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Forest law enforcement governance and trade in Myanmar

A conflict-sensitivity analysis



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Jana Naujoks and Robert Barclay, with Htun Paw Oo,
Saw Doh Wah and Naing Aye San

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Abbreviations

CFC	Community Forestry Certificate
CFI	1995 Community Forestry Instructions
CFUG	Community forest user group
CSO	Civil society organisation
EAG/O	Ethnic armed group/organisation
EU	European Union
FD	Forest Department
FLEGT	Forest Law Enforcement, Governance and Trade
GAD	General Administration Department
ITF	Interim Task Force
KIO	Kachin Independence Organisation
MOALI	Ministry of Agriculture, Land and Irrigation
MONREC	Ministry of Natural Resources, Environment and Conservation
MSG	Multi-Stakeholder Group
MTE	Myanma Timber Enterprise
MTLAS	Myanmar Timber Legality Assurance System
NLD	National League for Democracy
RECOFTC	Regional Community Forestry Training Center – The Center for People and Forests
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SGBV	Sexual and gender-based violence
VPA	Voluntary Partnership Agreement

Executive summary

The aim of this paper is to provide a conflict-sensitivity analysis of forest governance in Myanmar to inform all stakeholders involved in the negotiations of the Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreement (FLEGT VPA) in Myanmar. Drawing on several case studies from across the country, this report seeks to provide an overview of how different types of conflict are related to forest governance, and how the positive and negative impacts of forest governance reforms in Myanmar might be considered to help inform a “conflict-sensitive” approach to the FLEGT VPA process in Myanmar.

Myanmar is in the middle of a complex, precarious, and lengthy process of trying to negotiate peace after six decades of internal armed conflict. At the same time, it is in transition from military rule to a more democratic form of governance. A key issue in the democratic transition and peace process are questions about the future governance of Myanmar’s valuable natural resources, including teak, rosewood, and other valuable timber species that are predominately found in conflict-affected areas of the country. Within this context, any discussions about governance arrangements for natural resources, such as a VPA, risk unintentionally exacerbating deep-rooted grievances. Additionally, the tensions and conflict dynamics in the country will, by nature, influence the process of negotiating the VPA. Recognising this two-way interaction between conflict and the VPA process is at the crux of a conflict-sensitive approach.

This paper proposes the development of a simple tool, referred to here as a “conflict risk analysis”, to help the stakeholders involved in the VPA process identify, monitor, and mitigate potential risks and opportunities of the process on key conflict and peace issues related to the VPA. As a starting point for discussion, we propose the following four key issues to be monitored:

- Participation – to what extent do all groups have an opportunity to participate in the VPA process? Are any stakeholders excluded?
- Communication – Is the process accountable, transparent, and clearly communicated, and is the process building greater trust between stakeholders?
- Gender – to what extent are women participating meaningfully in the VPA consultation, negotiation and decision-making processes? Are their needs taken into account?
- Community empowerment – to what extent do the process and outcomes of the VPA empower communities and civil society, especially marginalised communities including conflict-affected communities, for more inclusive, representative, and participatory forest governance?

Why is this important? Participation, communication, gender and community empowerment are all factors that, if not managed well, could lead to increased tension. Lack of transparency around the process and the decisions being made could lead to lack of trust in the process and other governance processes. However, if managed well, these factors could contribute significantly to building more positive relationships between the different ethnic communities, local and national government, the private sector and armed actors. By regularly monitoring these risk factors, the Interim Task Force (ITF) or Multi-Stakeholder Group (MSG)¹ can avoid exacerbating conflict tensions, mitigate risks and support moving towards peace and reconciliation. Inclusive participation of civil society and ethnic communities, based on transparent two-way communication flows, will be key to achieving this.

¹ An ITF has been set up to prepare for the VPA negotiations, consisting of representatives from the government, civil society and private sector. After the current preparatory phase, the ITF will cease and an expanded MSG (drawing on the same constituencies) formed to conduct national discussions regarding the VPA negotiations between the government and the EU.

To put the FLEGT VPA process in context in Myanmar, this paper also takes a wider look at forest governance and illegal logging in Myanmar. It identifies several key issues – such as the political economy of timber, illegal logging, community land and forest rights – that need to be addressed to ensure that the governance of forest resources helps contribute to peace.

The paper suggests that all stakeholders should take care to ensure that the VPA process does not get too far ahead of the peace process and political dialogue currently under way in Myanmar, in order to avoid adverse impacts. A peacebuilding approach could look to achieve incremental governance improvements that can

“If we wait for peace to end illegal timber, there won’t be any natural resources left ... We need to do what we can now ... We need to find ways for FLEGT to support peace.”

Interview with CSO ITF member, Yangon, February 2017

enhance the lives of forest-dependent communities through inclusive multi-stakeholder dialogues (such as through the platforms envisaged for a VPA process) and by increasing community participation, in addition to the formal structures of the political dialogue. The meaningful participation of women, youth, and rural stakeholders from all ethnicities will be key to this.

Looking beyond the peace process, the paper identifies several key areas for governance reforms in Myanmar’s forestry sector. The paper draws on five short case studies to highlight specific challenges – including insecure land tenure, illegal logging, and challenges in operating community forestry in conflict-affected areas – faced by communities affected by forest governance weaknesses, as well as community-level approaches to address them.

The paper stops short of issuing firm recommendations as, ultimately, it will be for the stakeholders involved in the VPA process to determine the scope and ambition of the VPA in Myanmar – including the extent to which they wish to use the VPA to introduce governance reforms that can contribute to peace. However, by highlighting certain issues that are important to peacebuilding efforts in Myanmar, it is our intention to support those stakeholders in setting that ambition, and showing concrete ways in which such ambitions could be approached.



A logging camp on the riverbank of the Irrawaddy near Myitkyina, Kachin state, 2012

1. Introduction

Myanmar is rich in natural resources, but its famous forest resources are dwindling rapidly. Since 1990, more than a quarter of Myanmar's total forest cover has been lost,² a rate that is estimated to be the third-highest deforestation rate globally.³ Despite this reduction, forests are estimated to contribute to the livelihoods of roughly 80 percent of Myanmar's population,⁴ especially those living in poor, marginalised, and conflict-affected areas. Most remaining natural forests in Myanmar are situated in the borderlands, particularly along those of Thailand and China. These areas have seen over sixty years of armed conflict between numerous armed groups and the state, partly motivated by political, economic, and social grievances relating to natural resource management.

Myanmar is currently preparing for negotiations with the European Union (EU) for a FLEGT VPA. The EU's FLEGT Action Plan was established in 2003. It aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber. A FLEGT VPA is a bilateral trade agreement negotiated between the EU and a timber-exporting country outside the EU, which seeks to ensure that timber and timber products imported into the EU from a partner country comply with the laws of that country. The benefits of such an agreement for Myanmar would be to increase access to European markets for its timber exports, to support forest governance reform and increase revenue collection from the timber sector.

The process for negotiating a VPA differs substantially from other bilateral trade agreements, or related frameworks (such as Investment Protection Agreements,⁵ for example). While a VPA is formally negotiated between the EU and a national government, the content of the agreement is supposed to be decided in the

2 E. Htusan, Myanmar forest-cutting continues despite government efforts, 2 September 2016, http://bigstory.ap.org/article/92d749a1832446cf9c47cb6cf6ea9a9e/myanmar-forest-cutting-continues-despite-government-efforts?utm_campaign=SocialFlow, accessed 14 September 2017. See also ALARM et al, Myanmar Forest Cover Change 2002-2014, Yangon: ALARM, 2016

3 FAO, Global Forest Resources Assessment 2015: How are the world's forests changing? Rome: FAO, 2015

4 G. Kissinger et al, Background report for identifying the drivers of deforestation and forest degradation in Myanmar, UNREDD and MONREC, 2017, p.24

5 An Investment Protection Agreement between the EU and Myanmar is currently under negotiation, which would offer EU investors key guarantees in their relationship with Myanmar. While the creation of legal certainty and predictability for companies may help to increase foreign direct investment, such a treaty is not without risks for Myanmar. E Röell, The pending EU-Myanmar Investment Protection Agreement: Risks and opportunities, The ACT Alliance, 2017

Conflict sensitivity is a term that refers to recognising the two-way dynamics of the impact of an intervention on the context in which is undertaken, as well as the impact of context on interventions, such as governance reform.

Forest governance refers to the structures and mechanisms through which people and organisations rule and regulate forests to ensure forest sustainability. This entails decisions about the allocation and securing of access to rights over and benefits from forests, including the planning, monitoring and control of their use, management and conservation, and should be through fair decision-making and benefit distribution. In line with the principles of good governance, this means accountability, effectiveness, efficiency, fairness/equity, participation and transparency across three pillars of a) policy and legislative framework, b) planning and decision-making processes, and c) implementation, enforcement and compliance.

Pillar and Principles of Good Governance, FAO and PROFOR, Framework for assessing and monitoring Forest Governance, 2011, www.fao.org/climatechange/27526-0cc61ec084048c7a9425f64942df70a8.pdf, p.10

partner country through a long, participatory process that involves multiple stakeholders from government, the private sector and civil society. This means, for instance, that non-governmental national stakeholders are able to contribute to the decision of how to define 'legal' timber. Additionally, a VPA includes legal and governance reforms in both its process and text. These reforms are not pre-determined, but are the product of what stakeholders identify as necessary to ensure a VPA is credible. This multi-stakeholder approach to negotiation and implementation, together with the governance reforms and trade incentives, are designed to aim for social and environmental as well as economic goals by improving transparency, accountability and participation in decision-making.

Since formally expressing interest in a FLEGT VPA process in late 2013, Myanmar began the preparatory pre-negotiation phase in 2015. As this process commences, Myanmar is in a complex, precarious, and lengthy process of trying to negotiate peace after six decades of internal armed conflict. At the same time it is transitioning from a military dictatorship to a more democratic form of governance. Within this context, any discussions about changes to governance arrangements for natural resources, such as a VPA, risk exacerbating deep-rooted grievances, and the tensions and conflict dynamics in the country will, by nature, influence the process of negotiating the VPA. Recognising this two-way interaction between conflict and the VPA process is at the crux of a conflict-sensitive approach.

The aim of this paper is to provide an overview analysis of forest governance in Myanmar to inform the process of negotiating a VPA in Myanmar. Drawing on several case studies from across the country, this report seeks to assess how different types of conflict are related to forest governance, and how the positive and negative impacts of forest governance reforms in Myanmar might be considered to help inform a 'conflict-sensitive' approach to the FLEGT VPA process in Myanmar. Case studies include the following:

- Examples from Bago Yoma and Pa'O Self-Administered Zone that illustrate the links between access to land rights, displacement and conflict.
- A case from Magway region that highlights the impacts of illegal logging and efforts at the community level to tackle it, despite the risks this brings.
- An example from conflict-affected Kachin state, where Nyein Foundation supports communities to protect their lands, forest and water resources through community forestry.

This report seeks to situate these case studies against the relevant background dynamics to identify ways to strengthen forest governance in support of peace in Myanmar. A gender analysis – and acting accordingly to transform gender inequalities – are important features of conflict sensitivity and peacebuilding, and the section on gender explains why it is important to consider and how it can be integrated practically.

1.1 Methodology

This paper is based on a desk review, 20 qualitative semi-structured interviews and four focus group discussions with a range of relevant stakeholders including forest-dependent communities, Forest Department (FD) and Myanmar Timber Enterprise (MTE) staff, civil society organisations (CSOs) and private sector stakeholders in Yangon, Nay Pyi Taw, Magway and Kachin between October 2016 and February 2017. Details of the research team, interview list and research questions can be found in the Annex at the end of this report, which also discusses the limitations of this methodology. This analysis does not seek to provide a comprehensive analysis of forest policy, timber legality, extent of forest cover or illegal logging, nor a comprehensive assessment of the peace process in Myanmar. Nor does the analysis claim to represent all views on these issues.⁶

6 Indeed, based on discussions with the ITF, this analysis specifically did not seek to include the perspectives of ethnic armed groups (EAGs) at this point.

