

Legal Framework for the Promotion and Protection of Foreign Investment: A Case Study of Banana Plantation Issue in Laos

ORLATHAY SANTIKHONGKHA

Member of Vientiane Capital People's Council, Laos

Ph. D Candidate, Southwest University of Political Science and Law,

School of International Law, Chongqing, China

Personal Phone: Lao +856 20 5550 8531; Personal Phone: (Chinese) 19112822352

Abstract

Promotion and protection of both domestic and foreign investment in Laos is necessary for the management, and protection of investment system to ensure peace, security and stability in politics and security as well as to build confidence for investors to make them invest in Laos more and more and to promote domestic labor skills and create jobs for the people in the country. In addition, it also helps to develop the socio-economic system gradually according to the country's sustainable development plan strategy 2020–2030. This article analyzes the legal framework for the promotion and protection of foreign investment, and focuses on banana plantation investment issue in Laos, based on the academic literature, and the scholarly debate around global land grabbing is advancing theoretically, methodologically, and empirically. This article has the main aim to study the implementation and enforcement of key terms and conditions of Lao national investment legislation and how these regulations can be applied to different types of foreign investment promotion and protection. In addition to the national regulatory frameworks, and how the implementation of the international investment conventions framework that Laos has ratified, and how the Lao government implements and enforces them with domestic laws and regulations in relation to the actors, scales, and processes involved, the banana acquisitions differ from state-granted large-scale land acquisitions dominating the literature on land grabbing in Laos. Nevertheless, findings reveal how investors established networks of local middlemen who facilitate negotiations over land directly at the village level, thus enabling them to circumvent any formal involvement of government authorities. Finally, how does the Lao government have an investment dispute settlement mechanism for foreign investment, especially banana plantation dispute?

Keywords: Foreign Direct Investment, Domestic Laws, Conventions, Banana Plantation in Laos.

DOI: 10.7176/JLPG/135-02

Publication date: August 31st 2023

I. Introduction

Laos' Foreign Direct Investment (FDI) registered a growth of 4.1 % of the country's Nominal GDP in Dec 2022, compared with a growth equal to 5.6 % in the previous year. Laos Foreign Direct Investment: % of Nominal GDP data is updated yearly, available from Dec 1988 to Dec 2022¹. However, the Lao government has attracted more foreign investors to invest in many sectors of the economy because it is the main key factor to socio-economic development, and creation the sustainable careers to Lao peoples in the country. In addition, the government should guarantee the protection of investments including the rights and legitimate interests of investors. The FDI promotion work is in order to make the implementation of the policies of the Lao People's Revolutionary Party bear fruit, the government must periodically promote domestic and foreign investment and create conditions to facilitate them, especially by updating regulations in order to speed up the approval of investment, the organization to comply with the procedures of the law on investment promotion, ensuring that there is no corruption of government officials related to investment approval because it will create conditions and an atmosphere of investment that is not in accordance with the laws.

The Lao government has been promoting foreign direct investment for several decades and it has been seen that between 2010-2023 there are foreign investors coming to invest in many sectors in Laos, and according to data from the National Investment Promotion Department, the main investing countries in Laos are large neighbours such as China, Thailand, Vietnam, South Korea and other countries. Chinese investors are investing in the mining projects, construction sectors, and agricultural sector such as banana, potato, watermelon plantations, and other sectors. Banana and watermelon plantation area is in the central and northern part of Laos, such as: Vientiane Province, Luang Prabang Province, Oudomxay Province, Bokeo Province, etc². Many people need to ask why the Lao government promote foreign direct investment, it is not only Laos to promote the FDI policy, but China, Thailand, Cambodia, and other countries also promote the FDI, especially, China has created the best conditions in legal system, and create the legal framework for the protection of the rights and interests

¹ Department of Investment Promotion, the Ministry of Planning and Investment Report in 2022, p.12, par 1.

² Id, at p.22, par 5.

for the foreign investors. Therefore, Laos sees that, the FDI is a tool of foreign companies to get the highest profit for their investment through capital, knowledge, or technology it can create the sustainable jobs in Laos. In addition, the Lao government supports the private sector and international organizations including foreign investors to develop facilities to meet the needs of local areas in the country.

According to Lao laws, the Lao government encourages foreign persons, either individuals or legal entities to invest capital in Laos on the basis of mutual interests and observance of the laws and regulations of Laos and they shall be referred to as “foreign investors”. Foreign investors may invest in and operate enterprises in all fields of lawful economic activity such as agriculture and forestry, manufacturing, energy, mineral extraction, handicrafts, communications-transport, constructions, tourism, trade, services, and others. Although Laos promotes Foreign Direct Investment, foreign investors may not invest in, or operate enterprises that are detrimental to the national security, the natural environment, public health, or the national culture, or which violate the laws and regulations of Laos. Of course, the property and investments in Laos of foreign investors shall be protected by the Lao national laws and regulations, the property and investments may not be requisitioned, confiscated or nationalized except for a public purpose and upon payment of prompt, adequate and effective compensation¹.

