

PERSPECTIVE

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Peace and Prosperity in Myanmar Hinges on Land and the 2020 Candidates are Avoiding It

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EXECUTIVE SUMMARY

- Land rights were at the forefront of the National League for Democracy's (NLD) 2015 election campaign. After five years of unfulfilled promises and minimal progress, the NLD and other political parties have gone silent on land issues in their 2020 campaigns.
- The Farmland and the Vacant, Fallow and Virgin (VFV) Land laws, while creating new problems, exemplify how efforts to transform land governance have failed to address Myanmar's well-known and documented legacy of land pillaging.
- The third session of the Union Peace Conference (21st Century Panglong) in July 2018 featured 12 land-related principles and policies. These were overshadowed by the NLD-led government's preoccupation with the controversial Farmland and VFV laws.
- The next five years present an opportunity to revisit and tackle Myanmar's most pressing problems. The land agenda is one of these.

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INTRODUCTION

The NLD's 2015 Election Manifesto promised that: a) farmers would have the right to own and transfer land in accordance with the law; b) farmers whose land was illegally grabbed would get it back and/or receive compensation and restitution; c) farmers would be able to defend against illegal land confiscation practices, and; d) unjust laws would be amended.¹ This was an agenda that people could quickly rally around. Yet, the NLD government has made little progress on any of these measures. It was not alone in making lofty land-related promises; other political parties such as the National Unity Party (NUP), the Myanmar Farmers Development Party (MFDP) also made such commitments.² The result has been a deterioration of hope within and around major political parties about their promises.

Land rights remain a preeminent concern for every farmer or smallholder from the plains to the hills region today. There was much interest over how much emphasis the NLD and other parties would put on land matters in the 2020 Election Manifestos. On 1 September 2020, when the NLD Manifesto was published, the issue of land was not on the main agenda, and appears only under sub-section (5) agriculture and (12) farmers affairs, where it is stated that where there are insufficient pledges to provide land to those [farmers] who have no access to land, to investigate and prevent unlawful land confiscations, and to provide land restitution and compensation in accordance with the law.³ Dr. Zaw Myint Maung (Vice Chairman of the NLD) told the Myanmar Times that the NLD's 2020 manifesto would include several 2015 manifesto policies but would focus more on health and education.⁴ Later, ethnic political parties such as Arakan National Party (ANP), *Tai-Leng Nationalities Development Party also known as the Shan-ni Nationalities Development Party (TNDP)*, and Karen National Party (KNP) also released their 2020 Election Manifesto. These focus on genuine federal union, flourishing democracy, equal rights, and achieving perpetual peace and stop civil wars. Majority Burmese political parties such as the People's Pioneer Party (PPP) highlight federal union, democracy and social security.⁵ Land issues are being ignored in the 2020 election.

UNFULFILLED PROMISES

Candidates and parties brought much focus and attention to land rights issues on the campaign trail in 2015. In contrast, land is an elusive or absent topic in 2020. The NLD and other major political parties have chosen to back away from the one topic that unequivocally matters most to farmers and communities throughout Myanmar.

Reports such as *Myanmar Political Parties at a Time of Transition*, published in April 2015, present some insights into how and why political parties focused on specific issues such as land confiscation during their election campaigns at the local level. The report posits that candidates and parties focus on land to win votes, but not necessarily to deliver real change and policies on the issue.⁶

A Yangon-based non-governmental organization, Enlightened Myanmar Research Foundation (EMReF) also analyzed various party manifestos before the 2015 Election. The analysis showed that almost all of the manifestos focused on agriculture-related land issues, land confiscation, and compensation and loans for the benefits of farmers. Parties such as

the NLD stated that there should be an allocation of Vacant, Fallow and Virgin land to the smallest smallholders with formal ownership, technical irrigation system support and flood prevention measures. The National Unity Party (NUP) proposed the formation of a farmers' association, and emphasized the union's duty to promote the agriculture sector. The Myanmar Farmers Development Party (MFDP) emphasized implementing the 2012 Farmland law for both plain and hilly regions as a whole.⁷ These promises or goals are absent in the 2020 manifestos.