2. Conflict and peace – why does it matter for the VPA?

When referring to conflict⁷ and peace in Myanmar, one must bear in mind the multiple layers of conflict, and distinguish between violent conflicts (of varying severity) and peacefully resolved disagreements. A rough typology might identify the following ‘layers’ of conflict, which are inexorably linked and interconnected:

- At the national level, there are armed, violent, political conflicts between the government, militia groups, and various ethnic armed groups over socio-political grievances, issues of territorial control, the governance structure and degree of autonomy or federalism of the Myanmar state. The largest and best organised ethnic armed groups (EAGs) have been providing governance to local communities for 60 years, either in place of the central state, or more commonly, overlapping with state institutions in what have been referred to as ‘mixed-authority’ or ‘contested’ areas. Over the decades, violence has spiked in different areas of the country as the Myanmar military (*Tatmadaw*) has fought against different EAGs, particularly in Kachin, Shan, Kayah, Kayin, Mon, and Tanintharyi states/regions. Recently there have been intense clashes in Kachin and Shan states, while fragile ceasefires mostly hold in other parts of the country.
- At the meso-level, there are conflicts between different individuals and communities over issues such as land confiscation by the government of Myanmar or various private companies, exacerbated by decades of war-related displacement and a slow start of returnees, as well as conflict between the communities and government or private sector institutions over major development projects such as dams (such as Myitsone) or mines (for instance, the Letpadaung copper mine). Cutting across issues, there are complex relationships between CSOs and government institutions, between different government institutions (such as between the FD and MTE) or ministries (such as between the Ministry of Natural Resources, Environment and Conservation – MONREC – and the Ministry of Agriculture, Land and Irrigation – MOALI) as well as within them (for instance, between different individuals, or tensions between central and decentralised authorities). Such conflicts between ministries can serve to reinforce divisions between the conflict-affected ethnic groups and the government, such as in the example of Kachin where forest user groups were unable to receive approval for their community forestry on land controlled by the General Administration Department (GAD)⁸ (see case study 3).
- At the grassroots level, there are small-scale conflicts between individual farmers and forest users over land use at the local level (mostly resolved peacefully by village elders, leaders or local civil servants at the community level). Such conflicts, for example, between statutory and customary rights, and between returnees and those currently on the lands left behind by the displaced, are typical of conflict situations and are difficult to resolve, especially when interconnected with other conflict layers. For example, people displaced by fighting in the Tanintharyi region have found it difficult to return to their home communities as their customary, or individual/household land (for which they may not have had formal land title) might have been allocated to a company (such as a palm oil company), or lies within an area allocated by MONREC as a reserved/protected area, is contaminated by landmines, or both.⁹

7 ‘Conflict’ refers to disagreements or opposing ideas and actions between different individuals or entities. Conflicts are not inherently bad, they are an inevitable result of the differences and tensions between people and between groups. “A certain degree of conflict is essential for progress because progress requires change, and change generates conflict. For Alert, it is large-scale violent conflict, rather than conflict itself, that we see as a problem.” International Alert, Programming Framework for International Alert – Design, monitoring and evaluation, London: International Alert, 2010, p.5

8 The GAD under the Ministry of Home Affairs acts as the civil service for the Myanmar state and regional governments, providing the administration for the country’s districts and townships.

9 S. Leckie and J. Arraiza, Restitution in Myanmar. Building lasting peace, national reconciliation and economic prosperity through a comprehensive housing, land and property restitution programme, Displacement Solutions and Norwegian Refugee Council, 2017; and Tarkapaw et al, Green Desert – Communities in Tanintharyi renounce the MSPP Oil Palm Concession, Myanmar: Environmental Investigation Agency and ALARM, 2016

For International Alert, peace is more than the absence of violence alone. Peace is when people are able to resolve their conflicts without violence and can work together to improve the quality of their lives. Peace is measured not only by the number of incidents of violent conflict, but also by the presence of a number of ‘peace factors’.

In other words, for Alert, positive peace is when:

- everyone lives in safety, without fear or threat of violence, and no form of violence is tolerated in law or in practice;
- everyone is equal before the law, the systems for justice are trusted, and fair and effective laws protect people’s rights;
- everyone is able to participate in shaping political decisions and the government is accountable to the people;
- everyone has fair and equal access to the basic needs for their wellbeing – such as food, clean water, shelter, education, healthcare and a decent living environment; and
- everyone has an equal opportunity to work and make a living, regardless of gender, ethnicity or any other aspect of identity.

The process of working towards these ideal goals is what is referred to as peacebuilding. Peacebuilding includes activities and interventions that are designed to influence events, systems, processes, and actors to create results that enable peace factors to be gained and or maintained. This is a larger goal than preventing or stopping violence (although that is a necessary factor for peace), or resolving conflicts.

2.1 The link between VPA and the peace process

In Myanmar, there is an ongoing formal national peace process in parallel to grassroots peacebuilding and reconciliation efforts, seeking to achieve a durable peace agreement. The national process builds on progress made under former President U Thein Sein, including the National Ceasefire Agreement (NCA), which eight of the 21 key ethnic armed groups¹⁰ have signed to date.¹¹ The National League for Democracy (NLD)-led government, elected in November 2015, have stated that a top priority of the new administration is achieving peace and national reconciliation among all ethnic groups in Myanmar. This will need to entail reconciliation of the different claims on natural resources found across the country, including forest resources.

The architecture of the peace process is complex, envisioning a political dialogue between the government, military, political parties, and NCA signatory groups, where different ethnic-based, issue-based, and regional-based dialogues feed into a body called the Union Peace Dialogue Joint Committee, which makes proposals to be discussed and debated at Union Peace Conferences. A framework for political dialogue has been agreed, and this is divided into five thematic issues,¹² one of which focuses on the management of land, the environment, and natural resources.

The Union Peace Process is still in an early phase, with initial peace conferences and preparatory forums laying the groundwork for the political dialogue. Many challenges persist, including challenges relating to the meaningful inclusion of all genders, ages and ethnic groups, such as those groups that have not signed the NCA in a context of ongoing clashes persisting in parts of Kachin and Shan states. The peace process is going to be

10 This report uses ‘ethnic armed groups’ to refer to what others may call ‘non-state armed groups’ to reflect the fact that not all NCA signatories are based on ethnic identities, such as the All Burma Students’ Democratic Front (ABSDF) which primarily draws on a Bamah student constituency.

11 The KNU, RCSS, CNF, PNLO, DKBA, ALP, ABSDF and KPC are signatories while it has not yet been signed by the UNFC members (SSPP, LDU, WNO, KNPP, NMSP, ANC), nor by the KIO, UWSA, NDAA, NSCN-K, and the three organisations excluded from the 21st century Panglong conference in August 2016, the AA, TNLA, and MNDAA. The UWSA is attempting to start a separate peace process with the government and *Tatmadaw* without signing the NCA.

12 The other four chapters address political, social, economic and security issues. Burma News International, *Deciphering Myanmar’s peace process: A reference guide 2016*, Chiang Mai: Burma News International, 2017, p.48

a long-term process with many delicate issues to be discussed, to which there are no easy answers. How natural resources will be managed, both in terms of benefit sharing as well as in how decisions are made, and how this will be linked to a potential federal structure, will be one of the important factors in a successful peace process and enduring peace.

Since a national peace process is under way which will entail discussions on land and natural resources, potentially including forest governance, the question arises if (and if so, how) the FLEGT VPA discussions in Myanmar could or should be linked to the national political dialogue process. Both processes are ambitious in their aims, complex in the issues to be solved, and require meaningful engagement of multiple stakeholders with different interests, approaches, limited capacity, and scant trust in each other. They are both likely to take a significant amount of time and to bring politically challenging moments.

There are currently no formal structural links between the VPA and the peace process, although individual stakeholders do participate formally or informally in both the ITF and the land and natural resource management component of the political dialogue. Opinions vary on whether formal links need to be in place. Some are concerned that a national VPA cannot be agreed successfully and legitimately unless there is a full peace agreement (as stakeholder groups from conflict areas would be unlikely to be able to participate meaningfully in the due process of negotiating the VPA),¹³ while others argue for moving forward with the VPA process as it is uncertain when a peace agreement might be concluded.¹⁴

The majority of those interviewed for this analysis pointed to the imperative of progressing with the VPA process in parallel with the peace process. In the words of one ethnic minority ITF member: “We need to do what we can do now. We need to find ways for FLEGT to support peace”.¹⁵ More pragmatically, the same ITF member argued: “If we wait for peace to end illegal timber – there won’t be any natural resources left”.¹⁶ Considering the rates of deforestation, there is indeed no time to lose in tackling illegal logging.

At the very least, it seems important that the FLEGT VPA process remains somehow connected to the peace process in Myanmar, in order to avoid getting too far ahead of the political dialogue process: for example, by making decisions regarding definitions of timber legality, or designing a timber legality assurance system without full consultation and thus undermining trust between stakeholders involved in the political dialogue. The precise mechanism for connecting the VPA process to the political dialogue process remains to be developed by the national stakeholders. However, this could take the form, for example, of updates on the peace process discussions on land and natural resource management at the ITF meetings by the MONREC delegates, to ensure all members have the same information. It could also mean discussing timber legality as well as customary rights of forest-reliant communities both in VPA and the peace process fora, and in the consultation processes for both, using the discussions at each to contribute to the overall national dialogue on these key issues.

13 At the time of conducting this assessment, key barriers remained which restricted our access to interviewing EAG stakeholders, including legislation such as the unlawful associations act, and instructions from ITF members to not interview these stakeholders for this analysis. This leads to the question: How can stakeholders from conflict areas not only access, but participate meaningfully in the VPA negotiations while such barriers remain?

14 ITF members and related civil society, interview by the authors, Yangon, between October 2016 – February 2017

15 ITF CSO Member, interview by the authors, Yangon, February 2017

16 Ibid.

3. Conflict factor matrix

Myanmar has a complex political economy and socio-political context marked by fragmentation and conflicts between the different needs and positions between the key sides (government, military, EAGs, CSOs and communities, as well as private sector actors), as well as between different factions and actors on each side. This is a fragile context in which the VPA process faces several conflict risks. These are roughly outlined in the Conflict risk matrix (Table 1), which identifies four key conflict factors (Column 1) that could be affected by dynamics in the country and thereby have an impact on the VPA process (Column 3). Conversely, the VPA process may also have an impact on the broader conflict dynamics (Column 4). Recognising this two-way dynamic is an essential component of conflict sensitivity.

This matrix has been inspired by the Macro Conflict Risk Analysis tool, developed by International Alert to guide conflict-sensitive business practice in the commercial reforestation sector in Colombia.¹⁷ It also takes inspiration from a similar tool used by the Regional Community Forestry Training Center (RECOFTC) – The Center for People and Forests to identify conflict risks related to Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Asia.¹⁸ This matrix is intended to facilitate discussion. It is not intended to be a fixed, final, and comprehensive list of all conflict factors that will affect the FLEGT VPA or factors that the FLEGT VPA will affect. Instead, this is presented as a living draft, to be commented on, built on, improved, and revised by the stakeholders involved in the FLEGT VPA process in Myanmar.

The matrix has been specifically designed for the ITF, to support their commitment to ensure that the VPA is conflict sensitive. However, it may also be of interest to broader forest governance constituents. The matrix offers questions to assess the current situation in Column 2 (based on the findings of this conflict-sensitive analysis), while Column 5 suggest indicators to track the situation. Like all conflict analyses, the findings present a current snapshot which is likely to change frequently over the coming months and years. The matrix should be updated by interested members of the ITF or associated civil society on a regular basis, for instance, quarterly.

To encourage going beyond the analytical level into practical action, Column 6 is a space to think collectively about possible mitigation strategies for each conflict risk and spells out the potential positive peacebuilding contribution. By regularly monitoring the conflict factors, the ITF/MSG can work to avoid exacerbating conflict tensions, mitigate risks and support moving towards peace.

