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*The Role of Economic Diplomacy in the Handling of
Chinese Banana Plantations in Lao PDR through
the Land-Lease Contracts*

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Ms. Khonsavanh Vongvannaxay

Abstract

Globalization has made economic diplomacy increasingly important for countries as they open up and connect with each other. Lao PDR has a close engagement with China, in particular, which has helped improve efficiency and productivity in recent decades. This paper investigates the role of economic diplomacy between the Lao and Chinese governments and companies focusing, in particular, on banana plantations in Ton Pheung District, Bokeo Province in Lao PDR. On the surface, this example of economic diplomacy seems to be mutually beneficial, creating a win-win situation for both countries. This study aims to explore the complexities of the plantation developments in more depth. Research was conducted using qualitative methods, including document analysis, interview and observations. The findings indicate that the principle problem is overly-complicated implementation by the Lao government, including the provincial, district and village authorities. Further challenges are opaque bureaucratic processes, with their inevitable legal loopholes, and inefficient government regulations that do not protect rural communities and other socio-economic entities sufficiently. These problems are compounded by lack of enforcement of existing regulations and laws in the approval process; for example, absence of environmental management planning, lack of any regular review of production techniques, or officials who look the other way. Moreover, there is a fundamental lack of consideration for the livelihoods of local people. The overall impact of economic diplomacy on the community is not thought out by officials at every level because they are overly optimistic that the plantations will function in the national interest. As a result, a variety of undesirable effects have resulted: overuse of chemicals, land depletion, employment of local people at minimal wages and unregulated immigration of Chinese workers into the area leading to disputes between immigrants and locals. Lastly, at the root of the plantation issue are land lease contract. In theory these land leases are not even recognized by Lao land laws despite playing a major role in the process; thus, many problems between contractors and land users have resulted. Most land users overestimate their rents without considering the burdens imposed by the contract. The paper concludes that for any country to engage in economic diplomacy and derive optimal advantage from it, it is necessary to have sufficient internal institutional frameworks to handle it and its consequences – both positive and negative – effectively.

Keywords: *Economic diplomacy, Laos–China relations and Chinese banana plantation.*

1. Introduction

Economic diplomacy is an important tool to advance national interests and liberalize economies. The process also aids economic analysis by identifying differing interests thereby facilitating the formulation of policies. As a result, it is essential for anyone who is involved to understand the effects of changing economic and political currents so they can predict the impact on international economies and relations (Sangsomsak, 2006).

The role of economic diplomacy in both countries, as a part of their negotiations, is essentially a foreign policy making process. Since, it is crucial to economic development in Lao PDR, so Lao PDR's policy today is going toward China. Not only on political diplomacy, but also economic cooperation. Cooperating with a super power country like China helps the development of Lao PDR in terms of increasing efficiency and productivity of the country, as well as, to gain more benefits, ability to influence economic and social requests on others and economic development to fulfill both countries' interests. Furthermore, Lao PDR uses economic diplomacy to stabilize and pursue long term her development.

Banana plantation is perceived as a result of reciprocity under economic diplomacy. Chinese government requested Lao to allow the investment of plantation in several places throughout Lao PDR. In regard to the potential benefits for the Lao economy, the national government and Provincial authorities tries to promote the land leases concessions and contract framing to the Chinese investors. One of the most significant cooperation is in Lao's agricultural sector. Because of Chinese investment, banana plantation becomes the main source of income for Lao PDR (Vientiane Times, 2013), especially in the northern region. The largest banana plantation in the country is in Tonphuang district, Bokeo province. This province gains benefits enormously from banana plantation particularly money to the government for development and money income for locals which drive the local economy.

With the income and economic expansion, government can build and/or develop basic infrastructure such as road, electricity, water, and buildings. These benefits outweigh socio-economic impacts of the investment made by China. In fact, there are lacks of consideration and solidarity for the people livelihood and the overall impacts of economic diplomacy to the community by officials in every level such as overuse of chemicals, land depletion,