Since 2015, ASEAN member countries have furthered regional economic integration and implementation agreements for the investment environment in ASEAN and it also has been to create a more attractive of facilitating ASEAN’s continued growth. Over the last few years, regional action plans have led individual states to improve the investment atmosphere in ASEAN, especially the ASEAN economic community (AEC), which will be enacted on 31 December 2015, which presents new opportunities for Laos. Laos has been on track in implementing its AEC commitments, notably in cutting tariffs and creating the ASEAN trade repository through the foreign direct investment policy of Laos. And on February 2, 2013, Laos ratified a membership with World Trade Organization (WTO) because it makes Laos more attractive to foreign investors and foreign business partners to invest in Laos gradually. In addition, the Lao government has opportunity to develop the legal system and regulations that related to foreign investment to suit the actual current investment environmental situation, and the government has played a strategic role in the process of holding hands by supporting and guiding the development of new WTO exports clearly and with principles. Laos has also ratified international and bilateral conventions related to international trade and investment. Those conventions have defined principles, regulations, mechanisms and measures for the promotion and protection of investment. In fact, many international conventions have not been strictly implemented by the Lao government because the conditions are still against the domestic laws and regulations. Therefore, the government has improved the legislations to be consistent and create a legal framework to ensure the promotion of investment and the protection of investors.

Starting from 2010 until now, the investment in banana, watermelon, and other plantations has also seen a wide investment atmosphere in the northern part of Laos by Chinese investors. For that type of investment, the government has allowed Chinese investors to concession or leases the farm land, and garden land of the people in the local area at the value of 7-10 million kip per a hectare per year. Therefore, this article analyzes various problems including advantages and disadvantages from banana plantation investment, resolution mechanism of the investment dispute according to the Lao legal framework to ensure the promotion and protection of investment in Laos.

II. Legal Framework for the Promotion and Protection of Foreign Investment in Laos

The legal framework for the protection of investment takes stock of the investment policies in force and examines the level of regulatory protection granted to both domestic and foreign investments since the enactment of the Investment Promotion Law, No. 14/NA, November 17, 2016², which constitutes a milestone in Laos’ efforts to reposition itself as an attractive and safe investment destination. This law is the main law for the promotion and protection of domestic and foreign investments because it defines the principles, regulations, and measures for the promotion, and management in the country in order to make investment easy, quick, transparent, accurate, friendly to the environment and receive various protections from the state and also to protect the rights and legitimate interests of both domestic and foreign investors to contribute to socio-economic development to continuously grow in a green direction and create sustainable jobs for Lao people.

The Lao government sees the importance and necessary of both domestic and foreign investors investing in the country because it is a fundamental factor in building and developing of the country to prosper according to the strategy of the Lao People's Revolutionary Party and the government including the strategy of escaping from the least developed country in 2024. Therefore, the legal framework on investment is also an important work along with the foreign direct investment policy and the laws and regulations that related to the promotion and protection of investment were amended to be better based on expanding of socio-economic development and the

¹ The National Assembly of Laos Report, No. 01/94, 2018, p.13, par 7.

² Laos, the Investment Promotion Law, No. 14/NA, November 17, 2016.

world's evolution. The legal framework examines the law-making process as well as the quality of Laos' investment policies and the level of legal protection granted to both domestic and international investors in the country. The more important legal framework is the rules under the laws for protecting intellectual property rights and the legal regime for land property rights for both investors and local peoples including the mechanism settlement for the investment dispute through negotiation, mediation, and arbitration. Laos implements domestic laws, international treaties, and bilateral agreements for the resolution of foreign investment disputes.

