



Democratising timber: An assessment of Myanmar's emerging 'Forest Law Enforcement, Governance and Trade' (FLEGT) process[☆]



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ARTICLE INFO

Article history:

Received 10 April 2013

Received in revised form 8 August 2014

Accepted 3 September 2014

Available online 7 October 2014

Keywords:

Myanmar

Burma

Timber

Forest

Governance

Policy

ABSTRACT

Amidst Myanmar (Burma)'s political reform process the forest sector remains an important area awaiting democratisation. Forests historically covered over 50% of the countries' land area, and have been of major importance for both local livelihoods, the national economy and 'ecosystem services' such as biodiversity and catchment hydrology. The export timber trade has however played a decisive role in determining forest sector policy and indeed has exerted a significant influence on overall national politics since the colonial era began and continuing to the present day. Under the post-independence military dictatorship the timber trade involved ever more unsustainable plunder, particularly from the 1970s, rapidly degrading forests. But now reform of Myanmar's timber trade is on the national political agenda, reform which will be crucial for the Nation's transition towards an equitable and sustainable development trajectory.

New legislative measures within consuming countries, including the EU, to challenge illegally sourced timber and wood product supplies have begun to exert a catalytic influence on Myanmar's forest policies, and converging with domestic civil society pressures have led in 2013 to the initiation of a formal 'Forest Law Enforcement, Governance and Trade' (or FLEGT) bilateral process between the European Union and the Government of Myanmar. This paper presents an analysis of the nature of Myanmar's current timber trade and of the challenges and opportunities for reform, particularly in relation to the emerging FLEGT process. We argue that there are eight key aspects of Myanmar's timber trade overdue for democratic reform, which the FLEGT process puts into sharp relief: 1) resolution of ethnic conflicts primarily in upland forested areas, 2) reform of forest tenures; 3) a review of overall forest sector policies and the appropriate place of timber production; 4) reform of military era state timber institutions, 5) a return to silviculturally based sustainable forest management; 6) restructuring of the timber industry away from 'crony' domination; 7) measures to combat illegal logging and assure the rule of law; and 8) citizen participation in policy development and implementation.

This 'shopping list' of democratic reforms implies a major and undoubtedly difficult process ahead, and success is far from certain. From 2013 promising initial progress has already begun on several of these areas. However, although the Government of Myanmar may give the international audience the impression that it is rapidly democratising, on the ground only limited substantive changes are yet experienced in rural areas, and resistance to reform persists amongst the military and their commercial partners. A spectrum of possible outcomes for forest sector reform may be foreseen, from mere token improvements on the dictatorship-era 'business as usual' to a thorough realisation of democratic aspirations. The outcome will be determined by the balance of power between civil society, public representatives, timber merchants particularly the powerful so-called 'crony' and proxy military business interests, and the intermediating powers of Government (including a significant rent-seeking 'shadow state'), the EU, and the international markets that drive the demand for Burmese timber. The extent to which the FLEGT process can reinforce the wider democratisation process may be a decisive factor.

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[☆] This article belongs to the Special Issue: Illegal logging, legality verification, and new modes of governance.

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1. Introduction

This paper attempts to analyse the key aspects of reforms required to 'democratise' Myanmar's timber trade, and the political-economic interests contributing or obstructing reform. The main aim of this

paper is to assess the prospects for reform of Myanmar's timber sector in light of the emerging FLEGT process, and to apply a political ecological analysis to the ways in which the political–economic power balance will determine the outcomes. We use aspects of political–ecological analysis to understand the nature and dynamics of the contested reform process: firstly structural explanations for the ways in which different groups gain access to resources – in this case forests and timber, and who gains and loses through these processes; and secondly, a critical analysis of how politics relate to the exercise of power and practices on the ground. (Springate-Baginski and Blaikie, 2007: 10).