employment of local people with minimal wage and immigration of Chinese workers into the area, and disputes between immigrants and locals. Also, there is a legal loophole due to a lack of enforcement of existing regulations in the approval process such as no environmental management plan, no review of production techniques and some case we have the law but the organization that will responsible for enforcing that law does not follow the law strictly. Moreover, the content of the contract is imprecise and will certainly bring problems once conflict arises. All of these issues may lead to a loss of national benefits and hampering economic development. So, this study focuses on the implementation of government on the economic diplomacy to handle of Chinese banana plantation, including the government, province, district and village authority through the land lease for Chinese banana plantation in Ton Phueng District, Bokeo Province, Lao PDR. In terms of the banana plantation business, land leases are playing an increasingly important role in Bokeo province, Lao PDR. In recent years, there has been a significant increase in land leases and land offered for lease. Lao people make money from their land, government tax revenue increases and associated contracts benefit the agricultural industry. Therefore, the plantations are a key part of the government of Lao's socio-economic development strategy. However, legal loopholes in the content of land lease contracts which conflict with Lao land law have compromised the sector; thus, many problems between contractors and land users have resulted. Most land users overestimate their rents without considering the burden imposed by the contract.

2. Economic diplomacy and banana plantations

2.1 Economic diplomacy in Lao PDR

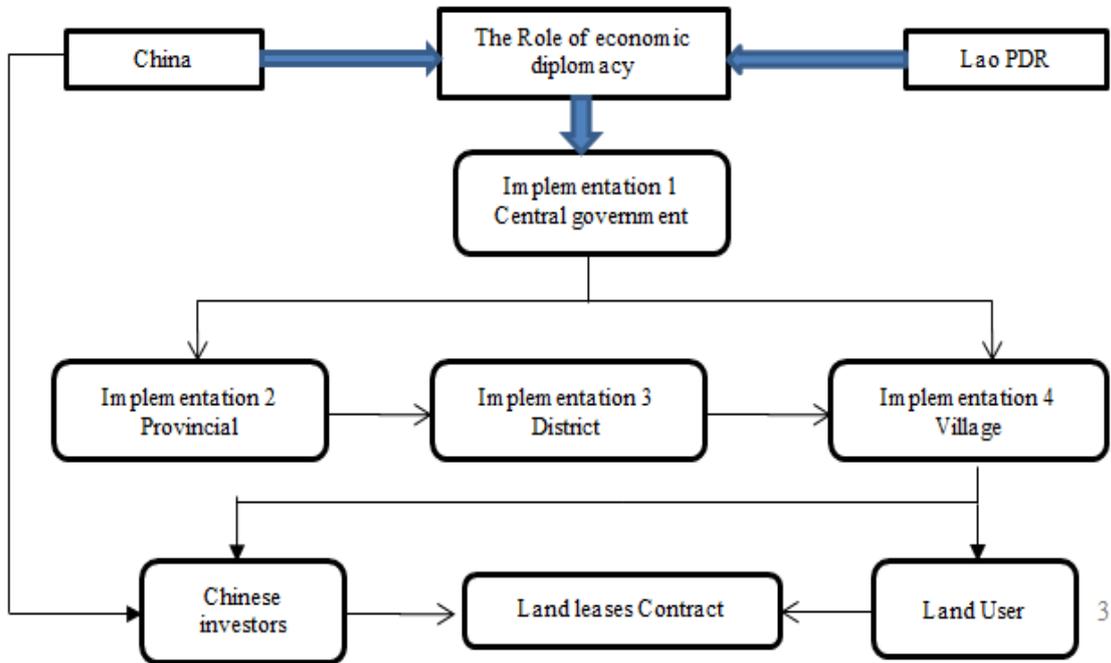
There are many ministries of Lao whose work are directly involved in the negotiation process as well as in the implementation of Economic Diplomacy such as a representative from the Lao' government and form the local provincial. Hence this is where most Chinese companies aimed to gain benefits from their investment in banana plantations. Most bananas yielded from banana plantation in the province are exported to China and the export volume of banana has been increasing every year by 2015 it was producing more than 400,000 tons of bananas (PAFO, 2016). Currently, a government order prevents the

provincial authorities from providing land for lease (Bokeo Authority, 2015) because there have been so many negative impacts on society and environment. However, despite this ban, negotiations are ongoing and land lease agreements are still being signed.