2.1 International Legal Framework

1) Regional Comprehensive Economic Partnership (RCEP) Agreement: It to enter into force on January 1st, 2022. The RCEP was proposed with objective of establishing a modern, comprehensive, high-quality, and mutually beneficial economic partnership that would facilitate the expansion of regional trade and investment and contribute to global economic growth and development, Laos ratified it. For Laos, RCEP will create favourable trade, foreign investment, and tourism conditions. Therefore, during 10-11, August 2022 in Vientiane, Laos, the Ministry of Industry and Commerce (MOIC), chairman held a series of Public-Private Dialogues on Unpacking the RCEP Agreement for Lao Businesses by chairman of Mr. Malaithong Kommasith, Minister of Industry and Commerce, and Mr. Paul Kelly, Australian Ambassador for Lao PDR. The Dialogues covered six RCEP chapters in five sessions: Trade in Goods and Rules of Origin, Customs Procedures and Trade Facilitation, Services, Investment, and E-commerce. Each Dialogue consisted of two sessions: presentations by a trade expert and government officials about the related chapter followed by a panel discussion composed of private sector representatives discussing the benefits and challenges of the agreement from the private sector perspective. And the Minister of Industry and Commerce, Laos emphasized the importance of RCEP and ensure that the implementation of the agreement brings real benefits to Laos and that government officials are ready to support businesses to maximize the potential opportunities of RCEP, especially investment sector¹.

2) Bilateral investment treaties (or, BITs) are international agreements establishing the terms and conditions for private investment by nationals and companies of one country to another country. BITs establish clear limits on the expropriation of investments and provide for payment of prompt, adequate, and effective compensation when expropriation takes place. BITs provide for the transferability of investment-related funds into and out of a host country without delay and using a market rate of exchange. According to the United Nations Conference on Trade and Development (UNCTAD), Laos has bilateral investment agreements with Australia, Cambodia, China, Cuba, Denmark, France, Germany, Japan, Korea, Malaysia, Mongolia, Netherlands, Pakistan, Russia Federation, Singapore, Sweden, Switzerland, Thailand, the United Kingdom, and Vietnam. On February 1, 2005, a Bilateral Trade Agreement (BTA) entered into force between the United States and the Government of Laos that contains some investment provisions². In addition, BITs is significant agreement for the protection and promotion investment.

3) China-Lao People's Democratic Republic BIT (1993)³, this agreement concerns encouragement and reciprocal protection of investments, it desiring to encourage, protect and create favorable conditions for investment by investors of one Contracting State in the territory of the other Contracting State based on the principles of mutual respect for sovereignty, equality, and mutual benefit and for the purpose of the development of economic cooperation between both States. This agreement is very important between Laos and China for investment promotion and protection by legal framework of both countries and it is strengthened implementation currently.

4) ASEAN Economic Community (AEC) translates to a better investment climate in ASEAN. The AEC facilitates the implementation of trade, services, investment, and other reforms necessary in each ASEAN Member States, thereby improving each country's location offers, and Laos is a member of the AEC in 2015. The AEC is the realization of the region's end goal of economic integration. It envisions ASEAN as a single market and production base, a highly competitive region, with equitable economic development, and fully integrated into the global economy. Once AEC is realized, ASEAN will be characterized by free movement of goods, services, and investments as well as freer flow of capital and skills with harmonized trade and investment laws, ASEAN, as a rules-based organization will be strengthened and become more interesting as a single investment destination⁴.

2.2 Domestic Legal Framework for Investment Protection and Dispute Settlement

The domestic legal framework to protect investment in all sectors and the resolution of investment disputes is an

¹ Economic Research Institute for ASEAN and East Asia (ERIA), Unpacking the RCEP Agreement for Lao Business: Public and Private Dialogue Series on 10-11 August 2022, For more information see: <https://www.eria.org>

² Bilateral Investment Treaties - Trade Agreements – USTR ustr.gov <https://ustr.gov>

³ China - Lao People's Democratic Republic BIT (1993) [unctad.org](https://investmentpolicy.unctad.org) <https://investmentpolicy.unctad.org>

⁴ About AEC | ASEAN Economic Community, [asean.org](https://investasean.asean.org) <https://investasean.asean.org> "Invest in ASEAN", 2023.

important basic regulation according to the process of domestic laws, and both domestic and foreign investors should receive this right. In addition, the government must issue regulations that are oriented, transparent, and consistent with the principles of domestic laws and international conventions. Currently, Laos has many laws and regulations for promotion investment and protection investors based on agreement of the national Assembly.

2.2.1 Intellectual Property Law Enforcement

Intellectual Property Law, No. 38/NA, 15 November 2017 has defined the principles, regulations and measures related to the management, protection of intellectual property rights in order to promote innovation, intellectual economy, development of science and technology, and to ensure the protection of the rights and legitimate interests of the owners of intellectual property and interests of the state in order to promote trade, investment and the ability to compete according to the effective market economic mechanism in order to integrate with the regional and international level to contribute socio-economic development and transform the country Industrial and modern¹. The enforcement of intellectual property law is important to the protection and recognition of the intellectual property rights of investors doing business in Laos. Some articles of this law were revised in 2017 by the National Assembly to make it appropriate and in line with the current investment situation in order to increase the capacity of the Lao government's support through equal policy mechanisms and the government also advertised to investors about the meaning and importance of this law on the protection of their intellectual property, rights and interests in order to clearly recognize the importance of this law and to the aspirations of the country in modernizing, industrializing and developing the country's regional and international status. This attitude is reflected in policy statements and strategic planning goals, local authorities are increasingly supported to enforce IP law in Laos.