Methodologically, the often opaque and generally illicit nature of Myanmar's present timber trade makes primary data collection extremely difficult, even hazardous. There is also limited government data, and what there is, is systematically misleading (EIA, 2014). Therefore for this overview paper we necessarily rely on secondary sources and anonymous interviews (conducted in Spring 2013), along with the personal experience of the authors.

To help clarify the complex and fluid contemporary situation this first section sets out the overall political and historical context of Myanmar's timber trade.

1.1. The context

Myanmar has been endowed with extensive and valuable forest resources, the majority of the country contains a wide range of forest types providing a range of benefits: biodiversity and ecosystem services, livelihoods and commercial trade (Htun, 2009). However from at least as early as 1826, when British colonial occupation began, these various benefits have gradually been marginalised by a central focus on timber. Myanmar's highly valued timber, particularly teak has incentivised and fuelled colonialism, territorial conflict and military repression. Indeed the enduring conflicts between the Myanmar Armed Forces and various ethnic groups which continue in upland forested areas to this day are partly timber resource conflicts. (Keeton, 1974; Bryant, 1997; Global Witness, 2009).

Since the military dictatorship period began in 1962, and particularly since 1988, a powerful oligarchical nexus of political and economic interests has formed around the timber trade. There are two sorts of business interests which have come to dominate the trade under institutional arrangements that facilitated the increasingly destructive and kleptocratic plunder of the nation's 'natural capital'. Firstly there are a handful of so-called 'proxy' military companies, which are private sector companies owned and controlled by senior military figures. Secondly there are a handful of private sector businesses functioning under explicit military patronage and benefiting from preferential treatment, often with family connections to senior military figures. These are commonly known in Myanmar and internationally by the colloquial term 'crony' companies, the term we use here, following numerous academics on the subject, to minimise ambiguity (see for instance Myoe, 1999, 2009; Jones, 2012).

The term ['crony'] is widely applied to most significant businessmen, because virtually no significant business could prosper without close links to the regime. A smaller subset ... were selected as 'national entrepreneurs' [and] were systematically favoured by state patronage and now own Myanmar's largest conglomerates ... Although no data exists on the scale of the 'cronies' dominance many politically and business leaders interviewed suggest that they control a majority of the country's wealth ...' Jones, 2012

Over the military dictatorship period, whilst the dictators themselves have accrued vast fortunes, Myanmar's human development has plummeted, from being in the 1930s one of the most promising South East Asian societies to becoming one of its least developed, experiencing severe poverty rates (UNDP, 2011), much of the poverty coincidentally being in ethnic upland forested areas. Some estimates

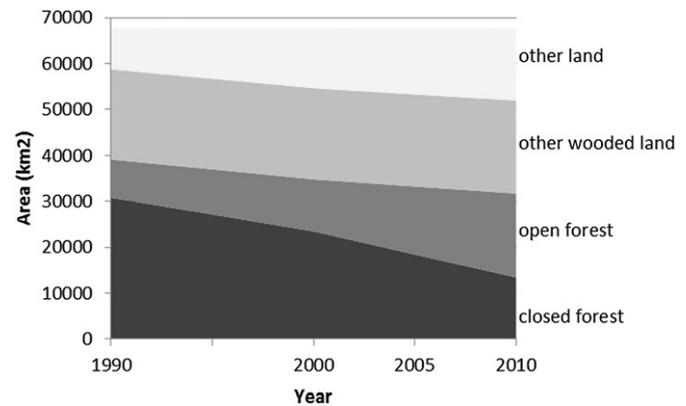


Fig. 1. Land use change in Myanmar (FAO, 2010).

put the number still displaced by conflicts (mainly in upland forested areas) are over four million people.