2.2. The implementation of Economic Diplomacy in the Case of Banana Plantations

The implementation of economic diplomacy of Lao PDR in the case of banana plantation involves numerous sectors and actors. Government and administrations operating at national, provincial, district, and village level all play important roles on the policy making and implementation. The government will conduct activities to attract investment, promote foreign policies, facilitate knowledge exchange and technological transfer, and organize capacity-building activities that will help promoting competitiveness of the country. And the authority at the provincial level, in this case refers to Bokeo provincial authority, makes policies that correspond to law and set direction to promote sustainable and attract foreign investment, and also promotes the investment on Cavendish banana plantation from China. As a result, it was can see legal loophole because of lack of enforcement of existing regulations in the approval process and some case we have the law but its implementation does not align with its purposes and objectives. Being subsequently delegated from the top, the negotiation process usually ended at the head of village level. Whiles the rest found out as their loophole on the contract was not cleared on law and lost the benefit. From the interview with the local people in Bokeo Province most people do not understand how to conduct proper agricultural business. Furthermore, they have no knowledge in the basic of law.

Figure 1. The process of the implementation



Source: Based on the Author's compilation

plantations on land rented for 3 to 6 years in the easily accessible with some small plantings of Cavendish hybrid bananas in Ton Pheung district adjacent to the Mekong River and have grown rapidly over the past few years over 11,000 hectares, commercial production of banana is a good strategy with the potential to generate income for Lao people in rural areas (PAFO, 2015).

2.4 Lao Law related to Banana Plantation

For the case of land lease for Chinese banana plantation was conducted with particularity the important Lao law as follows:

1). Decree on Land Lease or Concession of Lao PDR No. 135/PM VCC, Date 25/05/2009;

“Land Lease refers to the process of giving authorization to organizations, individuals or juridical entities to have rights to utilize state land based on the conditions and time period specified legally in the terms of the contract” (Article 2) Definition. And before determining the area for lease or concession of construction land, agricultural land, forest land, water area land, industrial land, cultural and communication land, there is the need to do a land survey, prepare a land map and land use plan based on land zoning and land classification specified in Article 5 of this Decree. After that the lease or concession shall be approved by specifying land use objectives in detail.

2). Law on the contract and tort No. 01/NA, 8 December 2008, article 16 the content of contract.

“A contract may consist of the following main contents: Name, Family and addresses of the contracting parties; Purpose, price, execution term, payment, delivery; Scope, quantity and quality of the objective; Place of contract execution and obligation to notify each other; Form and dispute resolution body; Conditions of modification and termination of the contract before term”.

3). Land Law No.04/NA 21 October 2003 defines that

“Land of the Lao PDR is under the ownership of the national community as prescribed in Article 17 of the Constitution in which the State is charged with the centralized and uniform management [of land] throughout the country and with the allocation [of land] to individuals, families and economic organizations for use', lease or concession, [the allocation] to army units, State organizations, political organizations, the Lao Front for National Construction, [and] mass organizations for use[, and the allocation] to aliens, apatrids", foreign individuals and organizations of such persons for lease or concession (article 3 the Land Ownership).

3. Analysis of Land Leases

3.1 Contract

In order to do agribusiness in Lao PDR, Chinese investors must land lease from local people. In this regard, there are contracts, processes, and procedures that Chinese investors need to do and to follow as stated in Lao law. In this part, analysis the content of the contract of land lease for banana plantation between Chinese investor and land user in 16 June 2015 at Sri Mueng Ngram village, Ton Phueng district, Bokeo province¹.

1) According with the Decree on Land Lease or Concession of Lao PDR No. 135/PM VCC, Date 25/05/2009, Article 64. The Lease or Concession of Land to 38 Aliens, Apatriids and Foreign Individuals; defined that: Aliens, apatriids and their organizations wishing to lease developed land from Lao citizens must get prior approval from the provincial or city administrations where the land is located.

In the case where foreign individuals and their organizations wish to lease developed land from Lao citizens, they must get] approval from the national land management authority based on the recommendation of the provincial or city administration where the land is located. so, this contract make conflict because that lack of enforcement of existing regulations on the approval process and the contract usually ends at the head of village level and the government cannot control it.

2) Article 1 of contract should normally state purpose of contract and details that enter into a contract. In practice, there are many details missing. For the land ownership, name and surname are not clearly stated. Other information is not included contact number, Lao identification number, house registration document, and residential address. For Chinese investors, the information on business license, office location, contact number, and other important information representing the company including name of company's

¹ Translate to English from the original one of the Land leases contract in Lao language on the 16 June 2015 at Sri Meung Ngram village, Lao PDR

representative, logo or seal of the company, name and/or surname of the person who signed contract on behalf of the company are missing from the contract.

