rough approximation would be that Vietnam should have 1,000 inspectors for its 46 million workers.

In Vietnam, officials have suggested that they should have 1 inspector for 15,000- 20,000 workers. To meet this standard, they assert, Vietnam should have more than 700 labor inspectors for the 12 million waged workers. The current number is effectively 140 for the entire country thus equaling about 1 inspector per 100,000 workers.

Problem identification: it is clear that Vietnam has an insufficient number of labor inspectors to properly conduct the full range of duties that they are required to perform as well their role in facilitating the resolution of strikes. MOLISA/DOLISA also appears to have problems with retention and turnover in labor inspectors.

Goals/means:

1. Make the case for the government to hire more labor inspectors. This could be done in part by improving reporting, planning and data collection to better identify the problems and to highlight MOLISA/DOLISA's successes with their limited numbers.
2. Determine how to better retain labor inspectors. This could be done in part by surveying labor inspectors. MOLISA could conduct an initial survey with SIIR assistance and sustain it thereafter. Inspectors should be asked, for example, what are their training needs? What do they like about their jobs? What do they request to improve their job satisfaction?

D. Improve Outreach for Better Education & Support

Premise: Labor law compliance will be improved if the ministry expands educational outreach to employers, unions and workers to ensure they have a better knowledge of the law, policies and regulations. This outreach may include best practices in labor relations.

Problem identification: at times, MOLISA/DOLISA and the training institutions hold workshops explaining new laws and regulations. Also, key officials also hold public meetings every month to answer citizen questions. However, they have very few educational tools and materials to provide to employers, unions and workers; the training is limited to a relatively small group of people; and the material does not appear to include a wider range of practical information in an easy to access format. Employers are sent self-assessment forms, which are not effective enforcement tools; however, they could be improved to educate employers on what the law requires.

Specific goals: improve educational outreach by 1) providing educational material that covers a wide range of practical matters related to rights and responsibilities in the law, particularly concerning the most common problems; 2) in a manner that ensures that the widest audience can see and use them in various forms and levels of complexity on the web,⁹ in pamphlets and posters, and radio and TV; and 3) establish a process to update and expand them.

Means:

1. Develop relatively easy to use web based applications that do the following:
 - a. Provide simple explanations of the law and MOLISA/DOLISA procedures;
 - b. Provides a calculator allowing workers and employers to calculate wages, overtime pay, and benefits.
 - c. Provides links to other information sources

⁹ For example, an excellent web based resource was developed for Central American countries that include information on the law and a calculator that workers may use to calculate their benefits, overtime pay, and wages due. It lists and answers the most commonly asked questions. See www.levlaboral.com (most in Spanish, some in English).

2. Produce simple written pamphlets and checklists that may be provided to employers, workers and unions. This may also include small handbooks or sample sheets for workers to keep track of their own hours.

Develop a poster that summarizes worker rights, MOLISA/DOLISA and procedures and processes. Employers could voluntarily choose or be required to post them at workplaces.

3. Improve the self-assessment forms to serve as a better tool for educating employers on the law's requirements.¹⁰
4. Survey employers, unions and workers to determine their needs on education. Also engage with employers and unions to determine how their organizations will better educate managers and workers.

E. Improve Inspection Management for More Efficient & Effective Enforcement

Premise: to ensure labor compliance, the government must have a well-functioning system of enforcement with: 1) a good management system for the inspectorate with the timely, effective and fair processing of cases; 2) professional respected inspectors without inappropriate pressures from outside sources; and 3) appropriate remedies and penalties that make injured parties whole and sufficiently discourage future violations without being overly punitive.

Three factors must be considered in enforcement: speed of resolution, chances of violators being caught, and strength of penalty. Where processes are slow, the chances of being caught are low, and the penalties are weak, then many more violations are likely to occur. In comparison, if the penalties are high, but chances of being caught are relatively low, employers are more likely to comply. Similarly, if the processes are quick and the chances of being caught are high, even though penalties are relatively weak, then employers are more likely to comply. Of course, the ideal situation is one in which processes are relatively fast, chances of being caught are high, and penalties strong.

