



Chính phủ Việt Nam - Chương trình Phát triển Liên hợp quốc
Government of Viet Nam - United Nations Development Programme



*“Tăng cường tiếp cận công lý và bảo vệ quyền lợi ở Việt Nam”
“Strengthening Access to Justice and Protection of Rights in Viet Nam”*

Diễn đàn đối thoại chính sách pháp luật lần thứ nhất:

“Theo dõi thi hành pháp luật”

The First Legal Policy Dialogue:

“Monitoring Law Implementation”

Hà Nội, 17.12.2010

The First Legal Policy Dialogue

“Monitoring Law Implementation”

Frdifay, 17 December 2010
Venue: Melia Hotel , 44 Ly Thuong Kiet, Hà N i

Co-Chairs:

Mr. Hoang The Lien, Vice Standing Minister of Justice

Ms. Setsuko Yamazaki, Country Director, UNDP Viet Nam

Panelists:

Mr. Nguyen Hoai Nam, Deputy Director General, Legal Department, Office of National Assembly

Mr. Le Thanh Long, Director General of the Department of General Affairs in Legal Development, Ministry of Justice

Mr. Nguyen Van Vy, Deputy Director, Ha Noi Department of Justice

Mr. Nicholas Booth, Policy Advisor for Rule of Law and Access to Justice, UNDP

8.30 - 8.45 Registration

8.45 - 8.55 Introduction

Ms. Dang Hoang Oanh, Deputy Director General of International Cooperation Department, MOJ

8.55 - 9.10 Opening

Mr. Hoang The Lien, Vice Standing Minister of Justice

Ms. Setsuko Yamazaki, Country Director, UNDP Viet Nam

9.10 - 9.40 Overview of the monitoring law implementation by the Ministry of Justice in 2010

Mr. Le Thanh Long, Director General of the Department of General Affairs in Legal Development, MOJ

9.40 - 10.00 Role of the National Assembly in supervising law implementation

Mr. Nguyen Hoai Nam, Deputy Director General, Legal Department, ONA

10.00 - 10.15 Coffee break

- 10.15 - 10.35 Role of the Department of Justice in assisting the People's Committee in monitoring law implementation in Ha Noi**
Mr. Nguyen Van Vy, DOJ of Ha Noi
- 10.35 - 10.55 Case studies on Monitoring Law Implementation in the Areas of Environment Protection and Food Safety**
Representatives of the research teams
- 10.55 - 12.00 Q & A**
- 12.00 - 12.15 Closing**
Mr. Hoang The Lien, Vice Standing Minister of Justice
Ms. Setsuko Yamazaki, Country Director, UNDP Viet Nam
- 12:15 Luncheon hosted by the project**

LIST OF PAPERS AT THE FIRST QUARTERLY LEGAL POLICY DIALOGUE

1. Overview of the monitoring law implementation by the Ministry of Justice in 2010
- *Dr. Le Thanh Long, Director General of the Department of General Affairs in Legal Development, MOJ*
2. Role of the National Assembly in supervising law implementation - *Nguyen Hoai Nam, Deputy Director General, Legal Department, Office of the National Assembly*
3. Vai trò của S T pháp trong việc giúp Ủy ban nhân dân thực hiện nhiệm vụ theo dõi thi hành pháp luật trên địa bàn thành phố Hà Nội - *Nguyen Van Vy, Vice Director, Ha Noi Department of Justice*
4. Draft Research Report on monitoring law implementation in the area of food safety - *Team of national consultants*
5. Draft Research Report on monitoring law implementation in the area of environment protection - *Team of national consultants*

OVERVIEW OF THE MONITORING LAW IMPLEMENTATION BY THE MINISTRY OF JUSTICE IN 2010

**Dr. LE THANH LONG - Director General
Dr. TRAN VAN DAT
Department of General Affairs in Legal Development
Ministry of Justice**

BACKGROUND

As stipulated in the Decree No. 93/2008/ND-CP dated 22/8/2008 of the Government on functions, tasks, powers and organizational structure of the Ministry of Justice (Decree 93/2008/ND-CP), the Ministry of Justice is assigned to perform the functions of state management on the work of law enforcement, with two specific tasks namely to generally observe the law enforcement in the whole country; to guide and promote the activities of ministries, ministerial-level agencies, Government bodies, People's Committees of provinces and cities directly under the Central Government in observing the task of law enforcement. This task is new and of great importance and have not gained many experiences in its implementation. It also has great social significance, related to the organizational structures and operation of all agencies and bodies from central to local levels. To implement this task with its scientific, disciplined and efficient features, appropriate researches and necessary conditions with proper steps and roadmap should be taken into account.

On 04/11/2008, the Justice Minister signed Decision No. 2101/QD -BTP prescribing the functions, tasks, powers and organizational structure of The Department of General Affairs on Legislative Development. Accordingly, The Department of General Affairs on Legislative Development is determined as a unit of the Ministry of Justice, has the functions of advising and assisting the Minister in performing the State management of law enforcement. Under its authority the Section of law enforcement was established as a unit directly assists the Minister to conduct this task.

On 16/02/2009, the Government issued the Decree No. 16/2009/ND-CP to amend and supplement the Clause 2 of Article 8 of Decree No. 13/2008/N -CP dated 04/02/2008 of the Government prescribing the organizational structures of the professional agencies under the authority of People's Committee of provinces and cities under central authority. Accordingly, the Department of Justice has the functions of advising

and assisting the provincial-level People's Committee to monitor the implementation of legal documents on the local level.

On 28/04/2009, the Ministry of Justice and the Ministry of Home Affairs issued the joint circular No.01/2009/TTLT-BTP-BNV guiding the functions, duties, powers and organizational structure of the Department of Justice under the authority of the province-level People Committee, the Division of Justice under the District-level and judicial work of the commune People's Committee. Accordingly, the Department of Justice is a specialized agency of the provincial People's Committee, to advise and assist the provincial People's Committee to perform the functions of state management on the implementation of legal documents. In terms of organizational structure, the Department of Justice may establish offices in the fields of construction and implementation of legal documents and examination of legal documents; legal dissemination and education; judicial administration, judicial support, management of attorney and other areas.

On 30/11/2009, the Prime Minister signed Decision No. 1987/QĐ-TTg approving the project "*Implementation of monitoring the work of law enforcement.*" The scheme is conducted from 01/01/2010 to 30/06/2011, including many contents of activities with a number of pilot contents. After the the scheme completes, the review and evaluation of its implementation will be conducted nationwide in order to share the gaining experiences throughout the country. The Ministry of Justice is supposed as a key body to coordinate with a number of ministries, sectors and localities to implement the scheme.

Generally, from the time of promulgation of the Decree No.93/2008/ND-CP to the time before 01/01/2010, the implementation of the monitoring tasks on the law enforcement mainly focused on the activities of research, development, amendment and supplement legal documents prescribing the functions and tasks of the system of justice sector agencies assisting the Minister of Justice and the People's Committees to perform tasks at various levels to monitor the implementation of law enforcement. The year 2010 identified as central and pivotal year, the Ministry of Justice has been carrying out the following tasks: *first*, coordinating with a number of ministries, sectors and localities to implement most of the activities of the scheme. This is the task of strategic nature, serving as a pilot episode, preparing for the monitoring and assessment of law enforcement deployed in a scientific and long-term strategy. *Second*, monitoring and evaluating and reporting the work of law enforcement throughout the country; guiding and urging the ministries, ministerial-level agencies, Government agencies, People's Committees of provinces and cities directly under the Central Government in monitoring the work of law enforcement. This is a regular task prescribed in the Decree 93/2008/ND-CP by the Government to the Ministry of Justice.

To comprehensively assess the results of the implementation of monitoring the law enforcement in 2010 and orient the activities for the following years, in this document, we refer to three issues: (1) Results of the tasks of monitoring the implementation of the law enforcement in 2010; (2) A number of shortcomings and difficulties in the process of implementation the tasks, (3) Recommendations on directions , tasks and solutions to improve the effectiveness of monitoring the implementation of law enforcement.

I. THE RESULTS OF THE TASKS OF MONITORING THE IMPLEMENTATION OF LAW ENFORCEMENT IN 2010

1. Results of implementation of the Decision No. 1987/QD-TTg by the Prime Minister dated 30/11/2009 on approving the scheme "*Implementation of monitoring the work of law enforcement*"

1.1. Formulating the plan for the scheme : Based on the Decision 1987/QD-TTg by the Prime Minister, dated 10/02/2010, the Justice Minister signed Decision No. 769/QD -BTP implementing the said plan, clearly stating the time, progress and defining the responsibilities of agencies, coordinating bodies, methods, scopes of the implementation for each specific operation of the scheme .

1.2. Training: 03 training courses were conducted for the civil servants of the Ministry of Justice and Department of Justice of the provinces and cities under central authority in the whole country; public servants responsible for the legal matters in industries and other professional agencies under People's Committees of provinces and cities under central authority in the whole country in implementing the project and deploying the work of monitoring the implementation of law enforcement (from 20 to 24 / 4 2010 at the venue of Binh Thuan provinces in the southern provinces and from 27 to 29.4.2010 in the Northern provinces in Vinh Phuc, the Ministry of Justice and Legal Department of Ministries on 15/10/2010).

1.3. Strengthening, consolidating and setting up a pilot unit responsible for monitoring the law enforcement in a number of ministries, industries and localities:

Currently, all ministries, industries and localities carrying out the pilot study have completed the establishment of the Department or unit responsible for monitoring the work of law enforcement. Specifically as follows:

- At the central level, the Legal Matters Departments were established at the Ministry of Finance, the Ministry of Science and Technology, The Ministry of Industry and Commerce; meanwhile the specialized tasks units were set up in monitoring the implementation of law enforcement under the Legal Matters Department of the Ministry of Agriculture and Rural Development, The Ministry of Natural Resources and Environment and the Ministry of Health.

- At the local level, the Departments of Justice in Hanoi, Hai Phong, Ho Chi Minh City and Nghe An established under their authority professional sections of monitoring and inspection of legal documents; Da Nang Department of Justice set up the professional sections of law dissemination and education while the other one of law enforcement was formed under the Department of Justice of Can Tho province.

In addition, depending on the situation, the task of monitoring the implementation of law enforcement was assigned to specific units at ministries, industries and localities which were not included in the pilot study.

1.4. Investigations and surveys:

- The pilot investigation and survey of law enforcement in certain areas of localities:

In June and July 2010, the assigned team of experts and interdisciplinary survey team conducted a number of investigations, surveys and assessment of the law enforcement in the field of food safety and environmental protection in some places such as Hanoi, Hai Phong, Da Nang, Nghe An, Ho Chi Minh City, Can Tho. At each location, the mentioned teams conducted surveys by direct vote and interviews with people working in the field of management of the said areas, public enterprises and people living in the area as well.

Conducting study and exchange experience overseas: in December 2010, the Ministry of Justice coordinated with a number of ministries, industries and localities form a delegation of study and exchanging experiences in organizing and implementing the tasks of monitoring law enforcement in Thailand and Singapore .

Besides the above major activities, the Ministry of Justice has currently been conducting a review and evaluation of the provisions of current law on the enforcement and monitoring of law e to detect the shortcomings and inadequate principles, proposing to build and perfect the legal texts of the monitoring the law enforcement.

2. Results of the implementation of general monitoring task on the law enforcement throughout the country; guiding and urging ministries, ministerial-level agencies, Government agencies, People's Committees of provinces and cities under central authority to conduct the work of monitoring the implementation of law enforcement.

2.1. Promulgating documents guiding the ministries, industries and localities to implement the monitoring of law enforcement:

After studying and absorbing the opinions of the ministries, local experts and scientists in the country, the Minister of Justice issued the Circular No. 03/2010/TT-BTP guiding the work of monitoring the implementation of law enforcement. The Circular took effect

from 17/4/2010. This Circular serves as the legal basis and mostly original, specific guidance on the content and mechanisms, as well as the responsibilities of the ministries, industries and localities in the monitoring, assessing and reporting on the implementation of law enforcement as a regular, timely and consistent task, specifically as follows:

- The contents include: (1) Promulgation of detailing and guiding legal documents, and documents directing, urging and organizing the implementation of legal documents of superior state agencies and competent state agencies at the same level ; (2) law observance by agencies, organizations and individuals; (3) effectiveness of law propagation and dissemination; (4) rationality of legal provisions; (5) measures to organize, and conditions for ensuring, law enforcement.

- Mechanisms for monitoring law observance include (1) monitoring of law observance nationwide;(2) branch-and domain-based monitoring of law observance; (3) monitoring of law observance in localities; (4) monitoring of law observance based on information provided by agencies, organizations, enterprises and individuals. The Ministry of Justice shall monitor law observance nationwide ; Ministries and branches shall monitor law observance in the domains under their management. Provincial-level People's Committees shall monitor law observance in the domains under their management in localities. Legal departments of ministries and branches shall assume the prime responsibility for and coordinate with agencies and units under their ministries and branches in. advising and assisting ministers, heads of ministerial -level agencies or government-attached agencies in monitoring law observance in the domains under the management of ministries and branches. Specialized agencies of provincial-level People's Committees shall coordinate with provincial-level Justice Departments in monitoring law observance in the assigned domains in localities.

- Methods of monitoring law observance: Ministries, industries and localities monitor the Law observance with the following methods: (1) investigating and surveying law observance; (2) examining law observance; (3) collecting and processing information on law observance.

- The Ministry of Justice is responsible for overseeing and reporting to the Prime Minister on the implementation of law observance nationwide. Legal organizations of the ministries and branches shall assist the heads of the ministries ; the Department of Justice is to help the provincial People's Committee implement the monitoring and evaluation, preparation for reporting on the law enforcement under their management to the Ministry of Justice.

2.2. *Training:* in conjunction with the implementation of the scheme, 03 training courses were conducted for the civil servants of the Ministry of Justice and Department of Justice of the provinces and cities under central authority in the whole country; public

servants responsible for the legal matters in industries and other professional agencies under People's Committees of provinces and cities under central authority in the whole country in implementing the project and deploying the work of monitoring the implementation of law enforcement under Circular No. 03/2010/TT-BTP as described in Section 1.2 of Part I of this document.

After the training for professional agencies and individuals, most of the ministries, branches and provincial-level organizations have been actively organizing training courses for units of under the ministries, branches and local district level to implement their specific tasks.

2.3. Building the joint report on the task of law enforcement throughout the country: basing on the information provided by ministries, branches and localities; analysis and processing of information from investigative activities, surveys as well as from other sources, the Ministry of Justice has been building a joint report on the situation of law enforcement throughout the country and expects to report to the Government in late December 2010 prescribed in Circular No. 03/2010/TT-BTP.

II. SOME SHORTCOMINGS, HINDERANCE AND DIFFICULTIES

So far, all activities of the project have been undertaking and expected to be completed according to the set schedule; the work of monitoring and evaluating of law enforcement in 2010 initially has achieved some fruitful results, creating preconditions for the next deployment of the tasks. Beside the achievements, the process of implementation has also faced many difficulties and shortcomings. This has exerted a large negative effect on the efficiency as well as the progress of the work in the past time.

1. Regarding the implementation of the Decision No. 1987/QĐ-TTg by the Prime Minister dated 30/11/2009 on approving the scheme "Implementation of the monitoring of law enforcement"

1.1. On the establishment of pilot units or departments in charge of performing the task to monitor the implementation of law enforcement:

Scheme planned to set up the pilot units or departments in charge of monitoring tasks in law enforcement at The legal organizations under 06 ministries, and Department of Justice in 06 provinces and cities under central authority.

At ministry-level, under the provisions of the Decree on the functions, duties, powers and organizational structure of the Ministry, only the Ministry of Finance, the Ministry of Science and Technology, the Ministry of Trade and Industry are entitled to establish the Legal Departments. The Ministries of Agriculture and Rural Development, the Ministry

of Natural Resources and Environment and the Ministry of Health are responsible for the establishment of organizational taskforce in monitoring the implementation of law .

At the local level, according to Circular No. 28/4/2009 dated 01/2009/TTLT -BTP-BNV of the Ministry of Justice and Ministry of Home Affairs guiding on the functions, duties, powers and organizational structure Department of Justice under the Province -level People's Committee and DPC and district-level People's Committee and the judicial work of the communal level People's Committee, the Department of Justice has authority to establish less than 05 sections and not exceeding 07 professional offices for Hanoi and Ho Chi Minh City. Therefore, most localities selected the pilot establishment of specialized divisions merging u the different models as described in Section 1.3 of Part I of this document.

Thus, although the conducted activities have met the requirements of the scheme, the provisions of certain documents as mentioned above, the establishment of pilot units or departments in charge of implementation the task of monitoring law enforcement have not been carrying coherent activities in the whole ministries and provinces. In the places with the absence of professional Departments, the Department of Justice has to be merged with other units and the implementation of monitoring the law enforcement have faced more difficulties and been influenced by other tasks, so the efficiency of the said activities is still restricted and have not met the set requirements.

1.2. Regarding the monitoring the implementation of law enforcement in selected pilot areas:

The scheme selected to monitor the pilot implementation of law enforcement in the field of environmental protection, food safety and other financial institutions. In the said implementation, the Ministry of Justice shall serve as the hosting agency in all activities . Activities in financial institutions shall be guided by the Ministry of Finance. It can be said that the mentioned fields have a huge affect on social life and have caught the public attention, faced many difficulties and hindrance during the implementation.

During the time of conducting the research and development for the scheme, the Ministry of Justice had been relatively prudent and careful in selecting the pilot a reas. However, the implementation of the scheme have exposed that these are areas of expertise, of a very wide range and of limited time for the implementation (starting on 06/7/2010, ending on June 30/ 6 / 2011). The contents of monitoring and evaluation in these mentioned areas are determined in accordance with Circular No. 03/2010/TT - BTP including: (1) Promulgation of detailing and guiding legal documents, and documents directing, urging and organizing the implementation of legal documents of superior state agencies and competent state agencies at the same level;(2) law observance by agencies, organizations and individuals;(3) effectiveness of law propagation and dissemination;(4) rationality of legal provisions;(5) measures to organize, and conditions for ensuring law enforcement.

This is the first time the Justice Ministry, the other ministries, branches and localities have monitored and evaluated the implementation of the law enforcement with such contents. Therefore, the implementation process of monitoring and evaluation have faced difficulties and confusion.

The reasons mentioned above have made the monitoring and assessing of law enforcement focus on some huge difficulties and shortcomings, posing challenges to lead to comprehensive, adequate and specific monitoring activities in the mentioned areas.

1.3. Forming the criteria for evaluating the implementation of law enforcement and compiling professional guidance documents:

The important outputs in the scheme was identified to be the construction of a Government Decree on monitoring the implementation of the law enforcement (including the criteria for evaluating the effectiveness of law enforcement). Thus, the assessment criteria for the effectiveness of law enforcement can be considered important contents and indispensable of the said Decree. However, the forming of criteria to evaluate the effectiveness of law enforcement is a big matter, and of great importance, placing to consider for so long, but the authorities have not come up with these criteria. Currently, the Ministry of Justice, other ministries, branches and localities are still facing many difficulties and confusion in the research and development of those criteria.

Similarly, the compilation of documentation is also a critical operation of the scheme. However, monitoring law enforcement is a new task, not having a lot of experience in its implementation. Besides the Circular 03/2010/TT-BTP, there are no more legal documents stipulated this issue. Meanwhile, the handbook for the professional use of all ministries, sectors and localities should have the required content of high standards. Therefore, currently, the Ministry of Justice, the other ministries, branches and localities faced many difficulties and obstacles in implementing these activities.

2.The implementation of joint monitoring law implementation throughout the country; guiding and urging ministries, ministerial-level agencies, Government agencies, People's Committees of provinces and cities under central authority in the work of monitoring the implementation of law enforcement.

2.1.The implementation of tasks in ministries, branches and localities:

The *Circular 03/2010/TT-BTP guiding the work of monitoring the implementation of law enforcement for the ministries, ministerial-level agencies, Government agencies and People's Committees of provinces and cities under central authority.* Depending on the specific situation of each locality, People's Committees of provinces propose the way to guide and implement the tasks flexibly and appropriately. However, most localities only

did the task of disseminating the Circular 03/2010/TT -BTP without issue documents guiding the implementation of this task. Some localities such as Hanoi, Ho Chi Minh City, Da Nang, Hai Phong, Nghe An, Hung Yen ... only delivered the documents to urge the implementation. Therefore, the deployment of monitoring law enforcement by professional agencies at the province and district levels have not done with specific, obvious direction and timely manner.

2.2. Reporting on law observance

Circular 03/2010/TT-BTP specified on the reporting on law observance. Accordingly, the ministries, provincial and local branches shall make annual reports, special reports and extraordinary reports. No requirements for special and extraordinary reports are needed for the year 2010, but only the implementation of periodic reports. Till 13th of December, the Ministry of Justice have only received reports of 15 ministries and 28 provinces.

Through the initial examination, beside specific reports by of a number of ministries, sectors and localities such as the Ministry of Industry and Trade, The Ministry of Health, The Ministry of Agriculture and Rural Development, The Ministry of Foreign Affairs, the Government Inspectorate, Lang Son , Hanoi, Hai Phong, Da Nang ..., most of the contents of the other reports are sketchy, unfocused and have not meet the set requirements.

2.3. The implementation of content monitoring the implementation of the law enforcement:

- *The contents of evaluation of the documents issued which prescribe the detailed regulations and guidelines; text of direction, urging the implementation of legal documents of superior State agencies and the State agencies and the same-level competent authorities:* according to the Law on Promulgation of Legal documents in 2008; Law on Promulgation of Legal documents of the People's Committee and People's Council 2004, annually, the National Assembly makes the decision on building the program on laws and ordinances; the Government reviews the plan to build the decrees; the provincial People's Council issues the program on constructing Resolutions of the Provincial People's Council; the People's Committee issues the programs of building decision and directives of the PPC .

The contents of the said programs clearly state the amount and form of documents which shall be developed and promulgated. Basing on the above programs, ministries, branches and localities can be able to comprehend the situation and evaluate the related contents. Overall, ministries, branches and localities, especially ministries have not faced major difficulties in implementing this content, however, there remain some ministries and localities with too general reports on the content concerned.

- *The Content of assessment of the level of compliance of law by agencies, organizations and individuals:*

Circular 03/2010/TT-BTP developed the provisions of Decree 24/2009/ND-CP on the responsibility to monitor and evaluate the implementation of legal documents on this content. However, the level of compliance is a very general issue, difficult to quantify and clarify.

To accurately assess the level of compliance or non-compliance of legal documents, specific criteria should be based. In fact, the development of criteria on legal matters in general and the criteria to assess the compliance with legal documents in particular is of major issues set out for so long, but so far the authorities have not come up with these needed criteria. Therefore, the assessment of ministries, branches and localities on the content is mostly subjective judgments, not highly persuasive.

