

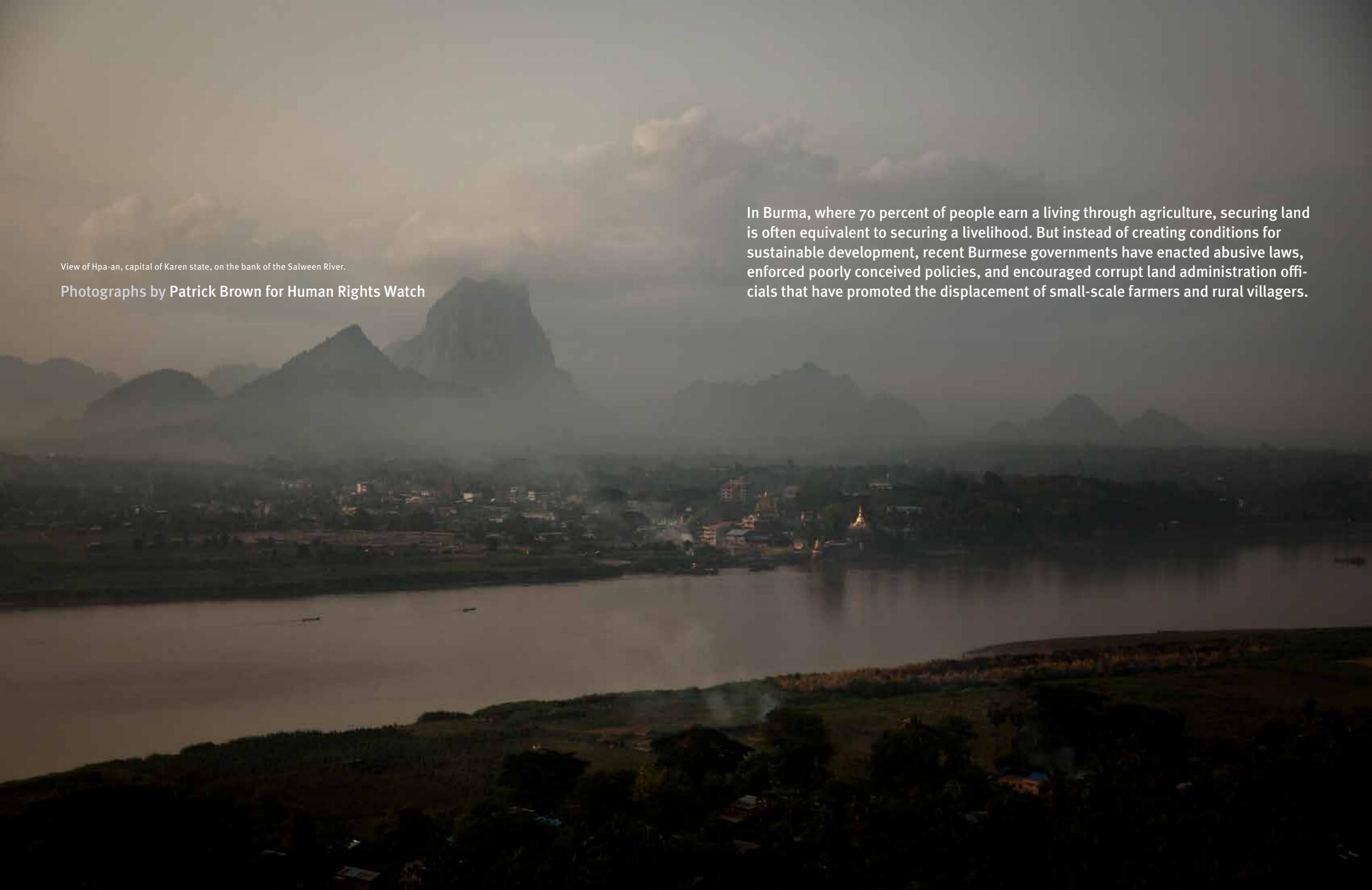


HUMAN
RIGHTS
WATCH

“The Farmer Becomes the Criminal”

Land Confiscation in Burma’s Karen State

Summary



View of Hpa-an, capital of Karen state, on the bank of the Salween River.