Problem identification: MOLISA/DOLISA officials identified issues in the following areas: 1) labor inspector independence; 2) a greater number/percentage of inspectors should be trained as specialists; 3) retaining labor inspectors and reducing turnover; 4) delays in resolving remedies; 5) penalties and remedies are not adequate and employers sometimes do not pay; and 6) about half of all employers do not complete self-assessments and there is no penalty for submitting inaccurate ones. While these issues

¹⁰ Chile has an excellent labor inspection system with many resources available on its website, including self-assessments for various industries, including transport and communications, fishing, mining, construction, commercial sector, agriculture, and public transport. See <http://www.dt.gob.cl/documentacion/1612/w3-propertyvalue-23497.html> (in Spanish).

are addressed in part below, additional information and dialogue would provide better focus in capacity building efforts.

Specific goals/means:

1. *Inspector independence:* concern was expressed that labor inspectors do not have sufficient independence in terms of being able to conduct inspections on their own. On one hand, MOLISA has determined that the best way of insuring high quality and thorough inspections is by sending teams out on inspections. On the other hand, the inspectorate could cover a much larger number of employers if individual inspectors perform visits. Perhaps one alternative could be to have individual labor inspectors visit employers as part of their educational outreach and to convince employers to submit accurate self-assessments. Whether inspections are done by team or individually, it is important for inspectors to report and document their visits.

A related issue is how to address situations in which labor inspectors are pressured to not properly perform their work, for example to overlook violations that they find. Where this is a problem, develop rules for ensuring their professionalism and a process to allow labor inspectors to confidentially raise their concerns in specific cases.

2. *Inspector specialists:* concern was also raised over two related problems: i) the inspectorate must cover social insurance and affairs and health and safety as well the labor code with a small number of inspectors; and ii) inspectors are often generalists when specialized knowledge is, at times, needed. Ideally, inspectorates are most effective when inspectors specialize. However, practical limitations may make that impossible, particularly in offices with few inspectors. The best approach may be to enhance their training, access to research and supporting material, and ability to quickly and easily communicate with other labor inspectors and persons with specialized knowledge.

In managing the process, the inspectorate must balance an interest between increasing the quantity of inspections and improving the quality and depth of inspections. The scope of impact may be enhanced through the use of technology, develop web-based tools for employers and workers to submit information and to calculate wages and benefits.

3. *Inspector retention and turnover:* more information should be gathered to ascertain more clearly why inspectors leave. Like all other employees, inspectors seek meaningful work, decent pay and benefits, job security and a good working environment.
4. *Delays in processing:* MOLISA/DOLISA has established very specific time targets for the processing of cases; however, it's not clear whether and when

they meet them. Data collection could better identify strengths and weaknesses in the system.

5. *Effective remedies:* It was noted that a legal reduction in penalties a few years ago has weakened compliance with the labor laws. Moreover, employers sometimes do not pay penalties. A basic principle for labor inspection systems is a commitment to ensure a full processing of a case to its completion and including the payment of any penalties. Education alone is insufficient if employers do not have the incentive to follow law, knowing that it will be enforced if they fail to follow it. With regard to repeat violations, MOLISA/DOLISA should collect and share information to ensure that repeat violators are identified. Moreover, employers who repeat the same violations should be subject to more severe penalties.
6. *Employer self-assessments:* as currently used, it appears that self-assessments are not effective enforcement tools. For this to be the case, a rule would have to be adopted that employers must submit them and if they are substantially inaccurate, employers could be penalized. However, for this to work, MOLISA/DOLISA would need to have sufficient administrative resources and capacity to receive the assessments and enforce the rule. A possible approach could be to develop a form that employers complete online with the information going directly into the database. If such a form is developed, it should be simple, clear and easy to use with easy access to useful explanations.

F. Improve Research and Networking for Higher Quality Inspections

Premise: If labor inspectors have access to good research materials, then the result will be better enforcement of the law, better service to the public in explaining the law (and best practices), and improve the worker and employer perceptions of/ respect for the labor inspectors' role.