The same trend holds true for the manifestos of the 2017 by-elections. Eleven out of 24 political parties commonly highlighted three key messages with regard to land: ensuring land ownership for farmers, addressing the land confiscations, and providing loans and technical assistance to farmers, and promised under the agriculture and land sub-sections in their manifestos. The National Unity Party, Democratic Party (Myanmar), the People Democracy Party, and the New Society Party made promises on farmland ownership. Of those four, the NUP emphasized amendments of land-related laws.⁸ The 2017 by-election mirrored 2015 in that land rights featured both in the manifestos and in public campaigns. Clearly, therefore, 2020 campaigns are a clear departure from the slogans and speeches of 2015 and 2017. All of this raises the question whether political parties have simply given up on land rights, an issue that is paramount to the lives and livelihoods of many in the country.

THE 2012 FARMLAND AND THE VACANT, FALLOW AND VIRGIN LAND LAWS (VFV): A REALITY CHECK

The Union Solidarity and Development Party (USDP) government amended several land-related laws for the purpose of economic development. Those amendments favored and incentivized investment opportunities. The rhetoric supporting the amendments stated that they were for the purpose of promoting private domestic and foreign investment to reduce poverty. Myanmar's abundance of land resource is indeed attractive to land-based investments. Yet all stakeholders involved in land matters (USDP government, political parties, investors and companies) have been struggling to understand land issues and their complex entirety. The lack of public consultation in drafting and approving new laws or making amendments added to the problem. Chronic land confiscation continued unequal and unjust formalization of land ownership and caused many land disputes at the local level.

Notably, the 2012 Farmland Law and the VFV (Vacant, Fallow, Virgin) Land Law immediately undermine the rights of smallholder farmers to own and cultivate their lands in mountainous and lowland areas. The VFV enables many large-scale land-based investments, such as the Letpadaung Copper mining projects in Sagaing region, the Tigyit coalmine in southern Shan state, the Dawei Special Economic Zone in Tanintharyi region. Those projects have resulted not only in the loss of land but also livelihoods, displaced many communities, and deepened mistrust at the community level.

In an attempt to address some of these trust issues, the USDP government established a parliamentary commission for the *Prevention of Public Disenfranchisements Connected to the Confiscation of Farmland and Other Lands*, otherwise known as the Parliamentary Land Investigation Commission or PLIC in August 2012 to investigate land grabbing issues and

to propose solutions for smallholders.⁹ The PLIC received about 6,000 complaint letters from 14 states and divisions related to Myanmar Military or *Tatmadaw* seizure of land issues. By November 2015, the PLIC had received almost 17,000 complaints.¹⁰ Of these, over 565 specifically mentioned *Tatmadaw* land grabs. The PLIC report estimates that 250,000 acres (almost 100,000 hectares) had been seized from farmers in ethnic and central regions, especially in the Ayeyarwaddy delta.¹¹

The PLIC's effectiveness was hampered by its unclear mandate, the complexity of land-related laws and regulations, and the lack of commitment from local authorities to address land disputes resolutions. The PLIC was dissolved in 2016 under the NLD-led government, which replaced it with the *Central Reinvestigation Committee for Confiscated Farmlands and Others Lands*.¹² This new committee was the NLD's attempt at rectifying Myanmar's land rights woes at the union, state and regional level. The committee's objectives were to address the land confiscation and dispossession in land-related issues since 1988 and engage with different levels of administration in the state and region, district, township and village level, non-governmental representatives and civil society organizations.

The new committee received 7,119 complaint letters in addition to the 5,000 unresolved cases that it inherited from its predecessor, the PLIC.¹³ These cases were not categorized by parties or by nature of land dispute. Civil society criticized the committee for not being inclusive, for being too inactive and centralized and for having no systematic data capture of confiscated and of returned lands with overlapping cases. The lack of communication and information-sharing with the public, especially with farmers, regarding the status of claims and (dispute) solutions, added to public distrust.¹⁴