- Similarly, reports of ministries, sectors and localities on the content of evaluation of the effectiveness of the dissemination of law, mainly focus on the form of the reports, the number of bodies, designated objects, not on specific information evaluating the effectiveness of propaganda, dissemination, education of law as required.

2.4 Methods of monitoring law observance :

The Circular 03/2010/TT-BTP have regulations Methods of monitoring law observance including Investigating and surveying law observance; examining law observance; collecting and processing information on law observance. However, in 2010, almost all ministries, sectors and localities have not carried out the said methods but combined with other activities or assessed with their subjective judgement.

Besides, so far a mechanism for coordination among agencies in the system of state management and the Court, the Procuracy, People's Council, the civil organizations have not established in the provision of sources of information concerning the situation of law enforcement, so the content assessment has not met the requirement of a comprehensive coverage.

2.5. Budget and ensuring conditions for the implementation:

As well as other tasks, the implementation process requires the need to ensure financial, personnel and a number of other conditions. However, prior to the date 10/12/2010 the financial mechanism specifically for this work has not been built. In 2010, the Ministry of Justice has not enjoyed any budget for the implementation of monitoring the law enforcement as a regular task. Similarly, almost all ministries, sectors and localities also have not allocated the budget for this work.

From the results of assessment for the tasks of monitoring law enforcement, the 2010 tasks have exposed some shortcomings as follows:

- Improvements have not been made after 01 years of observance of law. In some cases, guidance to ministries, branches and localities have not met the requirements of time and readiness leading to the mood of expectation or confusion in the deployment of the tasks.
- The study of the construction of legal documents on the work of law enforcement may not respond in time and meet the requirement of the tasks.
- Not yet fully utilizing the input comments and the role of experts, scientists and legal organizations of the ministries, branches and localities and the Department of Justice in the implementation of observance of law enforcement.
- Not yet making these recommendations of depth and intensity to improve the efficiency of law enforcement nationwide.

There are many reasons leading to the above limitations, but we believe that the limitations of observing the work of law enforcement in recent years mainly concentrated in some of the following causes:

- The observance of law implementation is new task to be carried out with broad scope and diverse, complex nature but with no practical experiences. Awareness of leaders of some ministries, branches and localities on the importance of monitoring the work of law enforcement is limited, leading to the implementation of this task may not meet the set requirement. In some places and time the monitoring law implementation has been done formally, not gone into the substantial, effective nature leading to low effectiveness.
- The current legal documents rarely mention the monitoring law implementation, a few documents may mention but with general content and without uniformity. Till now, The Circular 03/2010/TT-BTP is the only legal documents containing guidance on professional skills, however, the content of the Circular is too general with no quantitative criteria. Therefore, the evaluation and perspective on law enforcement with subjectivity, lack of convincing basis.
- The Legal Organization of ministries, sectors and localities have not really promoted their role in advising the heads of the agencies to the monitoring law implementation.
- Experience, number, qualifications and competency of the legal officials conducting the monitoring law implementation in the Ministry of Justice, other ministries, branches and localities have not met the requirements set out by the new tasks.

- Currently, there is no specific mechanism for financing this work, therefore, in the ministries, branches and localities have faced a lot of difficulties in the implementation.

III. PROPOSALS OF DIRECTION, DUTIES AND SOLUTIONS

1. Orientations and duties

1.1. To create the improvement in the observance of law enforcement in some socio-economic hot spots; to improve the efficiency of state management on law enforcement, ensuring the legal texts really come to life, promoting effective practices, timely detection of flaws, vulnerabilities of law, creating legal motivation for socio-economic development.

1.2. To effectively implement the scheme "*Implementation of monitoring the work of law enforcement.*"; to focus on the monitoring and guiding and supervising the organization of the monitoring law implementation in some areas in ministries, sectors and localities to promptly address the issues arising.

1.3. To focus on the observance of activities greatly affecting social life.

1.4. To promote the role of legal organizations in the implementation of the legal documents drafted by ministries, industries.

2. Solutions

2.1. Continue training and strengthening the public servants working in the observance of law enforcement in ministries, sectors and localities.

2.2. Continue to strengthen and consolidate the unit responsible for monitoring law implementation at the Ministry of Justice, other ministries, branches and localities.

2.3. Complete the activities of the scheme "*Implementation of monitoring the work of law enforcement.*"; review the implementation of the scheme in June 2011.

2.4. Review, evaluate and draw the experience of the implementation of pilot contents and replicate the results on a national scale.

2.5. Build to submit to the Government a Decree on the monitoring law implementation.

ROLE OF THE NATIONAL ASSEMBLY IN SUPERVISING LAW IMPLEMENTATION

NGUY N HOÀI NAM - Deputy Director General
Legal Department
Office of the National Assembly

I. SUPREME SUPERVISION RIGHT OF THE NATIONAL ASSEMBLY

Supervising the state power is closely and organically connected with the building organizational mechanism of the state power. In order to effectively function the state power, to prevent from the violation and to protest against the abuse of power by the civil authorities, the establishment of an efficient supervision mechanism is therefore crucial to every state.

As stipulated in the 1992 Constitution, the highest-represented, the most-powerful body of the Socialist Republic of Viet Nam is the National Assembly (NA) and as such, “*the NA undertakes the supreme supervision right to all activities of the state*” (Article 83), “*The NA undertakes the supreme supervision right to the compliance with Constitution, laws, resolutions of the NA*” (Article 84). These are the highest and most important legal regulations relating to supreme supervision function of the NA (NA) by that the NA, its agencies and members (PM) monitor, review and evaluate activities undertaken by agencies, organizations and individuals who are put under supervision regarding implementation of the Constitution, laws, ordinances and resolutions of the NA and its Standing Committee (ST). In order to functioning the supreme supervision right, the NA, its agencies and members, within their respective jurisdiction as stipulated by the Constitution and laws, undertake the supervision in various forms such as: reviewing reports prepared by the competent state agencies; considering the answers in response to questions of the NA’s deputies; voting of confidence to those positions that are voted or approved by the NA; set up interim committees for investigation of a certain issue; consider those legal normative documents that are allegedly inconsistent with the Constitution, laws, ordinances; consider the settlement of appeals, denunciations of citizens ...

In order to elaborate the regulations of the Constitution, the NA has enacted legal documents with the aim to provide a legal basis by that the NA is enabling to undertake the supreme supervision right ensure. These documents are Law on NA’s Organization, Law on Supervision Activities of the NA, Rules of Procedures of the NA’s Sessions,

Rules of Procedures of the Nations' Council and of the NA's Committees, Rules of Procedures of the NA's deputies and the NA Delegations and some other legal documents among that the Law on Supervision Activities of the NA is the most important legal document. This Law has elaborated the supreme supervision function of the NA in detailed provisions on the jurisdiction and responsibility of the NA, its agencies, the NA's deputies in supervision activities; on the procedures and steps undertaking supreme supervision ...Regulations of the current legislation on the supreme supervision right of the NA have significantly contributed in the positive change aiming at transparentizing the supervision jurisdiction, responsibility, formality, procedures; ensuring openness, objectiveness, due competence and not causing any obstacles to normal operation of agencies, organizations, individuals who are subject to supervision and measures for the ensured supervision activities that have been determined.

Originating from the nature of the highest-represented, the most- powerful bodies, supervision activities of the NA have the following features:

Firstly, the supreme supervision of the NA is an activity that assumes the state power and does not separate from the state power. This characteristic presents the distinguishing between the NA's supervision and the people's supervision in general and those of the Vietnam Fatherland Front in particular. Therefore out of reports, conclusions of controls, inspections, supervisions, the resolution of the NA on the supervision activities is the decision that assumes the highest legal value and there is not any agency, organization, individual in the state who is entitled to review the NA's decision.

Secondly, the subject of the supreme supervision right of the NA is the NA, its agencies, the NA's deputies that is undertaken in accordance with the law of which supervision activity of collective of the NA's deputies during the NA's session that is undertaken in accordance with the conference regime and majority principle for decision making reflects the most sufficient and concentrated way of the NA's supreme supervision right. However, with characteristics of our NA's operation in session and majority of the NA's deputies is not full time members, the supreme supervision right of the NA is not carried out through the NA's organs set up by the NA. Therefore, between two sessions, the supervision activities of other subjects as the NA's Standing Committee, Nations' Council, NA's Committees, NA Delegations, the NA's deputies are also very important that are basis for the NA to undertake the supreme supervision at its sessions. These subjects implement the supervision right by "authority" of the NA through considering, evaluating effectiveness of the laws, policies rather than enacting handling decisions as a "level" of power.

Thirdly, objects under the supreme supervision of the NA are all state activities i.e. activities of the state agencies who undertake the rights of legislature, execution and

justice and are mainly at the central level as they are competent agencies in policy making for submission to the NA, issuing legal normative documents for nation-wide application that cause impacts to all social aspects>

Fourthly, supreme supervision of the NA is undertaken in various forms that have close relation one another as reviewing reports, supervising the issuance of legal normative documents, undertaking interpellation, setting up interim committees, organizing supervision missions ... each of that will be implemented in certain steps, procedure in accordance with laws.

Fifthly, purpose of undertaking the supreme supervision right is to consider the NA's decisions: the compliance in practice, difficulties met and feasibility in legal system basing on that legal system will be improved including abrogating the irrelevant regulations, amending for improvement of the current regulations; making decision on the areas that call for development of new legal documents. All supervision activities of the NA aim at ensuring that the Constitution and laws shall be strictly observed in an integrated manner, in the same time political and legal responsibilities of the objects under the supervision shall be considered.

II. SUPREME SUPERVISION ACTIVITIES OF THE NA AT ITS SESSIONS

1. Reviewing reports

The procedures on considering, discussing reports at end-of-the year session or end-of-the term session reflect the highest level on the supreme supervision right of the NA. In accordance with the law, NA will consider reports of the State President, NA's Standing Committee, Prime Minister, President of Supreme People's Court, and Head of the Supreme People's Procuracy. Basically, consideration of reports of the above-mentioned bodies and individuals is strictly undertaken in accordance with the legal regulations. Investigation reports of the NA's agencies show its own view and opinion. While discussing on the reports, the NA's deputies have timely reflected the relevant comments of voters, evaluated the achievements and pointed out shortcomings, and clarified the critical issues arisen from practice, recommended solutions for coping with such difficulties, shortcomings and limitation. Almost agenda items for discussion have been reflected by the NA's will through its enactment of resolutions that may be included in general resolution of the session or in a separate one.

In fact, these practical supervision activities show that, reports to the NA's agencies are often submitted later than regulated resulting in insufficient time for throughout consideration, review and checking information by the NA, lacking advice in depth on the addressed issues. The discussion on the reports is mainly based on the submitted information. Using the independent channels of information from auditing, inspecting

and examining reports as well as participation of experts as required by the investigation, consideration is limited. Reports of some important subjects that are submitted to the NA are still not examined by the NA's agencies. Some procedures relating to examining reports have not been regulated in details. Reports as requested by sectoral laws and the NA's resolution are also still not considered¹.

2. Supervising the enactment of legal normative documents of the Government, Supreme People's Court, Supreme People's Procuracy and other state agencies.

Supervising the enactment of legal normative documents of the Government, Supreme People's Court, Supreme People's Procuracy and other state agencies is one of important supervision activities of the NA and its agencies. This task calls for regular, continuous implementation in whole country after enactment of legal normative documents. Through this supervision activities, the enactment of documents for implementation of laws, ordinances will be timely undertaken in consistent with the Constitution, laws, ordinances, resolutions of the NA and the NA's Standing Committee; and wrong, confused or inconsistent stipulations of the documents will be discovered for timely adjustment of the implementation, cease, modification or abrogation with the aim to ensure the constitutional, legal consistency and the integrity of legal system.

During its eleventh legislature, the Standing Committee has prepared for the NA's thematic supervision on enactment of legal normative documents of the Government, Supreme People's Court, and Supreme People's Procuracy. Through this thematic supervision, competent agencies in charge for enacting legal normative documents have reviewed all enacted documents, corrected the violations, and abrogated those documents that are inconsistent with legislation and amended, modified those documents that are not suitable with the practice.

The current supervision (of the NA in general and of its agencies in particular) is mainly undertaken in combination with thermal supervision process and focused on the enactment progress, quantity of legal normative documents but not addressed in specific contents of each document. Since abrogation of general supervision function of the People's Procuracies at various levels, regular supervision activities on enactment of legal normative documents has been vested to the NA and its agencies. In reality, it proved that capacity of the NA and its agencies is not sufficient to supervise constitutional and legal consistency of all legal normative documents issued by all competent agencies, as evaluated by the NA Standing Committee at the Note No. 401/UBTVQH 12 dated 23 November 2010 regarding the response to interpellation of the NA's deputies in which, the limitation relating to supervision of legal normative documents derived from many reasons. Among them, "*the main reason was that the NA's committees have to spend too much time for legal development. Furthermore,*

¹ According to preliminary statistics, current 23 laws stipulates that sectoral management agencies shall annually report to the NA on the results of law implementation

organizational structure, human resources of these committees are very limited, so that they cannot allocate sufficient time for supervising legal normative documents”.

3. Undertaking interpellation and answer at the NA's sessions

Of forms to undertake supervision activities, interpellation is a direct form of the NA's supervision that is considered as a strong and effective tool of the NA. At the NA's sessions, the interpellation and answer is always interesting, especially in the recent sessions. The interpellation sessions are sufficiently lived on the television. Quantity and quality of questions interpellated by the NA's deputies have been improved.

Interpellation activities of the NA are always renovated for quality improvement such as improving the way of undertaking and executing interpellation session (answerer does not read prepared writings, answering interpellation in a group of matters); appropriately reducing the time for interpellation and response, giving floor for directly response by Prime Minister or Deputy Prime Minister to the questions raised by the NA's deputies; undertaking interpellation at meetings of the NA's Standing Committee; issuing resolutions on the interpellation activities ... Summarizing interpellation, monitoring the answer's implementation of promises, informing the related contents after interpellation ... that are regularly carried out and met with required quality have contributed to enhance effectiveness of interpellation activities. These achievements contribute to strengthen quality, effectiveness of the NA's interpellation. Through activities of interpellation and answering, the NA's role in supervising activities of the Government, other state agencies has been clearly and actively shown. Interpellation and answering have become an efficient tool of the NA in supervision activities, a regular political activity of the NA at every session that is highly appreciated and supported by voters and people.

However, there is still lack of specific regulations for preparing interpellation and response that does not work out all contents required for these supervision activities such as: lack of procedure on examining that interpellation form met with required conditions before transferring to the answer. This requirement reflects the responsibility of interpellant and ensures that contents of interpellation must be clear, based on rationale and related to jurisdiction and duties of the interpellantee. In fact there were a number of interpellations that have been based on general public opinion and lacked of up to date information officially provided by responsible agencies, individuals. The procedures for selecting interpellants and relevant issues for interpellation at each session are not specific resulting in the fact that full will of the NA's deputies have not been reflected and interpellation does not meet with the NA's deputies' request. Besides, there is not specific regulation, or regulations are not reasonable, on the time allocated for interpellation and response at session as well as lack of procedure for evaluation of interpellation and response.

4. Undertaking thematic supervision at the NA's sessions

Since 2004, in implementing the NA's resolution on the Annual Supervision Programme of the NA, the NA and its Standing Committee have undertaken supervision in the form of reviewing thematic reports on several critical, urgent issues that are reflected by the public opinion and interested by people in whole country. The initial results derived from this form of supervision are useful and effective that has created certain changes in some specific areas as investment of capital construction used the state budget, education, health care for people, implementation of policy relating to agricultural and rural development promotion ...

With narrow and specific supervised objects and scopes, thematic supervision could make determination of important policies and decisions on significant matters in some certain fields more practical, meeting with social needs and requirements in a better manner. Implementing legislative function and deciding important matters in certain fields could be tested, evaluated and supplemented through supervision on special subject in such fields. Therefore, thematic supervision could be considered as an indispensable auxiliary step in legislative activity as well as in deciding essential matters of the nation; thus, ensuring the NA could fully and synchronously undertake its functions with the highest quality.

However, thematic supervision has some following limitations:

- Firstly, lack of legal basis for thematic supervision of the NA. This supervision form is only an application way based on thematic supervision activities of the Nations Committee and Committees of the NA.
- Secondly, the way to implement supervision is still insufficient in which each subject in a certain field would be assigned a specialized Committee of the NA to preside and support the NA Standing Committee to supervise and prepare report.
- Thirdly, there is an overlapping in supervising scopes between subjects who undertake thematic supervision.
- Fourthly, recommendations, resolutions and conclusions given after thematic supervision have not been paid attention to follow and speed up the implementation.

5. Voting of confidence for persons holding positions elected or approved by the NA

As stipulated in the Constitution 1992 which is amended, supplemented in 2001, the NA has a right to vote of confidence for persons holding positions elected or approved by the NA. Nevertheless, during the past 10 years, there is no case submitted to the NA to consider and vote of confidence by the NA Standing Committee. The fact shows that,

during the past time, among persons who have been elected or approved by the NA, there are still some persons who “have infringed legal regulations or have not implemented correctly and fully their assigned tasks or rights”. These persons could be brought out for voting of confidence. However, there are still many insufficient legal regulations of voting of confidence such as: lack of procedure for voting of confidence; scope of subjects who can be brought out for voting of confidence is too broad (that scope includes members of the NA Standing Committee, members of the Nations Committee and Committees of the NA); infeasibility of regulation on proposal of the NA’s deputies for voting of confidence (in which stipulates that this form of supervision must be expressed by a written document, showing recommendation of at least 20% of total the NA’s deputies); the Nations Committee and Committees of the NA are agencies that can not submit to the NA for voting of confidence but make proposal only.

III. SUPERVISION BETWEEN THE TWO SESSIONS OF THE NA

1. Supervision implemented by the NA Standing Committee

As being a subject undertaking supervision as stipulated by the law and a standing agency of the NA between the two its sessions, the NA Standing Committee plays a very important role in implementing supervision function of the NA. The NA Standing Committee has duties to supervise the operation of the Government, the Prime Minister, Supreme People’s Court, Supreme People Procuracy and People’s Councils of provinces and cities under central government in implementing Constitution, laws, ordinances, resolutions of the NA and the National Committee Standing Committee; supervise the enactment of legal normative documents of the Government, the Prime Minister, Supreme People’s Court, Supreme People Procuracy, resolutions of the People’s Councils of provinces and cities under central government. Besides, the NA Standing Committee prepares and submits to the NA its planned Annual Supervision Program; undertaking guidance, harmonization, coordination the super vision of the NA agencies and ensuring that the NA’s deputies can implement their rights of interpellation during the time between the two NA sessions.

a) Reviewing reports of the Government and state agencies during the time between the two NA sessions

During the time between the two NA sessions, the NA Standing Committee reviews operation of the Government, Supreme People’s Court, Supreme People’s Procuracy by reviewing these agencies’ working reports. The NA Standing Committee can require these agencies to report on other issues if necessary. Through reviewing working reports of the Government and relevant agencies, the NA Standing Committee evaluated the achievements and pointed out shortcomings, raising concrete requirements for strengthening responsibilities of the agencies in undertaking their

duties, and by doing that, the Government and relating agencies provide specific guidance and timely management.

Shortcoming of reviewing report is unclearly clarification between supervision and formality reviewing for preparing contents to submit to the NA at its session. It is too short time to review working reports for submission to the NA's session, leading the easiness in reviewing in terms of both procedure and content.

b) Reviewing answer to interpellation between the two NA's sessions

As stipulated by the law, during the time between the two NA's sessions, at its meetings, the NA's Standing Committee will review the answer to The NA's deputies' interpellation that has been agreed for response by the NA and other interpellations send to it. This activity has been recently carried out in the twelfth legislature of the NA. Since the effect date of the Law on NA's Supervision, the NA's Standing Committee has undertaking interpellation and answer at some sessions. As this is quite new activity, it is not sufficient time to conduct comprehensive and in-depth evaluation. However, through opinion and evaluation of the voters as well as the NA's deputies..., initial results of this activity is positive that is supported by the Governmental members, the NA's deputies, voters and welcomed by the public. The interpellation taken place in between two NA's sessions has attached the supervision activities of the NA's Standing Committee to the news arisen in the life, contributing to building a clean, effective and efficient state apparatus, actively supporting to legislation development.

The limitation of this supervision is unclear criteria in selecting content and object for answering to interpellation at the NA's Standing Committee, especially in selecting appropriate issue for interpellation at the NA's and its Standing Committee's sessions. For interpellation which is determined by the NA to be answered at the NA Standing Committee's session, Law on Supervision Activities of the NA has not specified the determination procedure, while Regulation on the NA's sessions only stipulates that in case the interpellation needs to be investigated, the NA decides whether that interpellation will be answered before the NA Standing Committee, at the next session or by written document.

c) Supervising operation of the People's Councils

As stipulated by the law, the NA Standing Committee supervises the resolution issuance of provincial Peoples' Councils; determine to abrogate or according to proposal of the Prime Minister, the Nations Committee, the NA's Committees, the NA's deputies, determine to abrogate a part or whole of resolution issued by provincial People's Council which has a sign of illegalization with Constitution, laws, ordinances, resolutions of the NA, the NA Standing Committee; reviews organization and operation situation of People's Council when necessary; determine to dissolve provincial People's

Council or approve resolution of provincial People's Council on dissolving People's Council in districts, towns, cities under provincial government in case that People's Council causing serious damage to people interest; approves results of Chairman, Deputy Chairman, Standing Member of provincial People's Council election.

However, in fact, supervision operation of Peoples' Council is mainly based on listening to report. Almost none of supervising delegation is specialized in reviewing operation of People's Council at a specific level, there is no recommendation on reviewing resolution of the People's Council, etc. Hence, result of this form of supervision is still vague.

d) Thematic supervision

During the recent years, together with deployment of thematic supervision of the NA, the NA Standing Committee has undertaken 2 – 3 thematic supervision per year. The supervised issues are critical and urgent ones of socio-economic situation. Through thematic supervision of the NA Standing Committee, many recommendations have been accepted and resolved by relating agencies which are object of supervision.

This form of supervision, though has been paid more and more attention, still basically relies on reviewing reports of supervised agencies. As a result, this supervision is still positive; the receiving information is insufficient and not really objective. The causes such as ineffective coordination between a number of supervised agencies, cursoriness in report preparation, reporter is not a right competent person, etc. have negative impact to quality and effectiveness of this form of supervision .

In addition, under current situation of organizational structure and human resource, the NA Standing Committee has been overworked in undertaking thematic supervision. Under the current implementing method, there is almost no distinguishing between thematic supervision undertaken by the NA and its Standing Committee during the preparation. Special supervised issues of the NA or its Standing Committee have also undertaken by the way of which the NA Standing Committee issues resolution on establishment Supervising Delegation and assigns the Nations Committee or a Committee of the NA to preside the supervision. The above -mentioned shortcomings of thematic supervision of the NA are very shortcomings of thematic supervision undertaken by the NA Standing Committee.