Problem identification: The labor inspectors have access to only a limited amount of information with most of it circulated in printed form rather than online. The information is limited in its coverage of technical areas, inspection skills and linkages to external sources.

Specific goals: 1) identify a range of research sources; 2) identify high-priority areas of needs for labor inspectors; and 3) establish a system to collect and share research material that may be gathered by various MOLISA/DOLISA officials and offices.

Means:

1. Establish a point person (or persons) for accepting research material and sources who ensures that they are made available to all labor inspectors. Ideally, the materials would be put online and be accessible to all officials. In

addition or in the alternative, the point person could regularly circulate a list of research materials that inspectors could request as needed.

2. Develop new material that summarizes important areas. For example, MOLISA's 14 guides could be expanded to include new topics. SIIR and potentially other projects could assist.
3. Promote the sharing of information among labor inspectors. For example, a web based blog could be set up for labor inspectors to ask each other questions and offer answers.

G. Develop Systems of Continuous Improvement

Premise: A labor inspectorate must have a process to regularly evaluate its performance, identify gaps, improve its operations and adapt to changes.¹¹ This requires internal reviews within the inspectorate and external dialogue with employer and worker stakeholders.¹²

Problem identification: Communication occurs in DOLISA often between labor inspectors and deputy and chief labor inspectors; and between the latter and MOLISA officials. It generally involves particular complaints and inspection plans. Labor inspectors have also been consulted regarding labor law reform. However, it appears that there is no regular process through which labor inspectors are engaged in identifying problems and potential solutions in the labor inspection procedures and operations, identify training and research needs. At the same time, it appears that processes could be improved for routinely engaging with employer and worker representatives at the local and national levels on improving inspection procedures and operations and improving educational outreach to them.

Specific goals: 1) improve internal consultations with labor inspectors to improve labor inspection processes and procedures and identify their needs for training and research; and 2) improve external consultations with worker and employer representatives to improve labor inspection processes and procedures and educational outreach.

Means:

1. Establish channels of communication to receive labor inspector input on key issues.
2. Review and improve channels of communication with employer and worker organizations to address these areas.

H. Improve Coordination with International and Private Monitors

Premise: If the ministry improves coordination with Better Work and other labor compliance monitors, then it will better focus its limited resources in a manner that will

¹¹ All U.S. agencies have a process for self-evaluation and reporting to ensure continuous improvement.

¹² Vietnam ratified ILO Convention 144 on Tripartite Consultations in 2008.

help ensure that the monitors' work enhances rather than duplicates its efforts to promote labor compliance.

Problem identification: MOLISA/DOLISA has limited information on and, so far, limited interaction with the international and private monitors. However, the fact that MOLISA's chief labor inspector chairs Better Works advisory committee means that the ministry has good opportunities for cooperation. Moreover, it appears that more communication and coordination would be useful with inspectors in the Industrial Processing Zones (IPZ's).

Specific goals: 1) learn more about the monitoring; 2) develop a cooperative plan with the monitors; 3) share experiences with them and enhance labor inspectors' knowledge and skills by interacting with them; and 3) to the extent possible, coordinate with them in terms of capacity building.

Means:

1. Incorporate material and information on this monitoring into the labor inspectors' training manual and courses (see above);
2. Share information and ideas with the monitoring groups for improving labor compliance, educational outreach and labor inspector skills and knowledge. For example, monitors could meet and share information and perhaps go on joint inspection visits; and
3. Develop a coordinated plan with Better Work and private monitors.