Photographs by Patrick Brown for Human Rights Watch

In Burma, where 70 percent of people earn a living through agriculture, securing land is often equivalent to securing a livelihood. But instead of creating conditions for sustainable development, recent Burmese governments have enacted abusive laws, enforced poorly conceived policies, and encouraged corrupt land administration officials that have promoted the displacement of small-scale farmers and rural villagers.

“The businessman takes the land from the farmer, but when the farmer protests, he becomes the criminal.”

Lawyer, Hpa-an, Karen State,
August 2015

Conflicts over land have come to the forefront of Burma’s national agenda in recent years. These tensions have intensified as the country has embarked on a process of democratic transition and reform, with greater openness in some areas, but continued military dominance in other sectors, particularly where the military controls key government ministries.

Land disputes are a major national problem, with rising discontent over displacement for plantation agriculture, resource extraction, and infrastructure projects—often without adequate consultation, due process of law, or compensation for those displaced. In many parts of the country, those contesting land seizures have taken to the streets in frequent demonstrations but have faced retaliation in the courts.

The dual problems of land confiscation and reprisals against protesters is particularly acute in Karen State. Located along the border with much more prosperous Thailand, Karen State is viewed by many as a desirable site for investment in the tourism, extractive, and agriculture industries.



Toll booths operated by militias on a new road financed by Thailand from Kawkaireik to the border town of Myawaddy in Burma. Armed men at the tolls lack military insignia or other distinguishing marks on their uniforms, and charge 1000 to 2000 Burmese kyat for each car to pass.



Front gate of the UMH Industrial Park in the Hpa-an Special Industrial Zone, located north of the city of Hpa-an. Since the zone opened in 2011, the value of land located around the industrial zone has tripled in value.



Children and adults making and stacking bricks on the construction site of the UMH Industrial Park special economic zone, north of the city of Hpa-an. Sand dug from the Salween River is used in the manufacture of the bricks.

The economic opening of the country to investors has made land more valuable, while the peace process in Karen State and other ethnic areas has given access to areas previously beyond the reach of the Burmese armed forces and military-linked businessmen. The result is that powerful interests are gaining land through questionable means while farmers are losing it, often without adequate compensation.

As peace negotiations continue and the return of refugees from Thailand gains credence, land tenure issues will likely intensify, particularly as those who return find that

land they previously farmed has now been occupied by government or business interests.¹

This report focuses on government abuses related to land confiscation in areas near Hpa-an, the capital of Karen State. The villages in this area are under the effective control of the Burmese military, called the Tatmadaw, and military-controlled militias called Border Guard Forces (BGFs), or are located in areas of mixed governance by the ethnic

¹ See, for example, “Myanmar, UNHCR to ensure safe return of refugees,” Bangkok Post, July 7, 2016, <http://www.bangkokpost.com/news/asean/1030081/myanmar-unhcr-to-ensure-safe-return-of-refugees> (accessed August 21, 2016).

armed group Karen National Union (KNU) or other militias and the government.

The report illustrates the dynamics of land confiscation in Karen State—a longstanding problem previously documented by Human Rights Watch and local organizations such as the Karen Human Rights Group.² It details cases in

² Human Rights Watch, “They Came and Destroyed our Village Again”: The Plight of Internally Displaced Persons in Karen State, vol. 17, no. 4(C), June 2005, <http://www.hrw.org/reports/2005/06/09/they-came-and-destroyed-our-village-again-o>, p. 28; Karen Human Rights Group, Losing Ground: Land conflicts and collective action in eastern Myanmar, March 2013, <http://www.khrg.org/sites/default/files/losinggroundkhrg-march2013-fulltext.pdf> (accessed June 12, 2015); Karen Human Rights Group, “With only our voices, what can

which government officials, military personnel and agents on behalf of the army, local militia members, and businessmen have used intimidation and coercion to seize land and displace local people. It also documents the impact of land loss on local villagers, some of whom have farmed land for generations but lack legal documentation to prove it.

Human Rights Watch found that farmers who protest land-taking and try to stake a claim to their land face retaliation by police and government officials, and prosecution un-

we do?: Land confiscation and local response in southeast Myanmar, June 2015, http://khrg.org/sites/default/files/full_with_only_our_voices_-_english.pdf, June 2015 (accessed July 1, 2015).

der peaceful assembly and criminal trespass laws. Many farmers whose land has been confiscated as far back as a decade have not been able to obtain any redress and, in some cases, continue to suffer abuses after calling for compensation or attempting to reclaim land. The government's failure to provide adequate compensation or other redress for land confiscation means that victims struggle to make ends meet, and frequently must become migrant workers abroad or rely on relatives working in Thailand or elsewhere abroad for economic survival.