) The handling measurements to follow up supervision's result

According to the law, basing on result of supervision, the NA Standing Committee has undertaken two handling measurements as follows:

First, the NA Standing Committee by it-self, suspends the implementation of supervised legal normative documents which infringes Constitution, law, resolutions of the NA; requires to amend or determines to abrogate a part or whole of supervised

legal normative documents which infringes ordinances, resolutions of the NA Standing Committee; issues a resolution on responsibility of person who is interpellated; requires to amend or determines to abrogate illegal resolution of provincial People's Council; dissolves provincial People's Council in case that People's Council causing serious damage to people interest; abolishes election in electing agency which makes serious legal infringement and determines to re-elect at that agency.

Secondly, proposing to the NA or requiring authorized agencies or individuals to dismiss or remove from his duties, undertake handling measurements with individual who have seriously legal infringement; request the NA to vote for confidence with person holding positions which are elected or approved by the NA; request authorized agency, organization individual to apply measures aiming at stopping legal infringements, reviewing responsibilities and handling violating person; propose to amend and supplement the inappropriate regulations.

At present, most of handling measurements to follow up supervision's result of the NA Standing Committee mainly have been implemented through its proposals on supervised objects or requirements to authorized person who receive the proposals to review and handle. Nevertheless, the issue that whether the proposals have been solved or not, or result of handling the problems have not been paid much attention. In addition, there is still lack of regulation to bind agencies which are supervised to strictly implement their responsibilities.

2. Supervision activities of the Nationals Council and the NA's committees

After five years of implementing the supervision activities of the NA, in general, supervision of the Nationals Council and the NA's committees has been attached with due attention, promoted and got several active changes. The Nations Council and the NA's committees have undertaken rather comprehensively the assigned areas of supervision and form and contents of the supervision have been initially innovated. Through examining annual reports, supervising legal normative documents, supervising the handling appeals, denouncements and thematic supervision, the quality and effectiveness of supervision activities have been being improved. The forms, methods to undertake supervision have also been innovated, thematic supervision and regular supervision have been streamed that cause positive effects, contributing to enhancing the supervision quality. Coordination with other agencies has been further strengthened. The remarks, evaluations of the supervision reports have objectively and really reflected the practice, highlighted the achievements and especially discovered limitations, outstandings, difficulties in terms of mechanism, policy, law and shortcomings in management, execution that need to be remedied; feasibility of the proposals, recommendations mentioned in the supervision report are high that create the consensus at the NA forum hence enhancing the NA's position and improving policies in assigned areas of the Nations Council, and committees in charge.

Some pending issues in supervision activities of the Nations Council and the NA's Committees are that supervision capacity of the NA's agencies do not meet with requirements, lack of professionalism, qualification and skill in general supervision as well as thematic supervision of some The NA's deputies are limited; intervenes made by several The NA's deputies are not so qualitative even in the fields under the Nations Committee or the NA's committees in charge. Secondly, scope and subjects to be supervised are too large. Each Nations Committee, the NA's Committees that is assigned to monitor, supervise several ministries, sectors under its responsibility does not organize fact finding missions; the supervising legal normative documents is mainly combined with thematic supervision.

Thirdly, to some extent, quality and effectiveness of supervision have not met with expectation. The supervision in some cases is just formalistic, which focuses only on organizing thematic supervising delegation in stead of deploying and applying other form of supervision in order to diversify supervision undertaking methods. The supervision has not been undertaken carefully, deeply and regularly leading the result that late discovering of issue, untimely proposal making. In many cases, proposal is so general, making difficult in defining specific content for polity adjustment, amendment or supplement.

Fourthly, there are so many supervising delegations coming to localities and sometimes, coming to the same localities during the same time; the working way of supervision delegations in localities has not distinguished as "supervise" or "survey".

Fifthly, it is still lack of closely and seriously coordination of supervised object in some thematic supervision.

Sixthly, gathering, following and speeding up the handling measurements of the Nations Committee and the NA's Committees has not been paid much interested, affecting negatively to effectiveness and efficiency of supervision.

3. Supervision of Delegations of the NA's deputies and the NA' s deputies

a) Supervision of Delegations of the NA's deputies

Real situation of supervision of Delegations of the NA's deputies shows the fact that, supervision of delegation of the NA's deputies in localities has many progress, especially in provinces or cities having a great number of the NA's deputies; supervision of delegation of the NA's deputies has been implemented quite effectively; many proposals of delegation of the NA's deputies have been reviewed and solved by various concerned ministries, sectors and agencies. The delegations of the NA's deputies have a well coordination in thematic supervision in according to supervision program of the NA, the NA Standing Committee, the Nations Committee and the NA's Committees. But,

besides the achievements, there are some shortcomings in supervision of delegations of the NA's deputies as follows:

Firstly, supervision of delegations of the NA's deputies as a supervising subject has not been undertaken regularly. As stipulated of the law, delegation of the NA's deputies is not a completed organization yet. Currently, the number of specialized deputies is so few; delegations of the NA's deputies mainly undertake the supervision by participating in Central Supervising Delegations. Many delegations of the NA's deputies have not organized working or researching delegations to serve their supervision yet.

Secondly, content of supervision is still unfocused. In many cases, the operation of the delegation is just formalistic, gathering least information and depending on willingness of supervised object. The supervision just stops at recording and reflecting, nature of investigation has not been appropriately paid attention. Supervision of the delegation of the NA's deputies has regard for supervised objects and lacks resoluteness between supervising subject and supervised object.

Thirdly, supervision on legal normative documents of Delegations of the NA's deputies has many shortcomings as follows: the supervising constitutional and legitimate consistence of legal normative documents is still very limited. Although many documents issued by various ministries, sectors or local governments are allegedly consider as inconsistent with the law that have been discovered by the control of justice sector but many Delegations of the NA's deputies have not discovered timely and expressed their views. It can be said that supervision on legal normative document has not met with requirement. Due to this fact, many Delegations of The NA's deputies propose that this form of supervision should be abolished.

Fourthly, capacity of official assisting for Delegations of the NA's deputies in supervision is still limited and insufficient in terms of quantity. Most of them have not been trained on supporting skill for Delegations of the NA's deputies in localities.

Fifthly, the coordination supervision between Delegation of the NA's deputies and People's Council at various government levels has not been interested; supervising scope of People's Council and Delegation of the NA's deputies has still been overlapped.

b) Supervision of The NA's deputies

As stipulated by the law, the NA's deputies is independent subject who undertake supervision by the various forms such as interpellation at the NA and the NA Standing Committee's sessions; supervising the enactment of legal normative documents at localities; supervising legal implementation at localities; supervising the handling complain and denunciation, etc. Many the NA's deputies have actively undertaken their supervising role at the sessions, at localities and their working agencies. However,

in fact, apart from participating in interpellation at the NA sessions, the NA's deputies nearly could not implement their individual supervision due to lack of specific regulations as well as supporting regime in terms of specialization. the NA's deputies mainly participate in collective supervision of the NA's agencies and Delegation of the NA's deputies. Moreover, supervision of the NA's deputies depends primarily on his own ability, prestige and enthusiasm.

IV. LESSONS LEARNT ON THE NA'S SUPERVISION

Through researching the NA's supervision during the past time, some following lessons learnt should be implemented for a real effectiveness in this NA's activity:

Firstly, it is needed to ensure the independence and objectiveness of the supervision undertaken by the NA and its agencies. Independence and objectiveness in supervision is one of significant factors ensuring effectiveness of the NA's supreme supervision.

Secondly, it is needed to have a clear, sufficient and synchronous legal basis ensuring implementation of supervision, including regulations on not only competence, content, scope but also procedure implementation for each form of supervision. The more closely the legal basis has been stipulates, the more effectively and efficiently the supervision obtains.

Thirdly, structure, component and the way to organize activities of Supervision delegation need to meet requirements of supervising contents.

Fourthly, enhancing quality of recommendations and sanction after supervision, ensuring the supervision undertaken by the NA, the NA's agencies, The NA's deputies have been regularly and continuously implemented in compliance with their duties and powers as stipulated by the law.

Fifthly, it is needed to closely coordinate between the supervision of the NA and its agencies.

Sixthly, conditions ensuring and supporting to supervision of the NA, its agencies and The NA's deputies need to be strengthened./.

ROLE OF THE DEPARTMENT OF JUSTICE IN ASSISTING THE PEOPLE'S COMMITTEE IN MONITORING LAW IMPLEMENTATION IN HANOI

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I. ASSESSMENT OF STATUS OF LAW ENFORCEMENT TERRITORY OF HANOI CITY

1. Some features of the context

As the political-administrative centre of the country, Hanoi Capital is the location where a lot of central state agencies, diplomatic agencies, international organizations, foreign representative offices are situated. During recent years, political security, social order and safety has constantly been stabilized. National and regional big political, cultural and sport events have been successfully held. Hanoi is also active in international cooperation and integration and through that, it contributes to the affirmation of Vietnam position in regional and international arena.

Hanoi is also a large cultural, educational, scientific and technological centre of the country. In the city territory, there are several hundred universities, colleges, science research institutes and academies, big national organizations and agencies in culture, and many cultural constructions symbolizing the history of the country. Since the 1st August 2008, by Resolution No.15 of the National Assembly, Hanoi administrative boundary was expanded to cover the area of 3,344.7 square kilometers (including old Hanoi, Ha Tay province, Me Linh district separated from Vinh Phuc province and four communes separated from Luong Son District of Hoa Binh province). Hanoi consists of 29 districts, prefectures and towns; 57 wards, communes and townships, with the population of more than 6.5 millions. The expansion of administrative boundary initially addresses some difficulties and problems in urban development, expands the capital space, and creates huge potentiality for economic, tourist development and urban planning for the Capital in the coming time.

However, apart from the advantages and achievements recently obtained, there are also challenges and difficulties in urban administration. The expansion of administrative boundary, mechanical emigration, plus the unplanned or past-insufficiently or

unscientifically planned urbanization in long time leads to rapid increase in population that, in its turn, causes overloads to urban traffic and housing infrastructure, health care and education services. Central and outskirt areas develop unequally. In many locations in the City, public awareness is still backward, living conditions are poor. Urban planning and city expansion has evolved, but at a low pace, with the lack of comprehensiveness in development of traffic infrastructure, health care and education services. Urban environment is seriously polluted that adversely affects people's living quality. Some imperative matters have arisen in city social order and safety; the rate of crimes and new forms of crimes tend to increase. Those problems and challenges are not minor ones. They require the most effective mobilization and usage of all resources, bringing into play full force of the city political system and people, enhancement of the effectiveness in state administration of authorities at all levels to go ahead in the near future.

2. The grounds for assessment of status of law enforcement

The assessment of status of law enforcement in Hanoi for the year of 2010 is based on the reports on assessment of the implementation of state administration mandates by city line departments, the People's Councils of districts, prefectures, towns, communes, wards and townships. At the same time, the City sent missions to inspect and survey the enforcement of laws relating to foodstuff sanitation and safety and environmental protection in some locations. However, since law enforcement follow-up is a new work, the inspections and surveys were only conducted in some locations and sectors, therefore, the assessments does not comprehensively and fully reflect the status of law enforcement in the local.

3. Status of adoption of legal normative documents detailing documents to guide, urge and organize the enforcement of legal normative documents

Based on the jurisdiction conferred in adopting detailed guidelines and local practical demands, City People's Council annually adopts its legal normative document development program. According to the program, it is provided that each department, line-department or board shall take the lead in drafting of legal normative documents that govern the field such agency is in charge of. In respect of the legal normative documents with the governing scope spreading over different fields and sectors, the City People's Council appoints the lead agency in drafting process. From the 1st January 2009 to 30th September 2010, Hanoi People's Committee and People's Council adopted 124 documents, among those: the City People's Committee enacted 30 Resolutions; the City People's Council enacted 66 Decisions and 28 Circulars. Departments, line-departments or boards those have been assigned with drafting task follow closely sequence and procedure for document enactment, such as holding consultations, gathering verifying opinions from legal agencies before submitting to City People's Council for passage and enactment. Hence, documents enacted fit practical

situation with high feasibility and have positive impacts to the social -economic situation and state administration of the City. Legal normative document review work is implemented by the City People's Council based on Review Plan enacted at the beginning of the year. The Department of Justice is now summarizing up the list of review, which contains 442 documents (including those enacted by the City People's Council and by Ha Tay province prior to the 1st August 2008), to be submitted to the City. It shows that 310 documents are currently in force, 119 documents terminated their forces, 75 documents require revision and supplementation, and 44 documents need to be replaced by new ones. The City People's Council promulgated the list of 33 legal normative documents enacted by People's Councils of Hanoi and Ha Tay province those terminated their effects. List of 179 documents on environmental protection was reviewed and indexed.

Apart from legal normative documents enacted by the City, the City People's Council instructed district, commune People's Councils, departments, line -departments and boards to timely develop Deployment of Law Enforcement Plan. Supervisory and inspectoral works, instruction of law enforcement shall be enhanced to facilitate strictly handling of law violations.

Pursuant to the provisions in Circular No. 03/2010/TT-BTP of the Ministry of Justice, provincial People's Councils shall enact documents guiding law enforcement follow -up in the locality. However, since there has been no concrete guidelines yet, to ensure post enactment enforceability of documents, the People's Council has not enacted a legal normative document yet, but assigned the Department of Justice to guide the other departments, line departments, boards, district and commune People's Councils. After a specific period of implementation, there must be an assessment and review, and the document is tentatively to be drafted and enacted in 2011.

4. Status of law enforcement

Based on functions, mandates and powers, departments and local authorities of the City organized the enforcement of legal normative documents enacted by central and local authorities. Legal dissemination has been implemented by local authorities and line departments. At the beginning of the year, City People's Council enacted legal dissemination plan and program. Local authorities at all levels instructed legal dissemination and education coordinative Committees, whose standing body are from the Justice line, to regularly reform the forms of legal dissemination and education to fit the features, the subjects and the localities in order to bring laws to people. Legal dissemination and education significantly contributes to the enhancement of legal awareness of agencies, organizations, public servants and people, the decrease of complaints and denunciations, the stabilization of local social and economic situation. However, in practice, legal provisions have not been fully and strictly complied with. Violations on land management, foodstuff sanitation and safety, construction order,

environment management, traffic are still typical. The reasons are that organizations, enterprises or individuals still give priority on business benefit, supervisory and inspectoral work has not regularly conducted, violations have not been strictly handled when detected.

The status of handling administrative violations in 2010 in some sectors in Hanoi territory is as follow:

- In Justice, Investment and Planning sector: under City People's Council's instruction, the Department of Justice, in collaboration with line departments, sent many supervisory and inspectoral missions over the performance of organizations, such as law firms, notary offices, household registration and certification services in districts, prefectures and towns within city area. Through the inspection, few violations, which have not reached the extent to impose sanctions and to which only warnings or corrections are required, have been timely detected. In 2010, the Department of Planning and Investment helped the City People's Council handle 50 violations, issued 50 decisions on handling administrative violations, including 46 decisions on imposition of administrative sanctions and 04 decisions on remedial measures.

- In administration of construction sector: Construction administration forces of districts and prefectures inspected 16,622 construction sites and made reports in 4,993 cases (including 536 cases of wrong permits, 3,642 cases with no permit, 375 cases of illicit permits). The Inspectorate of the Department of Construction reinforced supervision and inspection over construction order in city area, inspected 81 projects and constructions where the permit of construction are exempted, and the constructions with the permit issued by the Department of construction, imposed administrative fines on 54 investors and contractors who committed administrative violations in construction sector, forced the payment of fines of more than 800 million dong in total. In inspecting violations relating to urban technical infrastructure, 875 administrative violations have been detected and handled, with the total of fines exceeding one billion dong.

- In Healthcare, Labor, Invalids and Social Affairs sectors: The Inspectorate of labor, invalids and social affairs issued decisions on imposing administrative sanctions against 63 enterprises, units, owners of business facilities, with the total of fines over 500 million dong; in healthcare sector, 678 units committing violations were fined with the total amount of more than 1.4 billion dong.

- In Agriculture and Rural Development sector: supervisory and inspectoral missions in this sector examined nearly 3,000 organizations and individuals taking part in agricultural productions and business, handled 70 violations, collected more than 2 billions dong to be deposited into state budget; seized a large amount of plant protective medicine materials and products which is out of date and with no clear origin; forced the destruction of several ten thousand heads of livestock and poultries at low

quality. In inspection and supervision process, the mission handled administrative violations in accordance with provisions of laws.

In addition, in other sectors such as trade and commerce, preventing and combating trade fraudulence, the City People's Council is interested in instructing timely supervision and inspection to detect violations and handle them in accordance with laws. Professional inspectorate forces in trade and commerce sector, Department of Market Management regularly detects and handles timely administrative violations.

5. Difficulties and problems in law enforcement:

Difficulties and problems are faced in law enforcement in the locality. In more details:

First, in our legal system, too many legal normative documents need to be enforced. For examples: in environmental sector: 03 laws, 07 decrees, 07 circulars, 02 instructions, 02 Minister's decisions, 04 decisions and 03 plans issued by the City People's Council, etc.; in foodstuff sanitation and safety sector: 01 ordinance, 05 decrees, 02 Prime Minister's instructions, 06 circulars and 14 decisions issued by the Ministry of Health, 01 inter-ministerial circular; 01 circular and 02 decisions issued by the Ministry of Agriculture and Rural Development, 01 decision issued by the City People's Council require the enforcement. Based on legal normative documents, districts, prefectures, towns, communes, wards and townships issued document guiding the enforcement. Therefore, it is difficult to select the sectors or legal provisions for legal dissemination and education purpose. Application of laws shall be based on various documents. It is really hard to appraise the level of compliance of laws in respect to each document, each provision, and in listing the provisions not yet be enforced in reality.

Second, supervisory and inspectoral work is hardly held due to its interrelated ministerial mechanism that requires very scientific cooperation; the pool of officials doing supervisory and inspectoral works is still small; the material facilities are poor, especially at commune, ward and township level. Handling the violations in environmental protection and foodstuff sanitation and safety sectors faces many difficulties due to the lack of assessment equipment; while the agency seizing the exhibits have to hire warehouses for them, it takes time to ask for assessment ... Coordination mechanism in handling violations carries out many shortcomings. For example, in a case, the Public Security of Hoai Duc district detected and seized a tank truck of oil sludge, the violator admitted the facts. In preparation of the file of case to be submitted to the Chairman of the District People's Council for the issuance of the decision on handling administrative violation, the Public Security Office opined that because the violator admitted the facts, there is no need to ask for assessment, but the line department was of opinion that there must be an assessment report with a clear conclusion that the relevant tank truck carried oil sludge as a ground for the decision of

the Chairman of the District People's Council. Consequently, the officials carrying out supervisory and inspectoral duties tend to ignore the violations or handle them leniently.

II. THE ROLE OF THE DEPARTMENT OF JUSTICE IN ASSISTING THE PEOPLE'S COUNCIL TO IMPLEMENT LAW ENFORCEMENT FOLLOW -UP MANDATE IN HANOI TERRITORY

1. Legal grounds

- Decree No.16/2009/N -CP dated 16/02/2009 revising and supplementing Art.8.2 of the Decree No 13/2008/N -CP on 04/02/2008 issued by the Government providing about the structure of professional bodies of People's Councils of cities under central power and provinces says: "2. The Department of Justice [shall] advice and assist provincial People's Council to perform state administration mandates on: **legal normative document** drafting and **enforcement**; legal normative document review and inspection; legal dissemination and education; civil judgment enforcement; notarization; certification; child adoption with foreign element involved; trade arbitration; family registration; nationality; judicial records; lawyering; legal counseling; legal aid service; judicial assessment; conciliation at grassroot; auctioning and other justice works under the provisions of laws".

- Inter-circular No. 01/2009/TTLT-BTP-BNV dated 28/4/2009 jointly issued by the Ministry of Justice and the Ministry of Internal Affairs guiding the functions, mandates, jurisdictions and structure of the Department of Justice of provincial People's Councils, Office of Justice of district People's Councils and justice works of commune People's Council reads: "the Departments of Justice, as a professional agency of the People's Councils of provinces and city under the central powers (hereinafter referred to as "provincial People's Council") shall advise and assist the provincial People's Council to perform state administration mandates on: **legal normative document** drafting and **enforcement**; legal normative document review and inspection; legal dissemination and education; civil judgment enforcement; notarization; certification; child adoption with foreign element involved; trade arbitration; family registration; nationality; judicial records; lawyering; legal counseling; legal aid service; judicial assessment; conciliation at grassroot; auctioning and other justice works under the provisions of laws".

Legal normative document enforcement mandate includes:

- + General following up legal normative document enforcement in the local;
- + Providing professional and vocational guidance on following up the enforcement of laws under the managerial scope of other line departments of provincial and district People's Councils;

+ Summarizing up and reporting status of legal normative document enforcement in local, making recommendations on measure to address difficulties and problems in enforcing legal normative document to the provincial People's Council and the Ministry of Justice;

- Circular No. 03/2010/TT-BTP dated 3rd March 2010 issued by the Ministry of Justice guiding the follow-up of laws enforcement read: "Provincial People's Council shall follow up the enforcement of laws in sectors under its managerial scope in the local. The Department of Justice shall advise and assist the provincial People's Council to perform the law enforcement follow-up mandate in sectors under the management of the provincial People' Council; assist the Minister of Justice to follow up law enforcement in sectors under the managerial scope of the Ministry of Justice in the local."

2. Role of the Department of Justice in advising Hanoi People's Council to perform law enforcement follow-up mandate

To implement effectively Decision No. 1987/Q -TTg dated 30 November 2009 issued by the Prime Minister approving the Project on "Deployment of law enforcement follow-up mandate" and Circular No.03/2010/TT-BTP issued by the Minister of Justice dated 03rd March 2010 guiding the implementation of law enforcement follow-up work, the Department of Justice advised Hanoi People's Council to enact the Action Plan of the Project on "Deployment of law enforcement follow-up mandate" in Hanoi territory attached to the Decision No.1643/Q -UBND dated 09th April 2010. According to it, the City People's Council assigned the Department of Justice to take lead, in collaboration with other departments, line departments, and boards of the City, People's Councils of districts, prefectures and towns, to implement strictly activities required, organize training and deployment of laws enforcement follow-up mandate; review legal provisions on laws enforcement follow-up work; conduct surveys and studies in some selected departments, line departments, boards, People's Councils of districts, prefectures and towns. At the same time, financial resources are supplemented to line departments and localities for deploying this new mandate in the localities.