In addition, the Civil Code, No. 55/NA, 6 December 2018 was adopted and the Penal Code No.26/NA was also adopted by the National Assembly of Laos on May 17, 2019; these regulate the civil and criminal charges for infringers and the punishments and fines relating to IP infringement. There are several provisions in the legislation protecting intellectual property rights and suppressing its infringement. The government has also launched supporting regulations regarding the importance of protecting intellectual property rights and guaranteeing intellectual property protection for foreign investors through legislation².

2.2.2 Investment Promotion Law, (2016)

This Law was amended on 17 November 2016 by the National Assembly and defines principles, regulations, and measures regarding domestic and foreign investment promotion and protection, and administration in order to enable convenient, expeditious, transparent, proper investments, and protected by the Government to ensure the rights and benefits of investors, the state, collective and people, enabling the regional and international integration, contributing to the continuous growth of national socio-economic development in line with green growth and sustainability³. Article 75 defines the National Committee for the Investment Promotion and Management, this committee provides to facilitate the government in monitoring and inspecting the management of both domestic and foreign investments to be accurate and transparent in accordance with the law, and Article 77 stipulates the rights and obligations of the National Committee for the Investment Promotion and Management between the central and local committee level. In addition, Articles 80-84 set the principles and measures for the National Committee and Office, including the Rights and Obligations of Committee for the One-Stop Investment Service to facilitate investors in submitting applications or proposals for investment permits in Laos according to various sectors. And Article 93 has defined four types of Investment Dispute Resolution Mechanism, such as: investment dispute will be resolved through (1) Negotiation between the two parties with conciliation; (2) Resolution of disputes on Administrative Regulations; (3) Dispute resolution by the Economic Dispute Resolution Office in Laos, or International Investment Disputes Arbitration Center as agreed by both parties; And with the form of filing a lawsuit to the Domestic Courts, or the International Courts.

For the actual implementation and enforcement of investment promotion law, it is seen that it has not been achieved as it should be, because this law has not been widely disseminated to the private sectors, especially foreign investors because the government, especially the ministries and departments that have responsibilities and obligations to the domestic and foreign investments lack of expert human resources on interpret domestic laws and international conventions for investment standards, including the drafting of investment contracts between the state and investors that have many gaps that caused Laos to lose benefits. In this case, members of the National Assembly made comments in the National Assembly Regular 5th Session in during 24-26 June 2023. This session focused on the improvement of the National Strategy on the Socio-Economic Development in 2023-2025 and disused about the gaps and to create new conditions for Laos not to lose too many benefits from foreign investment environment. Therefore, the members of the National Assembly proposed to the government, especially the investment-related ministries, to pay attention in strengthening compliance with the laws on the study of investment project' details, to ask comments from the local people in the investment areas, to monitor

¹ Intellectual Property Law, No. 38/NA, 15 November 2017, Article 1.

² Intellectual Property Rights Enforcement in Laos, December 4, 2019, [tilleke.com https://www.tilleke.com](https://www.tilleke.com)

³ Investment Promotion Law, No. 14/NA, 17 November 2016.

and inspect investments regularly to ensure that investments do not affect the people's lives, do not affect the environmental situation, such as water sources that the community uses for consumption, etc.

For articles 80-84 are new and important articles for the analysis, monitoring and inspecting of investments through the government's one-stop service channel to facilitate and focus not to waste the time of investors. On the other hand, the actual implementation currently is the most difficult due to many reasons such as: (1) lack of coordination between the central ministries and departments at the local level delay and make investors waste much time, and unclear coordination; (2) Human Resources is not enough and some employees lack of the responsibility and obligations that stipulated on the laws, procrastinate for a long time and asked benefits for themselves from investors, lack of the ethics, and do not understand deeply about the government's policy regarding one-stop investment services, they also do not understand deeply about their rights and obligations as defined in the law on investment promotion and other laws; (3) The implementation and enforcement of the law on investment promotion and regulations on one-stop investment services are still weak. However, the government is pursuing measures to address the perceived shortcomings in the legal enforcement system, including the judicial system. Some of the main concerns for investors in their interactions with the Lao domestic courts relate to the speed and efficiency of case management and justice accessibility under the fundamental rights of humans.