On 11 September 2018, the NLD government took another angle by amending the 2012 VFV Land Law. The amendments were to be implemented by March 2019, These were however criticized by concerned members of the public and civil society groups for creating new risks around land classification, thus causing further land insecurity for farmers.¹⁵ The amendments required existing users of customary land that fell under the VFV label to apply for a 30-year land use permit. If they failed to do so within a six-month period, they would be charged with trespassing. The specifications for land-use permit applications ranged from 300 acres to 3,000 acres for large-scale agricultural business purposes, and 50 acres for small-scale holders.¹⁶ These VFV labeling requirements affected existing land-users who had traditional or customary use of land in the ethnic and rural areas, whether upland or lowland. This encompassed some ten million people.¹⁷

The Farmland Law and VFV Law and their amendments do not recognize customary farming practices such as shifting cultivation and lack of legal protection. Additionally, there is a lack of certified documented records and no definition of customary practices in the varying contexts of state and regions in Myanmar.¹⁸ As a result, customary tenants have been habitually jailed for plowing crops on disputed land under these laws.

The Farmland and VFV laws exemplify how efforts to transform land governance have backfired and instead created new problems and failed to address Myanmar's well-known and documented legacy of land pillaging. For decades, the *Tatmadaw* had seized lands from civilians to use for security or military trainings and military-owned business purposes. These have taken the form of ventures such as Shrimp farms and rubber plantations in

Rakhine and Shan States.¹⁹ In 2018, there were protests in northern Shan State over the decision that 160 acres of land belonging to 46 farmers from Kaykham village in Lashio Township seized by the *Tatmadaw* would not be returned nor would there be any compensation. Additionally, the *Tatmadaw* returned only 1,921 acres of over 3,835 acres of land from Ann Township in Rakhine State that it had confiscated over the decades.²⁰

WHO GRABBED THE LAND?

There have also been recent Pa-O farmer protests in Hsihseng (southern Shan State and Pa-O self-administrative zone) over *Tatmadaw*'s land confiscation. Confiscations date back to 1996 when the *Tatmadaw* seized more than 1900 acres of land from five villages in Hsihseng township. Locals were not informed, much less compensated. When farmers tried to continue using their land, *Tatmadaw* prosecuted 70 farmers.²¹ This is not new to Myanmar. Through massive land concession and land-acquisition schemes, the *Tatmadaw* has developed some sophistication in grabbing land. Those same schemes continue today.

Beyond the *Tatmadaw*, military-linked businesses and companies have also been involved in land confiscation. The Yuzana, Htoo and Zay Kabar conglomerates have a well-documented history of such practices since 1986. The military-backed USDP government thus inherited the myriad disputes with the local farmers and protests over land seizures dating back decades. In the Mandalay region, about 80 acres of land in Kyaukse Township were leased to the USDP to generate agribusinesses.²² Along with USDP, government departments such as General Administration Department and the Livestock Breeding and Veterinary Department were also involved in land confiscation. These two departments confiscated over 220 acres of land in Mandalay region, according to a Myanmar Now report.²³

Securing land rights in Myanmar is a convoluted and incomplete process. This may reflect the reality that land governance in Myanmar has been deliberately complexified and mired in a history of pillage that continues today. While it is understandable that candidates and parties may want to avoid or minimize a topic that seems practically insurmountable, the intensifying frustrations and hostilities around land rights make it imperative for more attention to be paid to the problem.

LAND GOVERNANCE AS PIVOTAL FOR PEACE AND PROSPERITY

The third session of the Union Peace Conference in July 2018 featured 12 land-related principles. These called for land rights, ownership, management and preventative/protection protocols, not only in ethnic nationalities' areas but everywhere in Myanmar as well. Unfortunately, the NLD-led government's preoccupation with the controversial Farmland Law and VFV Law led to a neglect of the land governance promises made under the Peace process.

On 21 August 2020, after three days of negotiations, the fourth Union Peace Conference resulted in the Union Accord (Part III), but without any discussions related to land issues.

Land governance is pivotal to the peace process in Myanmar, however.²⁴ While the NLD government lags on its commitments, the ethnic armed groups that are signatories to the Nationwide Ceasefire Agreement (NCA), such as the Karen National Union, have decided to unilaterally develop their own land policies.²⁵ Such moves by the NCA signatories present an opportunity for the government to embrace ethnic land policies and implement the Union Accord agreements related to land.