17 M. Leonhardt and J. M. Orozco, Conflict-sensitive business practice: Guidance for commercial reforestation in Colombia, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, International Alert and Global Compact, 2006

18 RECOFTC, Conflict in REDD+: Analysis of sources of conflict based on case studies from South and Southeast Asia, Bangkok, Thailand: RECOFTC – The Center for People and Forests, 2016, p.6

Table 1: Conflict risk matrix

Conflict factor	Example questions to consider	Possible impact of VPA process	Possible impact on the VPA process (risks)	Possible indicators	Possible mitigation strategy
Lack of participation	Are negotiations representative, accessible, accountable or transparent? Can all affected ethnic groups participate?	May exacerbate existing grievances, or cause conflict if not inclusive or transparent	Lack of trust and lack of participation could lead to a less effective, transparent, and successful VPA	# of members actively participating from different stakeholder groups (different ethnicity, age, gender, etc.)	Clear communication, continued and strengthened inclusive participation, accountability measures
Lack of communication	Is clear communication about FLEGT available to all stakeholders?	Without clear communication, some (especially remote) stakeholders may mistrust process	Low levels of trust could make communication difficult; range of ethnic languages to consider; challenges of 'hard-to-reach' stakeholders	# of communications materials produced # of stakeholder meetings in # of locations	Translation of materials to ethnic languages; outreach meetings held; press conferences held
Gender	Are women participating in VPA negotiations?	If VPA doesn't meaningfully include women's concerns, then it might be seen as reinforcing gender inequalities	Women might face barriers to meaningfully participate in the VPA negotiations (due to capacity, cultural norms, lack of similar experience, etc.)	# of women who contribute to VPA meetings – both in attendance and in participation (speaking) # women's roles in forest use and management considered	Specific gender quota, or target; specific support to women to participate
Lack of community engagement	Are communities able to benefit from improved forest governance?	Greater protection and enforcement of community rights in forest governance through, for example, community forestry	Lack of transparency or opportunities for civil society or communities to input into forest governance reform might cause further mistrust, making VPA more difficult to negotiate and implement	Reference to community rights and/or community role in timber legality enforcement in VPA agreement	Funding for civil society organisations and community organisations to participate meaningfully in the VPA process and other reforms

Note: Each of the topics raised in Column 1 are discussed in more detail below.

3.1 Participation

A key question is how to ensure that all stakeholders can adequately participate in the FLEGT process, particularly the ethnic armed groups or their political wings that are not currently participating formally for reasons due to the state of conflict and, in parts, open warfare, legal and political issues and capacity challenges of the armed groups, as well as other reasons. The compromise solution so far has been for ethnic civil society stakeholders to represent the views of the ethnic groups in the national discussions. This poses a number of challenges in terms of representation, as well as on practical and logistical levels – with the ethnic CSO members sometimes unable to attend all the ITF meetings held in Yangon and Naypyidaw. Current representatives on the ITF were elected at a workshop in early 2015 on a geographical basis, so that the current eight CSO representatives in the ITF are expected to represent all of Myanmar's civil society including the eight major ethnic groups, plus over 100 smaller ethnic groups across the seven states and seven regions of Myanmar. How can a limited number of civil society representatives (who inevitably also bring organisational priorities and personal views shaped by their backgrounds and ethnicities) meaningfully represent the views of such a multitude of groups? How can they deal with the inevitable differences in opinions and priorities between the different groups they are expected to represent? How is their mandate given, and how can they be accountable to these groups?

Meaningful representation will require a systematic and transparent process of consultations and identification of priorities of all groups and communities, so that the CSO representatives can provide clear inputs and priorities in the ITF forum. There are some parallels between such a process and the consultations and mechanism that are being put into place for the peace process and for the Extractive Industries Transparency Initiative (EITI) process,¹⁹ which includes a multi-stakeholder group. One of the EITI process learnings was the need for a 'secretariat' for the CSOs – the Myanmar Alliance for Transparency and Accountability, which was formed with approximately 500 members.²⁰ A coordinating forum for CSOs could play a crucial role in fostering agreement on key points between the diverse members and views of the 'civil society' stakeholder group. Establishing such a forum would take time, and may require additional capacity building or facilitation support by experienced dialogue facilitators or technical resource people who enjoy the trust of ethnic groups and have a mandate to engage in this dialogue process. Technical support by experienced and credible facilitators would then be essential in ensuring that discussions are brought to clear decisions, ideally by consensus, to ensure that the process does not create grievances by stakeholders that feel excluded.

3.2 Communication

Given that the FLEGT VPA negotiations have the potential to cover sensitive issues such as resource ownership, timber legality, and roles of different stakeholders in ensuring legality, clear communication will be essential. Information and communication about all aspects of the full FLEGT process (the aims of the process, the different steps involved and progress to date, timelines, actors and allegiances, opportunities to participate or feed into discussions, as well as which points are being discussed and what are the options under discussion) should be easily accessible to all stakeholders and citizens, in Bamar as well as in ethnic minority languages, where appropriate. Different language, knowledge and access barriers between men and women, urban and rural communities should be taken into account at this stage. Palladium (DFID contract holders to support the FLEGT process in Myanmar) and ITF members including the CSO ALARM, as well as the EU/European Forest Institute, have started to address communication needs through the production of IEC materials, translation of the 'VPA Unpacked' (information materials about FLEGT VPAs) into Burmese, funding a communication-focused post in the FLEGT Secretariat, and funding outreach meetings recently conducted in all states/regions. Additionally, the EU have funded a consultant to support the ITF in developing a communications strategy. These are a good

19 The Extractive Industries Transparency Initiative (EITI) is a global standard to promote the open and accountable management of extractive resources including oil, gas and minerals.

20 International Alert country team, consultations by the author, January 2017



© Roberto Cormacchia/Alamy Stock Photo

A truck transporting felled trees, Kayah state, 2016

start (and have been effective in the areas reached)²¹ but, as preparations continue, could be extended to reach a much broader audience.

Transparency and clarity of communications should flow in both directions: From the ITF/MSG to the broader population, and from the community level up to the ITF/MSG through representatives at different levels from household or village level through townships, district and state levels. As differences in opinions are likely to emerge, mechanisms for resolving disputes or complaints should be instituted and transparently managed, with clear follow up.²² This does not guarantee that people with minority views will accept adverse outcomes, but it significantly increases the likelihood of this by creating trust in transparent and accountable processes. This should be of particular relevance to the EU given the complaints from civil society groups about the lack of transparency and accountability in other trade-related deals with Myanmar, such as the Investment Protection Agreement negotiations.²³

3.3 Gender

It is women's right to participate in the decision-making on natural resource management issues that affect them and their lives, including in the forest governance sector. Meaningful inclusion will strengthen multi-stakeholder processes and increase the potential contribution to peace. The FLEGT VPA MSG and all civil society projects in support thereof should ensure that women participate meaningfully at all stages and in all consultations and negotiations, and that they have access to all associated benefits such as training and capacity building.

Activities related to FLEGT should consider the following:

- The barriers to participation that women face (such as domestic duties or socially conservative norms that hinder their participation in meetings or travel away from home, for instance from ethnic states to Yangon or Nay Pyi Taw). This could be addressed by specifically inviting women to participate in and speak at dialogue

21 CSOs, focus group discussion, Myitkyina, 18–19 January 2017

22 This could include hotlines or websites for registering complaints, or public consultations with public follow-up to queries raised. The ITF/MSG will also need to agree on how decisions are made: by consensus or vote, or other means they agree on.

23 E. Röell, The pending EU-Myanmar Investment Protection Agreement: Risks and opportunities. ACT Alliance, 2017, <http://actalliance.org/wp-content/uploads/2017/04/EU-Myanmar-IPA-Risks-and-Opportunities.pdf>

meetings, trainings and community consultations, subsidising child care or the travel costs of a childminder where required, giving due notice of meetings to permit domestic arrangements to be made, and ensuring that facilitators and moderators are clear in valuing women's participation and their contribution to the debate and not allowing their points to be disregarded, particularly where there are clear power imbalances between male senior officials and younger women from CSOs.

- Women's specific vulnerabilities to sexual and gender-based violence (SGBV)²⁴ in forest settings or when travelling, ensuring that meetings and trainings take place in well-lit, safe areas, creating an atmosphere where concerns can be safely shared, considering how taking action in programming might cause backlash by family or community members, and discussing personal safety and security considerations which might affect activists and consider methods such as regular phone check-ins or GPS tracking in remote areas.
- Take into account how social expectations of masculinity shape men's participation in the conflict, peace and forest governance processes. This could be reflections on the gender and power dynamics at the negotiating tables, decision-making based on power and positions rather than consensus decision-making or exploring creative solutions through dialogue. This could also entail considering what non-violent productive roles there might be for male ex-combatants after a potential peace agreement is secured, to ensure that financial pressure on men to provide for their families does not lead to increases in illegal logging when the remaining forests stop being conflict zones.

3.4 Community empowerment

To ensure the best progress towards a FLEGT VPA, the government and civil society actors in Myanmar should work together in an atmosphere of open dialogue despite differences in views. Part of the governance reforms that would facilitate FLEGT, and that may be brought about by the discussions, would entail more openness by the authorities to the perspectives of communities and civil society, one of the hallmarks of functioning democracies, with peaceful channels of communication between states and citizens. The following case studies show how, in a context of insecurity, speaking out on behalf of communities' land and forest access or against illegal logging can make individuals vulnerable to threat or other risks. Becoming visible brings risks, despite a general setting of law and order, yet with localised and specific threats. This is stronger in specific locations, such as Kachin or Shan, for specific ethnic groups, or for those whose activism or advocacy threatens vested private interests such as agroindustry companies or illegal loggers. At the same time, within the civil service, a strongly hierarchical command structure limits the positions that individuals can take, while retired civil servants can speak out more freely. There has also been increasing legal persecution for people speaking out on social media. This creates an atmosphere of perceptions that "we are all at risk", of arrest, negative repercussions or assassination, forming barriers to people speaking up on issues including FLEGT-relevant topics.²⁵ The election of the NLD to government in 2015 gave rise to hope for change, albeit the process of changing bureaucracies is bound to be a slow one of incremental change.

FLEGT-associated governance reform poses an opportunity to bring decision-making on forest management closer to the people, to the community level, and to ensure effective and participatory monitoring mechanisms to tackle institutionalised corruption and overexploitation of forest resources for short-term financial gain at the expense of more sustainable and peaceful options. Increasing the political space for civil society to participate in governance in Myanmar is an important goal of FLEGT, and is an important component of peacebuilding. As also noted previously, some important progress has been made in ensuring that CSOs, including those based in ethnic states outside of Yangon, have 'seats at the ITF table'. However, there are continued challenges relating to the participation of different and smaller ethnic groups, and in women's meaningful participation in all parts of the processes (especially decision-making).

24 SGBV refers to all physical, verbal, emotional and economic violence that occurs due to somebody's gender or sex.

25 CSO ITF member, interview by the authors, Yangon, February 2017

The FLEGT Action Plan is also specific about the importance of ensuring that the process of negotiating a VPA delivers benefits in terms of empowering communities and civil society more broadly. Even if the FLEGT Action Plan was never designed as an aid to peacebuilding, the creation of multi-stakeholder forums through the VPA have been identified as yielding important peacebuilding dividends, as it provides a platform for a variety of stakeholders to table their issues, such as discussing what constitutes legality in terms of timber production, conversion timber, social impacts of deforestation on forest-reliant communities, compensation and benefit-sharing of logging activities, and so on. For example, CSOs in Cameroon, CAR, DRC, Ghana, Liberia and Indonesia have seen the VPA process as key to improving coordination and accountability related to their respective forest governance reform sectors, with the VPA process providing “the political space and structures in which CSOs were better able to be agents for change”.²⁶ As an example, some positive outcomes of the dialogue process has been the inclusion of traditionally excluded groups, such as indigenous groups in Honduras, engaging in the VPA negotiations to voice their concerns regarding customary rights.²⁷

The case studies included in this report demonstrate considerable efforts taken by communities from different areas of Myanmar to combat illegal logging and improve forest governance. However, many structural issues remain, which act as barriers to the effectiveness of these efforts. These include, for example, mistrust between FD staff and community organisations, delays and bureaucratic hurdles in issuing community forestry, or land tenure, certificates, and security risks faced by communities who speak out against illegal logging, corruption, or vested interests in the forestry sector. These challenges will have to be addressed for Myanmar’s VPA process to fully deliver the governance benefits promised.

26 FERN, Do FLEGT VPAs improve governance? Examining how FLEGT VPAs are changing the way forests are owned and managed, FERN, 2016, http://www.fern.org/sites/fern.org/files/impactreport_lowres.pdf

27 European Commission, Evaluation of the EU Action Plan for Forest Law Enforcement Governance and Trade (FLEGT), Brussels: European Commission, 2016

4. Assessment of key forest governance issues

Myanmar's forestry sector is facing several challenges, including issues that are influenced by conflict dynamics and that, in turn, impact on the conflict and peace process. To better understand these, this section discusses several key issues at the macro level: the political economy of the timber trade, illegal logging and timber legality system challenges, historical challenges with mandates and implementation, the underlying issue of access to land, as well as the impact of gender inequalities. This chapter also investigates the implications and responses to these challenges at the community level, drawing on a series of case studies to bring out community-driven action against illegal logging, as well as a more detailed assessment of community forestry as a peacebuilding tool.