Myanmar's focus on timber extraction to the exclusion of other considerations exemplifies what Holling and Meeffe (1996) called 'pathological natural resource management' in which preoccupation with only one ecosystem product undermines both provision of other products and services, but also the viability of the ecosystem itself. Myanmar's timber supplies have ineluctably dwindled in quantity and quality, and Myanmar has joined the global frontrunners in deforestation and forest degradation rates (Leimgruber et al., 2005; FAO, 2010). Forest extent has declined from an estimated 41,195 km² in 1975 to 31,773 km² in 2010 (a decline from over 60% of land area to under 47%), and dense forests (i.e. more than 40% canopy cover) have declined even more rapidly, from being the largest land use at around 45% in 1990 to 18% in 2010. (See Fig. 1.)

1.2. Myanmar's recent democratisation process

Myanmar has been undergoing a gradual, although as yet partial, democratisation process in recent years, initiated by relatively moderate elements in the military in conjunction with civil society. This began with the new 2008 Constitution, the release of many political prisoners (although not all), the legalization of political parties in 2010, and the loosening of media controls in 2012. The 2011 by-elections saw many candidates of the National League for Democracy (the main *Bamar* ethnic majority opposition party), including its leader Daw Aung San Suu Kyi, as well as ethnic party representatives, win 109 seats (just under 25%) in the national *Hluttaw* (lower house of parliament) as well as a similar proportion of seats in the upper house and regional assemblies.

However, the country remains far from fully democratic: under the 2008 Constitution the military retain an unelected 25% of Parliamentary seats, and in alliance with the predominantly 'ex-military' and 'crony' United Solidarity and Development Party (USDP) politicians the military still command a large Parliamentary majority. Furthermore the national budget is not yet transparent and the military enjoy a disproportionately high allocation, exacerbating ethno-political tensions. Several long-running regional armed conflicts are still continuing, with frequent military offensives against ethnic groups despite ceasefire agreements and the army appears to exercise significant autonomy from the political leadership (International Crisis Group, 2012: 9¹).

Full national parliamentary elections are scheduled to be held in late 2015. If 'free and fair' they promise a dramatic reversal in political power, but lack of manipulation of the election is far from certain. Recent communal violence against Muslim communities seem partly explained as a 'strategy of tension': covert provocations by hard-line

¹ The International Crisis Group is an international policy and analysis think-tank.

military elements in order to exacerbate social divisions, polarise nationalist and Buddhist political identities in the run-up to the 2015 elections, and legitimate the need for ‘security’ interventions.

Although the political process has been relatively encouraging to date, there has not yet been an equivalent democratisation process for the structure of the economy. The economy remains dominated by two related groups whose positions were established and continue to be maintained through preferential military patronage: firstly a small oligarchical clique of so called ‘cronies’ (e.g. the Kanbawza Group, Htoo Trading Corporation, Max Myanmar, Asia World, Dagon Trading), and secondly directly military-owned holding companies, foremost of which is the Union of Myanmar Economic Holding Limited (UMEHL) known as *U Peing*. Despite these groups being previously subject to targeted international sanctions, they still retain dominance of the economy, including the timber export trade (International Crisis Group, 2012). The economic democratisation process is possibly even more complex and challenging than the political process. The so-called ‘crony’ and ‘proxy’ groups are seeking to retain and extend their political influence as the political formations evolve, as indicated recently by the surprising revelations of substantial ‘donations’/patronage payments being made by leading ‘crony’ businessmen (Mr Tay Za, Mr Zaw Zaw, and Mr. Kyaw Win) to the National League for Democracy, payments defended by Daw Aung San Suu Kyi herself (Irrawaddy, 2013).