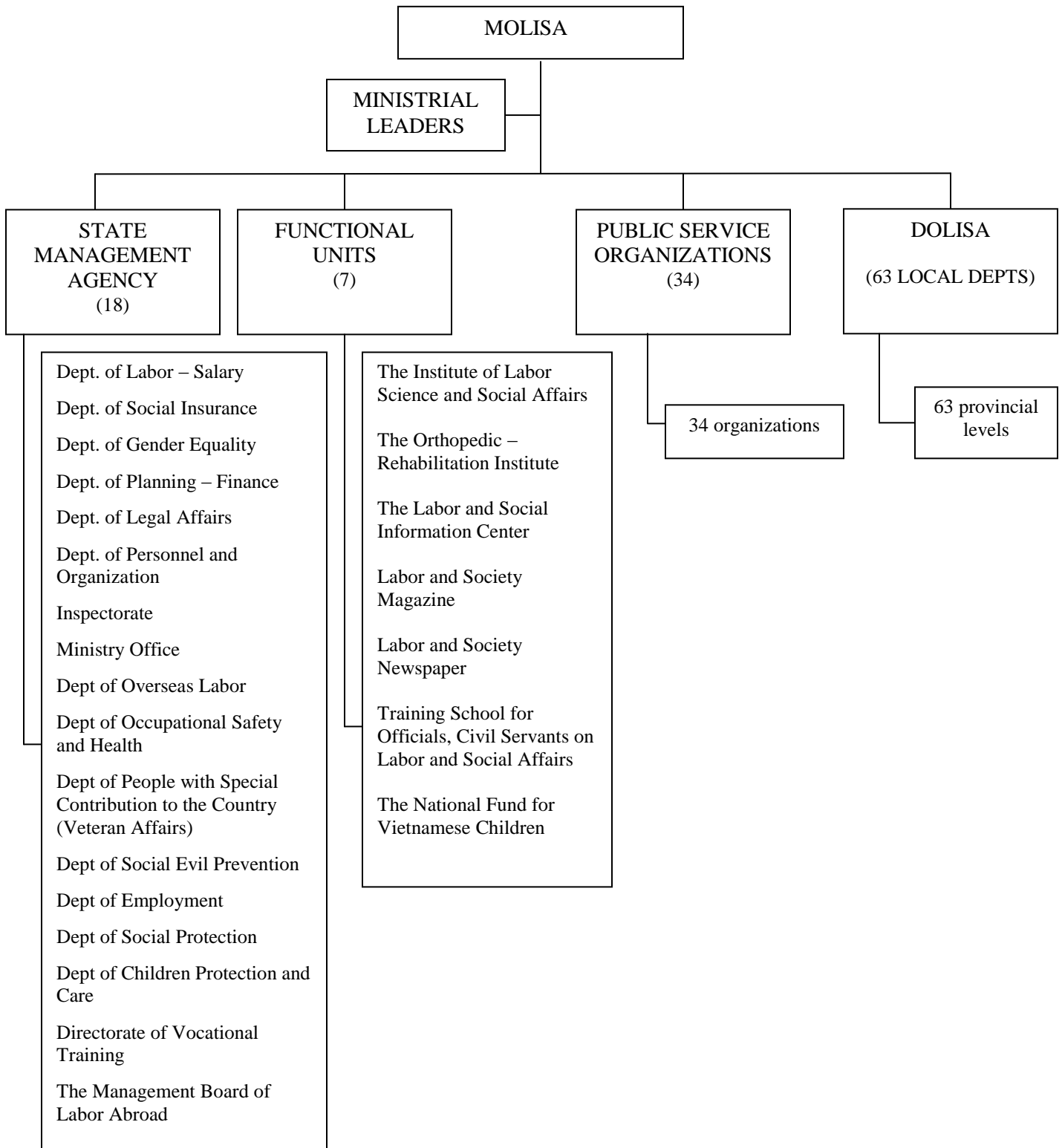
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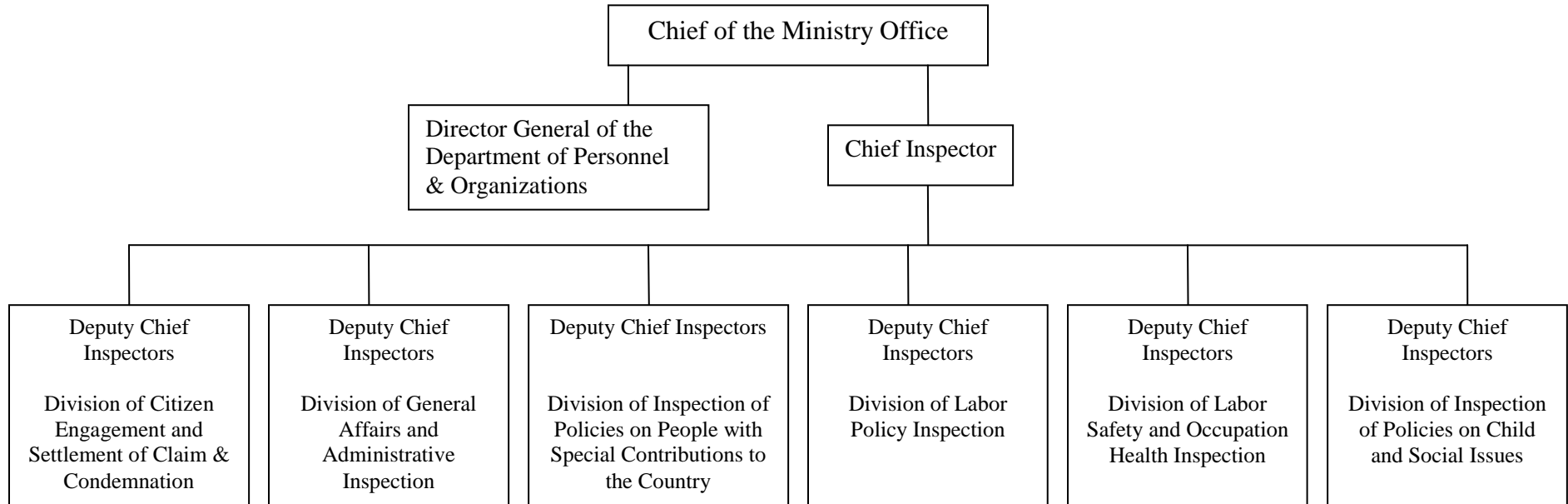
APPENDIX A