4.1 Political economy of the timber trade

Historically, the profit opportunities from control and taxation of the high value timber trade, specifically in teak, contributed to the first Anglo-Burmese war in the 19th century and the subsequent creation and colonial occupation of what came to be known as Burma.²⁸ In line with the extensive literature on Burma,²⁹ interviewees for this study largely argued that the trade of high value timber, including teak, rosewood, and other valuable species found in Myanmar, is not the primary root cause of current conflicts in Myanmar. These are instead perceived to be related to political differences between different ethnicities and interest groups around the shape and nature of Myanmar's future federal union. However, it was widely agreed that the exploitation of natural resources including timber "fuels the (political) narratives" of conflict.³⁰

It has been widely documented that revenues from control of the timber trade, especially the illicit trade in illegal logs, help finance armed conflict. For example, the income from logging and the timber trade have been shown to fund armed conflict in Myanmar, as well as countries like Liberia, Cambodia, Central African Republic, and others.³¹ In Myanmar, "timber revenue and control of the (timber) trade on the border has enabled the ethnic insurgents to finance their side of the conflict".³² Women's League of Burma argue, "partly, [...Myanmar's] conflict stems from a desire to control the vast natural resources in ethnic areas, and the military and its cronies have long-standing and extensive business interests in ethnic regions".³³ Harwell and Blundell have further documented that illegal logging and the associated revenues can undermine the rule of law, fuel corruption and hinder development.³⁴

28 K. Htun, Myanmar Forestry Outlook Study, Bangkok: Food and Agricultural Organisation: 2009, <http://www.fao.org/3/a-am252e.pdf>

29 M. Gravers and F. Ytzen (eds.), Burma/Myanmar – Where now? Nordic Institute of Asian Studies, Asia Insights series, no. 3, 2014; A. South, Ethnic politics in Burma: States of conflict, London: Routledge, 2008; M. Callahan, Making enemies – War and state building in Burma, New York: Cornell University Press, 2005

30 CSO ITF member, interview by author, Yangon, January 2017

31 Global Witness, Logs of war: the timber trade and armed conflict, Programme for international cooperation and conflict resolution. FAO report 379, 2002; Global Witness, Blood timber – How Europe helped fund war in the Central African Republic, Global Witness, 2015

32 Global Witness, A conflict of interest – The uncertain future of Burma's forests, 2003, p.7; and O. Springate-Baginski et al, Democratising timber: An assessment of Myanmar's emerging 'Forest Law Enforcement, Governance and Trade' (FLEGT) process, Forest Policy and Economics, 48, 2014, pp.33–45

33 Women's League of Burma, CEDAW Shadow Report 2016 – Long way to go: Continuing violations of human rights and discrimination against ethnic women in Burma, Chiang Mai, Thailand: Women's League of Burma, 2016, p.2

34 E. Harwell, Forests in fragile and conflict-affected states, Washington DC: Program on Forests (PROFOR), 2010; A. G. Blundell, Forests and conflict: The financial flows that fuel war, Washington DC: Program on Forests (PROFOR), 2010

Strategic management of natural resources has also played a role in Myanmar's expansion of state control over ethnic borderland areas over the last 60 years, in a process dubbed "ceasefire capitalism".³⁵ For instance, after decades of fighting for autonomy for Shan state, "the 2000-strong Shan State Army ... made peace with Rangoon (in) 1989, and was granted timber concessions in the Hsipaw area in northern Shan state".³⁶ Vanda Felbab-Brown has documented similar arrangements with other groups, and including other illicit goods, such as drugs.³⁷

One significant issue for the FLEGT VPA process to consider is how the language of combatting illegal logging could become part of the rationale for conflict, or used to legitimise specific military operations. For example, as seen over the last three years of fighting in Northern Myanmar, when the *Tatmadaw* attacks Kachin Independence Army positions in Kachin state, they sometimes issue press releases about the mission targeting illegal logging camps/smugglers,³⁸ sometimes with little evidence to back up that claim. The environmental NGO ALARM found that "most of the (illegal) logs seized in Kachin actually come from areas controlled by the government, such as Sagaing region and parts of southern Kachin state,"³⁹ and thus theoretically could be seized in locations under government control before they reach Kachin. Meanwhile ethnic actors argue that their customary forest-management practices are more successful than the state-driven ones.⁴⁰ In the politicised narratives, all sides accuse each other of squandering forest resources.

Finally, given the current context in Myanmar, consideration should be given to evidence from other countries that has shown that deforestation through both legal and illegal logging actually increases after violent conflicts come to an end.⁴¹ There are two main reasons for this. Firstly, it is easier, safer, and more cost-effective for loggers to cut and/or transport logs or other timber products in areas without active fighting. Secondly, periods of relative peace can attract greater investment in agri-businesses, which in Myanmar's case has seen large-scale allocation of forested land to companies that have then cut down the trees and profited from the sale of that timber. This is in line with the government's active pursuit of exploiting natural resources to generate jobs and invigorate the post-conflict economy. This has resulted in the production of what is referred to as 'conversion timber'. Myanmar's new government has already given some consideration to this, through an ordinance passed in May 2017 which banned the export of products made from timber produced in conflict-affected areas, as well as those from 'conversion timber'. At the time of writing, it remains to be seen how this ordinance will be enforced or how 'conflict' will be defined.

35 K. Woods, Ceasefire capitalism: military-private partnerships, resource concessions and military-state building in the Burma-China borderlands, *The Journal of Peasant Studies*, 38:4, 2011, pp.747-770; and A. G. Blundell, *Forests and conflict: The financial flows that fuel war*, Washington DC: Program on Forests (PROFOR), 2010

36 B. Lintner and M. Black, *Merchants of madness: The methamphetamine explosion in the Golden Triangle*, Chiang Mai, Thailand: Silkworm Books: 2009, p.30

37 V. Felbab-Brown, (2017) *Myanmar maneuvers – How to break political-criminal alliances in contexts of transition*, Tokyo: United Nations University – Centre for Policy Research, 2017.

38 The Kachin Independence Army Deputy Chief of Staff Gen. Gun Maw alleged that "the Burma Army is attacking our frontline bases under the pretext of a crackdown on illegal log traders". After attacks, Kachin Rebels must rethink peace process: Gun Maw, *The Irrawaddy*, 17 February 2014, <https://www.irrawaddy.com/in-person/interview/attacks-kachin-rebels-must-rethink-peace-process-gun-maw.html>; see also <http://panglongenglish.blogspot.com/2015/03/ceasefire-debacle-and-illegal-logging.html>, accessed 14 September 2017

39 B. O'Toole, Doubts over log export ban, *The Myanmar Times*, 10 April 2014, <http://www.mmtimes.com/index.php/in-depth/10154-doubts-over-log-export-ban.html>. The Kachin state minister of forestry and mines agrees that "In some cases, the (seized illegal) timber had been transported from Sagaing region and Shan state". Kachin state authorities continue illegal timber seizures, Myanmar official says, *Radio Free Asia*, 18 February 2016, <http://www.rfa.org/english/news/myanmar/kachin-state-authorities-continue-illegal-timber-seizures-myanmar-official-says-02182016160853.html>

40 Civil society, interviews by the authors, Yangon, between October 2016 – February 2017

41 R. de Koning and D. Capistrano, *Sustainable forest management for peace building – Advance unedited version*, 2007, <http://www.un.org/esa/forests/wp-content/uploads/2015/06/SFM-for-PeaceBuilding.pdf>, accessed 14 September 2017

4.2 Illegal logging and timber legality system challenges

Ultimately, FLEGT VPAs seek to strengthen the national system for assuring the legality of timber that enters the market. Nationally, Myanmar is considered to have a relatively strong forest policy framework⁴² in the 1992 Forest Law and 1995 Forest Policy. However, there have been significant challenges in the implementation of these.

Nationally, the extraction and sale of timber is officially the exclusive domain of the state-owned enterprise – MTE. While the Myanmar Selection System (MSS) which regulates timber extraction is well respected in theory, “the government acknowledges that the MSS has not been followed in practice for the past several decades due to political and financial pressures”.⁴³ The over-exploitation peaked in the lead up to the 2014 logging ban (announced in advance),⁴⁴ with figures from Chatham House showing that 2.1 million tonnes of timber products – worth \$1.4 billion – were officially exported from Myanmar in 2013.⁴⁵ This is estimated to be only the tip of the iceberg, with much of the trade being unrecorded in official figures, or logs cut during this time but stockpiled for trade later. The FD, and especially MTE, similar to other ministries and their state-owned enterprises such as those in the mining sector,⁴⁶ has been criticised by CSOs for mismanagement and corruption, and civil society has called for efforts to strengthen the government’s capacities.⁴⁷ In early 2016, the Myanmar Forest Certification Committee (MFCC), supported by the Food and Agriculture Organization of the United Nations (FAO), commissioned a multi-stakeholder, participatory analysis of a proposed Myanmar Timber Legality Assurance System (MTLAS) developed by the MFCC that would meet FLEGT requirements and incorporate elements of best practice. The MTLAS gap analysis⁴⁸ observed that the current provisions do not include some of the key elements of assurance schemes, such as licensing or attestation to the compliance of the timber or an operator, and crucially, no independent assurance, oversight or monitoring.

In addition to over-exploitation of forests through ‘legal’ measures, Myanmar has seen rapid deforestation through widespread illegal logging. The scale of the illegal timber problem in Myanmar is illustrated by the difference between Myanmar’s officially reported export of hardwood (\$2.83 billion) compared to the \$5.57 billion of hardwood imports from Myanmar reported by trading partners (especially India and China) between 2011 to 2014.⁴⁹ The Environmental Investigation Agency’s 2015 ‘Organised chaos’ report revealed that 900,000m³ of

42 The policy framework has been discussed in more detail in other publications. For example, see B.Wode et al, Preliminary assessment of regulatory constraints and opportunities for legal community and smallholder timber in Myanmar, Report No. 37 of the Myanmar Conservation and Development Program, an initiative of Fauna and Flora International (FFI) Myanmar Programme, Yangon: FFI, 2014

43 K. Woods, Timber trade flows and actors in Myanmar: The political economy of Myanmar’s timber trade, *Forest Trends*, 2013, p.7

44 For instance in 2013/4, 60,000 teak trees were logged in Katha, Sagaing, instead of the 12,000 Annual Cut Allowance Limit. O. Springate-Baginski et al, Democratising timber: An assessment of Myanmar’s emerging ‘Forest Law Enforcement, Governance and Trade’ (FLEGT) process, *Forest Policy and Economics* 48, 2014, pp.33–45

45 See Resource Trade Earth, Chatham House, <https://resourcetrade.earth/data?year=2013&exporter=104&category=3&units=weight>, accessed 14 September 2017

46 For example, the previous Minister for Livestock, Fisheries and Rural Development, Deputy Minister for Social Welfare, Relief and Resettlement as well as the Deputy Minister for Communications and Information Technology (all former senior military officers) have all been implicated in illicit aspects of jade mining and trade; Global Witness, *Jade – Myanmar’s “Big state secret”*, London Global Witness, 2015. In 2012, media reported about an audit general’s report finding fraud and misappropriation at the ministries of Mining, Information and Agriculture, although this was never published; G. Robinson, Myanmar ministries accused of corruption, *Financial Times*, Bangkok, 16 March 2012, <https://www.ft.com/content/1a78c348-6e92-11e1-a82d-00144feab49a>

47 T. Treue et al, Legally and Illegally logged out: Extent and drivers of deforestation and forest degradation in Myanmar, *ALARM*, 2016, p.27. This goes beyond the Forest Governance Sectors; Myanmar was ranked 147 out of 168 on the 2015 Corruption Perceptions Index (2015) by Transparency International.

48 Presentation of the findings of the MTLAS Gap Assessment by Sofia Ryder at the Final Workshop of the MTLAS Gap Analysis Project hosted by the MFCC, Global Timber Forum and the FAO FLEGT Programme in Yangon on 17 February 2017.