Rightly after the issuance of the Plan by City People's Council, 15 out of 29 districts and prefectures issued their own Implementation Plans. On 27 May 2010, the Department of Justice organized the workshop on training and deployment of law enforcement follow-up mandate for the leaders and legal officials of departments, line departments and boards of the City, leaders of People's Councils and Office of Justice of districts, prefectures and towns. Because this is a new mandate for the local authorities and while there has been no document detailing about the sequence, procedure, methodologies of deployment, as well as powers and responsibilities of line departments and local authorities at all levels, the Department of Justice issued timely a guiding instruction for consistent implementation by departments, line departments and People's Councils of district, prefectures and towns. The Department of Justice drafted

and submitted to the City People's Council for issuance of Decision No.51/2010/Q - UBND dated 18 October 2010. Accordingly, the Office of Legal Normative Documents Review and Enforcement of the Department of Justice shall be responsible to advise and assist the Director of the Department of Justice to implement laws enforcement mandate. Meanwhile, the City People's Council authorized the Director of the Department of Justice to establish study and survey missions to visit some districts, prefectures and towns, and work with departments, line departments or boards of the City on environmental protection and foodstuff sanitation and safety. Survey mission consists of a leader of the Department of Justice as the head, representatives from Departments of Environment and Natural Resources, Agriculture and Rural Development, Health, Trade and Commerce, Construction, Finance and Environmental Police of City Public Security.

Up to now, discussions and surveys have been held in People's Councils of Hoang Mai district, Gia Lam and Hoai Duc prefectures and Son Tay town; survey was conducted in one joint-stock company operating in urban environment; one plant doing business in urban environment, 05 vocational villages and livestock and poultries abattoir facilities, 01 village where city waste processing site is located and environmental pollution was detected. The inspections and surveys show quite a lot of cases of violations of legal provisions on environmental protection and foodstuff sanitation and safety. However, the detection and handling of violation still bear some limits. The reasons are the lack of human resources and equipments to conduct inspections, supervision and handling of violation carried out by state administration agencies.

3. Difficulties and problems in deploying law enforcement follow -up mandate

- Articles in Circular No.03/2010/TT-BTP are general, without any concrete provisions on powers, responsibilities of each agency and office in organizing the assessment of the status of law enforcement. The method to conduct surveys in some localities and sectors are not highly efficient and does not reflect fully status of law enforcement.
- The scope of law enforcement follow-up work is broad, the coordination mechanism with bodies conducting litigations has not been developed yet, so that it is really hard for the Department of Justice to sum up and assess comprehensively and fully the implementation of law enforcement work in the territory.
- Since the detailed procedure for making survey and inspection on law enforcement is in absence, the implementation of it faces many difficulties. The coordinative responsibilities among the members of inspection and survey mission bear some shortcomings and limits.

- Although having been trained on deployment of the mandate, almost of departments and local authorities have not fully acknowledged the importance of this mission and therefore, not paid enough attention on it.

- This mandate is a new one and hence, a working mechanism shall be established, despite of the fact that City People's Committee instructed the departments, line departments to assign officials to take charge of the mandate. However, since the total number of administrative staff shall be decided by the Ministry of Internal Affairs and it is really difficult to ask for an increase of the quota, Departments and line departments have to make internal mobilization and it causes difficulties.

- Because there is no detailed guidance on supportive items of expenditure for the implementation of law enforcement following up mandate, it is really hard to clear the expenses.

III. SOME RECOMENDATIONS

In order to ensure effective implementation of law enforcement follow-up mandate, overcome and address current difficulties and problems, Hanoi People's Council recommends that:

- The Government is kindly required to enact regulation providing in details about law enforcement follow-up work as soon as possible. It must contains, among the others, the contents, scope, powers and responsibilities of line departments and local authorities in conducting assessment of status of law enforcement; procedure and methodologies to carry out law enforcement follow-up work to ensure properly assessment that gives rise to useful solutions to enhance the capacity to enforce laws; supportive mechanisms and guidance on expenditure to perform the duty.

- The Government is advised to enact the regulation on collaboration in assessing status of law enforcement among executive agencies and the bodies conducting litigations.

- The Ministry of Justice is kindly required to conduct training courses on skills needed to perform law enforcement follow-up mandate for the pool of officials in charge of this mandate.

- The Ministry of Justice needs to study about the revision and amendment of Decree No.122/2004/N -CP dated 18th May 2004 of the Government providing in details about the powers, mandates, functions and legal affairs offices. It needs to contain a compulsory provision requiring professional line department to establish legal affairs office with the mandate of implementation and deployment of law enforcement follow-up work.

Above is a report on status of law enforcement in 2010 and achievements gained in deploying law enforcement follow-up mandate of Hanoi City. Hanoi People's Council respectfully report to the Ministry of Justice.

**RESEARCH REPORT ON MONITORING LAW
IMPLEMENTATION IN THE AREA OF FOOD SAFETY
(Draft)**

INDEPENDENT RESEARCH TEAM

PART A

**PURPOSES, CONTENTS AND METHODS OF RESEARCH ON MONITORING
IMPLEMENTATION OF FOOD SAFETY LAW**

I. INTRODUCTION

Law implementation, together with ensuring law implementation, is said to be the responsibility of every individual, enterprise, state body, political, social and poli-social organization. In fact, state management agencies always play very important roles in this field. As stated in the Constitution, Law on Organization of the Government as well as other detailing and guiding legal documents, it is the Government that is mainly responsible for ensuring the implementation of laws and Constitution. According to Government's Decree No. 93/2008/ND-CP of August 22, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Justice, this Ministry has the function of managing law implementation, and thus, is the main agency in charge of this area.

On March 3, 2010, the Minister of Justice issued Circular No. 03/2010/TT -BTP, guiding the Performance of Law Implementation Situation Monitoring, with the aim of performing its tasks, setting up the basis for state agencies to evaluate law implementation, and ensuring law implementation in the area which each agency has responsibility for. This is a necessary step to prepare the Ministry of Justice for monitoring law implementation in the whole country. It is also a temporary legal basis for performing law implementation, as well as improving its institution.

The contents and mechanisms of law implementation monitoring are applied in every social aspect. Its purpose is to ensure the conformity of monitoring law implementation with the spirit and content of Circular No.03, to overcome limitations on law implementation in the long run, and to continue improving the regulatory framework for law implementation monitoring. It is, therefore, essential to select an area, which

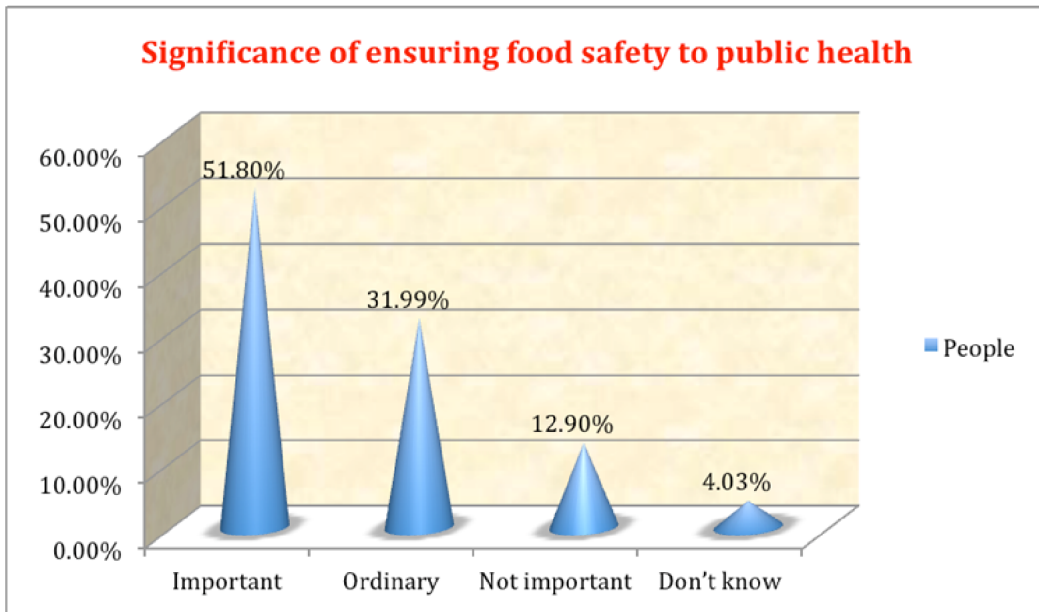
involves the participation of different agencies at different levels; this means that management and implementation of law in this area are associated with several branches/agencies and areas. Monitoring law implementation of an inter-agency nature is also the main purpose of Ministry of Justice's Circular No.03/2010/TT -BTP of March 3, 2010, guiding the Performance of Law Implementation Situation Monitoring. Food safety is a good example for this. Under current legal regulations on food safety (legal documents which are currently in effect), at the central level, the area of food safety is under the authority of different agencies, including the Ministry of Health (Hygiene food safety of foods circulated on the market and imported foods); Ministry of Agriculture and Rural Development (Hygiene food safety of agricultural products); Ministry of Science and Technology (technology processes and product standards); and Ministry of Industry and Trade (imports of raw materials for food production).

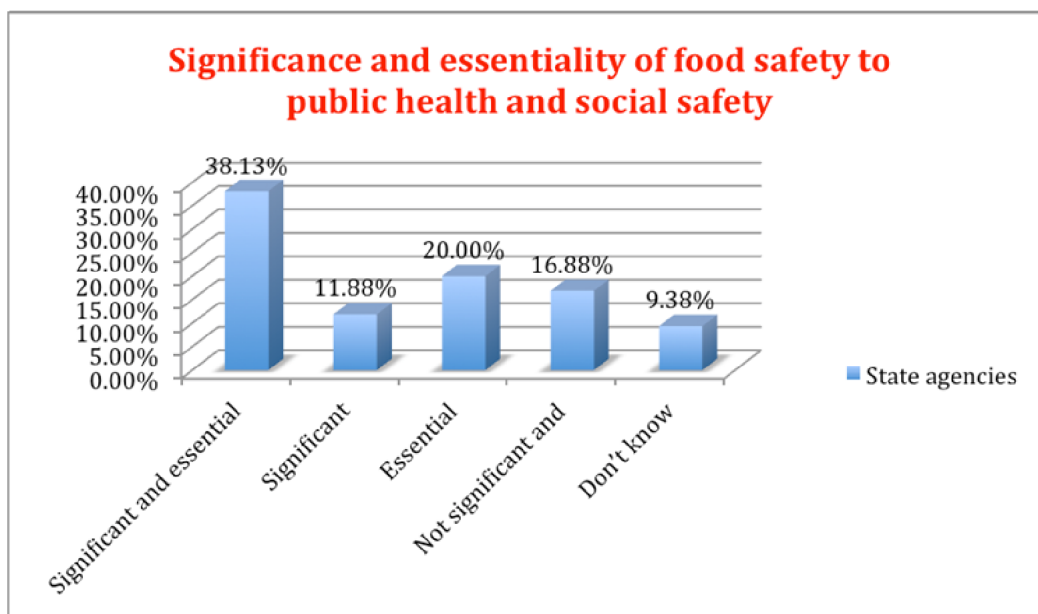
Moreover, the current situation of ensuring food safety is a rather serious problem, though state agencies have used a number of measures, both voluntary and compulsory, as to minimize the harm of food safety incidence. Some examples frequently written on mass media illustrating the current food insecurity are as follows:

- In central provinces of the country, authorities found out a series of cancer-causing toxin contaminated chilli powder specimen.
- In November 2009, Team PC36 of Hochiminh Police Department detected two establishments/producers specializing in producing grease and greaves from animal fat, skin and internal organs, which still had dung stucked on. Material evidence was 70 tons of grease. Also in Hochiminh City, recently, a jam establishment has been caught with tons of raw jam materials stored in drums with lots of muck worms.
- In December 2009, authorities found out two warehouses with tons of rotten grease with enclosed making process in Thua Thien Hue Province.
- In Hanoi, authorities detected relationships between dirty grease establishments with a fried corn establishment in La Phu Village, Hoai Duc. Also, in Long Bien wholesale market, the most crowded food market in Hanoi, inter-branch authorities found out frozen squid products, all rotten and moldy, cleaned by chemicals, to "transform" into... fresh and white squid. When inspecting the frozen warehouses in these establishments, authorities detected a whole system of squid bleaching centrifugal machine. The workers described the making process as accurately as real professionals as follows: frozen dirty squid are cleaned, put into tanks with water, with half a kilo of salt, 1/3 of an ice cube and about 250ml of hydrogen peroxide, then soaked in approximately one hour. After that, the squid are put into centrifugal machines to be bleached, cleaned, packed and carried away for consumption. Two bleaching squid kiosks can put tons of chemical squid into the market each day.
- In Khoa Chau, Hung Yen Province, vermicelli girdle cakes were dried above sewage trenches. Girdle cakes and finished vermicelli were dried throughout sagging and smelly pigsty roofs. Cake strips hung down the wall, went down to the sewer of the

pigsties. Lots of them even fell down, rolled on village paths with full of animal dung, etc.

According to a survey, most state officials and people agreed on the significance of food safety to public health, which encouraged the Expert team a lot when conducting this report.





The UNDP project “Improving Access to Justice and Protection of Right in Vietnam” agreed to support this research because of the significance of food safety ensurance as well as the complexity of monitoring law implementation. Its results will certainly help improve the legal system and law implementation efficiency in the area of food safety and environmental protection, as well as the legal framework regulating the performance of monitoring law implementation in every social aspect within the whole country.

II. OBJECTIVES

1. Research and propose solutions to improve the efficiency of law implementation in the area of food safety, including proposals for improving the legal system of food safety.
2. Propose solutions to improve the efficiency of law implementation in every legal aspect.
3. Improve the legal framework for monitoring law implementation situation.

III. SCOPE AND CONTENTS

1. Briefly evaluate the status of food safety legal system.
2. Introduce some countries' regulations of food safety and experiences gained through the new provisions of Law on Food Safety, which will be in effect on July 1st 2011.

3. Assess the current status of performing, organizing and monitoring law implementation in the area of food safety based on Circular No.03/2010.TT -BTP.

IV. METHODOLOGY

1. Collecting, classifying and analyzing data reports, reference materials and information sources

The Expert team collected information from various sources, such as data reports on activities, scientific research materials, mass media, Internet and other relevant documents, particularly information from the survey of food safety, which was conducted, gathered and processed carefully and thoroughly.

Results from survey, data processing and previous researches related to food safety area are important inputs and vivid illustrations for statements, analysis and evaluation shown in this Research report.

2. Conducting surveys

The survey was conducted by traditional methods, including questionnaires, in-depth interviews and seminars.

- Questionnaires

It took about two months to give out and gather in questionnaires. They were then sorted out; of which factual data and information were used in this Report.

We gave out a total of 720 questionnaires to three groups related to the area of food safety in four central cities: Hanoi, Haiphong, Danang and Hochiminh City, which are major ones and have high food safety violation level. In particular, the number of questionnaires given out and gathered in are as follows:

- Ordinary people: 400 given out, 352 gathered in.
- State management agencies on food safety (including some judicial institutions overseeing the performance of law implementation): 160 given out, 160 gathered in.
- Enterprises (including food producing, processing and trading establishments): 160 given out, 146 gathered in.

- Direct interviews

The team also directly interviewed people who have experience in the area of food safety, such as officials at Vietnam Food Administrator under the Ministry of Health, Food Safety Bureau under the Department of Health of provinces and cities at central level, as well as other agencies and organizations.

These in-depth interviews clarified technical information and brought the most accurate survey result. Specialists working in agencies, organizations and enterprises, together with researchers, provided the Expert team with concrete information. Not only could the team further analyse technical content, but they could also clarify the survey result by giving out, gathering in and sorting out questionnaires.

- Conducting seminars/conferences

Holding seminars is also a useful method to collect information from state agencies, organizations and enterprises in food safety area. Seminars are held in two types: general and technical ones. General seminars are the ones with the participation of representatives of state agencies managing food safety, and food making/trading establishments. Technical seminars are private meetings with officials of a certain unit/agency, with the aim of solving related problems.

3. Making Research report

The Expert team has compiled, analysed, assessed information to make the Research report on monitoring implementation of food safety law. This is based on the results of current legal normative document research, technical documents on the performance of law implementation on food safety, survey results, data reports, opinions of specialists in seminars/conferences, information from mass media and other sources.

The Report was made step by step, from getting opinions for the Report detailed outlines and the Report Draft, to completing it. This is the official research result of the Expert team and still needs updating and improving. It can be used for other specific research purposes.

PART B

STATUS OF PERFORMING, ORGANIZING AND MONITORING IMPLEMENTATION ON FOOD SAFETY LAW

I. CURRENT LEGAL REGULATIONS ON FOOD SAFETY

1. Current legal normative documents on food safety

On July 26th 2003, the Standing Committee of the National Assembly approved of Ordinance on Food Hygiene and Safety. This Ordinance has come into effect as from November 1st 2003. The Government, officials, ministries and agencies, People's Councils and People's Committees of provinces and central cities have issued several

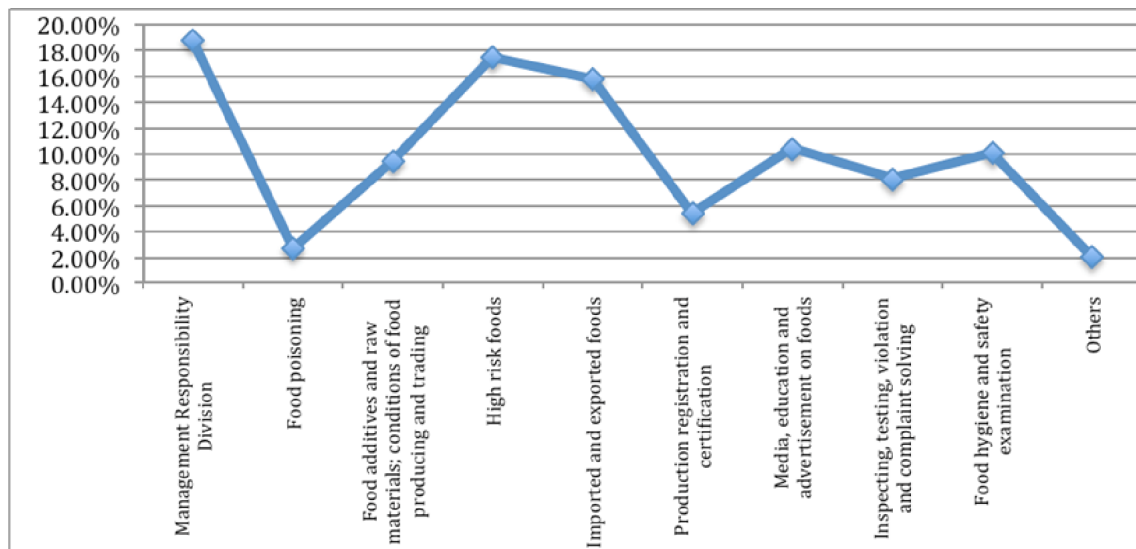
documents guiding the implementation on the Ordinance, particularly some important ones, known as the basis for performing, including:

Legal normative documents in the area of food safety, listed in detail in this Report Annex.

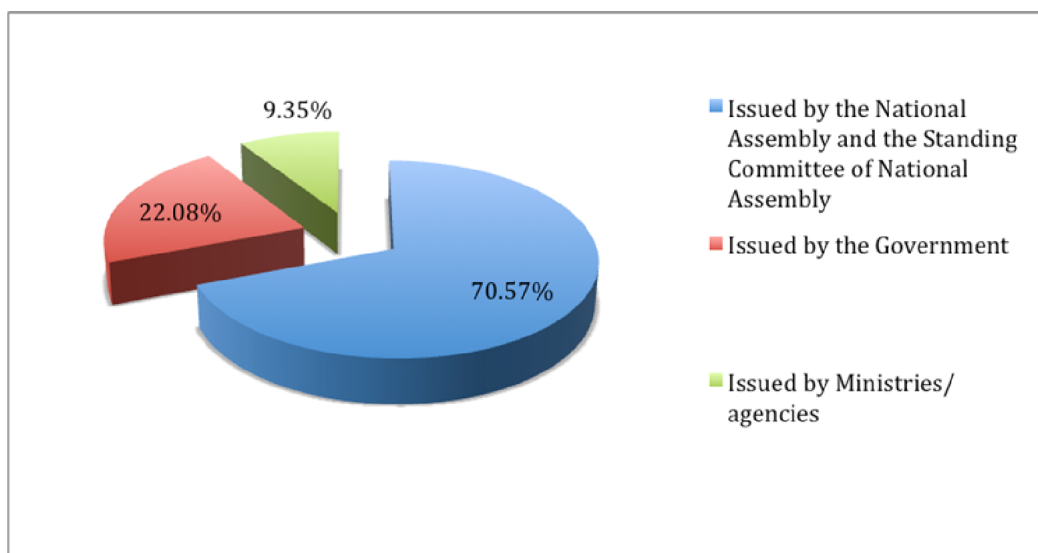
In addition, there have been several new laws and ordinances, or amendments related to the management of food hygiene and safety promulgated, such as Law on Standards and Technical Regulations, Law on Products and Goods Quality, Law on Pharmacy, Law on Advertisement, Ordinance on Veterinary Medicine, Ordinance on Plant Protection, and a series of sub-law documents. All the above-mentioned documents have created a legal framework for the management of quality, food hygiene and safety, so as to meet the international economic integration requirements.

According to the Ministry of Health's statistics, there are hundreds of legal documents on food hygiene and safety, 299 of which are issued by central institutions.

- Regarding aspect regulation: Legal normative documents on food safety regulate 10 main aspects, approximately 20% of which are about responsibility division among state agencies in ensuring food safety. In particular:



- Regarding competence: there are three types of legal normative documents on food safety: issued by the National Assembly, the Government, and Ministries/agencies. In particular:



According to the Ministry of Health's statistics, People's Councils and People's Committees have issued a total of 930 legal documents in order to implement the Ordinance on Food Hygiene and Safety. However, in the scope of this report, we did not assess further and analyse concretely the status of their issuing legal normative documents.