1.3. The problem: democratising timber

Whilst the focus of the political and economic reform agenda has mainly been at the ‘macro’ national level – in pursuit of realising democracy rights and equity, there is a need to translate this process into specific sectors on the ground. The governance of timber and the wider forest sector are fundamental issues in Myanmar’s democratisation process for several reasons, two stand out in particular: firstly, timber has been one of the country’s major primary industries and export revenue earners: In 2007–08 timber was the military government’s fourth most important export commodity, earning US \$538 in legal foreign exchange (Global Witness, 2009). Myanmar is estimated to produce about 283,000 m³ of teak and 1.98 million m³ of other hardwood annually (ETTF, 2012), revenues from which have largely been diverted from benefiting citizens. Secondly, the access to and extraction of timber by the military business partners has been a key grievance for ethnic groups, fuelling civil conflict in ethnic areas:

“Control over natural resources is a major cause of conflict in Burma’s ethnic areas, where the majority of the country’s economically viable natural resources are located,” (BEWG, 2011) “What the Kachin Independence Organisation is trying to achieve is political rights... the KIO wants to govern Kachin State autonomously within the federal union. It wants the right to administrate the Kachin people and what it considers their natural resources. ... Conservationists and the KIO say the Tatmadaw has long been in cahoots with the [timber] smugglers. They describe the army’s communiqué [justifying attacks as motivated by the wish to reduce illegal logging] as a flimsy pretext for controlling a lucrative border crossing while denying the KIO a major revenue stream at a pivotal time in peace negotiations. (National Geographic, 2014). Clashes in Putao Township reportedly took place in a densely forested area known as Nga Kha Akar. Burmese tycoon Tay Za [founder of Htoo Trading Co Ltd] allegedly has been granted a 100,000-acre (40,000 hectare) logging concession ... that would allow him to cut down vast swathes of valuable, pristine teak forest.... The government and the BGF troops attacked the KIA to secure the area where Tay Za will do logging,” claimed the KIA officer. This area is historically very important for the Kachin people, so the KIA will resist the government troops. We won’t pull out,” he said, adding that ethnic Kachin villagers wanted to preserve the large hillside forest. “The fighting might even damage the peace deals between the KIA and the government,” the officer said” THE IRRAWADDY Monday, September 2, 2013

There is however a gathering mood for reform of the ‘crony’ dominated timber trade: government pronouncements regarding forest sector policy reform are becoming more frequent, and a new Forest Law has been in preparation since 2012. Social movements have been turning to the timber issue and many MPs, ethnic groups and civil society groups are beginning to question the non-democratic, illicit and opaque arrangements²: *Will civil wars taking place in forested areas be resolved equitably? Will rural citizens get rights to their customary local forests and shifting cultivation lands? What should forest management objectives be, who should decide and can they encompass local livelihoods? Will timber production and the associated trade become managed for the national interest rather than for the benefit of opportunistic individuals? Will Myanmar respond to recent legislative reforms in the major international markets to combat the illegal timber trade with a robust system rooting out abuses and corrupt practice to ensure access to those markets?*

Although the timber trade and forest sector offers a major opportunity for the democratisation process and national reconciliation, if the democratic environment enabling civil society participation in reform is not created it may perpetuate and even exacerbate social divisions and conflict, even threatening the national reconciliation process.³

To what extent can the recently initiated bilateral EU FLEGT process contribute to and help catalyse this democratisation of the timber trade? The rationale seems compelling: the EU’s market rates for Myanmar’s timber are substantially more attractive than those offered by Asian markets, but in response to illegal logging and the associated trade, recent EU legislation that came into force in Spring 2013 decrees that placing illegally harvested timber and products on the European markets is prohibited. The European Union Timber Regulation (EUTR) requires that EU operators who place timber and wood products on EU markets must exercise due diligence in ensuring their sources are legal, and that traders who buy or sell timber and wood products already on the market must ensure all information about their suppliers and customers so that there is a transparent chain of custody.⁴ The EU Forest Law Enforcement Governance and Trade (FLEGT) Action Plan⁵ includes a range of provisions including a platform for bilateral agreements between producer countries and the EU to develop a robust and transparent legality system and to address forest governance issues. Called Voluntary Partnership Agreements (VPAs), these agreements are negotiated over time and create a political space for all stakeholders to be included in defining what legality should mean, and how the forestry sector should be reformed.