MOLISA ORGANIZATIONAL CHART



Based on organizational chart provided by the Ministry of Labor, Invalid and Social Affairs

**APPENDIX B
MOLISA/DOLISA INSPECTORATE ORGANIZATIONAL STRUCTURE**



Information based on description in Decree No. 148/QD-LDTBXH

APPENDIX C
LABOR INSPECTION TRAINING SYSTEMS IN VIETNAM**

Type of Training	Objective	Training Venue	Trainers	Training Materials	Authority for Certification	Training Budget
Pre-employment/ Pre-Service Education						
University graduation or post-graduation	- To meet basic educational requirements - Mandatory	At Universities concerned ¹³	University Lecturers/ Professors	Course work and textbook from the universities	Head of universities	- Personal; - State; Other donors; Mixed
Post-hire/ Pre-Service Training						
Three-month Pre-Service Training for New MOLISA & DOLISA staff	- To equip with basic knowledge of public administration; ¹⁴ - Mandatory	- ULSA Staff Training Center in cooperation with the NPAA - arranged by local organizers	From the NPAA	From the NPAA	Head of NPAA	State
Three-month Pre-Service Training for New MOLISA & DOLISA inspectors	- To equip new inspectors with basic knowledge and skills of labor inspection - Mandatory	- At ULSA's Staff Training Center or as arranged by organizers - arranged by local organizers	Inspectors' School of the Government Inspectorate (first 1.5 months) and MOLISA's Inspectorate (next 1.5 months).	From the Inspectors' School of the Government Inspectorate and MOLISA's Inspectorate ¹⁵	Head of Inspectors' School of the Government Inspectorate	State
Three-month training for promotion to "principal" inspectors	- Enhance skills to meet "principal" inspector qualifications. - Mandatory.	To be arranged by organizers'	From the NPAA	From the NPAA	Head of the NPAA	State
Three-month training for promotion to "senior" inspector	- Enhance skills to meet "senior" inspector qualifications. - Mandatory.	To be arranged by organizers	From the NPAA	From the NPAA	Head of the NPAA	State

¹³ Only ULSA has labor inspection coursework that could be upgraded to "faculty" level.