However, the NLD government has to first take these commitments seriously. Resolving land governance issues in the context of peace and reconciliation present a transitional justice and peace-building dimension that is important for accomplishing peace in Myanmar. This may appear to be an uncontroversial stance. However, the *Tatmadaw*, the NLD government and other political parties seem to be underestimating the critical relevance of land rights to peace in the country.

CONCLUSION

Land rights continue to be foremost on the minds of Myanmar’s farmers – be he Bamar or of an ethnic nationality. Getting land governance right is pivotal to both peace and development. Yet, a collective sense of desperation around land rights is growing stronger.

Persistent barriers around land-related legal frameworks add to people’s frustrations, and widespread land-grabbing by the *Tatmadaw* and unscrupulous investors continue. No matter the complexities, a first step towards resolving these injustices lies in firmly establishing ownership and authority. Land disputes are both a human rights issue and a peace issue, and need a champion in the halls of power to emphasize this interconnectedness.

The lack of emphasis on land-related commitments in the various Election Manifestos and the Union Accords may create the impression that dealing with land rights issues in Myanmar is a “mission impossible”. Yet, the next five-year term of 2021-2025 presents an opportune moment for keeping this topic alive as a key deciding factor for the wellbeing of the country.

¹ National League for Democracy, “The National League for Democracy’s 2015 Election Manifesto”, 2015, p. 11 (https://www.burmalibrary.org/docs21/NLD_2015_Election_Manifesto-en.pdf, accessed 14 July 2020).

² Enlightened Myanmar Research Foundation, “၂၀၁၅ အထွေထွေရွေးကောက်ပွဲကြေငြာစာတမ်း လေ့လာသုံးသပ်မှု စာတမ်းငယ်” [Brief analysis on 2015 General Manifestos], October 2015 (<https://digital.lib.washington.edu/researchworks/handle/1773/35462>, accessed 12 July 2020).

³ အမျိုးသားဒီမိုကရေစီအဖွဲ့ချုပ်, “အမျိုးသားဒီမိုကရေစီ အဖွဲ့ချုပ် ရွေးကောက်ပွဲကြေငြာစာတမ်း (၂၀၂၀ ခုနှစ်)”, [National League for Democracy, “National League for Democracy Election Manifesto(2020)”] (<https://drive.google.com/drive/folders/1ZwgS3T85nuEljtZnfeAulFKW0Y8yXbnc?usp=sharing> , accessed 11 September 2020). It comprises three principles (i) ethnic affairs and peace, (ii) democracy federal union, and (iii) sustainable development and security, highlighting three pillars

of government (legislative, executive and judicial) and consisting of 15 sub-sections; (1) ethnic affairs and peace, (2) foreign policy, (3) security, (4) economic, (5) agriculture, (6) education, (7) health and sport, (8) natural resource and environment, (9) energy and electrification, (10) transport, (11) communications and information, (12) farmers affairs, (13) workers, (14) women and (15) youth.

⁴ Kyaw Ko Ko and Aung Thant Khaing. “NLD to release election promises in August”, *Myanmar Times*, 3 July 2020 (<https://www.mmtimes.com/news/nld-release-election-promises-august.html>, accessed 3 July 2020).

⁵ Burma News International, “Policy and pledges for 2020 General Election - The Karen National Party”, 11 September 2020 (<https://www.bnionline.net/mm/node/75458?fbclid=IwAR3-ct8vbCb85BDWaCLsoJrVWzJubJPszb8HbtQIJPwkSXoeAyyFd-jW7jVw>, accessed 11 September 2020); Burma News International, “ANP’s policies and pledges for the upcoming election”, 11 September 2020 (<https://www.bnionline.net/en/news/anps-policies-and-pledges-upcoming-election?fbclid=IwAR3-ct8vbCb85BDWaCLsoJrVWzJubJPszb8HbtQIJPwkSXoeAyyFd-jW7jVw>, accessed 11 September 2020); Burma News International, “Shan-ni Nationalities Development Party (Red Tiger)’s policy and pledges or the election, 15 September 2020

(<https://www.bnionline.net/en/news/shan-ni-nationalities-development-party-red-tigers-policy-and-pledges-election?fbclid=IwAR2cjFM-DAHjSxuzfk9pMBdmN3V5PbMwZ9v-M0WsbkX53TMbDFxG7Oz7WI#.X2HWbx16t3k.facebook>, accessed 15 September 2020); and

ပြည်သူ့ရှေ့ဆောင်ပါတီ။” ၂၀၂၀ ရွေးကောက်ပွဲကြေငြာစာတမ်း။ [People’s Pioneer Party (PPP), “2020 Election Manifesto”] (<https://www.pppmyanmar.org/manifesto2020>, accessed 12 August 2020).