2. Evaluation of current legal regulations of food safety

a) Legislation on food safety is closely associated with and subject to other law fields to some extent

Besides the Ordinance on Food Hygiene and Safety (Law on Food Safety will not be in effect until July 1st 2011), there are several legal normative documents on monitoring food safety, such as Law on Standards and Technical Regulations, Law on Products and Goods Quality, Law on Pharmacy, Law on Advertisement, Ordinance on Veterinary Medicine, Law on Plant Protection, etc.

b) High number of legal normative documents does not mean high sufficiency and efficiency in state management of contents:

- There are 56 legal documents on responsibility division, accounting for 18.73% of the total. However, they still cannot determine which agency has to be responsible when problems of food safety arising.
- There are 29 legal documents on food additives and raw materials, conditions of food producing and trading, accounting for 9.37% of the total. However, breaches are still relatively common.

c) Overlaps, conflicts and duplications in the legal document system on food safety

- Content overlaps and conflicts: tens of legal normative documents regulating the same content.
- Competence overlaps: 211 legal documents on food safety issued by ministries and agencies (47 Circulars, 174 Decisions), not to mention documents issued by local authorities (930 documents).

d) There are some impractical legal regulations (higher conditions than can be applied in reality), for instance, regulations of:

- Limitations on microorganism contamination (*Clostridium perfringens*) for meat and meat products.
- Standards for safe vegetable production areas (Viet GAP).
- Standards of hygiene and food safety for street foods.

e) Some legal normative documents on food safety are not specific enough. Moreover, several provisions and aspects lack specific guidance from the Ministries/agencies

- Legal documents on standards and technical regulations of food safety

The number of standards and technical regulations is less than required. There are about tens of thousands of kinds of foods circulated on the market nowadays, yet only 406 out of 684 Viet Nam's Standards are related to food safety area.

- Legal document system: adequate, yet needs taking broader legal system into consideration, such as criminal treatment. Ministries/agencies need to review each other's regulations to complement theirs.

g) Law on food safety has not been updated early enough. Methods of encouraging people to implement law on food safety are rather blurred.

II. EXPERIENCE FROM FOREIGN COUNTRIES IN LEGAL DOCUMENTS ON FOOD SAFETY AND THEIR PERFORMANCE IN REALITY

1. Regulations of several countries on food safety

a) China:

Under China's regulations, food safety area is governed as follows :

- Assignment of management agency of food safety assurance:

Ensuring food safety is supposed to be the responsibility of different agencies. A Food Safety Commission was established, members of which are representatives of relevant

ministries/agencies. It shall co-ordinate with other ministries. The Ministry of Health is of greatest importance, responsible for making policies, evaluating risks and building up standards. Other ministries/agencies also play certain roles. Agencies under State Council shall co-ordinate with each other to manage and assess food safety status, build up standards, publicize information, set up technical certification regulations, test foods, check data, investigate and solve serious problems. Quality inspection, industrial and commercial agencies are responsible for oversight and management of food producing, distributing and other services.

- Dissemination of food safety knowledge/information

Food safety-related associations are responsible for guiding food producers and traders to implement legal regulations, propagating and disseminating knowledge of food safety. Furthermore, they are to encourage civil society and community groups to learn about food safety, legal documents, regulations and standards, propagate healthy diets, as well as improve consumers' awareness of food safety and health care.

Mass media must provide free propaganda of knowledge and regulations on food safety, and listen to people's feedback about violations.

- Rights of compensation claim

Consumers have the right to claim compensation under legal regulations if there is any physical or property damage caused by food consumption, food additives or other food-related products.

- Food safety control and risk assessment

China maintains compulsory management methods and has a network of technical inspectors from the level of commune/ward. Accordingly, a control mechanism for food safety is established throughout the country in order to control the diseases caused by foods, food contamination or other food-related hazards to human health.

Risk assessment is conducted by the Risk Assessment of Food Safety Commission, members of which are specialists in health, agriculture, foods, nutrition and other areas, selected by health agencies under the State Commission. If the assessment result shows that the food is not safe, competent agencies are to use reasonable methods immediately in order to ensure that the producers/traders will stop producing/trading that kind of foods, and to inform consumers to stop consuming it. In urgent cases, standards of food safety will be built up or renewed.

- Food producing and trading

If a kind of foods is found out not to meet current standards, producers shall at once stop producing, recall bad products circulated on the market, inform other producers, traders and consumers. If a kind of food is found out unsafe, producers shall at once stop producing, inform relevant producers and traders, as well as consumers to stop producing, trading and consuming it. In case producers and traders do not recall or stop producing and trading that kind of foods, competent quality inspection agencies and authorities at a district level or higher may revoke or terminate the food business.

o Solving problems of food safety:

Medical agencies at a district level or higher, after receiving reports on food safety problems, shall immediately conduct investigation, co-ordinate with agricultural, industrial and commercial management agencies, as well as quality inspection ones, to use remedial measures to avoid or minimize harm to people. Authorities at a district level or higher shall immediately require resolutions, set up emergency plans and use essential remedies. In case the problem is serious, medical management agencies at a city level or higher shall co-ordinate with relevant bodies to conduct investigation, and require agencies at the same level to give accountability. When a food safety incident involves two provinces or more, an autonomous region or a central city, State Council's management agencies shall conduct investigation into the ones accountable.

b) India

Indian food safety law was mostly contained in the Ordinance on Foods. It regulated food producers, distributors and sellers; food services from the moment it is invoiced until it reaches consumers, and when poisoning occurs; imported food registration; the Government's competence of issuing foods regulations; standards and qualities of special foods; state authorities' competence, consumers' rights; co-operation and information sharing among ministries/sectors; law enforcers (specialists, inspectors, etc); treatments (fining, prisoning, etc). All breaches, whether serious or not, are heard by court with proper treatment.

Nowadays, food safety is regulated by Law on Food Safety, which mostly inherits from the previous Ordinance. Furthermore, it focuses on regulating several detailed contents, for instance, food traders' liability of not keeping, selling or distributing any kind of foods that is unsafe, has false labels, does not meet standards or contains irrelevant/illegal substance. The Law also encourages Food Safety Inspectors to participate in preventing incidents and improving conditions.

A very great advance of this Law is to setting up risk assessment rules, which combines some requirements containing in Article 5 of the World Trade Organization's SPS Agreement. Accordingly, when issuing regulations or standards, food agencies shall base on risk assessment, unless they think it is not appropriate in that case or

inconsistent with its characteristics. Risk assessment is conducted based on scientific evidence in an independent, objective and transparent way; ensuring the participation of the public openly, directly or through representative agencies at any level, during the time of drafting, assessing and amending regulations; unless they think a food safety or public health emergency needs issuing/amending. In this case getting opinions can be exempted on the condition that that regulation is only in effect for no more than 6 months. In addition, the Law allows food management agencies to require medical practitioners and pharmacists to report to relevant officials on everything related to food poisoning.

c) Thailand

- Assignment of management agency of food safety insurance :

Under Thailand's regulations, Ministry of Public Health is responsible for managing food safety. Minister of Public Health's authorities are given under regulations, including: controlled kinds of foods, its qualities and standards; the ratio of ingredients used in food production; conditions and principles of using preservatives, preservation methods, color making or other substances; qualities and standards of packages and using packages; methods of producing, equipments and facilities used in food production and preservation; kinds of foods which is prohibited producing, importing and selling; principles, conditions and methods of examining, preserving and analysing foods; requirements of labels and their layouts, advertisement principles and methods on labels.

Food Council is the Minister of Public Health's consultant body on implementing food safety. Its members include the Permanent Secretary of the Ministry of Public Health, who serves as Chairman; Secretary General of Drugs and Foods Bureau; representatives of Department of Health, Pharmacy, Infectious diseases, Internal Trade and Customs; representatives of Ministry of National Defense and Ministry of Agriculture; representatives of Legal Council, and 9 other members with professional skills, selected by the Minister of Public Health. The Council, when performing its tasks, has jurisdiction to issue a written decision to request anyone to confirm or account for inspected documents.

- Granting, suspending and revoking licences of food producers/traders.

2. New points of Law on Food Safety 2010 drawn from legislative experience of other countries

In the near future, difficulties and shortcomings listed in Section 2 will surely be limited and mostly resolved by Law on Food Safety. On June 17th, 2010, it has been passed by Legislature XII of the National Assembly of Socialist Republic of Vietnam at the 7th Session. Consisting of 11 chapters/ 72 articles, this Law has several new points in

comparison with the Ordinance on Food Safety No.12/2003/PL -UBTVQH of July 26th 2003.

Chapter I: General Provisions, consisting of 6 Articles (From Article 1 to Article 6). This chapter has several new features compared to the Ordinance, including updated and clarified terms, and principles of managing food safety from farm to fork. Also, the Law clearly stipulates that fine levels for administrative violations on food shall comply with legal provisions on handling administrative violations. In case applying the highest penalty prescribed by law on handling administrative violations is still 07 times the value of food violations, the applied fine is no more than 07 times the value of food violations.

Also, the Law clearly stipulates that fines for administrative violations shall comply with the law provisions on handling administrative violations. In case the highest penalty prescribed by law for handling administrative violations is less than 07 times the value of food violations, a higher fine can be applied, but no more than 07 times the value of food violations.

Chapter II: Rights and responsibilities of individuals and organizations in ensuring food safety. It consists of 3 Articles (from Article 7 to Article 9), stipulating rights and responsibilities of 3 groups: individuals and organizations producing foods; individuals and organizations trading foods; and food consumers.

Chapter III: Conditions of ensuring food safety, consisting of 9 Articles (from Article 10 to Article 18). This is a total new chapter compared with the Ordinance. It stipulates as follows: Besides general conditions, all kinds of foods must meet some more specific ones (regarding specific groups, such as fresh, processed and functional foods, etc) .

Chapter IV: Conditions of ensuring safety in food production and trade, consisting of 15 Articles (from Article 19 to Article 33). The difference compared with the Ordinance is that, it has specific regulations for retail good producers/traders. Relevant Ministries shall stipulate conditions of each kind. Moreover, there is a separate regulation on safety conditions in street foods' business.

Chapter V: Certification of eligibility for food safety in production and sales. It consists of 4 Articles (from Article 34 to Article 37). The difference compared with the Ordinance is that, the Certification of eligibility for food safety is only in valid in 3 years. Six months prior to the Certification's expiration date, individuals and organizations producing and trading foods must apply for re-certification if they want to continue their businesses (according to the Ordinance's regulations, this Certification did not have an expiration date).

Chapter VI: Importing and Exporting Foods, consisting of 5 Articles (from Article 38 to Article 42). It has more detailed provisions on safety conditions of imported and exported foods.

Chapter VII: Advertising and Labeling, consisting of 2 Articles (from Article 43 to Article 44). It regulates food advertisement contents; for instance, food advertisement is allowed only after being examined and approved; and only examined and approved contents can be advertised, etc.

Chapter VIII: Examining foods, analysing food risks, preventing and overcoming food safety incidents. It consists of 11 Articles (from Article 45 to Article 55). This is also a total new chapter in comparison with the Ordinance. According to this chapter, analysing risks of food safety is required, including assessing, managing and propagating the risks. Also, it defines the responsibilities of organizations and individuals producing and trading foods, and of competent state agencies for tracing out the origin of, recovering and and dealing with unsafe foods.

Chapter IX: Informing, propagating food safety. It consists of 5 Articles (from Article 56 to Article 60), defining the purposes, requirements, contents, objects, forms and responsibilities of informing, educating and propagating food safety.

Chapter X: State management of food safety, consisting of 10 Articles (from Article 31 to Article 70). This chapter has several new points compared with the Ordinance. It assigns 3 Ministries the responsibilities of state management: Ministry of Health, Ministry of Agriculture and Rural Development, and Ministry of Trade and Industry. In addition, it defines more concretely the responsibility of state management of food safety at each level. The Ministry of Health is responsible for inspection and unexpected examination of the entire process of producing, importing, trading foods under other ministries' jurisdiction when necessary.

Chapter XI: Implementation Provisions, consisting of 2 Articles (from Article 71 to Article 72). The Law on Food Safety comes into effect from July 1st 2011. The Ordinance on Food Safety No.12/2003/PL-UBTVQH shall be no longer enforced from the effective date of the Law on Food Safety.

III. SITUATION OF LAW IMPLEMENTATION IN FOOD SAFETY

1. Situation of issuing legal normative documents on food safety which guide and detail documents of competent agencies at higher/same levels

- In general, the lack of standards and technical regulations of food hygiene and safety, and slow progress of their issuance result in unmet managing requirements. There are several reasons, one of which is the limitation of investment funds for setting up national technical standards (currently less than 10 million VND/standard or technical regulation). Another reason is the slow review and transformation of Vietnam's Standards and branch standards of food safety into national technical standards.

- There is not sufficient statistics about the situation of issuing legal normative documents on guiding and detailing other documents on food safety. However, it is clearly seen that there is no assurance in the progress of issuing guiding and detailing legal normative documents. For example, the Ordinance on Food Safety has come into effect since November 1st 2003; however, not until the end of September 2004 has Decree No.163/2004/ND-CP of September 7th, 2004 been enforced. This is only one of many examples of the situation of issuing legal documents guiding and detailing higher agencies' ones.

Under the Ordinance's provisions, food business is a kind of conditional business; however, under Decree No. 59/2006/ND-CP detailing the implementation of Trade Law on business services, there is no provision of business conditions for food commodities.

To improve the management of food hygiene and safety (FHS), the Prime Minister has issued Directive No.06/2007/CT-TTg on implementing essential measures to ensure FHS. Provincial People's Committees have issued decisions approving of "Action plan to ensure the quality of FHS", known as a basis for local management of FHS.

Moreover, inter-branch headquarters have been established in the Central and People's Committees at all levels in order to improve the operation and co-ordination among agencies in the state management of FHS and regulate the performance of regional agencies.

2. Level of compliance with legal regulations on food safety

a) Group of legal provisions seriously implemented

- Regarding standards and technical regulations: Inspection and test have shown that almost every large scale food trader has complied with technical regulations. Some export enterprises also apply quality management systems, such as HACCP, GAP, ISO, etc. Domestic food market is safer and safer, domestic consumers have more food choices. As reported by the Ministry of Agriculture and Rural Development, there are 448 enterprises that process aquatic products meeting industrial standards, 300 enterprises qualified for export to EU market, 238 qualified for export to Canada, 442 qualified for export to Korea, 444 qualified for export to China, and 30 qualified for export to Russia. Meat, tea, fruit and vegetable processing enterprises have been actively implementing quality control measures, some of which have adopted HACCP.

In 2008, Vietnam exported more than 11 billion USD of foods and agricultural products to 160 countries and regions, including difficult markets such as the U.S, Japan, E.U. This somehow has shown the capacity of Vietnamese enterprises for the production and processes of safe foods.

b) Group of legal provisions relatively seriously implemented

- Implementation of legal regulations on product labeling :

Recently there have been several collective poisoning incidents. According to some specialists, besides medical recovery, the Health sector has had to spend a lot of time and money on investigating the causes, which in some cases could not even be found out because the foods was sold at the markets without origin.

It is essential to require food producers/traders to label food products before circulating them on the market, which makes it easier to find the origin of products when incidents happen, as well as the liability of agencies/ establishments.

In addition, all labels are required to specify the entire processing flow, including the name of producer and production methods (from the beginning to the very end, such as transportation, processes, circulation and sales).

- Usage of additives, processing aids and preservatives:

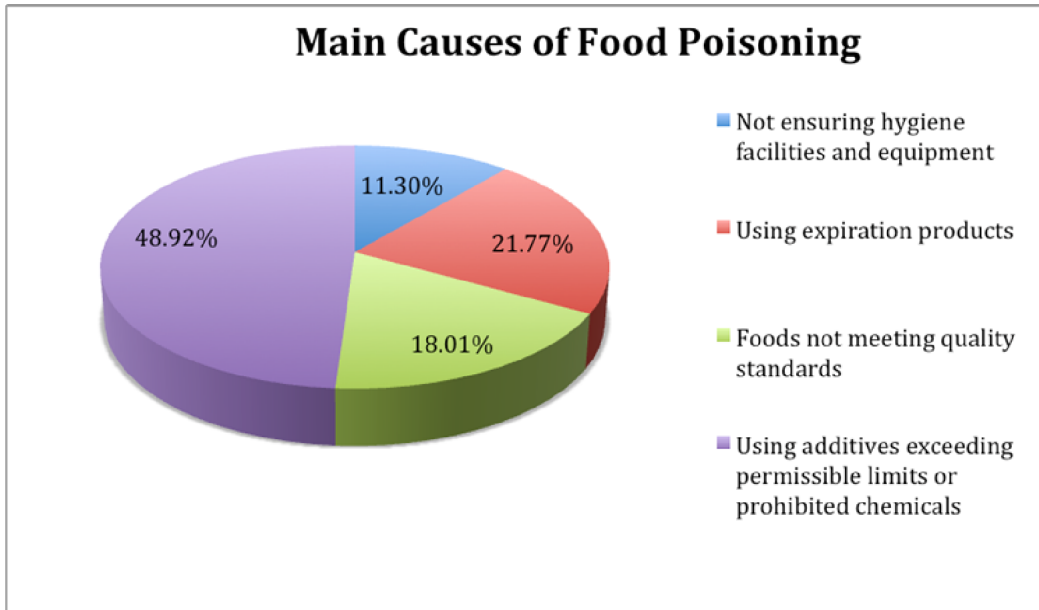
The situation of trading and using additives, preservatives and processing aids with unknown origin and not contained in the List of Allowed Substances is still common among small food producers/traders. Several kinds of food additives do not meet the quality of FHS but are still circulated. Some other kinds of additives which have unknown origin and are not in the List of Allowed Substances are still sold openly.

This is one of the main causes of food poisoning which occurs more and more frequently and has a serious impact on public health. Some examples of food poisoning situation which have often been heard on mass media are as follows:

- On June 10th 2010 in Phan Thiet City, 127 out of 650 tourists suffered from food poisoning and were taken to local hospitals for treatment. Their symptoms were nausea, abdominal pain and diarrhea. On the previous day, these people had had dinner in Dai Duong Restaurant and the “Countryside market cuisine” with 42 dishes introduced in the tents of Suoi Cat resort in Phan Thiet (Dantri E -Newspaper, Release date: June 11th 2010).
- On June 11th 2010 in Binh Thuan Province, there was a collective food poisoning incident of 34 out of 242 tourists traveling from Hochiminh City. In the evening of the previous day, they had had dinner in Song Bien Xanh Ltd. Co with dishes like snail salad, Thai hot pot, fried rice. They then had to go to Mui Ne General Hospital (in Phan Thiet City) with nausea and abdominal pain symptoms.
- Also on June 11th 2010, nearly 100 people suffered from food poisoning after participating in Mr. Dzui’s wedding in Ai Roh Village, Ia Pech Commune, Dak Doa Dist., Gia Lai Province. The main symptoms were headache, vomiting and constant diarrhea.
- On September 30th, 2010, a collective poisoning occurred in Tan Thuan Export Processing Zone, Dist. 7, Hochiminh City. 32 workers of Nissey Ltd. Co. had been hospitalised.

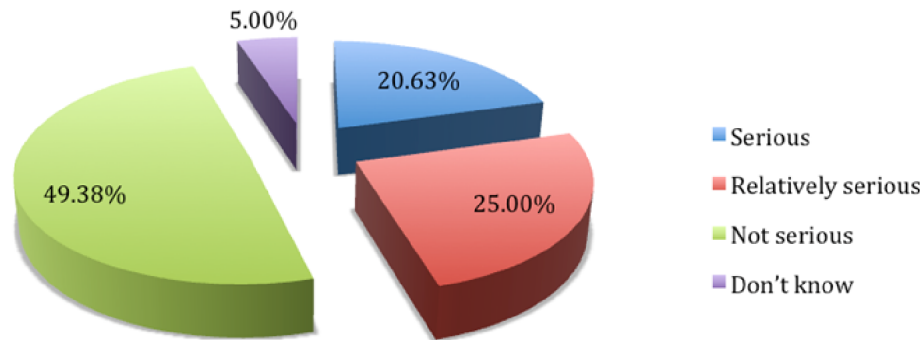
As stated by the Vietnam Food Administrator (Ministry of Health) in the preliminary wrap-up report of FHS propaganda of quarter II/2010, as of June 25th 2010, there had been 88 cases of food poisoning, with 2,959 people infected, 2,429 hospitalised and 32 died.

According to survey results, 50% said that the cause of recent food poisoning cases is unproper and illegal usage of additives, processing aids and preservatives. The rest said that food poisoning is caused by three other reasons. In particular:



When being interviewed through questionnaires, state management agencies also assessed the law implementation of using additives in the food production and processing. The result was as follows:

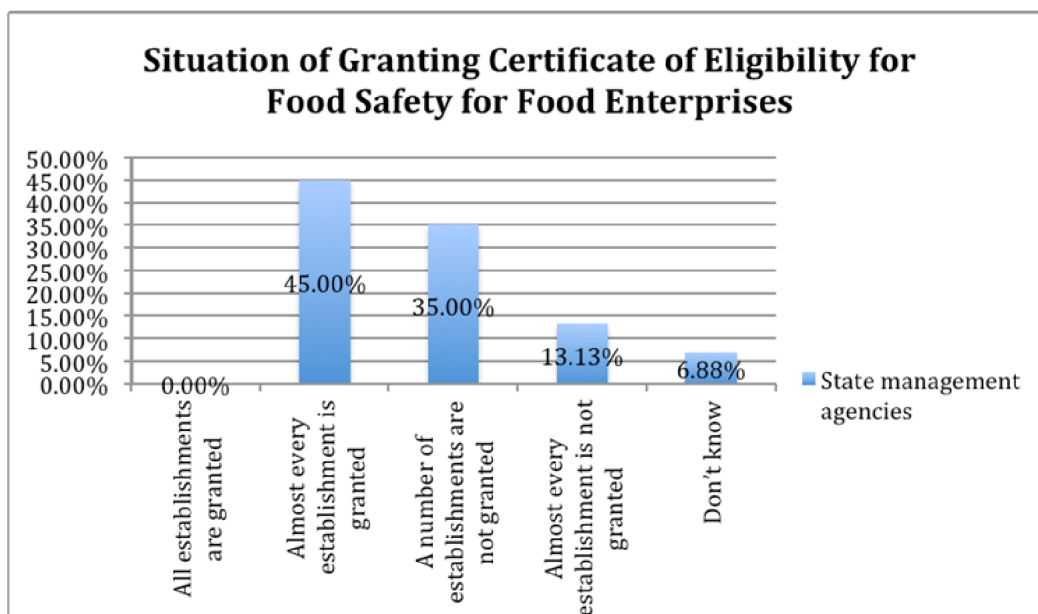
Situation of law implementation in using additives



- Situation of granting the Certificate of Product Standard Announcement:

Among tens of thousands of new food products, only 25,224 products were granted the Certificate of Product Standard Announcement. This is only the Vietnam Food Administrator's statistics. In fact, the number of food products circulating on the market is even higher, since enterprises did not announce their product standards, particularly the ones importing foods only once.

The survey for state management agencies about food safety has shown that the granting of Certificate of Product Standard Announcement is conducted relatively seriously. Only a small number of establishments have not been granted.



c) Group of legal provisions with low rate of or without implementation .