49 E. Htusan, Myanmar forest-cutting continues despite government efforts, 2 September 2016, http://bigstory.ap.org/article/92d749a1832446cf9c47cb6cf6ea9a9e/myanmar-forest-cutting-continues-despite-government-efforts?utm_campaign=SocialFlow

logs a year were illegally traded into China, adding up to an estimated half a billion USD in value.⁵⁰ The report and the attention it generated, in addition to the bilateral negotiations between China and Myanmar, helped achieve a Chinese suspension on wood traded across the border which significantly reduced the flow of illegal timber, despite smuggling continuing on a smaller scale.⁵¹

Since that report, and the 'Legally and illegally logged out' report from ALARM,⁵² MONREC has intensified efforts to confront illegal logging and the illegal timber trade, seizing an estimated US\$3.3 million worth of illegal timber in the first two months of 2017 in Yangon.⁵³ During the fiscal year 2016-17, more than 50,000 tons of smuggled timber were seized overall and 8,000 people arrested for alleged illegal timber harvesting and trade – though the overall scale of illegal timber is suspected to be far higher.⁵⁴ Disconcertingly, the volume of illegal teak seized (14,000 tons) during this period is nearly the same as the annual allowable cut for 2017-18.⁵⁵ It remains unclear whether it is actually the scale of illegal logging that has increased or only the seizures of illegal timber.

In addition to degrading the forests and depriving communities of forest goods, illegal logging is often accompanied by localised violence,⁵⁶ posing threats to communities and FD staff. On 27 December 2014, a district forest officer and three forest rangers were shot and killed during an operation against the illegal logging of rosewood on their way back from Wumsalaung village of Linkhay district in southern Shan state.⁵⁷ More recently, a Daily Eleven journalist thought to be investigating the illegal timber trade and logging was found dead on 13 December 2016,⁵⁸ which the police are still investigating.

4.3 Community-driven action against illegal logging

The following case studies show the impact on communities that take action to tackle illegal logging and to protect their environmental resources.

The ability of individual communities to take collective action against threats to their forest was also demonstrated by village communities in Tilin and Gangaw in Magway, who formed conservation vigilante patrols with the aim of preventing illegal logging in their areas. Their example shows the potential for engaging citizens in monitoring illegal logging and timber, and the importance of high-level back up to individual citizen monitors to overcome traditional power structures interfering with due process. The risks to their personal safety is clear, but there is also a risk of them assuming the 'responsibility' for legal enforcement where they might potentially be blamed for failures, when it is the government authorities that are ultimately responsible for law enforcement. Further recommendations based on these case studies would be to block the supply of chainsaws as the 'tools of illegal

50 Environmental Investigation Agency, *Organised chaos: The illicit overland timber trade between Myanmar and China*, London: Environmental Investigation Agency, 2015

51 Environmental Investigation Agency, *Myanmar's logging ban a major step towards forest sector reform*, 4 August 2016, <https://eia-international.org/myanmar-logging-ban-major-step-forest-reform>

52 T. Treue et al, *Legally and Illegally logged out: Extent and drivers of deforestation and forest degradation in Myanmar*, ALARM, 2016

53 H. Htun, *Forest Department investigates sizeable seizures of smuggled timber*, The Irrawaddy, 1 March 2017, <https://www.irrawaddy.com/news/burma/forest-department-investigates-sizeable-seizures-smuggled-timber.html>

54 *Tropical Timber Market Report*, Volume 21, Number 8, ITTO Market Information Service, 16–30 April 2017, https://www.itto.int/files/user/mis/MIS_16-30_Apr_2017.pdf

55 Ibid.

56 H. K. Linn, *The fight for Pegu's forests gets violent*, Myanmar Now, 9 August 2016, <http://www.dvb.no/news/fight-pegu-forests-heats-gets-violent/69232>

57 Press conference on fatal shooting of four forestry officers in Langkho township, Global New Light of Myanmar, Myanmar News Agency, 30 December 2014, <http://www.globalnewlightofmyanmar.com/press-conference-on-fatal-shooting-of-four-forestry-officers-in-langkho-township/>; *Combating illegal wildlife trafficking and illegal logging in Myanmar*, MONREC, <http://www.fdmocaf.gov.mm/eng/news/9966>, accessed 14 September 2017

58 B. Walker, *A journalist's murder provides a window into the destruction of Myanmar's forests*, 9 January 2017, <https://scroll.in/article/824583/a-journalists-murder-provides-a-window-into-the-destruction-of-myanmars-forests>, accessed 14 September 2017

logging’ and to seize the chainsaws that are usually owned by middlemen or bosses rather than the impoverished locals hired to log illegally – who are normally the first to be arrested and charged, with the middlemen less likely to face consequences. In addition, a peacebuilding approach could seek to interrupt the ‘human resourcing’ of illegal logging by promoting alternative livelihoods that protect rather than damage the environment.

Case study 1: Challenges of addressing illegal logging at a community level

This case study is set in an ethnic minority subsistence farming community practising shifting cultivation, though due to persistent poverty, the community also relies heavily on the forest for survival. They collect medicinal plants, plant coffee and fruits, hunt and fish, and rely on the forest for fuelwood and domestic timber. While the community practices shifting cultivation sustainably, they feel the government misinterprets this and persecutes them for illegal logging. The FD arrested some shifting cultivators in 2015 for clearing areas for replanting after the fallow period. Meanwhile, forest lands were seized and trees cut on a much larger scale by the military and associated companies nearby, leading to degradation of the hillside, and by a company who occupied and cut 5,000 acres of forest before planting green tea in a smaller part of the logged area. The actual logging is often done by local day labourers, perceived by the community to be drug addicts so desperate for any cash income, they ignore the long-term damage they’re inflicting on the environment they rely on for survival.

This logging took place on community lands for which the community had been seeking official land titles. Their efforts included applying for a community forestry certificate, but this was not successful. While some Form 7s (official land titles) were granted for land close to the highway, the community was unable to reclaim confiscated land which has remained under military control.

While communities feel unable to affect this specific case, due to corruption and powerful vested interests, an ethnic minority youth network in this area has been undertaking awareness raising and advocacy to stop illegal logging. One of the members of this network was threatened in October 2016 by illegal loggers, who warned of violence to the family unless the anti-logging efforts stopped. These included threats of planting illegal drugs on the family premises and getting them arrested by the police. There is little legal or physical protection available to individuals who take action for the environment and their community, and who, in this instance, continue to do so.

Case study 2: Community-driven monitoring against illegal logging in Magway

A monitoring checkpoint was started by an NLD member, mandated by the area’s NLD MP and township authorities, who quickly realised the extent of illegal activities and the struggle of the authorities to manage this. The checkpoint was supported by CSOs and the Village Tract Administration, although the police and FD did not initially do so. Later, an Observer Group was formed consisting of the police, village elder, lawyer and GAD, although the FD still declined to participate.



The checkpoint is operated 24/7 by citizen volunteers and youth groups, who built up a network of local contacts who call to tip them off about suspicious activities. They seize illicit materials and when they find illegal logs, they reach out to the local police and FD authorities. Their initial response was to just call in the information, which often resulted in the materials disappearing before the authorities intervened. They adapted their response procedure by also informing the local MP at the same time to ensure external verification and to guard against local authorities not taking action or individual officers being paid off locally. This method has increased the accountability of local authorities. Despite this, some irregularities still occur; in 2016, for instance, the checkpoint seized 22 cubic meters of rosewood to hand over to the police, who recorded receipt of only 5 cubic meters in their files – the investigation into this discrepancy is still ongoing.

During a different incident, the checkpoint volunteers encountered an eminent person, a religious leader, involved in transporting illegal timber and goods. When the checkpoint volunteer informed the police to seize the illegal timber, the police initially questioned the checkpoint's authority to intervene. A phone call to the local MP confirmed the checkpoint's authority in this matter and prompted the police to take action and seize the illegal goods. This incident shows how power can customarily influence the operation of the justice system, but that linking to higher authorities can counteract such disruptions. However, one of the challenges of this kind of work is that sometimes no volunteers want to go with the monitor to investigate tip-offs, as challenging persons of influence bears potential risk to the volunteers' personal reputations and a risk of possible backlash.

Overall, the volunteer-operated checkpoint and tip-off system is a good example of concerned citizens taking direct action to defend the forests and interrupt the flow of illicit goods. It also connects the citizen more actively with local governance structures, with the oversight and authority of an engaged MP making a clear difference. Initiatives like this should be supported in their mission by the government and civil society with technical skills and equipment to enable efficient action.

A similar citizen initiative developed in the same district in Saw township, where communities realised that the FD and police lacked the capacities to overcome illegal logging and timber trade issue alone. 40 interested and active people from seven villages decided it was time to support this process and formed an Environmental Conservation Group (ECG), informing local authorities, the MP and the police. The ECG started by identifying the most likely strategic timber routes, and built a network of contacts to notify them upon sightings of suspicious people or trucks. Members of the group come to observe the situation and alert the police and FD if they find that timber is loaded and moving. They identified the chainsaw as a major instrument of logging and lobbied the MP to raise the issue in the Lower House, resulting in the FD issuing chainsaw registration instructions and seizures of illegal chainsaws.

Citizens became actively engaged in confronting illegal logging through the ECG motivated by a realisation of the extent of the problem in their area, and a desire to conserve their environment. At the same time, they are fully aware that that illegal loggers often hire local residents to cut trees as day labourers, who take these jobs not by choice, but out of economic necessity. "Most illegal cutters are the have-nots, the landless."⁵⁹ The ECG hence sees better rural development as ultimately necessary to remove one of the enabling factors of illegal logging. Ecotourism developments or community-based agroforestry might be able to bring sustainable livelihoods into the area that protect rather than destroy the forest.

4.4 Land governance

The governance of forests is closely linked to the issue of land rights: decision-making over forest resources is usually closely linked to who owns the lands the forest is located on. Across Myanmar, land governance has been marked by conflict between different groups and asymmetrical power hierarchies. Communities have frequently been displaced from their land due to conflict, land grabs by the military,⁶⁰ the government or businesses linked to the government, construction of contentious development projects like dams, reservoirs, roads or business use (palm oil, mines), with a backlog of compensations, claims and complaints only slowly being tackled by new structures.⁶¹

The current land management practice is complex. According to interviewees for this study, approximately 17 different government departments are involved in land governance, in addition to the respective ethnic organisations' administrations. This results in predictable challenges for communities in documenting their land rights and lengthy processing times between different departments (especially for communities in mixed-authority areas). There is significant scope for simplification and streamlining to ensure more effective and equitable land management in the future. A new National Land Use Policy⁶² was passed in 2016 after a consultative process, forming a much improved and inclusive framework that recognises traditional shifting cultivation practices and communal tenure systems, and contains provisions to improve land management, dispute resolution and compensation mechanism for those whose lands were confiscated or displaced due to conflict. However, a new set of land laws, rules and regulations are needed to put this policy in to practice.

Recently, the FD/MONREC has announced plans to expand the lands registered as protected or reserved forests, while MOALI is also planning to expand the land under its control and under agricultural production.⁶³ Civil society has raised concerns that both agencies want to expand into the same lands,⁶⁴ raising the possibility of future structural conflict.

The following two case studies illustrate the challenges of land access for forest-reliant farmers in (a) a Pa'O community living in Restricted Forest Land where they are considered to be encroaching, but are at risk of illegal loggers, and b) in Bago Yoma, where a community experienced multiple displacements, including conflict-related displacement.

“We want more community participation in decision-making... We want land rights.”

Interview with Pa'O Farmers' Land Union, Nay Pyi Taw, November 2016

60 350 Myanmar farmers facing court over land grabs, Channel NewsAsia, 23 Feb 2017, www.channelnewsasia.com/news/asiapacific/350-myanmar-farmers-facing-court-over-land-grabs-7607748

61 T. Kramer and K. Woods, Financing dispossession, Transnational Institute, 2012; J. Buchanan et al, Developing disparity, Transnational Institute, 2013; and Displacement Solutions and Norwegian Refugee Council, Restitution in Myanmar, Building lasting peace, national reconciliation and economic prosperity through a comprehensive housing, land and property restitution programme, 2017

62 The Republic of the Union of Myanmar National Land Use Policy 2016 can be accessed at <http://extwprlegs1.fao.org/docs/pdf/mya152783.pdf>

63 K. Woods, speaking at a panel discussion on agribusiness in Myanmar as a major driver of deforestation and land conflicts, with the potential for reform, Forest Trends, Yangon, 16 November 2016

64 K. Woods, *Ibid.*; and G. Kissinger, Background report for identifying the drivers of deforestation and forest degradation in Myanmar, UNREDD and MONREC, 2017

Case study 3: Challenges with legal land access and illegal logging: Farmers' Land Union, Pa'O Self-Administrative Zone, southern Shan state

In this area, in a Self-Administrative Zone, a community has been following traditional shifting cultivation sustainably, managed through their traditional local forest management practice. This consists of open and transparent community discussions (all members can and do participate), led by a designated focal point (selected on a rotating basis). The national ethno-political conflicts have little direct impact here. There are some disagreements between the community that has lived and farmed there 'for a very long time', and the FD who categorised this land as Reserved Forest.