⁶ S. Kempel, Chan Myawe Aung Sun, Aung Tun, “Myanmar political parties at a time of transition: Political party dynamics at the national and local level”, April 2015 (https://themimu.info/sites/themimu.info/files/documents/Report_Myanmar_Political_Parties_at_a_Time_of_Transition_Pyoe_Pin_Susanne_Kempel_April2015.pdf, accessed 12 July 2020), p. 14-15.

⁷ Enlightened Myanmar Research Foundation, “၂၀၁၅ အထွေထွေရွေးကောက်ပွဲကြေငြာစာတမ်း လေ့လာသုံးသပ်မှု စာတမ်းငယ်” [Brief analysis on 2015 General Manifestos], October 2015

(<https://digital.lib.washington.edu/researchworks/handle/1773/35462>, accessed 12 July 2020), p. 9.

⁸ The author wishes to thank Tinzar Htun and Mael Raynaud at Urbanize: Policy Institute for Urban and Regional Planning, for sharing with her their unpublished notes on the platforms presented by political parties in the campaign for the 2017 by-elections.

⁹ San Thein, Pyae Sone and Diepart, J.C, “Transparency Under Scrutiny. Information disclosure by the Parliamentary Land Investigation Commission in Myanmar”, MRLG Case Study Series #1. Vientiane: Mekong Region Land Governance”, *Mekong Region Land Governance*, 2017

(<https://www.mrlg.org/wp-content/uploads/2019/09/Transparency-Under-Scrutiny-Information-Disclosure-by-the-Parliamentary-Land-Investigation-Commission-in-Myanmar.pdf> , accessed 12 July 2020), p. 2-3.

¹⁰ S. McCarthy, “Land tenure security and policy tensions in Myanmar (Burma)”, Asia Pacific Issues series No. 127, East-West Center, Honolulu, October 2016

(<https://www.eastwestcenter.org/publications/land-tenure-security-and-policy-tensions-in-myanmar-burma>, accessed 12 July 2020), p.5. See also M. Peel, “The greatest land rush.

Myanmar: The dispossessed”, FT Investigations, Financial Times online, 1 March 2016 (<https://ig.ft.com/sites/land-rush-investment/myanmar/>, accessed 12 July 2020).

¹¹ San Thein, Pyae Sone and J. C. Diepart, op.cit., pp. 1-3.

¹² Ibid, p. 1.

¹³ The Global New Light of Myanmar, “Central Committee for Scrutinizing Confiscated Farmlands and Other Lands holds coord meeting 1/2019”, 27 February 2019 (<https://www.gnlm.com.mm/central-committee-for-scrutinizing-confiscated-farmlands-and-other-lands-holds-coord-meeting-1-2019/>, accessed 10 August 2020).

¹⁴ C. Pierce and Ye Yint Htun, “Land committees: an opportunity for inclusion”, *Frontier Myanmar*, 7 July 2017 (<https://www.frontiermyanmar.net/en/land-committees-an-opportunity-for-inclusion/>, accessed 10 August 2020).

¹⁵ Reliefweb, “41 civil society organisations call on the Myanmar Government to suspend controversial land law which risks evicting millions of farmers from their land [EN/MY]”, 17 November 2018 [originally published on 16 November 2018] (<https://reliefweb.int/report/myanmar/41-civil-society-ogranisations-call-myanmar-government-suspend-controversial-land-law>, accessed 12 July 2020); Nyein Nyein, “Rising public concern over vacant land law amendment goes unaddressed”, *The Irrawaddy*, 21 February 2019 (<https://www.irrawaddy.com/opinion/analysis/rising-public-concern-vacant-land-law-amendment-goes-unaddressed.html>, accessed 12 July 2020); and Myanmar Centre for Responsible Business, “Re: concern about impact on responsible investment of 2018 amended vacant, fallow, and virgin land management law” (https://www.myanmar-responsiblebusiness.org/pdf/2019-01-10-letter-virgin-vacant-and-fallow-lands-law_en.pdf, accessed 12 July 2020).