There is already a vocal interest amongst Myanmar’s timber traders to go through the EU FLEGT process as rapidly as possible⁶ in order to access the European market. Initial talks between the European Union and the Ministry of Environment, Conservation and Forestry (MOECAF) have been held. An export ban on unsawn logs came into force in April 2014,⁷ and there have been pronouncements from MOECAF and the President’s Office endorsing the resumption of sustainable forestry principles, specifically a return to harvesting only within Annual Allowable Cut (AAC) levels instead of revenue-based targets regardless of the forests’ productivity.⁸ VPA’s are not quick fixes, they are a mechanism

² The civil society network established under the Extractive Industries Transparency Initiative (EITI) for instance has been branching out from lobbying on gas in 2014 to hold national workshops examining timber.

³ The above cited case of Tatmadaw protected ‘crony’ timber harvesting in Kachin in 2013 has already demonstrably destabilised the peace process there.

⁴ http://ec.europa.eu/environment/eutr2013/index_en.htm.

⁵ <http://www.euflegt.efi.int/files/attachments/euflegt/01flegtactionplanenfinalen.pdf>.

⁶ Personal correspondence U Barber Cho, Chair, Myanmar Timber Merchants Association March 2013.

⁷ Mizzima journal, 2013 April 1: <http://www.mizzima.com/business/natural-resources/9163-no-hard-sell-on-myanmar-timber.html>.

⁸ Estimated Annual Allowable Cut levels are published in an official publication called ‘Forestry’ MOECAF, 2011.

for deliberative reform and do take time. Central to a new legality system will be third party independent monitoring involving credible civil society participation and oversight. Without a robust monitoring system and clear transparency of its chain of custody, Myanmar will still be considered a 'high risk' country for European importers. The VPA process provides the mechanism for all of these issues to be discussed, tested and implemented in a coherent manner.

2. The history, nature and current status of Myanmar's timber trade

2.1. The historical context of the timber trade

Making sense of Myanmar's current juncture requires understanding its historical origins. There is limited information on the role of timber in Myanmar prior to the Colonial era, although an established timber and shipbuilding industry is reported in various sources. The extensive and high quality timber resources themselves were a motivating factor for colonisation, and during the Colonial era (1826–1948), after an initial period of unregulated private plunder a Forest Department was established in the 1850s under the first Inspector General of Forests, Dietrich Brandis. A colonial forest estate was appropriated from the most valued accessible forests not under territorial conflict, an appropriation which widely involved extinguishment of local people's rights. In this estate a systematic timber management regime was gradually developed (Bryant, 1997) based on the pursuit of sustainable yield harvesting. Brandis developed the 'Burma Selection System' in which continuous cover was maintained and only mature trees were selected and removed. Through the expansion of this system Burma became the Worlds' major exporter of teak:

Burmese teak dominated the world market. Just prior to the Second World War ... Burma provided 85 per cent of world teak exports (Gallant, 1957, 2, cited in Bryant, 2009)

After the extremely destructive Second World War, Burma gained independence in 1948, and enjoyed a brief phase of democratic government before the military *coup d'état* of 1962. Despite the new military government pursuing an autarkical 'socialism in one country' policy, export revenues from teak production remained strategically important. Extraction gradually escalated as revenue targets superseded sustainable harvesting principles, and by the 1970s the breakdown of sustainability began to become evident (Gallant, 1957). After the new SLORC military regime grabbed power in 1988, they introduced an economic liberalisation policy on the Chinese model. Logging concessions in conflict areas were issued to Thai companies literally days after taking power, setting the pattern for their subsequent rule.

Since 1988, the ruling military regime has controlled most of the forest resources within Burma and revenue derived from the timber trade has helped the regime maintain its grip on power. (BEWG, 2011: 20).