2.2.3 Agricultural Promotion Law, (1998)

The agricultural law was adopted on 10 October 1998, which is a law that has not been amended yet and this law defines the principles, regulations and measures related to the activities of agricultural production and plantation in Laos that is the basis of its economy of Laos. This law has defined the various measures to manage the cultivation of agricultural products and plantations with domestic and foreign investments in order to ensure the supply of agricultural productions as goods for export to domestic markets and abroad to generate income for the farmers while building and developing the country to prosper escape from the least developed country in 2024. In addition, Article 4 of this law defines the protection of the rights and interests of those engaged in agricultural activities with various laws and policies such as credit policy, tax exemption or reduction policy, etc. and proposals to carry out agricultural activities such as growing crops for export must be under the management and permission of the government.

Therefore, proposals for investment in agricultural sectors, such as banana, watermelon, potato plantations, etc. as products for export to the domestic markets or export to other countries (China, Thailand, Vietnam) must comply with the principles, regulations and measures set up in the Law on Agricultural Promotion; the Law on Investment Promotion; the Law on Intellectual Property Protection; the Specific Regulations on applying for investment permits in Laos for foreign investors and other related laws. However, the implementation of laws related to investment is not as strict as it should be which shows that the proposal of Chinese investors to invest in banana plantation during 2010-2020 had caused many effects on the living of the people in the community and the land leases without following the initial negotiation mechanism. Therefore, it is a gap that the local people do not have an opportunity to negotiate directly of their land lease with investors because some the government officials are only representatives of Chinese investors, and they brought the proposals of the local people for land leases to report to the investors, but some important proposals are not detailed with the Chinese investors. In fact, the government officials cannot do that, and are still abusing their rights and obligations under the laws. These issues are only some and due to the weak and unsystematic implementation of the regulations and laws enforcement by the relevant parties of the state, so there is a gap for some officials to violate the laws, but they are not still responsible by the administrative regulations and various measures against the law. Nevertheless, the government must implement and enforce the laws strictly and compliant the measures to violators of the laws.

III. A Case Study of Banana Plantation Issue in Laos

In 2010, the Lao government had a policy of allowing foreign investors, especially Chinese investors to lease or concession agricultural lands to grow agricultural cultivation for export, such as coffee, cassava, soybeans, and bananas. For Example, the Chinese company signed an agreement with the Lao authorities to study the prospects for the development of 500,000 hectares of land in Laos for banana plantation for export to China. But the policy has sparked friction over cases of environmental pollution and land taken without proper leases. In addition, the banana plantation has been severely affected by chemicals, herbicides, and pesticides, which have affected the health of local people in the community. There are still many impacts from Chinese investment in the field of agriculture, especially banana plantation investment because investment contract does not control many conditions. For example, land concession or lease contracts seldom specify that the investor is required to clean and restore the land to its previous condition after the agreement has ended; banana plantations sicken Lao villagers exposed to agricultural chemicals; the peoples working on the farms become weak and tired after only two or three years working on the farms, and often suffer from chronic headaches and dizziness believed to be

the result of exposure to chemicals¹. Therefore, it has a problem between the Government and Chinese investors, because the Lao government sectors, such as the Ministry of Planning and Investment, the Ministry of Agriculture and Forest, and the Ministry of Industry and Commerce of the Lao PDR are representative of agricultural land owners to negotiated and signed Contract on Agricultural Plantation.

At the end of September 2018, the Ministry of Agriculture and Forests warned four Chinese companies about the “excessive use of pesticides” and ordered inspections on the types and amounts of chemicals used at various banana plantations. Business licenses were threatened to be revoked if laws continued to be broken. In mid-October, authorities in Bokeo, Luang Namtha, and Oudomxay provinces banned the creation of new plantations, after Chinese-owned banana farms were discovered to have used and leaked hazardous chemicals into the soil and water resources. However, despite the government’s efforts towards preventing further damage from being done to the people and the environment, the use of illegal substances in banana farming is far too lucrative for it to disappear anytime soon. Farmers continue to provide their land illegally lease to Chinese investors to bring sustainable income to their families. At the same time, the Prime Minister Thongloun Sisoulith (the Current President) has voiced his concern over the widespread chemical usage on Chinese-run banana plantations stating, “The government could not overlook this. He added, since last year, I have ordered a prohibition on the lease out more agricultural land for banana plantations to investors because of the damage from chemical contamination”. He acknowledges that the impact of chemicals has made people sick and contaminated water sources, however he did not mention whether Laos would take action against the existing banana plantations². Through the permission of the Lao government to allow Chinese investors to invest in the banana plantation in Laos for a decade, and there are perspectives in advantages and disadvantages from investment. However, the Lao and Chinese governments have attempted to resolve every year together which disadvantages to be advantages to the Lao people, and socio-economic development and some of issues were actually resolved with negotiation and conciliation.