¹⁶ “မြန်မာဥပဒေတင်အချက်အလက်စနစ်။ “မြေလွတ်၊ မြေလပ်၊ မြေလပ် နှင့် မြေရိုင်းများ စီမံခန့်ခွဲရေးဥပဒေကို ပြင်ဆင်သည့် ဥပဒေ(၂၀၁၈ ခုနှစ်)၊ (၂၀၁၈ ခုနှစ်)ပြည်ထောင်စုလွှတ်တော် ဥပဒေအမှတ် ၂၄။) ၁၃၈၀ ပြည့်နှစ်တော်သလင်းလဆန်း ၂ ရက် (၂၀၁၈ ခုနှစ်၊ စက်တင်ဘာလ ၁၁ရက်)” [Myanmar Law Information System, “The Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018), (Pyidaungsu Hluttaw Law No. 24), The 2nd Waxing Day of Tawthalin, 1380 (11th September, 2018)”] (<https://www.mlis.gov.mm/mLsView.do?lawordSn=11121>, accessed 12 July 2020).

¹⁷ Nwe Ni Soe and Sung Chin Par, “Most farmers do not know about the Vacant, Fallow and Virgin Land management law as the grace period to register closes”, *Namati*, April 2019 (<https://namati.org/resources/most-farmers-do-not-know-about-the-vacant-fallow-and-virgin-land-management-law-as-the-grace-period-to-register-closes/>, accessed 12 July 2020).

¹⁸ M. L. Ingalls et al, “The State of Land in the Mekong Region” (Centre for Development and Environment, University of Bern and Mekong Region Land Governance. Bern, Switzerland and Vientiane, Lao PDR, with Bern Open Publishing, 2018), pp. 128 – 129.

¹⁹ R. Gerin, “Myanmar Army will not return seized lands in Shan, Rakhine states: Deputy Defense Minister”, *Radio Free Asia*, 20 June 2018 (<https://www.rfa.org/english/news/myanmar/myanmar-army-will-not-return-seized-lands-06202018160749.html/>, accessed 12 July 2020).

²⁰ Ibid.

²¹ Burma News International, “Hsihseng authorities land compensation scheme could create interethnic conflict, farmers say”, 23 July 2020 (<https://www.bnionline.net/en/news/hsihseng-authorities-land-compensation-scheme-could-create-interethnic-conflict-farmers-say?fbclid=IwAR0s-zPehx4j1O9o6a6GHYcu-2Wdfu6Rm4IoQ9dYELuGskDUEOyY881ZQT8>, accessed 23 July 2020).

²² Win Nandar, “USDP in row with farmers who say party stole their land”, 10 April 2019, *Myanmar Now* (<https://myanmar-now.org/en/news/usdp-in-row-with-farmers-who-say-party-stole-their-land>, accessed 12 July 2020).

²³ Ibid.

²⁴ National Reconciliation and Peace Center (NRPC), “Union Accord Part (III)”, 21 August 2020 (<http://www.nrpc.gov.mm/en/node/470>, accessed 21 August 2020).

²⁵ ကေအဲန်ယူ- ကရင်အမျိုးသားအစည်းအရုံး ဗဟိုဌာနချုပ်၊ ကော်သူးလေ။ “ကေအဲန်ယူ - ကရင်အမျိုးသားအစည်းအရုံး မြေယာမူဝါဒ၊ ဒီဇင်ဘာ ၂၀၁၅ ခုနှစ်။”

[Karen National Union Central Headquarters, “Karen National Union - KNU Land Policy”, December 2015] (https://www.tni.org/files/article-downloads/knu_land_policy_burmese.pdf, accessed 12 July 2020).

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