Unsustainable extraction, rather than being moderated, was accelerated further, and forests became exploited to the point of exhaustion. Myanmar's timber production had doubled in the decade to 2003 (ITTO, 2005), helping fund a doubling of the size of the army and increasing arms purchases. Ceasefire agreements with ethnic armed groups over the 1990 also allowed the extension of timber extraction into hitherto inaccessible areas, facilitated by both sides of the conflicts:

After the ceasefires in the early 1990s, new areas bordering Thailand and China were opened up for uncontrolled logging in one of the world's most exceptional biodiversity hotspots. Since then, the armed ethnic groups have been able to finance their side of the conflict through partial control of the mostly illegal border trade. China and Thailand have supported the insurgents, often in exchange for access to natural resources, including timber. (BEWG, 2011: 20).

2.2. Is it legal? The de facto export timber trade process

Myanmar's export timber trade process since the 1970s can be characterised as follows⁹: the military government directed the State Timber Extraction Organization (or State Timber Board, after 1989 renamed the Myanmar Timber Enterprise or MTE) to generate international revenue earnings according to an annual target. The MTE (or its forerunners) would then issue leases to private sector contractors to harvest and supply them with timber up to this target. At this stage huge illicit payments have been said to change hands to informally secure the licenses.¹⁰

In the forest plots in question, the Forest Department field staff has been expected to identify and mark trees suitable for harvesting. However, since forest inventory-based harvest planning has actually not been practiced for some time, inventories themselves have not been maintained up-to-date, and so became a poor guide to stock levels. Contractors should then fell and extract only the marked timber. However they are reported to commonly extract far more than the license permits, both from within felling coups and also, it is alleged, from non-prescribed areas. Forest Department field staff report that they are aware of contractors' illegal felling practices but lack the effective power to enforce that *only* marked trees are harvested. One reason for this is that under the SLORC FD field staff were disarmed – so they lack firearms to defend themselves in case of a potentially violent difference of opinion with (often armed) contractors.

It is widely reported that after contractors have felled trees, subsequently non-contractor timber cutters often use the established access routes into the forest to extract any lower value remaining timbers for domestic markets (which have until recently lacked official timber allocation).

Contractors transport the timber to depots where Forest Department staff are obliged to hammer-mark all the timber, providing *ex poste* notional legality even though the source and whether the felling was according to the terms of the license cannot be checked – resulting in a form of timber 'laundering'.

The timber may then be exported: both the MTE and private contractors may export teak, according to regulations, and official MTE timber is exported through Yangon port, almost entirely as unsawn logs (although log export was stopped in March 2014, and there is at the time of writing a rapid expansion of processing facilities in the country).

Recent analysis comparing officially reported export volumes and importing country volumes indicates a massive anomaly: of reported internationally traded Myanmar timber volumes during the period 2000–2013, only 28% was officially reported as exported from Myanmar, indicating almost three quarters was exported on a systematically illicit basis (EIA, 2014), representing an estimated value of \$5.7 bn lost to the nation. It is no surprise that the MTE remains on the US blacklist for institutionally corrupt trading companies.

There are two main variations on this pattern. Firstly, forest reallocation for non-forest use (e.g. agri-business plantation) has led to extensive forest clearances in upland areas, providing a pretext for generating 'conversion timber' even if the land is not subsequently used. This timber will probably have contributed to the 'official' exports, and some analysts guesstimate this may contribute as much as 50% or more of contemporary exports (Woods and Canby, 2011) although it is so difficult to know that the margin for error is inevitably very large. Second, in conflict areas insurgent groups sell either licenses or the timber itself to foreign timber traders, particularly to Chinese traders in Kachin (Mizzima, 2013; EIA, 2012; Woods, 2011; Global Witness, 2009). In the past MTE has also sold licenses in this way, e.g. in Kaya state to Thai contractors (EIA, 2012).

⁹ Based on anonymous interviews with a range of merchants and government staff respondents.

¹⁰ Personal correspondence – anonymous timber merchant.