3.1 Benefits and Impacts of Banana Plantations Investment

Based on the report of the Agricultural Sector in 2018, banana has a lot of varieties produced and consumed in the world, but Chinese investors' popular planting in Laos is a Cavendish type that is very famous in the world crop, which accounts for around 47 percent of global production because Cavendish banana crops are able to achieve high yields per hectare and, due to their short stems, are less prone to damage from environmental influences such as storms. Cavendish banana plants are also known for recovering from natural disasters quickly. Banana plantations investment by Chinese investors in Laos has a large plantation of more than 1000 hectares of bananas that is beneficial to local people because it created sustainable work and income from their wages daily or monthly, the land cannot grow rice is leased by investors in high. But on the other hand, banana plantations investment also has impacts to local people because Chinese investor use chemicals to water bananas, using herbicides and insecticides, all of those chemicals are very toxic to water sources, people, animals and the environment in the short and long term.

3.1.1 Benefits of Banana Plantation

Chinese banana plantations first started cropping up about six years ago in Bokeo province, Oudomxay province, and Luang Namtha province in the northern Laos, which borders Thailand and Myanmar. Nowadays they cover more than 11,000 hectares, provide US\$100 million in annual exports, and make up 95% of Bokeo’s exports, according to a 2017 report by Plan International. Most Lao banana plantation workers accept their dangerous working conditions because they earn more doing it than other jobs³. Banana plantation by Chinese investors is a main income resource for local people, who have large, medium, or small land for providing Chinese investors leases in the value of 8-10 million Kip per hectare and local people can work with Chinese people in banana farms by payment high wage per month or a day, such as the Chinese will hire local Lao workers to plant bananas, take care of banana shoots and apply insecticides or kill weeds. When the harvest season comes, Lao people in the local area will be asked by Chinese investors to cut banana stems, pick up bananas, wash bananas and lift the trucks by calculating the daily labor fee of LAK 100,000 - 350,000 per person based on the experience and the actual work to be hired. The land is leases for bananas, watermelons and potato plantations, fortunately have not affected commercial rice production because the Lao government has forbidden renting productive flat paddy land hilly and lower-quality land is used instead⁴.

3.1.2 Impact of Banana Plantation

Although the planting of bananas by Chinese investors in Laos will have many positive effects on the development of the social economy of Laos, creating jobs for local Lao people, generating income from renting

¹ Banana farms in Laos sicken villagers, More information visit: <https://www.rfa.org/english/news/laos/banana-05282020171853.html>

² Lao PDR, Interview’s Statement of The Ministry of Agriculture and Forestry, News by Pathed Lao, Published in September 2018 (Lao version).

³ Chinese Dialogues, Chinese banana plantations bring work and pollution to Laos, 2019 <https://chinadialogue.net>

⁴ Houn District Report: Benefits of Banana Plantations in Houn District, Oudomxay Province, Laos, 2020.

gardens and farmlands that cannot be cultivated due to the deterioration of the ground due to lack of water, etc., but it also has many effects on people, water resources and soil conditions as well. The Lao plantation worker from Oudomxay told that banana plantations used lots of chemicals for making bananas grow fast, and for killing insects. The chemicals end up in the rivers and creeks. Before we could drink the water from the creek and bath in it, but now we cannot, we have to use water from an underground source. He also said, even though we risk exposure to chemicals, tending bananas is a means for rural people who have no other choices to escape poverty. Normally working in banana farms in two seasons working at a plantation many people were able to save enough money to begin building a house and expense for their family living costs¹.

3.1.3 Legal and Regulations Enforcement Analysis

According to interviews many government officials related to the laws enforcement and regulations implementation on investment and anti-used of chemicals for banana plantation in 2023. They explained similar cases, i.e., Bounkhouang Khambounheuang, Deputy Minister of Agriculture and Forestry, told "The Lao government attempted to implement and enforce strictly the laws and regulations for banning remains in place and that authorities will investigate any new banana farms. The government strictly maintains a ban on new banana farms in Laos and will punish those who violate the rules and the Lao government must implement the investment contract for unauthorized plantations investments will have their operations put on hold or shut down without negotiation"². However, since 2018, the government position is to continue to enforce the ban and allows people to grow new crops according to clean agricultural practices, but not bananas.

Through the analysis, it can be seen that the Lao government has not analyzed the negative results or the impact on the people's lives, and the impact on the environment, etc. in accordance with the laws and specific regulations of foreign investment system in detail. This shows that the implementation of the laws and regulations of the public sector has not only focused on its own interests without studying the reasons why the banana plantations investment will affect the people of Laos in the long term. In conclusion, the implementation of various legislations related to investment, the use of chemicals that pose a risk to the lives of people, animals, environmental situation, and water resources is still not strict, there are gaps and problems that need to be resolved later. Therefore, it can cause issue to the internal law enforcement mechanism and investment contracts implementation system from the state.