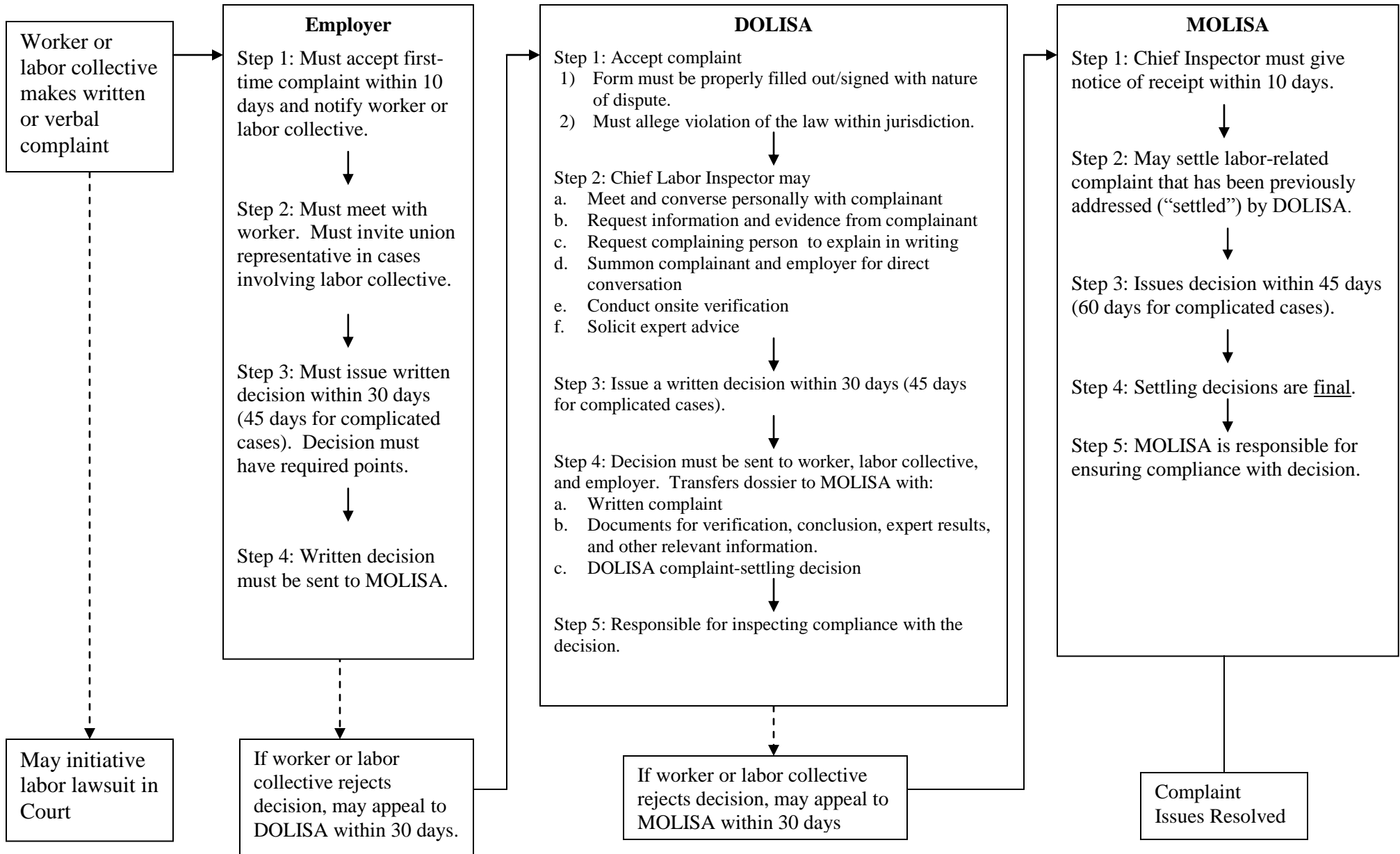
¹⁴ MOLISA's Inspectorate has developed a set of six modules of labor inspector training (not yet piloted).