IV. PERFORMING AND MONITORING IMPLEMENTATION IN FOOD SAFETY LAW

1. Performing implementation in food safety law

a) Organizational structure and staff performing law implementation

- Organization of state management has gradually been developed through implementing the Ordinance on Food Safety and Decree No. 79/2008/ND -CP. Under Decree No.79's provisions, there are five ministries in charge of the food supply chain at the central level, among which the Ministry of Health is accountable to the Government for the state management of FHS. In each ministry, there is a department or a bureau assisting the Minister to perform the state management of the quality of FHS regarding goods and products it is in charge of². In addition, the Central Inter-branch Management board of FHS is established in order to guide the co-ordination among ministries in FHS area.

² Ministry of Health: Vietnam Food Administrator; Ministry of Agricultural and Rural Development: National Agro Forestry Fisheries Qualities Assurance; Ministry of Industry and Trade: Department of Science and Technology; Ministry of Natural Resources and Environment; Ministry of Science and Technology: Vietnam Environment Administration, under the authorization of Directorate for Standards, Metrology and Quality, serving as a heading.

- Provincial People's Committees are responsible for the state management of the quality of FHS at local levels. The Department of Health, Department of Agriculture and Rural Development, as well as other departments and sectors shall assist provincial People's Committees. The Inter-branch Management board of FHS at commune level or higher shall guide and co-ordinate inter-branch activities in provinces. In the present, there are 61 central cities and provinces having established the Sub-Bureau of Managing Quality of FHS (under the Department of Health or the FHS Department of the Center of Preventive Medicine); 18 central cities and provinces having established the Sub-Bureau of Managing Quality of Agricultural, Forestry and Aquatic Products; 41 central cities and provinces having established the Office of Managing Quality of Agricultural, Forestry and Aquatic Products, under the Department of Agriculture and Rural Development.

In the period of 2004-2008, there is 0.5 managing person per province in average; 0.5 person per province implementing food safety, including professional management servants and inspectors; 2.9 people per province in the Department of FHS; 3.2 people per province in the Department of Testing. At the district level, there is 0.3 person in average not including managers, 0.9 person including preventive medicine specialists. At the commune level, there is 0.5-1 person assisting the People's Committee to implement food safety.

2008 is the year implementing Decree No.79/ND-CP. The establishment of Sub-Bureau of FHS and Sub-Bureau of Managing Quality of Agricultural and Forestry Products in provinces has increased the number of people managing qualities. Estimatedly there are 31.3 people per province, 3.0 people per district, 1.05 people per commune. However, this is only a general statistics of people managing the quality of FHS. It does not clearly distinguish between direct participation (having a payroll or getting paid for managing FHS) and indirect participation in some stages of the food supply chain, such as personnel of the sector of agriculture, industry and trade, or science and technology, which is a basis for calculating the cost of the state management apparatus of the quality of FHS. In general:

- The organizational structure of state management agencies on FHS is strengthened from the central to local levels. There is a division of responsibilities among Ministries, local departments and sectors.
- Inter-branch headquarters on FHS is formed from the central to commune level, in order to solve inter-branch issues opportunely.
- The inspection of food safety has been conducted at the central level, and is deployed conducting at provincial levels. Inspection and testing are enhanced, improving the quality of food hygiene in all stages, from producing, processing to consuming.

- The propaganda and dissemination of food safety law has initially changed the awareness of managers, producers/traders, and consumers to some extent.

b) Equipment and facilities conditions to ensure law implementation

The network of examining the quality of food hygiene has initially been established at the central and local levels. Testing facilities for state management has gradually been invested and upgraded.

Organizing tests and upgrading test facilities for state management of food safety have been improved. Until now, the network of examining food safety has gradually been strengthened from the central to local levels. At the central level, there are the Institute for National Food Safety Testing; four Local Centers of FHS Testing; departments, the Center of Testing (of the Ministry of Agricultural and Rural Development), and the Ministry of Science and Technology. At local levels, there are local laboratories of the Center for Preventive Medicine, Center for Testing of Pharmaceuticals, Cosmetics and Food Hygiene and Safety (of the Department of Health), laboratories of scientific research institutes, universities, academies and colleges, as well as private laboratories.

According to incomplete statistics, there are 72 state establishments testing food safety at present (private sector's statistics is still unavailable). In recent times, testing activities has contributed significantly to the management of food safety. Improving facilities and technical services for the management of food safety is the basis for socialization and innovative methods of quality management, bringing advantages to food businesses, services and food product management. FHS Testing system has been invested recently; however, it still cannot meet the real demand. Many establishments are outdated and lack facilities, chemicals, high accuracy equipment and quick analyzing tools. For example, only 16 out of 64 Centers of Preventive Medicine have laboratories with liquid chromatography machines. It results in difficulties in managing food safety, especially dealing with arising issues. Until now, there is still no laboratory with international and regional standards so as to become arbitrators to resolve "dispute" about testing results, examination and the quality of food safety in international trade.

c) Cost to ensure implementation on food safety law (million VND)

YEA R	Number of reporte d	Central budget	Local budget	Enterprise and private sector	Other sources	Total cost	Average cost/ province

	provinc es			supports			
2004	53	19,421.1	3,708.0	0	174	23,303.1	439.7
2005	53	22,136.3	6,221.9	0	90	28,448.2	536.8
2006	53	23,017.5	2,181.3	0	126	25,324.8	477.8
2007	54	34,257.2	4,650.2	0	224	39,131.4	724.7
2008	54	37,189.6	5,847.8	10	123	43,170.4	799.5
TOTAL		136,021.7	22,609.2	10	737	159,378	

2. Performance of monitoring implementation in food safety law

a) *Examining and inspecting the situation of law implementation in food safety and resolving violations*

Year	Examining		Inspecting	
	<i>Number of times examining</i>	<i>Number of satisfactory establishments</i>	<i>Number of inspection teams</i>	<i>Number of inspected establishments</i>
2004	201,837	165,618	6,437	65,609
2005	215,792	174,357	6,607	68,053
2006	263,254	210,984	11,257	97,860
2007	313,895	259,904	14,591	123,877
2008	366,420	303,322	17,221	123,567

According to provinces and cities' data reports, in the period of 2004-2008 there were 56,113 inspection teams of Food Hygiene and Safety in the whole country. The result has shown that:

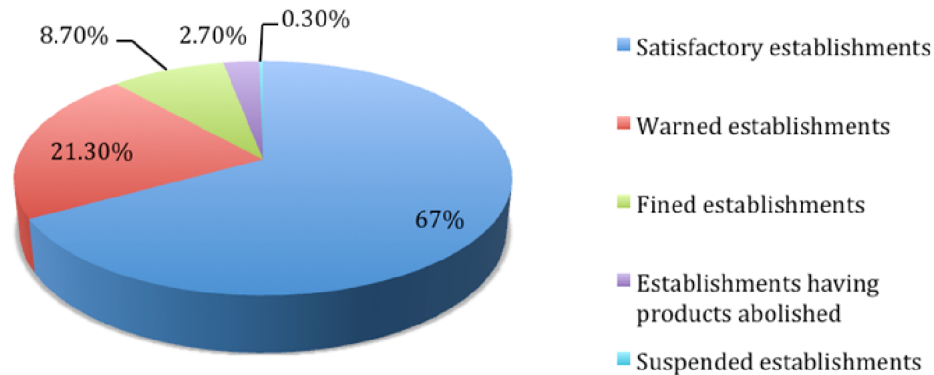
- Percentage rate of satisfactory business establishments increases from 55.7%/year (2004-2006) to 65.0%/year (2007-2008).
- Percentage rate of warned business establishments decreases from 34.0%/year (2004-2006) to 23.6%/year (2007-2008).
- Percentage rate of fined business establishments increases from 5.5%/year (2004 - 2006) to 8.2%/year (2007-2008).
- Percentage rate of business establishments having products abolished increases from 2.1%/year (2004-2006) to 3.0%/year (2007-2008).
- Percentage rate of suspended business establishments increases from 0.1%/year (2004-2006) to 0.2%/year (2007-2008).

According to the Summation Report on National Target Program on FHS, in 2007 and 2008, main violations were improper hygiene of facilities and equipment. (about 30% of establishments); 30% breaching regulations on product standard announcement; 30% - 35% not holding educational courses of FHS for direct food producers/traders; 90% not having the Certificate of eligibility for Food Hygiene and Safety; 10% -30% not labeling products properly. Breaches of food advertisements, especially functional foods, are rather common. In several provinces, there are lots of breaches of labeling products, trading expired food, using borax or colorings which are not in the List of Allowed substance in Food Production, illegally importing non -standard fruits, animals and its products, veterinary medicine and food additives; fake, counterfeit, inferior quality, expired products and products of unknown origin.

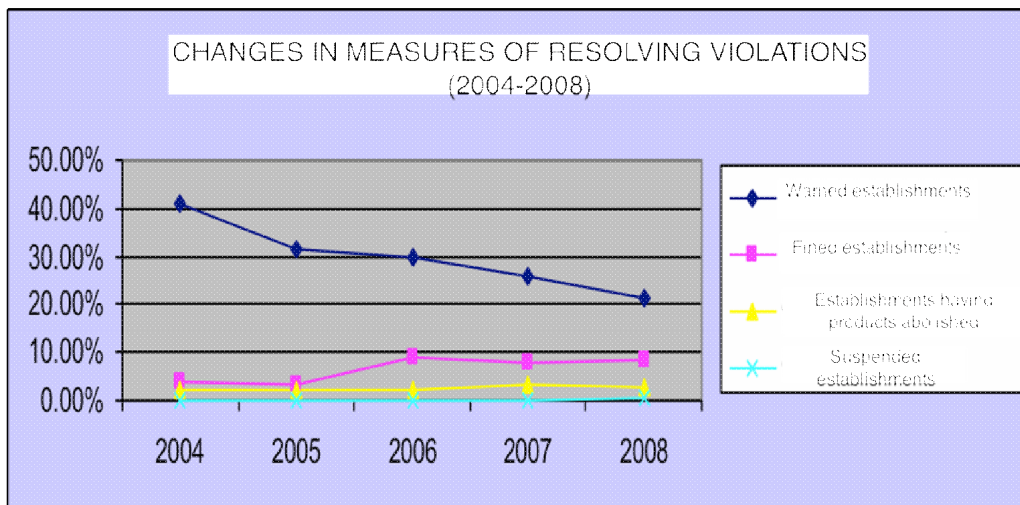
The inspection of FHS still has shortcomings. In particular, number of people inspecting FHS is still lower than in some other countries. Violation resolutions have not yet determined, and sanction levels are too low to deter and prevent breaches. In addition, the co-ordination among professional inspectors is unclosed. For example, several inspection teams come to a food establishment, influencing negatively on the food production and trading.

b) Situation of resolving violations on food safety

Situation of resolving violations on food safety in 2008

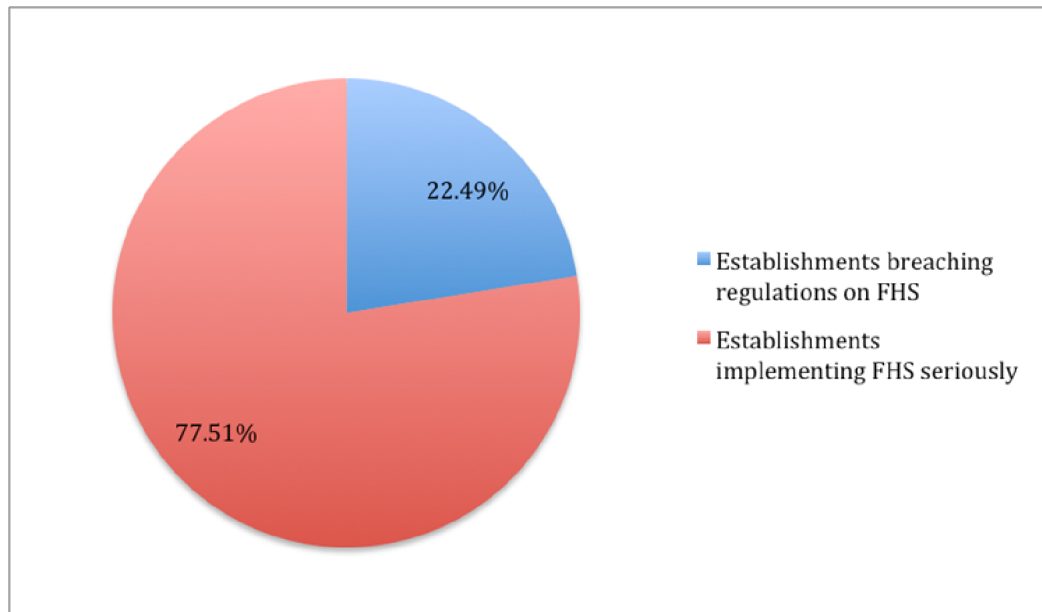


According to Mr. Nguyen Thanh Phong, Deputy Director of the Vietnam Food Administrator, testing and inspecting will prevent and resolve violations, making the food market safer. For example, in previous years, among 100 inspections, 30 violations were detected. In recent years, there have been 200 inspections annually, among which 40 violations were detected. Although the number of violations has increased, the percentage rate has actually decreased. On this occasion, we would also like to require clearer explanation from mass communication media, and closer co-ordination with management agencies to reflect information on FHS opportunely, accurately and objectively.



After conducting examining food producers/traders in the whole country, the Vietnam Food Administrator (Ministry of Health) detected 76,049 non -standard producers/traders, with a total fine of over 8.6 billion VND.

In particular, in the first 9 months, among 76,049 (22.49%) producers/traders detected breaching the quality of FHS, management agencies handled 29,110 ones, including warning 22,953 and fining 6,052.



- *Criminal resolutions*: According to the report of Supreme People's Court, the rate of criminal resolution to violations on FHS is very low in 2004 -2008. During this period, the court heard 160 cases, accounting for 0.05% of total criminal cases heard). There still exists several shortcomings, such as bases for transforming violations into criminals; defining harm levels to consumers' health in order to prosecute criminal cases, all of which are not yet clearly contained, leading to the fact that there are some violations which cannot be transformed into criminal cases due to insufficient bases.

c) Compiling and reporting on the situation of implementation in food safety law

The survey in four provinces and cities about the situation of implementation in food safety law has shown that the compiling and report on the situation of implementation in food safety law of management agencies is mostly used for periodic reports for superior state or competent agencies. State management agencies in food safety area have not

yet noticed and do not seem to consider that the compiling and reporting process are requirements of the agencies themselves, and conditions to improve the efficiency of state management in food safety.

According to general results of the Ministry of Health after making reports to submit to the Government and the National Assembly Standing Committee, there are only about 54 out of 63 provinces having local reports on the implementation in food safety law.

- The responsibility of compiling and reporting agencies/organizations' status to superior/competent state agencies is still very lax. There is almost no sanction, and mere formality, if any.

d) Assessment of implementation:

The monitoring and assessment of law implementation in general and in food safety in particular hardly have the participation of organizations, enterprises and individuals as supervisors.

V. MAIN REASONS

Ministries and ministerial-level agencies shall assist the Government in the organization and implementation of legal documents in each specific area. However, until now, there has been no agency serving as a heading to gather information, make assessment, compile, report and propose resolutions to issues which the Government is accountable for. Neither is there any consultant body to the Government in handling legal issues which are beyond relevant ministries's legal framework. Therefore, the monitoring and assessment of the implementation in food safety law are lack of generalization in the whole country as well as local areas.

- This content is only to compile and re-assess the summation results of implementation in food safety law. It ensures the full content of the report.

- The responsibility to implement legal regulations on food safety (for example, registration procedures for organizations and individuals; examining and inspecting; applying sanctions) is stipulated by law, however, there are not enough mechanisms to ensure the implementation of state agencies. Even legal documents on the inspection of superior/competent agencies over subordinate bodies are hardly ever implemented or have any effect.

- Cost of conducting implementation: there is no accurate proposal and approval of the conducting cost, resulting in intransparency.

a) Subjective reasons

- Investment funding for managing the quality of FHS is now lower than required; testing facilities are lack and outdated, particularly at frontiers. Moreover, there are not enough mobile inspection and quick test equipment. Also, there are very few quality management officials; mostly pluralism in some units. There is no system of title standards to use as a basis for staff standardized training, and no professional training system of quality management.

Data reports of 54 provinces and cities in the period of 2004-2008 have shown that funding for the management of FHS is mostly contributed by the Central. Only few provinces have investment funding from local budgets. Expenditures for FHS is very low; for example, the amount of money spent on inspection and testing processes was only 48.8 million VND/province/year, 60.1 million VND/province/year for propaganda and educating legislation, and 36.5 million VND for purchasing equipment and chemicals.

The above amount of funding is too little, making it difficult to manage FHS.

- The inspection, testing and investigation into food contamination causes are not conducted regularly and opportunely. The state management of the quality of FHS is still mainly about dealing with issues, not actively managing the contamination risk of the food supply chain with a long term strategy.

According to Mr. Tran Viet Hung, a lawyer and Director of Tri Viet Law Firm, sanctions on food safety are relatively strict and meet the needs of state management, however, the mechanism is not yet synchronized. There are lots of legal regulations on ensuring food hygiene and safety. For example, the charge of “bringing unsafe foods into the market” causing fatal consequences or injuries is also contained in the Criminal Code. However, it is very hard to prove this crime. The deadlock is at the stage of proving the causal link between behavior and consequences. Sanctions cannot be applied because of unsynchronized mechanism. The management of producing and trading food products is very poor. Mr. Nguyen Minh Anh, a lawyer from Tri Minh Law Firm, also agreed with that opinion. “It is said that the administrative measures are not strict and deterrent enough. Yet I do not agree with this point of view. The reason is poor administrative inspection, not light-weight sanctions. For instance, it is not a light-weight sanction at all to be fined a couple of millions VND just because of selling unsafe vegetable. Although Vietnamese people are always afraid of being punished or confronting state agencies, it is best to increase inspection and guidance, since violations are mostly caused by wrong perceptions”, he said.

- Facilities and technical equipment used for state examination on the quality of FHS is lack and outdated; expertise officials' experience and state examination laboratories' analytical capacity have not met the managing requirement, sometimes laboratories in

foreign countries had to be hired to conduct several indicator analysis of toxic chemicals in foods.

- Food producers and traders are not fully aware of their responsibilities and the implementation of food safety law. Some food producer/traders have even skipped regulations on food hygiene and safety because of profits.
- Inspection and testing FHS activities are not conducted regularly. There lacks managers and inspectors of FHS, not to mention that they have to do lots of different management tasks, such as inspecting FHS area, law implementation of protecting and quarantining plants/animals, etc. Sanctions are not determined enough to become deterrent and preventive.

In August 2008, the inspection team of Hanoi FHS Steering Committee detected a slaughtered poultry trader without any quarantine seals of animal health agencies or certificate of origin in Ngoc Lam market (Long Bien Dist.). The important thing was that this establishment was right opposite to the market management board, however no one seemed to care about its violation. When being asked, it was said that the person in charge had just been back from his business, and the staff did not notice. Ms. Do Thi Hong, Deputy Director of Trong Nghia JSC, Deputy Manager of Ngoc Lam market, even said: "You inspected so suddenly..." She even explained that the slaughtered poultry traders opposite to the market management board were only casual business households who re-bought the pork trader's position, therefore they did not notice (Source: <http://www.kinhtenongthon.com.vn/Story/VandeSukien/2008/4/10382.html>).

b) Objective reasons

- Vietnam originated from an agricultural economy with small scale of production and businesses, mostly household sizes; only a small number of industrial scale enterprises. Management regulations, on the contrary, do not distinguish between different scales of businesses. Therefore, it is difficult to implement law.

On the other hand, people's eating habits, educational levels and income levels are not so high, making it difficult to ensure food hygiene and safety.

- The environmental protection still cannot keep up with the speed of social and economic growth, therefore, the land and water environment to grow plants and raise animals/fisheries become more and more polluted. On the other hand, the planning of food material production regions is not quick enough, resulting in difficult in monitoring the quality of food materials. Besides, the pressure to improve productivity of crops and livestock has also increased the usage of chemicals in food production process.

- International economic integration and the expand of goods commerce exchange lead to the increasing number of food commodities. State management agencies cannot

keep up with this increase rate, therefore, it is very hard to control imported food commodities, especially smuggled products.

Food hygiene and safety is associated with the production, trading and food consuming perception. This task requires the participation of not only the state management agencies but related key subjects as well. On the other hand, FHS is influenced by a lot of factors, such as eco-social conditions, production technology levels, management competence, educational level, habits and consumption behavior. Managing FHS must be conducted regularly and continuously in all stages of the food supply chain. Therefore, the management and ensurance of the quality of FHS need to be socialized.

There are legal regulations, yet the subjects that they stipulate have not yet implemented, or implemented superficially. The main reason for this is the limitation in forming and issuing legal documents providing guidance and implementation. Perhaps there are still more underlying ones.

PART C

PROPOSALS TO INCREASE EFFICIENCY OF IMPLEMENTATION IN FOOD SAFETY LAW AND THE MONITORING OF LAW IMPLEMENTATION

I. PROPOSALS TO INCREASE EFFICIENCY OF IMPLEMENTATION IN FOOD SAFETY LAW

1. Improving regulations and mechanisms of law implementation in food safety

On June 17th 2010, Law on Food Safety will be passed. It will come into effect on July 1st 2011. Some examples of solutions contained in this law are as follows:

- There is a considerable number of legal documents guiding law implementation as well as contents that need to be guided. Ministries and relevant agencies shall actively finish the drafts guiding law implementation to submit to competent bodies or to issue themselves, so that when the Law is enforced, other guiding and detailing documents will come into effect at the same time. The time that the Law takes effect is now longer (one year), though previously this period was about 6 months.

Prime Minister's Decision No. 254/2006/QĐ-TTg dated November 7th 2006. According to this Decision, products exchanged by border residents, and products taken into border, frontier or economic zone frontier market, are not required state examination on quality. As a result, it is very hard to inspect those products. In fact, after the products are actually in the frontier market, a large amount of them will be brought into domestic

market and cannot be controlled. We would like to ask the Prime Minister to consider and amend this regulation.