3.2 Legal Framework for the Resolution of Banana Plantations Investment Impacts

The impacts and risks caused by the use of chemicals such as insecticides, weed killers, chemical to grow banana trees, etc. are all chemicals that affect to body, respiratory system of people, animals and when it rains, the chemicals that remain on the ground and banana trees will flow into the water sources, which will make those water sources unable to be consumed as before, in addition to affecting the water and ground environmental systems. Therefore, in order to reduce these effects and risks, the government, especially the relevant sectors, must enforce various laws and implement relevant measures against investors who violate the law without exception. If the law does not conform to the current situation, it must be submitted to the National Assembly to amend it in a timely manner to ensure the protection of the rights and legitimate interests of the people who are affected by investment that does not comply with the conditions agreed in the investment contract and according to Lao laws.

3.2.1 Strengthening Enforcement and Compliance of National Laws and Regulations

The Lao government must enforce laws related to agricultural investment and appropriate regulations to protect the legitimate rights and interests of investors and Lao people, such as Agricultural Promotion Law, Investment Promotion Law, Economic Dispute Resolution Law, Civil Code and Criminal Code, and other laws. In addition, the government sectors should implement civil and criminal measures in legal to against violators of investment contracts and land lease contracts. Although the severity of the impact of banana plantation investment remains to be a sustainable resolution by investors and the Lao government agencies, At present, both the governments (Laos and China) and the general public have expressed their concerns regarding the impact of banana plantations. The Government of Lao PDR, especially the environment sectors, must pay attention to monitoring and inspecting the investment of foreign investors under legal conditions that must be environmentally friendly and sustainable. The contract on investment must create conditions to control all areas in the actual implementation, especially the protection of the environment, such as soil erosion and degradation, pollution from agrochemical use, solid waste, water usage, etc.,

However, both the Lao and Chinese governments have important roles to play to resolve the impact together collaboration between the two countries is needed to calm the situation and reassure the Lao people that things will get resolved to be better and better in the further. In other words, the impacts will be managed in an effective manner and future Chinese investments would do better than harm to local people and communities in

¹ Interview Lae Sengchan takes care of Banana Plantations in Houn District, Oudomxay Province on 15 June 2022.

² Bounkhouang Khambounheuang, Deputy Minister of Agriculture and Forestry Report: Banana Plantation Banning by the Lao Government to Vientiane Time on November 2018.

particular and the host country in general. Following are some recommendations for both governments to consider: Firstly, the Lao and Chinese governments may encourage or educate the Chinese investors who currently have lived and invested in Laos, or planning to migrate and invest to respect Lao laws and regulations, culture, and social norms. Secondly, the Lao government must implement regulations and investment contracts, and enforce the domestic laws for against violators, including the enforcement the measures in legal for the environmental protection, and ask investors to comply with the domestic laws or facing the consequences and help to resolve together by negotiation, mediation and arbitration in Laos. Finally, the Lao Government has to evaluate the balance of advantages and disadvantages of Chinese investments, while continuing to welcome investors to ensure a sustainable and friendly investment for the environment and the community. Especially, drafting the contract on investment clarified and can control the protection of the environment and other areas.

3.2.2 Development of Domestic Legal Framework

The Lao legal and regulations related to banana plantation investment may develop in the future because Laos is a member of many international, regional conventions and agreements on investment, including foreign investment in the field of agricultural plantation investment. Therefore, Laos should learn some rules and procedures for the resolution of issues of agricultural investment from other countries, such as alternative mechanisms of resolution on the investment dispute, principles, rules, proceedings of dispute resolution. And the Lao government is paying attention to develop some domestic laws to be standards based on the principles of international, regional conventions by the National Assembly has seen the important of the laws' improvement. Therefore, In June 2023, the National Assembly 5th Session discussed about the laws amending and creation new laws, including the development the National Socio-Economic Strategy Policy during 2023-2025 based on the legislations regime development.

As we know, the politics of Laos takes place in the framework of a one-party parliamentary socialist republic. The only legal political party is the Lao People's Revolutionary Party (LPRP), and Lao criminal justice system is controlled by the party and the government. There are few legal restraints on government actions, including arrests, which are often arbitrary in nature. Dissent is frequently handled by suppressing basic civil rights. Making new laws or amending laws in Laos is the right and obligation of the National Assembly through the proposal of the government bodies, the People's Court, the People's Prosecutor's Office, the national inspection organization, and the Lao National Front Organization based on several steps, such as the government creating a plan to improve the law, creating a draft law, then the Ministry of Justice has the right and obligation to check and review the validity of the legal standards principles, form and draft of the law that will be presented to the National Assembly for revision and adoption.