¹⁵ MOLISA's Inspectorate has developed a set of 14 themed papers for new inspectors, approved for use.

Annual short-term workshops on new policies, regulations and tasks	- To update labor inspectors skills on new policies, regulations and tasks. - Mandatory	To be arranged by the MOLISA's Inspectorate	From MOLISA's Inspectorate leaders or resource persons	From MOLISA's Inspectorate	Head of MOLISA's Inspectorate	State
Workshops & training courses from other departments, agencies, organizations	- To improve knowledge of labor inspectors concerned; - At invitation	To be arranged by organizers (often in short-term)	To be arranged by organizers	To be arranged by organizers	To be arranged by organizers	- State; - Other donors; - Mixed.
Other trainings (IT skills, English language, etc.)	- To enhance capability of labor inspectors. - Mandatory	To be arranged by organizers	To be arranged by organizers	To be arranged by organizers	To be arranged by organizers	- State; - Mixed.
Continuous "Life Learning" Development						
Post graduation education and other (master, doctoral degree, IT, foreign languages, etc.)	- To improve or upgrade education level or skills of labor inspectors - At will	At universities or institutions concerned (often not in working hours)	From universities or institutions concerned	From universities or institutions concerned	Head of universities or institutions concerned	- Personal; - Donor (State, others); - Mixed.

**** Based on chart provided by Tuyen Huu Vu, Deputy Chief of Party, SIIR Vietnam.**

APPENDIX D LABOR COMPLAINT PROCESS IN VIETNAM'S DOLISA/MOLISA



APPENDIX E
PROVINCIAL LABOR STATISTICS 2009
(Sample template to be completed by MOLISA)

PROVINCE	NUMBER OF INSPECTORS	NUMBER OF SPECIALIZED LABOR INSPECTORS	NUMBER OF ENTERPRISES	NUMBER OF WORKERS	TOTAL PENALTIES COLLECTED (VND)
Đà Nẵng	6		11,053	225,304 (217,112 Contract)	
Đồng Nai		8	3,526	650,000	400 million VND
Hà Nội	12	4 or 5	7,000-8,000		
HCMC		50	2,400	350,000	4 billion VND
Quảng Ngãi		4	2,200	200,000	
Thừa Thiên-Huế		6	3,000		
Bình Dương					
An Giang					
Bà Rịa-Vũng Tàu					
Bắc Giang					
Bắc Kạn					
Bạc Liêu					
Bắc Ninh					
Bến Tre					
Bình Định					
Bình Phước					
Bình Thuận					
Cà Mau					
Cần Thơ					
Cao Bằng					
Đắc Lắc					
Điện Biên					
Đồng Nai					
Đồng Tháp					
Gia Lai					
Hà Giang					
Hà Giang					
Hà Nam					
Hà Tĩnh					
Hải Dương					
Hải Phòng					
Hòa Bình					
Hung Yên					
Khánh Hòa					

Kiên Giang					
Kontum					
Lai Châu					
Lâm Đồng					
Lạng Sơn					
Lào Cai					
Long An					
Nam Định					
Nghệ An			6,733 (147 registered with DOLISA)	267,152 (133,607 Contract)	
Ninh Bình					
Ninh Thuận					
Phú Thọ					
Phú Yên					
Quảng Bình					
Quảng Nam			3,800	105,000 (63,000 Contract)	
Quảng Ninh					
Quảng Trị					
Sóc Trăng					
Sơn La					
Tây Ninh					
Thái Bình					
Thái Nguyên					
Thanh Hoá			6,577	172,800 (167,927 Contract)	8 enterprises (117 million VND)
Tiền Giang					
Trà Vinh					
Tuyên Quang					
Vĩnh Long					
Vĩnh Phúc					
Yên Bái					

Source: Information provided by the Ministry of Labor, Invalids and Social Affairs (MOLISA).