As a consequence of living on Reserved Forest land, the communities have been unable to secure a Form 7 Land Use Certificate and are considered as 'encroaching'. In 2013, the President's Office issued instructions to settle encroachment in reserved forests and protected forest areas. A Form 7 cannot be issued for reserved forests and protected public forests, although this can be applied for in land that has been de-gazetted from this. This process is managed by the central government, which manages the Self-Administrative Zone. However, formal communication between the FD and this specific community is still lacking. The community has attempted to apply for a Community Forestry Certificate (CFC) without success.

There is no law enforcement in this area and illegal logging and related corruption are major problems for the community: in addition to losing trees, the logging degrades the soil quality, impacting farming through erosion. Some of this illegal logging is undertaken by armed organisations, and some by cronies, sometimes in collaboration with the government, though the community members do not know who the armed groups are or which are working for business organisations. They fear to ask this due to the risks involved. Some of the loggers have a legal FD permit to log for a specific area, but often cut a much larger area, though verification of this is difficult and potentially dangerous for the communities as it requires confronting the loggers. Additionally, the elephants used by the loggers eat or damage their forest-based crops.

The communities have responded to the illegal logging in different ways: community-based organisations feel more confident in approaching smaller incidents and trying to stop the loggers directly by talking to them, and they may report larger incidents to the police and FD who respond by investigating them. Some community members have been threatened in the course of such efforts to stop illegal logging. There has been a significant change in relationship with the FD with the new government in some areas: previously the FD "threatened communities not to interfere in logging", but now, under the new government, the FD affirms that community participation is important and they are starting to work together to stop illegal logging, though responsive action remains lacking. The community lands are also impacted severely by coal mining and associated disputes, as lands and livelihoods are lost and pine trees degraded. To date, there has been no adequate compensation to those affected, although community members who complained have reported facing threats to silence them.

While their area is formally under the Pa-O National Organization administration, the community has little communication with this administration unit. "We want more community participation in decision-making, including over natural resource management and forest use. We want rule of law. We want land rights."⁶⁵

Case study 4: Multiple displacement and fragility of land access in Bago Yoma

“Forest is the source that people rely on, for food, for medicine, for living”

Young community leader from Bago Yoma area, November 2017

This community lives and farms in the Bago Yoma, in an area of community farms and cultivated company plantations. They first moved into this area in the 1970s when they were displaced from their original lands due to conflict between the government and the Communist Party of Burma. Several communities are living and farming there despite it being officially a controlled area under Section 144 of the Criminal Procedure Code. This is a legal provision granting authorities emergency powers to control public order, but which has been used in response to smaller demonstrations and protests including land disputes, drawing criticism from rights groups. The community only became aware of this status when signposts appeared in 2006, when they had long been living and farming there. They don't know whom to appeal to in order to have it reclassified to legalise their land access.

The community initially settled in this location for lack of other options, but have subsequently experienced multiple displacement within this area without compensation or consultation. They lost parts of their culture and traditions due to the displacement, and face severe limitations due to their inability to secure legal land access: they cannot secure medical support or education for their community due to it being a 144 area. They hold no government registration cards and have no direct ties to the government administration, which excludes them from services as well as electoral processes and democratic representation.

The Bago Yoma range is an area historically rich in high-value timber, especially teak, however it has been extensively over-logged. In May 2016, the government announced a 10-year logging ban for Bago Yoma, to try to allow for reforestation efforts. In November 2015, the FD requested the community to move, but they refused as they were about to harvest what they had been planting – they considered collecting the harvest as a matter of survival. The FD subsequently cleared the cultivated lands in line with the regulations, leading to alleged losses on behalf of the community, including damage to property.

In addition to disputes with the FD, the community reported severe problems with illegal logging: they “have a lot of fire in their belly about the illegal logging” but cannot speak up “because people are easy to kill”, with frequent threats and occasional violence against them by the illegal loggers. They saw the ‘old-style illegal logging’ of companies with legal government permits exceeding the area they were permitted to log. The new style of illegal logging is more diffuse, as it is no longer big operations but involves hiring of small groups of local villagers as day labourers who, for lack of other income and economic necessity, take on the job. Therefore, illegal logging can only be stopped through viable alternative economic opportunities, they argue. Meanwhile community members patrol the forest they live in to spot illegal loggers, and confront them where possible. They have been able to discourage some illegal loggers in the past by taking cellphone videos of them logging, as this could potentially lead to legal consequences for the illegal loggers. However, such actions do not come without risk for the independent forest monitors.

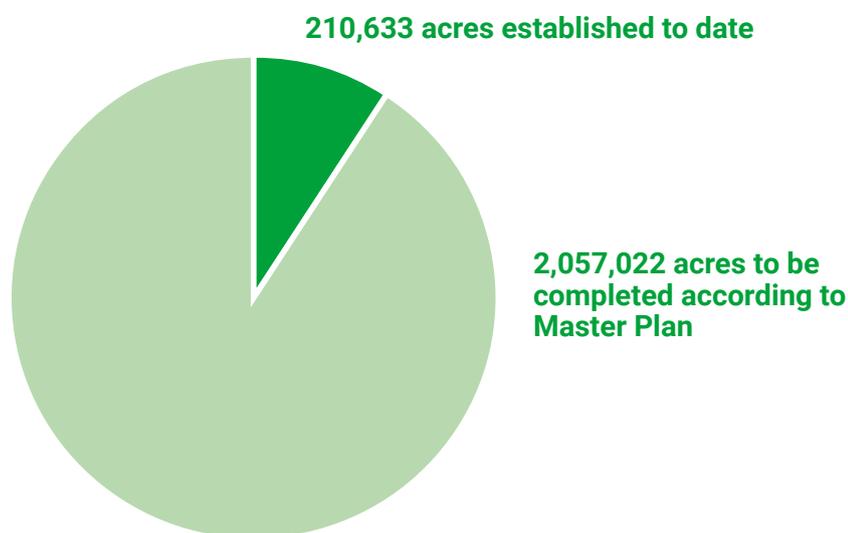
4.5 Community forestry

In addition to suffering from the rapid rates of deforestation, many communities in Myanmar lack the legal certification for the lands and forests that they manage and farm in accordance with customary communal tenure practices. Community forestry is considered to be one possible solution to these dual challenges.

The FD defines a community forest “as a forestry operation managed by the local community, establishing woodlots, planting trees and exploiting forest products in order to obtain food supplies, consumer products and incomes at the farm level”, with two primary goals: (1) to transform forest-dwelling forest destroyers into forest protectors; and (2) “to obtain a win-win situation for both sides (local people and the authorities) in terms of resource management”.⁶⁶ The 1995 Community Forestry Instructions (CFI) was notably “the first legislation to recognize villagers’ right to manage nearby forests for their own use and joint management with the district forestry department”.⁶⁷

The CFI were implemented nationwide from 1996 onwards and about 847 forest user groups (FUGs) were established by June 2016, managing an area of over 210,633 acres.⁶⁸ This is just under 10% of the government target of 2,267,655 acres under CF by 2030,⁶⁹ and indicative of the lack of political commitment to CF.⁷⁰ Implementation progress has been highest in Shan, Rakhine, Magway and Mandalay, mostly supported by DFID, UNDP/FAO, or other CSOs.

Figure 1: Community forest established



Source: Based on PowerPoint presentation by CF Unit of FD in 2016 to the CF National Working Group

66 K. Kyaw Tun, Sustainability in Pa-O Forest: Will there be hope for the locals?, in W. Tantikanangkul and A. Pritchard (eds.), Politics of autonomy and sustainability in Myanmar – Change for new hope...new life?, Thailand and Myanmar: Springer, p.93. See also by the Forest Department (1995) Community Forestry Instructions, Myanmar

67 K. Woods and K. Canby, Overview of forest law enforcement, governance and trade: Baseline Study 4, Myanmar, Forest Trends, Washington DC, 2011, p.18, www.forest-trends.org/documents/files/doc_3159.pdf

68 PowerPoint presentation by CF Unit of FD in 2016 to the CF National Working Group

69 National Forestry Master Plan for 2001–2002 to 2030–2031 prepared by Ministry of Forestry in June 2001.

70 K. Tint et al, Unleashing the potential of community forest enterprises in Myanmar, London: Ecosystem Conservation and Community Development Initiative (ECCDI), University of East Anglia (UEA), and International Institute for Environment and Development (IIED), 2014, p.viii

International comparisons have shown that “stemming forest loss through community forestry has been at least as effective as state-enforced protected areas.”⁷¹ To accelerate the momentum of community forestry in Myanmar, senior government officials from relevant departments and NGOs have established a National Working Group for Community Forestry. In addition, a specific unit was set up at the FD head office with staff assigned to deliver community forestry in the states and regions. In 2016, MONREC expanded the CFI’s objectives:

- To support forest-related basic needs such as wood and non-wood forest products for local community.
- To reduce rural poverty through employment and income opportunities for local community.
- To increase forest cover area and to ensure the sustainable utilisation of forest products.
- To promote a forest management system with people’s participation.

A range of environmental and social NGOs are supporting community forestry initiatives in order to build up the capacities of people to take action at the local level to protect their forests and water resources, and legitimise their community land rights. However, community forestry implementation remains far behind targets and communities have struggled to secure the CFC with long delays in approval of applications.

“There should be a clear system to CFC that is easy to understand.”

Focus group discussion participants, Magway, December 2016

The procedures for approving CFC are complicated, and especially so when communities apply for CFCs for lands that are managed by departments other than the FD, such as the GAD. Interviewees indicated that licences only seem to be granted for land already under control of the FD.⁷² For communities that see some CFCs being granted and others not, the criteria and process can lack transparency: “There should be a clear system to CFC that is easy to understand.”⁷³ Successful granting of the CFC also depends on capacities, experience and “the goodwill” of the forest officer at the township level,⁷⁴ whilst previously, certificates were granted only at the national level: the 1995 CF instructions delegated power of approval to the Assistant Director at the district level, but following issues in 2000, the instructions were revised so that union-level approval was required until 2012, when it was delegated to the state/

local level.⁷⁵ Processing should speed up once all parts of the system are accustomed to this. In addition, some EAGs like the Karen National Union and Kachin Independence Organisation (KIO) are also setting up or approving community forestry areas in areas under their control or in joint administration areas.⁷⁶

71 L. Porter-Bolland et al, Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics, *Forest Ecology and Management* 268: 6–17, 2012, www.cifor.org/library/3461/community-managed-forests-and-forestprotected-areas-an-assessment-of-their-conservationeffectiveness-across-the-tropics/

72 Land Core Group, interview by author, Yangon, 1 February 2017

73 Participants at FGD, Magway, December 2016

74 Flora and Fauna International, interview by author, Yangon, 3 February 2017, and FGD, Magway, December 2016

75 Myanmar Environmental and Reforestation Network, interview by author, Yangon, 22 November 2016

76 K. Joliffe, *Ceasefires, governance, and development: The Karen National Union in times of change*, Yangon: The Asia Foundation, 2016

Case study 5: Nyein Foundation – Building peace through community forestry in Kachin state

Nyein (Shalom) Foundation has been working on community forestry in Kachin since 2006 as part of their Development for Peacebuilding Programme in four townships: Wai Maw, Putao and Moe Gaung in government-controlled areas, and Man Si in mixed-control areas. The programme was developed to address the threat to the lands and forests of communities, in the context of an escalation of deforestation and land confiscation rates in the region.