This information are important in terms of entering into a contract because when conflicts arise, these people or company will be the very first parties that would be contacted or responsible for what happen. Furthermore, when these information are missing or omitted, the contract would not be completed and may be voidable. Other missing details involve payment method. It was not clear in the contract how and when the lease would be paid, who would pay for it, and method of payment by cash, check, or bank transfer. So, this article was conflict with the Law on the contract and Tort, No.01/NA, 8 December 2008, Article 16 (Amended) Content of Contract.

3) Article 3 and 4 in contract concern right and duties of land ownership. The right and duties of land ownership stated in this contract appear to be vague. The right was identified but responsibilities are not included especially on tax.

3.1 It is indicated that the land owner is obligated to facilitate to Chinese company for setting up the electricity, water supply, making drainage ditches, take care of banana trees such as prevent from the people to do damages, animals and natural disaster, and protect this land area. However, there was no statement mentioning who would be responsible for the expenses that may incur.

3.2 In terms of preventing banana trees from being destroy by animal, it is not clear in the contract which methods are required – fencing or just monitoring- and who would be responsible for expenses that may incur from all activities.

3.3 In the contract, the statement on how to take care of banana is ambiguous such as who would pay for equipment and chemical products. The land lease was so there is no word on safety measurement concerning the use of agrochemical and their toxic. Therefore, a variety of undesirable effects have resulted: both of the land lease and employment don't put in the contract or do for free. This is also in conflict the Law on the contract and Tort, No.01/NA, 8 December 2008, Chapter 2 on Land concession for cash crop plantation, forest rejuvenation, reforestation, industrial tree and economic tree plantation, must follow conditions specified in Article 74 of the Law on Forestry (version 2007)

4) Article 5 deals with mechanism to solve the conflict. So article 5 in this contract is not completed. There appears no mechanism to solve conflicts and/or problems in this contract in the following cases.

- 4.1 In case the Chinese refused to pay for the lease in the next 2 years.
- 4.2 In case the Chinese terminated the contract before ending period.
- 4.3 In case land that was leased were badly damaged by agrochemical substances.
- 4.4 The responsibility for environmental impacts that may result from the plantation.

This article conflict with the Decree on Land Lease or Concession of Lao PDR No. 135/PM VCC, Date 25/05/2009 that concerning the settlement of conflicts with contract on state land lease or concession, firstly the mediation should be done by the National Land Management Authority and the conflict parties. If the mediation is not successful, the conflict party can submit the request to the Economic Arbitration Authority for mediation or to transfer the case to the people's court for justice process.

5) There is no information on mechanism to solve problems that may come from disasters such as flood, fluctuating weather conditions, and drought. These issues be related to Article 3 that the land leaser must take care and keep the banana trees healthy which is contradictory to the general rule of land lease agreement where the usage of land must be transferred to the lessee. This seems to put more burden on the leaser as if (s)he is employed by the lessee.

In summary, there are three outstanding points of this contract. First of all, this contract is drafted and proposed by Chinese investors; therefore, all benefits go to the Chinese side. Secondly, all responsibilities fall upon the land users who are the lesser of this agreement. Finally, the content of the contract is imprecise and will certainly bring problems once conflict arises. So, national benefits come with significant costs and there are more adverse effect to economic development.

3.2 Interview

In our interview, the research has interviewed six informants and focus on the land leases for Chinese banana plantation in Ton Phueng district. All interviews took place in a formal setting with the presence of the respective government agent. Time taken for each interview was between 1 and 1.5 hours.

Based on the researcher's interview and observation, in term of banana plantation business, we can see a significant increase in land leases and land for lease. Lao people make money from their land and tax revenue increases for the government. From the examination of land lease contract described earlier, it was found that the content of contract is vague and weak. There are plenty of loopholes in the contract that could bring trouble to the land owner when problems or conflicts arise. All interviewees were not aware of this. Most people, moreover, do not understand how to conduct proper agricultural business. Furthermore, they have no knowledge in the basic knowledge on law of the country. They negotiate and work according to their level of understanding. When they saw the amount of money that the Chinese investors offered, they quickly took the offer and lease their land without calculating the risks and losses as well as plausible difficulties that may occur. Therefore, the production of banana is deemed to be a good strategy with a potential to gain income for Lao people in rural areas. It seems to be they can get a lot of benefits; but, finally, they have to bear its unintended and undesirable consequence because the content of the contract is unclear, leaving some rooms for the developers to cheat the desperate farmers and land users. So far, up to the time that the interview has been conducted, there has been no problem with the contract but conflicts and problems are expected to happen anytime.

