Forest law enforcement governance and trade in Myanmar

A conflict-sensitivity analysis

Summary

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Summary

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Acknowledgements

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Abbreviations

CSO   Civil society organisation

EU   European Union

FLEGT   Forest Law Enforcement, Governance and Trade

ITF   Interim Task Force

MSG   Multi-Stakeholder Group

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

This publication is a summary version of a longer research report, consisting of the executive summary of the research findings and the explanation of the 'Conflict Factor Matrix' tool developed therein.

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, the full 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.

To put the FLEGT VPA process in context in Myanmar, the full report 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

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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 European Union.

way in Myanmar, in order to avoid adverse impacts. A peacebuilding approach could look to achieve incremental governance improvements that can 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 full report 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.

> "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 civil society ITF member, Yangon, February 2017

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.

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, ethnic armed groups, civil society organisations – 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.[1] 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.[2] 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 a 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.

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1   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

2   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

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.

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

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.

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,[3] 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.[4] 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.

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 European Union (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

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3   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.

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

A truck transporting felled trees, Kayah state, 2016

communications strategy. These are a good start (and have been effective in the areas reached)[5] 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.[6] 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.[7]

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

6   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.

7   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

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 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)[8] 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

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

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.

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 case studies in the full report 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 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.[9] The election of the National League for Democracy 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).

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".[10] 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.[11]

The case studies included in the full 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 Forest Department 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.

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10   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

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

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