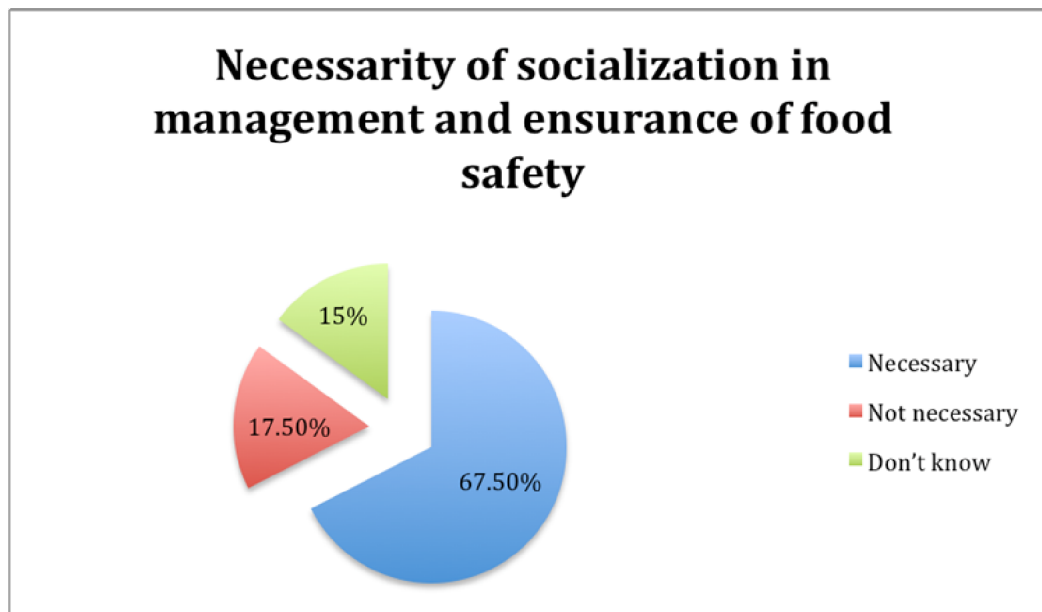
- Mechanism is reflected in regulations on principles of managing food safety. For example, it is stated that it shall be conducted during all production and trading processes, based on the risk analysis of food safety; or it shall ensure clear division of responsibilities, inter-branch co-ordination; as well as detailed outlines and contents in Law on Food Safety.

- Methods of managing food products; producing, processing and consuming chain (chapters of Conditions to ensure food safety in food production and businesses, food import and export; and food labeling);

- Improving the responsibility of all agency levels, in which the health sector plays the most important role.

- It is necessary to socialize some state service procedures for the state management of the quality of food safety, developing the roles of associations in managing the quality of food safety, especially in community monitoring, and propaganda and education. In the mean time, it is also essential to socialize activities of examining the quality of food safety, and funding investment for its management.

The survey for state agencies has shown an agreement on socialization in the management of food safety.



2. Methods of improving efficiency of the implementation in food safety law

- The insurance of food safety is not just based on the efficiency of implementing legal regulations. Perhaps the implementation in social rules, as well as people's eating culture such as weddings, funerals or street food shops, is the underlying base. Therefore, not only do we need to build and issue practical legal regulations and propagate law efficiency in food safety to people, but we also need to create social rules in Vietnamese eating habits, forming a habit of selling clean products and eating clean, both of which play a very important role in ensuring food safety to public health

Therefore, besides the building, promulgate laws and regulations are feasible, the dissemination of effective legislation on food safety should be affordable to people can create social conventions in the diet culture, food culture of Vietnam, formed the habit of selling clean, eating clean can also contribute significantly to ensuring food safety for the people.

- The necessity of a synchronized management tool:

According to Mr. Nguyen Dinh Xuan, Member of the Commission of Science, Technology and Environment, it is essential to establish a government agency to cover all activities of other ministries and sectors. In the mean time, there needs three tools in order to well-manage food safety, including:

+ Legislation: Law on Foods, other food standards and technical regulations shall be complied with.

+ A system of inspection and monitoring law implementation with strict sanctions.

+ A system of food testing with persuasive evidence in resolving violations and sufficient scientific base to build food standards and regulations.

- Improving staff in food hygiene and safety area from commune/district to provincial level; investing in technical facilities and equipment of testing quality of FHS to the district level; and improving inspection team on food safety in order to meet the requirement of managing FHS quality.

According to Mr. Nguyen Thanh Phong, Deputy Director of Vietnam Food Administrator, if there are sanctions defined in legal regulations, there must be tools for state agencies to perform their tasks as well. Tools mean human resources and funding, both of which are still lacking. The division of responsibilities is already very clear. The only problem is that these agencies need to be equipped in order to perform their tasks.

II. PROPOSALS TO INCREASE EFFICIENCY IN LAW IMPLEMENTATION

1. Promoting introduction and dissemination of legal regulations, contents, methods of monitoring law implementation

Research, propose to the Ministry of Justice on improving dissemination of monitoring law implementation regulations (this is the result of implementing Decision No.1987/QĐ-TTg; and contents of Circular No.03/2010/TT-BTP), including results of monitoring law implementation in some provinces recently.

2. Improving the regulatory framework institution for monitoring law implementation

Currently, the monitoring of law implementation shall comply with Circular No. 03/3/2010 dated 03/2010/TT-BTP. However, the new circular draft only defines monitoring methods without giving more detailed authorities for competent agencies. Therefore, it is necessary to build and issue a document with higher legal value, at least at the level of Decree, in order to stipulate law implementation.

3. Encouraging the participation of organizations, agencies and individuals in law implementation

The entire political system shall be aware that the monitoring of law implementation is the responsibility of every state agency, organization and citizen.

RESEARCH REPORT
ON MONITORING LAW IMPLEMENTATION
IN THE AREA OF ENVIRONMENT PROTECTION
(Draft)

INDEPENDENT RESEARCH TEAM

I. BACKGROUND OF ASSESSMENT

1. Key Study Activities

1.1. Time: From 7 June to 16 July 2010.

1.2. Methodology:

- Field study by an Expert team and Interagency Working Group (MOJ, MOH, MOTI, MARD, MOPS, MONRE);
- Round table meeting discussion;
- Questionnaires.

1.3. Location: Working Group has undertaken key activities in Cities and/or provinces: Hanoi, Vinh, Thanh Hoa, TP.HCM and Nghe An. In every locality, the Working Group organized meetings with and visits to provincial departments: Office of the provincial/city people's committee, Department of Justice (DOJs); Department of Natural Resources and Environment (DONREs); Department of Health (DOHs); Department of Agriculture and Rural Development (DARDs); Department of Trade and Industry (DOTIs); Provincial Environment Protection Agency; Food Security Agency; and some enterprises located in the city or province.

2. Other activities for research

2.1. Sources of information:

Research Assessment has been based on the information and data collected from different sources. They include:

- Written reports by authorized agencies/institutions (functioning departments);

- Working meetings with relevant agencies;
- Interviews with key officials in charge of environment protection;
- Public opinions;
- Newspapers/magazines/reviews; and
- Questionnaires.

2.2. Processing and analyzing of data and information

This report is prepared by a taskforce whose members are experts with knowledge and experience in law and environment. They spent time on reading reports to catch statements with arguments and recommendations, reviewing public opinions from field visits and newspapers, analyzing and interpreting data from questionnaires.

II. ASSESSMENT OF ENVIRONMENTAL LAW IMPLEMENTATION

1. Issuing detailed regulations and/or guidelines for implementation and other documents by relevant authorities to direct the implementation of environmental legislation

1.1. Issuing detailed regulations and/or guidance for implementation

Period 2005 – 2010 is said to be the most successful period of development and completion of environmental protection legislation. Some of examples include: Law on Environment Protection 2005 (which replaces the Law on Environmental Protection 1993) covers a number of new provisions; Law on Biodiversity 2008 stipulate s a legal corridor for conservations of biodiversity; 66 normative legal documents (by laws) within the competence of the Government, specifically, 23 documents by the Prime Minister and/or Government and the rest 43 documents by different ministries (see Appendix 1)

1.2. Issuing instructions/directives to steer the implementation

In selected research locations, local governments have timely issued documents to direct and speed up the implementation of plans, specific work has been carried out in different provinces as follows:

- In Nghe An province: one (01) Resolution by the Provincial People’s Council, nine (09) Decisions by the Provincial People’s Committee, one (01) Directive by the Chairman of the people’s committee already adopted; and other two (02) R egulations governing the management and usage of budget for environmental protection drafted to guide the implementation of interagency Circular 45/2010/TTLT -BTC-BTNMT dated 30/3/2010.

- In Ha Noi: following the Resolution 41-NQ/TW dated 15/11/2004 regarding environmental protection in the context of industrialisation and national modernisation, the Hanoi Party Committee issued the communique/Notice 22 -TT-TU dated 4/8/2005 to enhance the work of environmental protection in the Capital city. Hanoi People's Committee adopted Action Plan for environmental protection in the context of industrialisation and national modernisation (Decision 203/2005/Q -UBND); Hanoi People's Council also adopted a Resolution for treatment of solid waste, water pollution, air pollution, ect. Hanoi People's Committee also prepares (draft regulations) to cope with challenges of Hanoi in implementing Law on Environmental Protection 2005.

- In Hải Phòng: Hải Phòng People's Committee has adopted Environmental Protection Strategy upto 2020. It covers 24 projects and/or programs for environmental protection in Hải Phòng. At the same time, a directive for enhancing the Party leadership in environmental protection work in the context of industrialisation and modernisation of Hải Phòng City...

2. Assessment of legal information dissemination and education work in the field of environmental protection

In the study localities, legal information dissemination and education regarding environmental protection was given consideration. Every year, local governments in these localities plan to organize activities in response to the world environment day. Those activities are undertaken in coordination with other agencies, such as mass Newspapers, radio and television. The Justice Departments have also actively coordinated with relevant agencies, including the Ho Chi Minh Communist Youth Union, the Women's Farmers Association, the provincial Party Committee for Propaganda and Education, Fatherland Front etc. to raise awareness about environmental protection and to provide training courses for professional staff working at different levels with knowledge and skills such as air quality management, wastewater treatment, garbage disposal, environmental monitoring ... These activities have encouraged participation of many stakeholders from various departments. However, in reality, the effectiveness of this work has not met the requirements. The work only concentrates on the dissemination of new issues of legal documents via main forms like seminars, banners, slogans, louder speakers and has not yet deployed specific measures to raise awareness of people and enterprises in environmental protection.

3. Assessing the level of law compliance by individuals and/or institutions in the field of environmental protection

Environmental damage is significance that is likely to cause damage to life, health and property or assets. Vietnam is now facing increasing challenges in the struggle for environmental protection. Due to population pressure, industrial development and international economic integration requires more consumption of natural resources and

energy. Development of industrialization are causing serious environmental pollution. For instance, taking Hanoi as an evidence, Hanoi has lost \$ UD 23 million per annum due to air pollution.

Crimes and violations of laws on environmental protection are complicated, especially in production and business activities. In 2007, the Environmental Protection Agency has checked a total of 384 business establishments, 47 industrial parks (IPs) and seven villages in the area 41 provinces and cities nationwide, including Lao Cai, Nghe An, Ha Tinh, Quang Binh, Quang Tri, Thua Thien Hue, Da Nang, Quang Nam, Quang Ngai, Binh Dinh, Ho Chi Minh City, Ba Ria Vung Tau and Ca Mau, Soc Trang and found out that 69 establishments with problem of environmental pollution. Most establishments failed to install proper treatment system for disposal. Environment Police Department has investigated a number of cases of serious violations. For example, Thuan Thanh company (Quang Tri), Ngoc Son company (Quang Nam) watershed forest exploitation. The arrest of more than 3,500 containers with lead batteries in Hai Phong or a serious case in Ha Tay.

According to the General Department of Environment, the causes are on the one hand the poor compliance of law by business owners and/or ind poor. On the other hand, the authorities seem to ignore the violations. For example, recent environmental police caught Vedan factories discharging toxic waste into the Thi Vai River. A question was posed in this case is why the enterprise is the quality of wastewater of high pollution levels, the color parameters exceeded 14 times the prescribed parameters coliform (bacteria) to 2.400.000MPN / 100 ml, exceeding to 480 times higher than the prescribed standards that are allowed to discharge into river. Why violations have existed for 14 years (since 1994) without punishment if there had been no "ignorance".

Pollution of some major rivers and pollution in the villages that produce traditional products are also a problem. Even large companies with 100% foreign investment also fail to exercise proper measures for handling of their waste.

In 2010, inspection work has taken place in industrial areas and discovered that many industrial zones fail to report on environmental impact assessment (EIAs) and to perform ambient monitoring service as required by Circular No. 15/7/2009 dated 08/2009/TT-BTNMT of the Minister of Natural Resources and Environment. Inspection results of 92 industrial zones are as follows:

- There are 24 among 117 Industrial Parks (Ips) are (20.51%) in operation or under construction without approved reports of environmental impact assessment.
- There are 88 among 117 IPs are in operation or under construction (75.21%) with approved EIA reports. However, only the 30 among 88 IPs are fully complied with requirements of the EIA report.

- There are 26 among 92 IPs (28.26%) installing water treatment systems. However only 13 IPs (50%) meet the requirements of wastewater discharge standards in Vietnam.

- 37/92 operational IPs (40.21%) having wastewater discharge exceeding regulatory standards in Vietnam, including the 14/37 IPs having wastewater discharge 10 times higher than regulatory standards, 8/37 IPs having wastewater discharge 5 times higher than regulatory standards, 10/37 IPs having wastewater discharge exceeding the Vietnamese standards from 2 to 5 times, and 5/37 IPs having wastewater discharge exceeding less than 2 times in comparison with Vietnamese standards.

- 26/92 IPs (28.26%) fail to perform surveillance of waste, ambient monitoring as required.

- Most of the IPs do not have transit yards for collected solid waste or hazardous waste as required by the law. (currently only 03/92 IPs having KCN transit yards for ordinary solid waste).

The survey shows that the management agencies have implemented environmental inspection annually and then many cases of violations have detected and handled. For example, in Ho Chi Minh City, in 2005 inspection service took place in 160 units and discovered 142 units with violations. 2008, inspection over 283 units shows that all 283 units having violations. In Hanoi, in 2009 inspection over 267 establishments/units and discover violations in 256 units. Early six months of 2010 found out 50 among 85 inspected units with violations.

Thus, violations of environmental laws occur in many social and economic aspects, especially in the following areas:

- In industrial production: due to incentive policies to attract investment and disadvantages of current legislation in the field of environmental protection in Vietnam, many investors did not fully comply with corporate liability to install proper treatment systems. More than that some investors tried to play a game and sophisticated tricks in order to discharge directly waste into the environment such as installing double system like Vedan Vietnam, Tungkuang Co., Ltd. Miwon, Hao Duong leather company, Viet Tri Paper Mills, etc.

- In importation: illegal importation of waste into Vietnam in the form of used materials, equipment and technology will soon turn Vietnam into a landfill for industrial waste. Some tricks have been deployed such as "temporary import for re-export", or wrong addresses of consignee and/or consignor. Some businesses take advantage of the linear control mechanism or "shake hand" with some inspection staff to do clearance for easy entry of imported goods and technology that used to be available in 1960s.

- In the area for exploitation of natural resources and biodiversity protection: deforestation in our country is a pressing problem, especially the logging of native forests. Some businesses take full advantage of policy for conversion of "poor forests" to destroy environment and ecosystem by using chemicals such as mercury, heavy metals, or taking no measures to revert the environment, prevent erosion and runoff, affecting the ecosystem.
- Hunting and trafficking of wildlife animals, especially trafficking in rare animals like tigers and pangolines are not easy to detect due to sophisticated tricks and routes. Vietnam is a transit country for wild animals and products from wild animals trafficking to third countries (23 tons of pangolines and 6.2 tons of elephant ivory arrested in Hai Phong).
- Production in manufacturing villages: with over 2700 villages in Vietnam mostly with small-scale production at household level as handicraft producers using primitive production technology wastes from the production activities of the village is generally not treated but discharged directly into ditches, ponds, lakes, rice fields, etc. The POPs in the villages, especially tanning, textile and metal recycling has exceeded the standards as BOD, COD, SS causing serious impact on the environment and people's health.
- Hazardous waste management is poor. Although there exist over 60 enterprises operating in this area, most of them have not provided adequate investment in treatment technology. Even some enterprises have buried thousands of tons of hazardous wastes into underground with an aim to reduce the cost of processing (Green Company - BRVT, JSC Vietsta - HCMC).

The cause of this situation is the handling of administrative acts of violations. The remedies for the environment restoration is not strong enough. There are no criminal case for environmental pollution are prosecuted so far.

Generally, the implementation of environmental protection laws in recent years has not been strict with low effectiveness and efficiency; poor awareness and measures to solve the relationship between economic development and environmental protection. Law compliance in the enterprises, communities and citizens in general is limited. There is a lack of economic and technical norms for the management of the environment. Socialisation in the field of environmental protection is narrow in a small scale with simple model. Socialization is not applicable to some areas such as production of clean energy and/or projects of large-scale projects

Causes of low level of compliance of environmental protection legislation can be seen as follows:

Firstly, It is more and more difficult to detect and handle law violations and environmental crimes due to sophisticated methods and tricks of violations. Therefore it requires various measures and engagement of different forces. Another difficulty is the occurrence of foreign elements in violations. In many places, quite sometime it is not easy to deal with obstacles and/or pressure from professional associations, non-governmental organizations.

Secondly, the handling of violations of environmental laws is not uniform and consistent among localities, ministries and agencies. Due to the incentives to attract investment for economic development priorities, some localities have not paid due consideration to the evaluation of environment impact assessment reports of projects,

Thirdly, although the system of legal documents is amended and supplemented, there still exist disadvantages and shortcomings as linear sanctions. It is not synchronized and clear enough. Environmental police as a new institution is strengthened with limited experience.

It is estimated that environmental crimes and law violations will become more and more complex. Environmental law violations in the industrial parks, export processing zones and industrial waste disposal are still challenging meanwhile foreign investors will make use of incentive policy of Vietnam to transfer backward technology into Vietnam in order to avoid environmental fee or tax. Under these circumstances, it requires a number of measures to improve efficiency to prevent and combat crimes and violations of environmental laws in the future. They are:

- Consolidating and strengthening organizational structures of state management over environment, especially at the grassroots level to ensure effective implementation of the Party's policies, laws and policies of the State in the field of environmental protection. Clearly defined mandates for different authorities with effective coordination mechanisms and coordination responsibilities to prevent and combat crime and violations of environmental law among branches and levels of governments.
- Improve the mechanism, policies and legislation system of protecting natural resources and environment. Drafting and promulgating the law on environmental protection fees, the settlement of damages caused by acts of violations of environmental laws. Continuing to amend and supplement the Ordinance on Handling Administrative Violations and other decrees relating to the environment in a comprehensive and uniform system of legal documents for environmental protection, in which the specialized inspection forces should be given due consideration.
- Enhancing legal information dissemination and education work in order to raise public awareness and responsibility of all citizens in preventing and combating crimes and

violations of environmental law. Various forms of education and dissemination, including textbooks in schooling system should be used.

- Enhancing coordination of inspection and combining inspection with investigation by the police in hotspots. Ministry of Natural Resources and Environment shall coordinate with the Ministry of Public Security to review and make a list of establishments causing serious environmental pollution to advise the Government to put in inspection agenda for the next phase (from now to 2015).

- Allocating prioritized funds to strengthen the capacity of police forces in anti-crime environment as required by Resolution No. 27/NQ-CP dated 12/6/2009 of the Government. It requires additional budgets to have specialised equipment and staffing for the police forces to reinforce the environmental police in the new circumstances.

In addition, it is necessary to cooperate with the police forces in other countries in organizing prevention and fight against environmental crimes.

4. Assessing the reasonableness of legal provisions governing environmental protection.

4.1. Overall assessment of the reasonableness of the legal provisions regarding environmental protection:

Currently, legal provisions governing environmental protection are relatively complete and uniform. Enacted regulations and standards partly meet the requirements of state management in this area. However, there are still some legal provisions face difficulty in implementation, specifically:

- The application of economic instruments in environmental management was not designed in a positive manner such as mechanism of deposit or bond as security; refund; emission permits and emission right exchange market; some form of credit institutions on the environment such as environment banks, financial lending institutions, or system of rules, standards, technical regulations and norms .

- The current regulations on environmental protection fees for waste water, solid waste are in existence but the collected revenue accounts only one tenth of the total expenditure for collection and treatment of waste disposal.

- There is an inconsistency and/or duplication of the provisions among the Law on Environmental Protection and other laws, including Urban Planning Law, Investment Law, Construction Law, Water Resource Law, etc.; no clear assignment and decentralization of state management on environmental protection between ministries and between the central and local governments

In short, environmental protection legislation provides strong decentralized functions and tasks of state management on environmental protection for ministries, sectors and localities. However, in practice it shows that a professional organization for environmental protection, particularly in the locality is weak. It can not meet the requirements of decentralization in general and the evaluation of reports of environmental impact assessment in particular. Inspectors are strengthened in recent years but the detection of violations is limited. Responsibilities of state management on environmental protection are scattered in various ministries (vertical) and at different levels (horizontal).

4.2. Specific provisions

4.2.1. Regulations on environmental standards

There are no distinctions in the application of statutory environmental standards and corporate standards among investment projects. Statutory environmental standards and regulations have not been widely publicized and open to the public. Many specific standards are yet stipulated.

The provisions on strategic environmental assessment, environmental impact assessment, environmental protection commitments have not been updated to keep pace with rapid changes. Evaluation of environmental impact, environmental commitment, for many projects have not brought the desired effect as they should be.

System of national standards and national technical regulations on the environment has been established and have made important contributions in the management and protecting the environment, basically meets the requirements on the number and categories use.. However, the development of standards, regulations have not been designed with scientific justification leading to difficulties in the state management over environmental protection.

4.2.2. Regulations on environmental impact assessment

No opportunity for the people to engage in environmental impact assessment is defined. No detailed rules for Inspection and supervision of the implementation of commitments in the report of environmental impact assessments are designed.

4.2.3. Provisions for competence of state management in the field of environmental protection

- There are no clear cut rules between State management over environmental protection and State management over the exploitation, use and protection of natural resources such as forests, water, minerals, petroleum, fisheries. There exist many overlapping functions and authority between the Ministry of Natural Resources and

Environment with other ministries and branches such as the Ministry of Agriculture and Rural Development, Ministry of Health, the Ministry of Trade and Industry, Ministry of Planning and Investment.

- There is no clear definition of responsibilities of the ministries, branches and departments, specialized units to environmental protection. There is also a lack of regulations in the decentralisation of inspection service.

4.2.4. Regulations on handling of violations

- Law on Amendments of and Supplements to the Criminal Code in 2009 has just been adopted, but many fundamental problems remain unsolved. There are no specific rules on the signs of "serious consequences", "very serious", extremely serious". Criminal liability of legal persons has not been defined. It is not easy to prosecute a corporate for criminal crimes.

- The penalties stipulated in Decree No. 117/2009/ND-CP dated 31/12/2009 of illegal treatment in the field of environmental protection are not attached to specific competent authorities.

- The law on civil liability (compensations for environmental damages) in the field of environmental protection is generic and difficult to apply in practice.

- There are no clear cut rules to redress environment damages subject to administrative law and civil law (law of torts).

- The provisions on incentives and rewards for environmental protection activities are generic and difficult to implement in practice due to the lack of financial mechanisms for these activities.