Villagers and local groups say that government land registration services are effectively inaccessible to them, and farmers assert that local government offices fail to uphold their rights against more powerful moneyed interests. In

“Some things are getting better. There is electricity in the next village, and we may get electricity here, too. But none of that matters if our land is gone.”

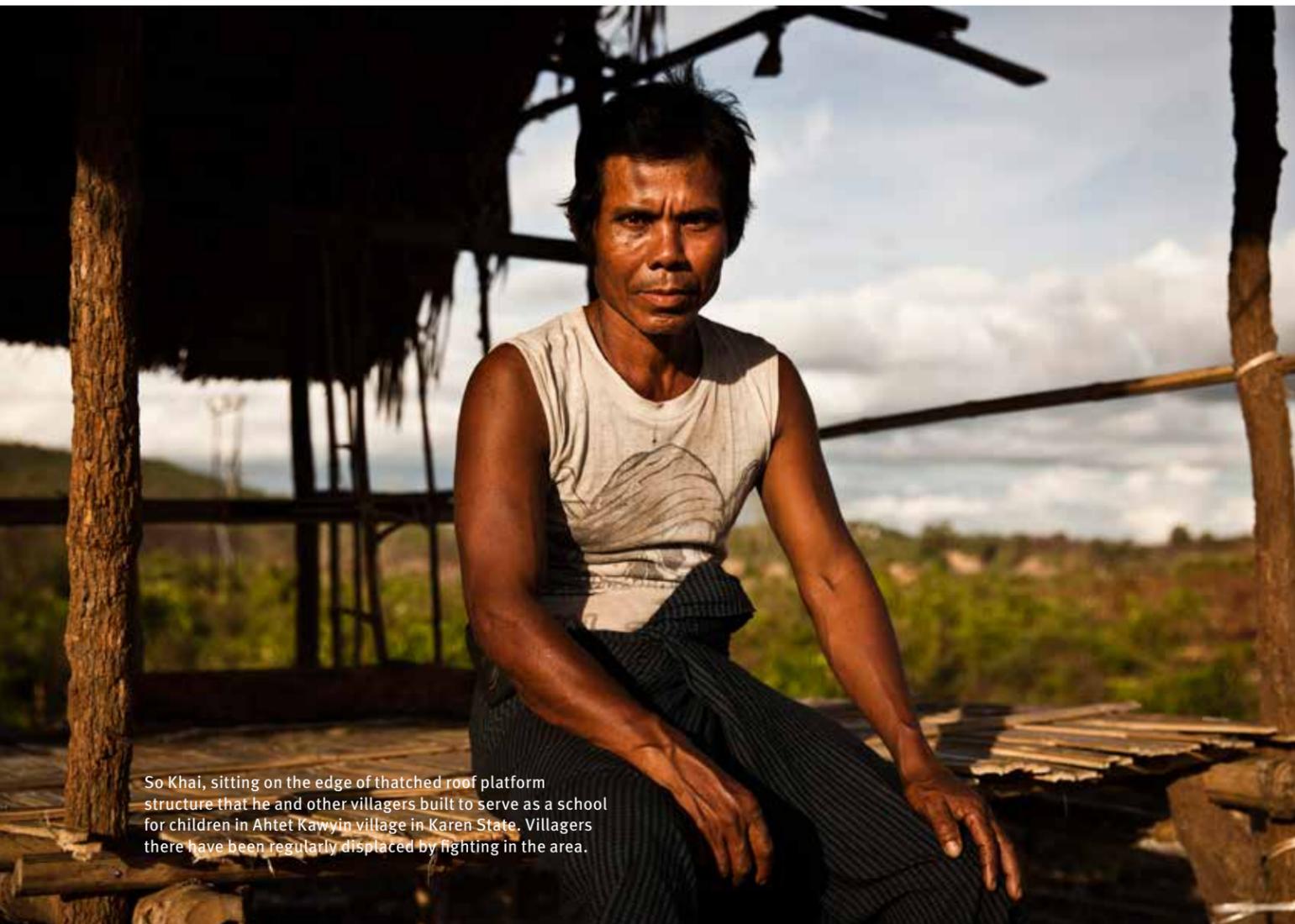
Nu Yee, San Klo, Karen State,
February 2015

some cases, villagers allege that local government officials have acted as brokers for land deals or facilitated the granting of licenses for mining and other projects, leaving long-time residents and farmers empty-handed and without effective recourse.