In government-controlled areas, the project has successfully built good connections with local authorities, raising their awareness about the importance and the challenges of CF. Some CF communities have good relations with the FD, while in other areas, the relations are more challenging, with delays experienced. Meanwhile in the KIO-controlled area, they have to work through a local partner organisation as they cannot operate there directly. The KIO has its own forest-related policies, and Nyein have found it easier to get KIO CF approvals (though there is no clarity whether these would be accepted by the central government should the context dynamics change). The day-to-day work is more difficult in mixed-control areas due to a double administrative burden as the forest management plan has to be submitted to both the FD and the KIO, with fees paid to both.

The community forestry work has faced severe challenges that have limited the positive impact in places. Some of these are conflict-related, others are related to issues with how the forest governance system currently operates. Only six out of the 27 villages that applied for the CFC have been granted to date, the others are still waiting – they reported an average waiting time of two years for the CFC. This could and should be significantly sped up. For example, the processing time for similar applications is only four months in Nepal and Cambodia.⁷⁷ To become a certified community forest, villages start by forming a community forest user group (CFUG), mapping their lands and formulating a management plan for the application. They often start implementing the plan by planting trees while they wait for the decision, requiring a leap of faith to start putting the plan into action before they know if the CFC will succeed.

While the FD is broadly supportive of CF, the community and CSO interviewees report encountering challenges with some forest officers who were not fully aware of CF, did not see the value or were overburdened with other tasks.⁷⁸ “To get an authorised person to the village, the community has to cover transport and food costs”,⁷⁹ representing financial challenges. Frequent rotation of forest officers also significantly delayed the processing of applications, and in the absence of effective handover processes, CFUGs essentially need to start the application process anew.⁸⁰ However, in general, the FD has been supportive of CF compared to the other departments responsible for administering land that do not share this objective, such as the GAD. No CFCs have yet been granted on lands managed by non-FD government departments.⁸¹ Interviewees cited parts of the 2008 constitution as a key problem, as it does not recognise communities’ land rights.⁸²

Nyein Foundation’s community forestry project illustrates the two-way impact of conflict on an intervention, and of the intervention on the conflict. Some of the CF communities in Kachin were severely affected by conflict and violence after the breakdown of the ceasefire in 2011, with instances of members suffering landmine injuries and young men being forcibly recruited as guides to armed groups in 2011–2012.

77 CSOs, interviews by authors, Myitkyina, 17–19 January 2017

78 Nyein Foundation, interview by authors, Myitkyina, 17 January 2017

79 Ibid.

80 Communication from Nyein to authors, May 2017

81 Other organisations supporting CF like Fauna and Flora International therefore only support CF on FD lands. Nyein’s rationale is that they want to support all villages that request their support.

82 See also Transnational Institute, *Access denied – Land rights and ethnic conflict in Burma*, Amsterdam: Transnational Institute, 2013



Conflict-related violence – the open warfare – interrupts the access of CFUGs to the forest areas and plantations, particularly limiting the mobility of women and girls when collecting fuelwood due to the presence of armed actors presenting risks of gender-based violence. The violence and risk of violence severely impact the implementation of the CF project, including by stopping project-related travel to CF villages, preventing FD officers from undertaking inspections and monitoring, and preventing CF members participating in cluster meetings or advocacy events. The insecurity in conflict areas and disappearances of some community leaders (including one CF leader in Moe Gaung) can undermine community leadership on joint action. In addition, individual members of CFUGs have fled the conflict, impacting the ability of CFUGs to deliver planned activities. For example, two entire villages in Wai Maw have been displaced by the conflict, meaning that the CF effort there had to be abandoned entirely.

How can community forestry support peace? The Nyein Reforestation and Community Forestry Project is not directly influencing the ethno-political conflict between the EAGs and the state authorities. However, it is contributing to peace in three important ways.

- It empowers communities who struggle otherwise to get their lands officially registered to protect their lands, forest and water resources. This prevents communities from being displaced and losing their land or resources, which could result in grievances against the state or a different ethnic group.
- It protects, maintains and manages the forests and watersheds, ensuring that communities have access to water and forest products, which is vital in a context where most of the community rely on the forest for their survival.
- It builds community unity: it builds the capacities of members to manage their forest lands, by discussing and resolving issues together in a participatory approach – thereby strengthening democratic practice at the grassroots level. This operates on the village level as well as horizontally and vertically, connecting CF villages to each other in a cluster system through quarterly meetings, and creating direct links to and improving relationships with (and slowly building trust in) local authorities and governance structure through regular interaction and targeted advocacy. These nascent networks of exchange and collaboration at township, district and state levels could potentially contribute to peacebuilding in the event of a peace agreement.

4.6 Gender

Women make up about just over half of Myanmar's population, but are structurally excluded from current governance and decision-making. "The combination of repressive rule by a male-dominated military and a traditional cultural patriarchy [has] had insidious and pervasive long-term negative effects on women's equality".⁸³ Several civil society reports have laid out how structural gender inequalities form barriers to women's meaningful participation in Myanmar's political and economic realm.⁸⁴ "Continuing conflict, and the web of military presence and business interests in ethnic areas, has had a devastating effect on women and women's rights, especially in rural and ethnic areas."⁸⁵ Discrimination against women, however, is not only on the part of the government, but "customary laws of some ethnic populations have discriminated women from land ownership and property inheritance",⁸⁶ which can form barriers to their use rights of natural resource management or exclude them from discussions and decision-making related to natural resource-use management.

83 Women's League of Burma, CEDAW Shadow Report 2016 – Long way to go: Continuing violations of human rights and discrimination against ethnic women in Burma, Chiang Mai, Thailand: Women's League of Burma, 2016, p.1

84 Gender Equality Network, Raising the curtain – Cultural norms, social practices and gender equality in Myanmar, Yangon: Gender Equality Network, 2015; United Nations Population Fund et al, Gender equality and women's rights in Myanmar: A situation analysis, Philippines: Asian Development Bank, 2016

85 Women's League of Burma, CEDAW Shadow Report 2016 – Long way to go: Continuing violations of human rights and discrimination against ethnic women in Burma, Chiang Mai, Thailand: Women's League of Burma, 2016, p.2

86 Committee on the Elimination of Discrimination against Women (CEDAW) Report, 2007



© Worawan Simaraj/Alamy Stock Photo

A Lisu woman carrying firewood collected from a nearby forest, Kachin state, 2014

UNEP and UN Women's report 'Unlocking the potential' flags up the important role that women play globally in managing and using natural resources, despite their structural exclusion from decision-making and ownership of natural resources such as land due to underlying inequalities. It calls for women's political participation and governance, protection and security as well as a role in economic revitalization.⁸⁷ Including women will make processes more inclusive, representative and effective – but this requires buy-in from the men and capacity-building for all government and community actors, which will be more effective at transforming society rather than women-focused trainings alone.

There have been some efforts to include women and gender perspectives in the ITF and various FLEGT fora so far in acknowledgment of the generally very male-dominated forestry sector. The ITF comprises four female members out of 24 members, two from civil society and two from the government side. The private sector representatives are all male. Four women out of 24 members works out at around 17%, which is far from representative, though beyond the number counting, the quality of the participation and representation are as important as the number of women

included. For example, are the women skilled, empowered and confident to speak in such gender-unbalanced formal settings? To what degree do they feel tasked with representing gender concerns?

The literature on the nexus of gender, FLEGT and conflict is sparse, with mainly passing reference to gender in the materials on FLEGT. For example, the EU FLEGT Facility website explaining the VPA national deliberations acknowledges civil society may work through existing or new platforms, with member organisations that "may have different priorities, such as concerning human rights, the environment, gender or the rights of indigenous peoples".⁸⁸ Other research has highlighted women's vulnerability to SGBV in general⁸⁹ but also in the forest,⁹⁰ particularly during the collection of firewood or non-timber resources, both of which are gender roles that women are expected to complete.

Why does gender matter in discussions of FLEGT and conflict? The Business Case for Gender Mainstreaming into REDD+ identified four key benefits from gender mainstreaming⁹¹ which would seem to apply to FLEGT similarly, apart from point 2 where it is the drivers of conflict and illegal logging that are at stake:

87 UNEP et al, *Women and natural resources – Unlocking the peacebuilding potential*, United Nations: New York, 2013

88 See <http://www.euflegt.efi.int/national-negotiations>, accessed 14 September 2017

89 Gender Equality Network, *Behind the silence – Violence Against Women and their resilience*, Yangon, Myanmar: Gender Equality Network, 2015; Women's League of Burma, *Breaking the silence*, Paper presented at the forty-sixth session of the Commission on the Status of Women, Chiang Mai: Women's League of Burma, March 2002, www.womenofburma.org/Report/Breaking_the_silence.pdf

90 Karen Human Rights Group, *Hidden strengths, hidden struggles: Women's testimonies from southeast Myanmar*, Myanmar: Karen Human Rights Group, 2016, p.3, 20

91 UN-REDD Programme, *Business Case for Gender Mainstreaming in REDD+*, 2011, http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Low_Res_Bus_Case_Mainstreaming%20Gender_REDD+.pdf

1. "Capturing the different roles, rights and responsibilities of men and women, as well as their particular use patterns and knowledge of forests, for example, given that women play a disproportionate role in forest-based livelihoods including shifting cultivation, any loss of access to forests due to logging or land grabbing will disproportionately affect women;
2. ensuring the accuracy of drivers of deforestation and forest degradation and methods for conservation, sustainable management of forests and enhancement of forest carbon stocks;
3. improving the equitable sharing of benefits from REDD+ (or FLEGT in this case);
4. ensuring consistency with the human rights-based approach to development."

Women have the right to participate in decision-making that affects them, including in conflict situations and in relation to benefit-sharing agreements over natural resources.⁹² Considering that current gender hierarchies accord men positions of higher power than women, they stand to benefit more from potential benefits from revenue sharing. Understanding how men and women are differently affected and engaged, and ensuring that women can participate fully in such processes is important for a rights-based peacebuilding approach.

For FLEGT in Myanmar, this would imply understanding and comprehensively addressing the drivers of illegal logging and timber/logging-related violence and contributing to meaningful participation of all genders in the equitable, violence-free and sustainable management of forest resources at all levels, from the grassroots to the union level.

92 United Nations Security Council Resolution 1325 on Women, Peace and Security (2000), United Nations, New York

5. Conclusion

A FLEGT VPA negotiation has a two-way interaction on prospects for peace in Myanmar. On the one hand, if implemented without due care and consideration to the peace process and the inclusion of EAOs, it risks exacerbating the sense of marginalisation and exclusion that is felt by many in the ethnic states of Myanmar, which potentially risks undermining factors relevant for peace and, ultimately, fuelling further conflict. For example, a lack of representation, and/or misinformation about the FLEGT VPA process, could lead to the perception that the VPA favours one ethnic group, or political class, or business group, over others. This perception could breed mistrust among excluded groups, which could exacerbate existing mistrust, fuel conflict, and make the FLEGT VPA process, the peace process, and wider economic and political reforms, harder to implement. Therefore, it is essential that a conflict-sensitive approach should be taken in pursuing a FLEGT VPA.

On the other hand, the governance and trade in natural resources in Myanmar is a key issue in the peace process (and is a factor in local-level conflict dynamics), and the FLEGT VPA process offers an opportunity to engage multiple stakeholders in a process to introduce laws and reforms that strengthen good governance beyond the forestry sector and inclusive market structures that can contribute to sustainable peace in Myanmar.

The report has presented a matrix of key risk factors of FLEGT (as well as broader forest governance reform) which could be affected by conflict dynamics and may thereby have an impact on the VPA process, or ways in which the VPA may impact the broader conflict dynamics. Participation, communication, gender and community empowerment are all factors that, if not managed well, could lead to increased tension. Lack of transparency around the process and the decisions being made could lead to lack of trust in the process and other governance processes. However, if managed well, they could contribute significantly to building more positive relationships between the different ethnic communities, local and federal government, the private sector and armed actors. By regularly monitoring these risk factors, the ITF or MSG can avoid exacerbating conflict tensions, mitigate risks and support peace. Broad-based participation of civil society and ethnic communities, based on transparent two-way communication flows, will be key to achieving this.

This report has sought to present an analysis of the conflict dynamics related to forest governance, highlighting certain areas for follow-up discussion and monitoring, rather than making prescriptive recommendations at this stage. We see this report as a first step towards a dialogue process involving all the stakeholders to jointly identify the recommendations and next steps, to ensure that key stakeholders are actively involved in setting the agenda. This should be in parallel to the ongoing political dialogue framework discussions taking place under the formal peace process.