4.2.5. Provisions on environmental monitoring

Environmental monitoring work did not meet the requirements of environmental management due to unreliable information and background data. The implementation of Decision No 16/2007/QĐ-TTg on 29/01/2007 of the Prime Minister approving the master plan for national monitoring network up to 2020 reveals shortcomings and needs to be revised.

4.3. *The content is missing or need detailed guidance*

- Missing contents: provisions on the protection of biodiversity and regulations on marine environmental protection, regulations on emissions charges, noise, regulations on use emissions quotas in environmental protection etc.

- The provisions need detailed guidance: provisions on the transfer and trading of emissions quotas for greenhouse gases (Article 84); provisions on public goods, democratization of environmental protection activities (Article 23 and Article 49, Article 61 and Article 93, Article 104 and Article 105); provisions on environmental taxation, environmental protection fee (Article 112, Article 113); charge Insurance compensation liability for acts of polluting environment (Article 134) etc.

4.4. Some regulations which are overlapping and/or inconsistent

- The mechanism of inspection: Notice prior to inspection leading to ineffective inspection

- Provisions on environmental impact assessment: inconsistent provisions stipulated in different laws requiring different procedures to approve investments projects related to different objects. (Law on Environmental Protection; Investment Law; Decree No. 21/2008/ND-CP, Decree 80/2006/ND-CP regarding lists of projects and EIA reports requiring separate and independent evaluation. Meanwhile, the Resolution 33/2008/NQ-CP on 31/12/2008 on the trial a number of administrative procedures in the construction of new urban projects, housing projects, infrastructure projects requiring EIA attached to 1/500 design of the project and the investors take full responsibility for ensuring the environmental standards. lack of specific guidance in the implementation of Decree No. 21/2009/ND-CP and Circular 05/2008/TT-BTNMT by the Ministry of Natural Resources and Environment guiding on strategic environmental assessment, environmental impact assessment and/or environmental protection commitment.

Lack of specific guidance in the implementation of Decree No. 21/2009/ND-CP and Circular 05/2008/TT-BTNMT: investors are allowed to do EIA, while there is no guidance for investors in the field of power/energy. Article 13 of Decree 80/2006/ND-CP stipulates the procedures for preparation of an EIA but inconsistent time frame as required by Article 1 of Decree No. 21/2008/ND-CP

The responsibility of inspection and monitoring work is also overlapping and inconsistent among different ministries (Article 40, Planning Act 2009; Article 17 Environmental Protection Act 2005 and People's Committees).

- In the field of hazardous wastes management, a business is subject to the examination by many authorities: the offices of public security and offices of science and technology and other functioning agencies in the locality, both the district and provincial level (Decree 117/2009/ND-CP: with respect to impose sanctions and fines; Decree No. 67/2003/ND-CP dated 13/6/2003 of the Government on environmental protection charges for waste water and Decree No. 04/2007/ND-CP dated 08/01/2007

- The deposits for retribute and restoration of the environment: It is difficult to implement Decision No 71/2008/QD-TTg dated 29/5/2009 of the Prime Minister on deposits due to

the lack of guidance for calculation of damages by projects to rivers, streams, and by mining activities of small individuals, households.

5. Evaluation of the conditions to ensure the implementation of legislation in the field of environmental protection

5.1. Organizational structure, apparatus work environment

- Situation of the organizational structure of the apparatus for environmental protection in surveyed (06) localities:

- Staffing: not enough to meet demand, especially in the divisions of environmental resources.

5.2. Qualified staff working on environmental protection

Environmental Protection Law has a strong decentralized functions and tasks of state management on environmental protection for ministries, sectors and localities. However, staff for environmental protection, particularly in the provinces are weak and can not meet the requirements of decentralization in general and the evaluation of environmental impact assessment, confirmed the commitment to environmental protection investment projects in particular. Inspectors are rather strong in recent years but the detection of violations is not much, especially when these violations are increasingly sophisticated and complex. Responsibilities of state management on environmental protection are scattered in various ministries. Professional staff for monitoring and enforcement of environmental protection in enterprises is not given due attention.

5.3. The condition of equipment and facilities to ensure the implementation of legislation in the field of environmental protection is a big challenge

5.4. The funding for implementing the environmental protection

Budget allocated for this work is limited (1% of total budget expenditures in 2006) it is lower in comparison with China and the ASEAN countries (1% of GDP), and much lower than developed countries (3-4% of GDP).

Circular 114/2006/TTLT-BTC-BTNMT (now the Joint Circular 45/2010/TTLT-BTC-BTNMT) needs revisions to strengthen environmental protection.

III. EXPERIENCES OF SOME COUNTRIES IN ENVIRONMENTAL PROTECTION

1. US Experience in developing environmental standards:

The SDOs in the United States include private and commercial organizations. Some organizations, including the National Institute of Standards and Technology are accredited institutions. There are more than 200 organizations accredited ANSI standards, operating on the basis of cooperation for building consensus standards, voluntary national standards and U.S. National (ANS) with 10,000 documents. The development of standards by organization for accreditation must comply with the procedures in the ANSI Essential Requirements. This is the core issue to ensure that the ANS is built in a fair, accessible and consistent manner with the requirements of many stakeholders.

In the United States the important elements of the procedures of national standards include: Consensus on standards proposed by a group or an agency which include representatives of interested parties and the parties seriously affected. Public review and comments on draft standards is required to ensure that the rules of procedures prescribed are fully complied with during standards development. U.S. government participates in the development of standards through a voluntary process to protect the national interests of the United States. Federal regulations prescribe standards (technical regulations) for: food safety, health and safe workplace, protection of telecommunications networks, environmental protection, medical equipment and drugs, consumer products and activities of the airport, highway and transportation safety. The United States of technical regulations developed in a transparent manner. It is published notice of proposed regulations in the construction of the federal register. The notice must include the full text or content of the proposed regulations, the legal authority to promulgate regulations on location and time for public comments. Laboratories in the United States are accredited laboratories and conduct testing in compliance with the testing and specific procedures.

On the system of regulations on environmental protection.

In the United States, the regulations on environmental protection are divided into the law governing each specific area such as:

- With respect to air environment there are many laws enacted: Pollution Control Act PL 84-159 air; Control Act PL 89-272, air pollution, air quality law PL 90-148; - Clean Air Act Extension PL 91-604; - Agent Control Act PL 94-469.

- The country has enacted many laws: - Pollution Control Act of PL 80-845, Water Quality Act PL 89-234; - Water Recovery Act PL 89-753; - Rehabilitation Act PL 91-224 improve water quality; - Safe Drinking Water Act, PL 93-523, Clean Water Act PL 95-217; - Water Quality Act PL 100-4

- With respect to land there are several acts to regulate: - Federal insecticide, Fungicide, and Rodenticide Act 1947; - Preservation Act PL 90-542 Scenic River; Surface Mining Control and Restoration Act, PL 95-87; - Alaska Land Protection Act PL 96-487; 1994 - Desert Protection Act PL 103-433 ... California

- With respect to hazardous waste, there exist laws: Solid Waste Law PL 89 -272; Nuclear Waste Repository law PL 97 -425; hazardous solid wastes and PL 98-616 amended Act. And the same to say for other areas.

2. Experience in environmental law enforcement in Japan

Unlike Vietnam, in addition to a complete legal framework on the environment, Japan has an entire judicial system. Law enforcement is de centralized from national to local levels. Laws are promulgated by the Parliament, and enforced by the Government. Ministry of Environment is the executing agencies, and local government, provincial police has duty to investigate environmental violations, all violations are adjudicated the Court.

In particular, since 1970, 14 environmental laws in Japan has been enacted and amended, including Law on Environmental Dispute Resolution (EDSL) protecting interests of the community and minimizing a burden of proof for victims to claim environmental compensation.

Since then, an organized system of dispute settlement environment in Japan has been established, headed by Coordinating Committee on Environment Disputes (EDCC), followed by the Inspection Commission of the pollution at provincial level (PPECs). The Committee will receive environmental claims and settle them with procedures applicabal to conciliation, mediation, arbitration, and adjudication by courts.

3. Singapore experience

To ensure control and environmental protection in Singapore, a series of enactments adopted, including:

- Act on the environment and public health covers noise, public toilets, solid waste, hazardous wastes and control trade in food, burials, fire burial as well as manage the pool. To implement this Act there are 14 guiding documents.

- Act on environmental pollution control regulates issues related to pollution control and environmental activities.

- Act of sewerage/drainage system regulates the construction, maintenance and upgrading of the sewerage and drainage system below the surface adjust the handling commercial waste water.

- Act on the import, export and transit of hazardous wastes regulates the import, export and transit of hazardous wastes and other waste gases.

To ensure these laws are effective in practice, the enforcement measures are indispensable, so the environmental law of Singapore has set out the enforcement measures for different levels violations of environmental law (Criminal penalties, including fines up to \$ 10,000 for the first violation and recidivism will be fined up to \$ 20,000; imprisonment to 12 months; temporary detention; compulsory labor; administrative measures, including: Land use planning; Licenses or Certificate; torts with remedies, etc).

4. China

Wastewater charges are prescribed in Article 18 of the Environmental Protection Act 1979. In the years 1979 - 1981, pollution charges are applied on a trial basis in 27 provinces, under the direct supervision of the Government. Since 1982 the performance has been applied across the country. Calculation of charges is subject to regulations in two periods.

- In the period prior to 2003

First, all pollution parameters in the wastewater were tested. After that, the pollution parameters to be ranked in order from the highest levels of contamination to the lowest. Charging parameters based on the highest pollution levels. With the parameters have the highest pollution levels, the fee is calculated based on the concentrations exceed the standard. For example, if the permitted standard (acceptable standards) is 50 mg / l and the concentration of pollutants is 70mg / l, the only charge against the 20 mg / l exceeds the standard.

- In the period after 2003

The above charges revealed some shortcomings. First, the concentration was based solely on businesses that is dealt by diluted sewage. Second, the only charge based on the concentrations exceed the standard also makes businesses that deal only pollutant concentration standards and not encouraged enterprises to invest in process to curb pollution at a maximum. Moreover, the charges against pollution parameters levels do not exceed the highest standards of business motivation to limit contamination with other parameters. To overcome these shortcomings, in 2003, the wastewater charge system in China was modified with few changes: The charge is now based on load and not just based on the concentrations and charges are calculated for all unit of pollution (both above and below acceptable standards unit) are charged with more than 100 parameters in waste water pollution. Standards prescribed by the Ministry of Environment to change depending on the industry and rates vary by type of pollutant.

5. Philippines

Philippines started a pilot project in waste water charges for Lake Laguna in 1997. This is the largest freshwater lakes in the Philippines. This Lake covers fresh water for 13 million people living in five provinces and a part of the capital Manila. It also receiving wastewater disposal of approximately 10,000 businesses. To solve the water pollution is increasing, in January 1997, Laguna Lake Management Board issued decisions on the application of waste water charges. First, the wastewater charge was applied to enterprises of key industries with average annual emissions from over 4 tons of BOD. Since 1998, expanded fee system, Fee includes two parts: a fixed cost and variable costs. Fixed cost depends on the quality and quantity of waste water samples to be taken to monitor the environmental status of the business. Variable costs based on emissions of BOD or TSS, depending on type of production. For food processing facilities, tanneries, slaughter, livestock, fisheries, sugar, paper production is based on BOD. For facilities producing cement, chemical fertilizer, metal production, mining is by TSS. The fee varies depending on the concentration of wastes in the wastewater. If the concentration of pollutants (TSS or BOD) less than 50mg / l, the fee is 5 pesos per kilo. If pollutant concentrations greater than 50mg / l, the fee is 30 pesos per kilogram of pollutant emissions. Since 2003, this is applicable nation wide based on the success of the pilot phase in Laguna Lake,. However, at this stage there are some adjustments to increase the efficiency of charge. First, the fixed fee depends on the amount of water and wastewater containing heavy metals or not. Second, the variable costs is applied simultaneously (Peso 5000 per ton) for all units of pollution regardless whether the units of pollution exceeds the standards or not.

IV. RECOMMENDATIONS FOR STRENGTHENING THE EFFECTIVENESS OF LAW IMPLEMENTATION WORK

1. Reviewing and improving the system of environmental legislation.

To continue the improvement and completion of normative legal documents on environmental protection in order to meet the requirements of development and international integration (detailed provisions for guiding the implementation of the Biodiversity Act, Chapter on Environmental Crimes in the Criminal Code; gradually to formulate mechanisms and policies to promote socialization activities for environmental protection and to deployment economic instruments in environmental management. Specifically:

1.1. Development of normative legal documents.

Conduct a study to evaluate comprehensively the impact of the Law on Environmental Protection Act 2005, and then propose the amendments, supplements to the Law on Environmental Protection 2005 by expanding the scope of application; unified functions

of management, avoid duplication, the current distribution; additional regulations on environmental protection of watersheds, manufacturing villages, industrial zones, economic zones, hi-tech, industrial parks; rural, mountain, sea and islands environment; detailed regulations on strategic environmental impact assessment, environmental impact assessment, environmental commitments, improving economic instruments and social protection of the environment to consider codifying the issues related to climate change; streamlining the content in a comprehensive and logical manner; institutionalized policy of economic resources for environment sector to state budget.

Propose the National Assembly to revise Law on State Budget 2002 with an aim to have adequate budget for environmental protection:

- Adding new budget lines for environmental protection projects or programs in the public sector in development investment expenditures;
- Redefining the rights and responsibilities of state management agencies in the field of environmental protection (at the central Ministry of Natural Resources and Environment, the local Department of Natural Resources and Environment) in planning and budgeting for the field of environment.

1.2. Finalization of regulations on environmental standards

In the future, regulations on environmental standards should be formulated in the following directions:

- Encourage the application of environmental standards of other countries as well as international standards in Vietnam.
- Promulgate environmental standards for certain special industries and areas. Some of them include:
 - a) Standards for emissions from equipments and vehicles, industrial waste disposal, solid waste and medical disposal;
 - b) Standards for hazardous waste;
 - c) Standards for noise and vibration for transportation, manufacturing facilities, business services and construction activities.

Ministry of Natural Resources and Environment should continue to enact new environmental standards, in accordance with the requirements of the Environmental Protection Law in 2005.

1.3. Improvement of regulations on environmental impact assessment

- Revise and elaborate regulations on the public review in connection with report on environmental impact assessment aimed at ensuring the participation of the people in the process.
- Have approved environmental impact assessments open for public monitoring the implementation of environmental commitments: These are the new requirements of the Law on Environmental Protection 2005.

1.4. Improvement of regulations on waste management

- Ministry of Finance in coordination with other ministries, branches and localities to review and improve financial mechanisms and policies, price collection and treatment services of solid waste, including funds for research activities, applying new technologies to minimize waste, recycling and renewable energy, mechanical transport equipment, specialized process technologies in the field solid waste.
- Ministry of Trade and Industry should finalize project on limitation and minimisation of toxic and chemical use. POPs and substitution of environmental friendly raw materials.

1.5. The provisions on publicizing information

Law on Environmental Protection 2005 defined in Article 23 a mechanism to publicize environmental protection activities (publicly post at the project site all kinds waste, treatment technologies, standard parameters of wastes and other environmental protection measures for communities to know, check and monitor the implementation) in Article 61 (liability of the provincial People's Committee to disclose to the public all information regarding waste discharged into the rivers), and articles 93, 104, 105 should be elaborated in details by operational regulations in order to make the public understand the law and comply with.

1.6. Regulations on environmental dialogue

Article 105 Law on Environmental Protection 2005 sets out mechanisms for dialogue on environmental issues among organizations and individuals and other stakeholders under the chairmanship of the People's Committee or the professional bodies on environmental protection. However, there should be specific guidelines on process and procedures of the dialogue, including the way to organize a dialogue, the time limit for exchanging documents.

1.7. Regulations on environmental protection fee

Article 113 Law on Environmental Protection in 2005 of regulations on environmental protection fees as follows:

- Organizations and individuals that discharge waste into the environment or conduct activities that generate negative impacts on the environment must pay fees for environmental protection.
- Environmental protection charges be adjusted according to the schedule in line with economic conditions - social and environmental protection requirements of the country
- All revenues from environmental fees are used for direct investment in environmental protection.
- Ministry of Finance in coordination with the Ministry of Natural Resources and the Built Environment, the Government of charges for environmental protection.

The Ministry of Finance should work closely with the Ministry of Natural Resources and Environment and other ministries and agencies to prepare and submit to competent authorities to promulgate legal documents and revise Decree 67/2003; Joint Circular No. 125/2003; Decree 174/2007, Circular No. 39/2008; Decree 63/2008, Circular 67/2008 in order to ensure full charge collection, particularly, the waste water charges by:

- Apply calculation of two types of costs: fixed costs (administrative costs) and variable costs.
- Focus on some targets large amounts of pollutants, causing serious pollution .
- Impose charges for all units/business with low pollution standards and impose charges for one year from one to two times to reduce administrative costs and travel of staff for a fee.
- Promote the application of environmental management systems business, in which businesses must periodically disclose the activities of his unit discharge to increase the transparency and accuracy of data declared.
- Regularly review and adjust fee schedule.

2. Strengthening the inspection and handling of violations

2.1. Creating a legal framework adequate to the specialized inspection forces by revising Law on Inspection with separate provisions for specialized inspection.

- Develop and promulgate guidelines on inspection and handling violations of laws in parallel with promoting the inspection and examination of environmental protection, apply remedies for serious violations of the Decree No. 117/2009/ND -CP of the Government.

- Develop effective cooperation mechanism between the environmental police force to combat crimes and violations of laws on environmental protection. A protocol for cooperation among Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Supreme Court for the implementation of the provisions of the Environmental Crimes in the Criminal Code (as amended and supplemented).

2.2. Strengthening the capacity of relevant agencies in handling environmental crimes

Criminal Code 1999 and revised Criminal Code 2009 has added many important environmental crimes. However, many violations in the field of environment is not under investigated, prosecuted. One of the causes is the capacity of investigation, prosecution and trial. Therefore, it is necessary to strengthen investigation, prosecution and adjudication of crimes and handling of environmental disputes.

2.3. Perfecting the regulations on handling of violations of environmental law

The promulgation of the Law on Environmental Protection in 2005 with several important new content just to perfect the legal system of environmental protection but also create conflict and overlapping in the system of new legislation environmental protection require amendments and supplements to suit the new spirit of the Law on Environmental Protection in 2005 including the regulations on handling of violations of environmental law.

Specifically:

Another issue needs to be emphasized is criminal liability for legal persons (corporate liability) committing crimes or violating regulations on environmental protection.

3. Improving conditions to ensure the monitoring of law enforcement

3.1. Building organizational structure for state management

To review, evaluate and redefine the responsibilities of ministries, sectors and localities in state management function over environment protection with an aim of ensuring consistency for environmental management by adjusting the functions, duties and powers of the Ministry of Natural Resources and Environment as well as other ministries concerned to cope with problem of overlapping of functions and duties in areas such as solid waste management, environmental protection in agricultural activities and rural environmental management, import and export activities of goods and local market management, conservation biodiversity, conservation of species and genetic resources, inspection.

3.2. More funding for environmental protection activities

Improve coordination role of environmental management agencies at all levels of management and effective use of funds in performing their functions. Develop and promulgate specific policies to diversify sources of investment for environmental protection, particularly issuing specific guidance on the implementation of incentives to mobilize investment capital, taxes, fees as defined in Decree No. 04/2009/ND-CP dated 14/01/2009 of the Government incentives and support activities for environmental protection. Propose the National Assembly to increase expenditure from 1% to 2% of the total state budget (Resolution No. 41 - NQ / TW 15 November 2004 on protection of the Political environment in the period of accelerated industrialization and modernization of the country.

4. Enhance the effectiveness of state management in specific aspects

4.1. Pollution control and waste management

Strengthen the application of economic tools in pollution control: Improving and promulgating environmental protection's fee on emissions; enhancing fee collection activities and conducting a pilot project on some issues related to environment threshold loads.

Innovate working model and improve the effectiveness of operation of environmental protection committees in river basins; design and approve projects to solve environment pollution in manufacturing villages; strengthen environment monitoring ability for the period 2011 – 2015 and up to 2020; gradually develop sewage and drainage system in 3 big cities: Hanoi, HoChiMinh and HaiPhong; establish mapping systems for pollution warning and control.

Continue reviewing and improving national environmental standards system; finalize and promulgate environmental standards in some specific industries, manufacturing villages, river basins; improve the quality and ability to respond to environmental problems and to perform environmental warning and restoration.

Accelerate environmental protection planning and investigation, environmental impact assessment in key economic regions; continue to improve the quality of reviewing the environmental impact assessment reports and of monitoring environmental protection commitments.

4.2. Rehabilitating and improving the quality of environment.

Develop and implement the national program for repairing and improving environmental recession, especially mobilizing the resources for solving urgent problems in hot-spots like polluted rivers, unsanitary landfills, deploy preventive measures to negative impacts caused by pollution.

Promote inventory service and develop a database of polluted businesses; review and make plans for active prevention of impact of pollution and roadmap for removing polluted businesses from the city centre.

4.3. Preserving biodiversity

Build and complete legal framework for biodiversity conservation. Rearrange organizational structure for biodiversity conservation from the central to grass-root levels.

Strengthen co-ordination between relevant agencies at the central and local levels in managing biodiversity focusing on financial budget for sustainable biodiversity.

Develop and deploy necessary methods of preserving biodiversity like: in-situ and ex-situ community based conservation, strengthen international cooperation in preserving biodiversity. Promote scientific researches and strengthen training for capacity building reinforce conservation work via mass media.

4.4. Communications and raising awareness

Design communication program/plans for raising awareness of environmental protection in the 2011 – 2015 period and orientations toward 2020; continue to further socialize communication work of environmental protection by mobilizing effectively different resources. Build a task-force and a network for communication programs

Promote the role of press and mass media to encourage new initiatives and public participation.

4.5. Technology and sciences

Continue to formulate mechanisms, policies to encourage domestic investors in application of new technology for sanitary landfill and waste treatment; promoting advanced technology transfer to deal with environment pollution.

4.6. International co-operation

Prepare a strategy on engagement of international donors and other country to support Vietnam to address environmental problems with priority in some fields such as: strengthening environmental protection's ability and institutions; improving environmental protection's awareness; preventing and dealing with pollution; effectively with EIAs, climate change; join or adhere to other environmental agreements/treaties.

4.7. Socializing environment protection work

Review the implementation of Decree 69/2008/N -CP dated 30 May 2008 of the Government and Decision 1446/2008/Q -TTg by the Prime Minister on 10 October 2008 to draw lessons learnt from practice and then design activities for socialisation of communication work for environmental protection. Finalise and promugate guidelines for such activities in specific areas.

The First Legal Policy Dialogue:

“Monitoring Law Implementation”

Project “Strengthening Access to Justice and Protection of Rights in Viet Nam”

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