Burma's departing national government adopted a cabinet resolution to enact a National Land Use Policy in early 2016, which could form the basis of future land law reform. The new policy aims to improve land classification and land information management systems, recognize communal tenure systems and shifting cultivation practices, create more independent dispute resolution procedures, and provide restitution for victims of land confiscation or



Two villagers in New Ahtet Kawin in front of their homes. Hpa-an police burned down their village in August 2015, and forcibly evicted these women and other residents. A total of 27 villagers refused to leave and prosecutors charged them with criminal trespass; all 27 were convicted and sentenced to prison for terms ranging from two to six months.



So Khai, sitting on the edge of thatched roof platform structure that he and other villagers built to serve as a school for children in Ahtet Kayyin village in Karen State. Villagers there have been regularly displaced by fighting in the area.



Aung Thay, who is protesting the Burmese government's decision to seize his and others' land near the Ye Bo dam, constructed in 2006. The government still has not provided financial or other compensation to him or his fellow villagers.

those who have been forced to abandon lands due to past or ongoing conflict.

In November 2015, the opposition National League for Democracy (NLD), led by Aung San Suu Kyi, swept nationwide elections. The party assumed executive power in March 2016 and appointed U Htin Kyaw as president. Since then the NLD government has made little progress on reforming land policy to advance these policy goals or otherwise ensure that rights are protected.

To address the problems facing farmers and other villagers such as those detailed in this report, the government should adopt additional safeguards (see Section IV). Cru-

cial is tackling the significant gap between government documentation of land rights and the manner in which land is actually being used or occupied, and by whom, in rural communities. Measures to be adopted should include recognizing community land tenure systems and shifting cultivation systems, providing formal documentation to farmers and villagers recording existing land use, and ensuring that villagers can challenge government decisions about land in an independent forum or body with the power to adjudicate land disputes.

In addition, the government should enact administrative changes to ensure that land reform at the national level results in actual changes at the local level, including by pro-

viding genuine notice to farmers where proposed land use changes would affect their livelihoods, and by implementing robust public consultation procedures. The government should also end the arbitrary arrest and detention of land activists for engaging in peaceful activities to protest land seizures.

A special taskforce consisting of the Burmese Defense Services (Tatmadaw), the Justice Ministry, and the Myanmar National Human Rights Commission should investigate all alleged abuses by Border Guard Forces (BGF) connected to land confiscation in BGF-controlled areas, make public the findings of the investigation, and ensure the return of

land taken improperly by members of the BGF to the villagers and farmers who had previously been using it.

Conflicts over land in Burma have intensified in recent years as the country has embarked on a process of democratic transition, marked by growing foreign investments and efforts to resolve long-running armed conflicts in ethnic areas. As a result, demand for land is greater than ever—whether for resource extraction, agriculture, tourism, or infrastructure development—and powerful interests are seizing control by displacing local people without adequate compensation or effective redress. In Karen State, located on the Thai border, farmers and rural villagers regularly face land confiscation. In a country where over 70 percent of people earn a living through agriculture, losing land often means losing a livelihood.

“The Farmer Becomes the Criminal” documents human rights abuses connected to land seizures in Karen State. The report details cases in which government officials, military personnel, local militia members, and businessmen have used intimidation, coercion, and force to seize land from local people. Farmers and activists who protest land-taking face retaliation by police and prosecution under peaceful assembly and criminal trespass laws. The report analyzes the corrupt land administration structures and abusive laws that have laid the foundation for these practices.

Human Rights Watch calls on the Burmese government to release all land rights activists detained for peacefully protesting land seizures and end the arbitrary arrest of activists by police; impartially investigate allegations of unlawful land seizures; and ensure the return of land taken improperly. The government should establish an independent forum with power to adjudicate land disputes for villagers who challenge decisions about land use, and set up mechanisms for individuals to report rights abuses by local government officials.

(cover) Workers build a water catchment area behind a government-constructed irrigation dam that flooded land belonging to Aung Thay and other villagers from Karen State. To date, the government has not paid compensation to the villagers who lost land.

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