Therefore, the various laws related to investment authorization, if it is seen that some articles are still not in line with the social conditions currently, the government can create a plan and create a draft law that needs to be amended and send it to the Ministry of Justice for review according to the procedure. However, the amendment of the laws is not important enough in the case of serious enforcement, there may be no gaps and no problems in the society, but the lack of power authorities' implementation and enforcement of the laws is not strong, of course the principle of law is weak. However, in cases where the law is not in line with international standards, it can be submitted to improve it.

Currently, Laos has many laws related to investment promotion and protection, such as the Investment Promotion Law, No. 14/NA, 17 November 2016, the Intellectual Property Law, No. 38/NA, 15 November 2017, the Taxation Law, No. 81/NA, 29 June 2020, the Agricultural Law, No. 01-98/NA, 10 October 1998, the Economic Disputes Resolution Law, No.51/NA, 26 June 2018 but there is no the Investment Disputes Resolution Law because it can implement and enforce for investment disputes resolution, and other laws including decrees of the government authorities. The implementation and enforcement of these laws are still not strict and some laws have been revised because the government does not want to create loopholes for investors. Since 2017, specific laws and regulations related to investment in banana plantations have been amended, such as the law on water and environmental protection was amended in 2020, the law on chemical management was amended in 2017, the law on water resources management was amended in 2022, other laws and regulations.

In addition, Laos has issued measures on the management of chemical use within banana plantations to protect against the effects that will occur again due to violations of the laws and regulations by investors and the Lao government has implemented the law against serious violators since 2018, which can be seen strictly because the Ministry of Agriculture and Forestry was representatives of the government inspected banana plantations across Laos and directing operators to produce their crops in line with sustainable agricultural practices, and the number of investors and banana plantations around the country decreased after the government enforced the measures for banning on granting land for new plantations and shut down companies that had violated regulations, the Minister of Agriculture and Forestry, Dr. Lien Thikeyo said while responding to a question during the 7th Ordinary Session of the National Assembly's legislature¹. All of this shows that the

¹ Dr. Lien Thikeyo, the Minister of Agriculture and Forestry, Spoke in the 7th Ordinary Session of the National Assembly's

government sees the importance of the impact that has happened to the Lao peoples, especially the workers in many banana plantations farms in the country have been directly and indirectly affected, which is against fundamental human rights and the violation of labor contracts, and laws. Therefore, the Lao government has attempted to develop and amend legal framework regime for the protection and promotion foreign investment equally and fair between investors, local people in community and investment sectors' workers.

IV. Conclusion and Recommendations

The Legal Framework for the Promotion and Protection of Foreign Investment, and studies of banana plantation investment issue in Laos is a very important and necessary article because of this legal enforcement and regulations implementation is weak, many laws were not amended to be principle standards based on international investment conventions that Laos is a party. Therefore, this article is examined and analyzed the legal framework for the promotion and protection of foreign investments including investors absolutely. And study case of banana plantation investment by Chinese investors that has impacts and risks to the Lao local people and banana farms workers in the short term and long term. China's investment in banana plantations in Laos over the past two decades has had the benefits and a serious impact on Lao people, especially the workers who regularly work in banana plantations farm. Despite their high incomes, but they are at risk of cancer, chemical illness, and many families go to work in banana plantations with their children and lose their opportunity to get an education or not go to school. Due to the lack of close attention from the government sectors, the people fell into a bad fate from inhaling the smell of chemicals from the banana trees, because the banana plantation requires the use of chemicals to make the banana trees grow fast, without disturbing insects and herbicides. However, the over-exploitation affects the livelihood of the people in the community because the water source is contaminated with chemicals and the environment is destroyed.

To ensure sustainable development and respect for humans and environmental rights, within the framework of the legal system and regulations, to achieve this goal, it is important: (1) Must cooperate with many parties related to investment to study the impacts or risks and good results of sustainable and environmentally friendly investment, and do not affect the health, life and livelihood of local people; (2) It is necessary to speed up the amendment of laws that are not in line with the enforcement of current investments, especially defining the role, rights and obligations of the National Committee to monitor, inspect and evaluate investments closely and regularly to ensure the violation of laws and regulations by investors; (3) Must enforce domestic laws and international conventions against violators of investment laws strictly and fairly; and (4) The government sectors should educate the impacts of the chemicals from banana plantations to the local people regularly, in addition to implement measures against violators of laws and regulations, and ban banana plantation investments that violated Lao laws.