Annex: Research methodology

Research objectives

1. To improve understanding of how forest governance can address conflict risks through case study evidence and provide recommendations for good practice.
2. To identify ways in which the FLEGT VPA process can be most effective and conflict-sensitive, given the complex governance and conflict environment.
3. To develop a framework that helps link forest governance to peacebuilding; in other words, identify what peaceful forest governance could look like for Myanmar within the broader development context of Myanmar, specifically development and agricultural policies.

Methodology

This paper is based on a desk review and qualitative semi-structured interviews with a range of relevant stakeholders including forest-dependent communities, FD and MTE staff, CSOs and private sector stakeholders in Yangon, Nay Pyi Taw, Magway and Kachin between October 2016 and February 2017. A total of 20 key informant interviews with these stakeholders and four focus group discussions with forest-reliant community members were conducted, as listed in this annex, which details the research team, interview list and research questions. The analysis was further informed by insights and participant observation during the project workshops and discussions during the implementation of International Alert's FGMC-funded project 'Conflict-Sensitive Forest Governance'. Earlier drafts of the report were kindly externally and internally peer-reviewed by Hugh Speechly, U Myo Min, Salai Cung Lian Thawng, Kevin Woods, Art Blundell, Shreya Mitra, Markus Mayer and Phil Vernon. The analysis, opinions and any errors remain the responsibility of the authors.

Limitations of the methodology: The research focused on identifying and understanding the key conflict risks and impacts of the political economy of forest governance in a purely qualitative, indicative snapshot, with the aim of drawing clear recommendations to the ITF stakeholders regarding a FLEGT VPA process. The research did not involve a quantitative survey of current forest resources, timber trade dynamics or private sector activity. The report does not provide a comprehensive analysis of forest policy, timber legality, land issues, nor a comprehensive assessment of the peace process in Myanmar. Nor does the analysis claim to represent all views on these issues. Indeed, based on discussions with the ITF, this analysis specifically did not seek to include the perspectives of ethnic armed groups at this time. The analysis is not aimed at providing recommendations on resource sharing or other related considerations in reference to the ongoing political dialogues. There were also limitations in the interview methodology in that we did not interview EAGs, as directed by the ITF, which is planning a separate study on this ('Study on non-state [Ethnic] Armed Groups and FLEGT'), forest-reliant communities from EAG-controlled areas or direct conflict zones in Kachin or other states/regions, or representative samples from all conflict-affected areas due to restraints of access to conflict areas, time, language, and resources. A different methodological approach to collecting these views would be required and is planned by the ITF, which will present an important complement to this paper.

Research team

The research interviews were undertaken by two consultants:

National expert: U Htun Paw Oo, Chair of the Myanmar Forest Association and Vice-chair of the Ecosystem Conservation and Community Development Initiative (ECCDI), former Director, Nature and Wildlife Conservation Division and Forest Research Institute, Forest Department, Ministry of Forestry

International lead researcher: Jana Naujoks, Technical Adviser – Research and Gender, International Alert Myanmar

The research team consisted of the International Alert's 'Conflict-sensitive forest governance' project team, led by Project Manager U Saw Doh Wah and Project Officer U Naing Aye San under the overall guidance of the Country Director Robert Barclay.

Interview lists

Note: Some of the names have been withheld as requested by the research participants.

Date	Name	Organisation or village	Location	Interview	FGD
22/11/2016	Group interview, Myanmar Environmental Rehabilitation-Conservation Network		Yangon	1	
	Prof Dr Kyaw Tint	Chairman ECCDI and MERN			
	Aung Thant Zin	CEO MERN			
	Bobby	CEO Network Activities Group			
	Phyo Thu	Programme Officer, MERN			
25/11/2016	Interview with Myanmar Forestry Association (MFA)		Yangon	1	
	Htun Paw Oo	Chairman MFA			
	U Tin Aye	Secretary MFA			
25/11/2016	Interview with Myanmar Forest Certification Committee (MFCC)		Yangon	1	
	U Shwe Kyaw	MFCC			
21/01/2017	Interview		Yangon	1	
	Salai Cung Lian Thawng	Pyoe Pin Programme and ITF member			
30/01/2017	Interview with Palladium		Yangon	1	
	Hugh Speechly	Technical Advisor MONREC/Technical Director Palladium			
	Prof Kyaw Htun	FLEGT Facilitator			
30/01/2017	Interview with UNDP – REDD+ programme		Yangon	1	
	Franz Arnold	Technical Specialist			
	Khin Hnin Myint	National Programme Coordinator			
31/01/2017	Interview with RECOFT		Yangon	1	
	Dr Tint Lwin Thaug	Executive Director			
	Dr Maung Maung Than	Country Programme Coordinator			
	Daw Khin Moe Kyi	Training Officer			
09/11/2016	Focus group discussion and individual interviews with civil society		Nay Pyi Taw	3	1
	1 male	Free Asho Chin Group			
	1 male	Maygo Hua			
	1 male	Pa'O Farmers' Land Union			
	1 female	Maguire Asho Chin Youth Network			

Date	Name	Organisation or village	Location	Interview	FGD
22 – 23/12/2016	Focus group discussion with CSOs in Magway		Magway		1
	U Olar	Green Network			
	Kyaw Soe Aung	Mindone			
	Salai Yang Naung Tun	Nge Pe			
	Mai Pan Ye	Nge Pe			
	Aung Kyaw San	Gan Gaw			
	Thant Naing Win	Gan Gaw			
	Myint Thein	Hte lin			
	U Aung Win	Hte lin			
	U Aung Ko U	Sin Paung Wae			
	U Lwin U Maung	Sin Paung Wae			
	Kyaw Ko Ko Shein	Nge Pae			
	Aung Myo Thu	Kan Ma			
	Salai Soe Moe Aung	Nge Pe			
	Kyaw Soe Aung	Mindone			
	Aung Kyaw Sum	Gan Gaw			
	U Aung Win	Hte lin			
	U Myint Thein	Hte lin			
	U Kyaw Lin	Gang Gaw			
	U Zaw Min H	Hte lin			
Myat Thu Soe	Sa Toe Ta Ya				
17/01/2017	Group interview with Nyein Foundation Community Forestry staff		Myitkyina	1	
	Name	Organisation			
	U Are San	Nyein Foundation			
	U Khun Myat	Nyein Foundation			
	Aung Sain	Nyein Foundation			
	Lo Aun	Nyein Foundation			
	Sein Han Tway Aung	Nyein Foundation			
Peter Brang Shaung	Nyein Foundation				
17/01/2017	Focus group discussion with community forestry user group leaders		Myitkyina		1
	Name	Village name			
	Zing Hawg Brea	Briba			
	Braung Hleum	Briba			
	U D Khaung Dao	La Mying			
	U Ja La	Gui Rut Yawg			
	U Kam Shaung	Gui Rut Yawg			
	U Ting Chan	Shwi Nyorg Pin			
	U Lapa Khawg Laim	La Mying			
	U Zaw Li	Aung Mye (2)			
	U Gu tar	Wu Yan			
	U Maw She	Wu Yan			
	U Uren Zaw Aung	Nawng Hkai			
	Jan Losham Low Taung	Lom Bizaw Yang			
	Sq Ma Rip Sing Gong	Lom Bizaw yang			
Daw Roi Grawng	Labang				
18/01/2017	Field visit to Waing Maw		Gwi Rut Yang village	2	
	Discussion with community forestry management committee members				
	U Kam Shaung	Former Chairman of CFUG			
	Daw Ja Khar	CF Management Committee Members			
	U Zaw Naw	CF Management Committee Members			
	U La Taung	CF Management Committee Members			
	Interview with community forestry management committee members				
	U Maw She	Chairman of CFUG			
U La Khaung	CFUG Member				

Date	Name	Organisation or village	Location	Interview	FGD
19/01/2017	Focus group discussion with community forestry working group		Myitkyina		1
	Hka Dau	Matta			
	Ja Ing	Myanmar Kachin Baptist Association/ KBC			
	Peter Brang Shaung	Nyein Shalom Foundation			
	Peter Seng Kham	All Kachin Youth Union			
	Nhlam Hkun Naung	Uak Thun			
	Hkum Myat	Nyein Shalom Foundation			
	Mr. Khun Sai	Matta			
	Saya Yaw San	Kachin Conservation Working Group			
	Soe Naing Win	Kachin Conservation Working Group			
Ny Lin Maung	Kachin Conservation Working Group				
U Wunna	Kachin Conservation Working Group				
01/02/2017	Interview with Land Core Group		Yangon	1	
	U Shwe Thein	Executive Director			
03/02/2017	Interview with Flora and Fauna International		Yangon	1	
	Mark Grindley	Programme Manager			
03/02/2017	Interview with EcoDev ALARM		Yangon	1	
	Bawm Zung	National Programme Coordinator and CSO ITF Member			
06/02/2017	Interview with Promotion of Indigenous and Nature Together (POINT)		Yangon	1	
	Myo Ko Ko	Founder and Programme Officer			
06/02/2017	Interview with ITF private sector representatives: Myanmar Forest Products Merchants Federation (MFPMF)		Yangon	1	
	Dr Sein Win	President MFPMF			
	Oak Soe Paing	General Secretary MFPMF			
	Soe Maw	Vice Chairman			
16/02/2017	Interview with FD and MTE ITF Members		Yangon	1	
	U Kyaw Zaw	Director MONREC – FD			
	U Zaw Win	Assistant Director, MONREC FD			
	Dr Tin Tin Myint	Manager, MTE			
21/02/2017	Meeting with Communications Team from Palladium and EFI		Yangon	1	
	Iola Leal Riesco	European Forest Institute			
	Rutger-Jan Schoen	Communications Consultant, EU Delegations			

Research questions

Following are the overall research questions, which were tailored to each semi-structured interview and focus groups discussion depending on their sector, location, and involvement in this sector.

Introduction

International Alert is an international NGO working with people affected by violent conflict to help them find peaceful solutions to conflicts. Many forest-dependent people in Myanmar have been affected by conflict. We are interested in understanding more about the issues related to conflict and forests, including timber and land.

We appreciate that these are complicated and sensitive issues. If any question is unclear, or if you do not feel comfortable answering the question, please let us know.

How effective are the existing forest governance structures and mechanisms in Myanmar?

- What key challenges do you think the FD/MONREC face in managing forests?
- Why do you think there has been so much deforestation in Myanmar?
- Is illegal logging happening in your area? How is this affecting communities?
- Do communities have official land tenure or forest use rights from government or EAO?
- What customary practices are used to manage forests at community level?
- Do women and girls use the forest resources differently to men and boys? Do they participate in forest-related decision-making differently?
- What is the relationship between the communities and the MTE/private sector actors?
- What is the relationship between FD and MTE, or other government departments?
- What is the relationship between EAG forest departments and FD?

How does conflict affect forest use by local communities, forest management and forest governance?

- Conflicts arise when people think they have different, incompatible interests. Across the different areas in which you work, what conflict is there over forest resources?
 - Is there conflict between communities and private sector, or FD, for example?
 - if so, how do people try to resolve this conflict?
- How have communities been affected by conflict? Have local forest-using communities been displaced by conflict or have displaced people come to the area? What is the impact of this in relation to forest use and management locally?
- Has conflict affected women and girls' forest use and access differently to men and boys? In what way?
- Can you give me any examples of how disputes related to forests or land are resolved peacefully? For example, do people use court cases for land claims? How are disagreements resolved in CFUGs? How about in mixed-authority areas?
- Do you think forest or land issues will be addressed in the peace process – if so, how?

What risks and opportunities are there in reforming forest governance/management, through a process like FLEGT VPA?

- What are the key barriers to effective and inclusive reform or improved forest governance? What is the way forward?
- Do you think the FLEGT VPA process can lead to better FG in Myanmar? How?
- What challenges do you think the VPA process faces in Myanmar? (inclusiveness? FG?)
- Do you think the FLEGT VPA process is related to the union peace process, or not? Should it be? What are the challenges?
- Are there any stakeholders not included in the FLEGT VPA so far? If so, how can they be included?
- How can NGOs (including ethnic organisations) work with the FD to improve FG?

International Alert

071/072, Building C, Shwe Pyi Aye Condo
Shwe Pyi Aye Street, Sanchaung township
Yangon, Myanmar

Tel +95 (0)1 230 4781

myanmar@international-alert.org

www.international-alert.org

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