4. Discussion and Conclusion

As mentioned above, it was found that the role of the economic diplomacy on the surface seems to be mutually benefitted; creating a win-win situation for both countries, because the economic diplomacy does provide some instruments to promote the coordination of policies and gain national benefit, but it may not be an all propose solution. So, the

researcher would like to look for the possible solution to reduce the impact on the economic diplomacy such as social-economic development, environment pollution, and legal loopholes. For instance, the Lao government should be careful on the systematic coordination mechanism between the difference levels (Central-Province-District linkage) for the approval monitoring system and post approval process evaluation on the impact. At the moment, economic development is more important than environment protection for Laos and relevant sectors; so the real cost of plantation is overlooked. The government should build capacity for provincial investment committees, who would be considered as the technical secretariat for the provincial governor in the investment approval process in order to screen the banana plantations and block those creates environmental and social impacts, and at the same time promotes and recognize good practices.

In summary, Bokeo province is still a small and least developed area. Therefore, the Chinese investment comes to the Province fostering the national economic interest because it benefits to the locals as well as stimulate Laos' economic expansion. Thus, it has received the highest priority. But the implementation of economic diplomacy in the case of banana plantations involves various levels to implementation, so they still have legal loophole and insufficient government institutions that concern and protect the national interest and the socio-economic development. We found that economic diplomacy is look like negotiation as a game of strategies and particular within the foreign policy² analysis.

The implementation of these activities reflects the reality of economic diplomacy in the handling of Chinese banana plantations. The plantations must be considered in terms of the gain to national interest and economic relations of both parties. Therefore, the payoff from economic diplomacy for Lao PDR is social and economic development through the increase of government revenue. Chinese banana investment in Lao PDR provides a suitable lens to examine the implementation of economic diplomacy. The study demonstrates considerable economic benefits of the plantations, which must be balanced by the negative consequences which arise from the imbalanced economic diplomacy between both

² Foreign policy is of great importance for the state because foreign policies are governments strategies use to guide their actions toward other states. Cutting from teaching document of Prof. Songsak Saicheua Director General Department of American and South Pacific Ministry of Foreign Affairs in Thailand. 2015

countries. In order to create a win-win situation, especially for the host country, Laos has to improve many aspects of its implementation so that the country can distribute the social and economic benefits while minimizing the impact on local communities and the environment.

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About

Thammasat Institute of Area Studies (TIARA)

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In line with the University wide restructuring, in 2015, the Institute underwent a major revamp to include 3 more area studies institutes namely Indian Studies Centre, Russian and CIS Studies Centre and ASEAN Studies Centre. With the consolidation of these 3 new area study centres, the institute therefore renames Thammasat Institute of Area Study (TIARA). The institute will continue what it do best, to continue producing high quality academic excellence and hope with the new restructuring, the institute will be able to achieve more in the coming years.

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Master of Arts in Asia-Pacific Studies Program (MAPS)

Master of Arts in Asia Pacific Studies (MAPS) program is an up and coming area study based master degree in Thailand. Focusing on Asia Pacific Studies, MAPS is a multidisciplinary graduate program that helps interested students to have an in depth understanding of this dynamic region. With a strong foundation of academic curriculum and high quality facilitators across all academic backgrounds, Master of Arts in Asia Pacific Studies will guide students through the disciplines of Politics, Economics, International Law and International relations to give a well-rounded understanding of Asia Pacific. These advanced courses offer a more in depth examination of questions and problems specific to the Asia Pacific region. Our graduates go on to pursue careers in academia, business organisations, government and wide array of organisations, both local and international.

Our students will also have the chance to familiarise with the academic settings in a sense that through their thesis course, student will be exposed to all kinds of academic scrutiny such as thesis defend and comprehensive thesis writing course. Nearing to the end of the program, student will be given a chance to showcase their hard labour at an International Conference held specially to facilitate the students learning curve. In the end, the works that they put their heart and soul into will become the pride of the program as each one of them, despite their different backgrounds; can come up with a thorough and deep analysis of particular research program concentrated on Asia Pacific and finally contribute to the literature on Asia Pacific Studies.

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