A revealing illustration of just how dysfunctional Myanmar's timber trade remains came in a recent news report:

“Ethnic Kachin rebels have fought deadly gun battles with the Burma Army and a government-backed militia this weekend in a frontline area near Putao, a town located in northern Kachin State, a rebel officer claims. The clashes occurred despite ongoing ceasefire talks between Naypyidaw and the Kachin Independence Army (KIA). The fighting broke out on August 31 at 6 a.m. It lasted three hours. Two government troops were killed. Clashes in Putao Township reportedly took place in a densely forested area known Nga Kha Akar. Burmese tycoon Tay Za [founder of Htoo Trading Co Ltd] allegedly has been granted a 100,000-acre (40,000 hectare) logging concession here by the government that would allow him to cut down vast swathes of valuable, pristine teak forest.... The government and the Border Guard Force troops attacked the KIA to secure the area where Tay Za will do logging,” claimed the KIA officer. This area is historically very important for the Kachin people, so the KIA will resist the government troops. We won't pull out,” he said, adding that ethnic Kachin villagers wanted to preserve the large hillside forest. “The fighting might even damage the peace deals between the KIA and the government,” the officer said” THE IRRAWADDY Monday, September 2, 2013.

To summarize, Myanmar's export timber trade, including ostensibly 'official' export timber, is likely to have been illegal in the terms of Burmese statutory law for many years, and probably continues to be so to a large extent, due to the reported prevalence of four mutually reinforcing malpractices:

- 1) the allocation of licenses to favoured contractors involving bribes;
- 2) contractor felling illegally exceeding the license agreements, in volume and source;
- 3) timber reaching depots and export consignments being of opaque provenance, and likely to have been mixed with the large volumes of timber known to be felled illegally, for instance in conflict areas;
- 4) massive 'off the record' timber export flows through formal channels as shown by discrepancies between official timber export volumes and international trade figures. Such off the record flows must necessitate coordinated and institutionalised corrupt practice by those involved in the timber value chain (whether voluntarily or

under duress), particularly forest department staff, contractors, MTE staff, port authority staff and police.

Other studies have reached the same conclusions: the WRI concluded that 'most of [Myanmar's timber export] trade is illegal.' (Brunner et al., 1998), and in 2013 the EU concluded: *almost all exports of timber from Burma are likely to be illegal....* (EU, 2013).

As with any study of covert behaviour specific claims may be disputed without tangible evidence, which is inevitably hard to come by. However the evidence from EIA 2014, based on reliable international trade statistics, in incontrovertible proof that corruption is the timber trade has been institutionalised at an aggregate level in Myanmar, the only dispute can be over the precise mechanisms and culpability.

2.3. The pattern of Myanmar's timber export trade

Sanctions had prohibited direct export of Myanmar timber to Europe and the US since 1989, and Myanmar's major export markets were China and more recently India, which has become the main buyer. Fig. 2 below, (EU, 2012) shows that India imported almost 50% of the logs which importing countries reported as imports from Myanmar during 2010. India has become the destination for possibly as much as 80% of Myanmar's log exports (although Yangon based Indian merchants say a significant fraction of Indian imports are re-exported to Dubai for the Middle East market). Fig. 2 below shows how despite fluctuating volumes the values have been growing to become over \$1 billion. Grossly unsustainable rates of logging during the previous military government have caused the quality of timber being exported to decline and have be a key factor prompting the current government to propose a log export ban starting in 2014.

3. Will FLEGT in helping catalyse democratisation of the forest sector

The European and US timber markets have historically offered price premiums for tropical timber, compared to other markets. But this premium, in the context of an unregulated international timber trade, has driven illegal harvesting, with the origin of raw materials often unclear. Recognising that Europe shared the responsibility for illegal logging within producer countries due to its demand for tropical timber, EU based civil society embarked on a campaign for legislation to prohibit

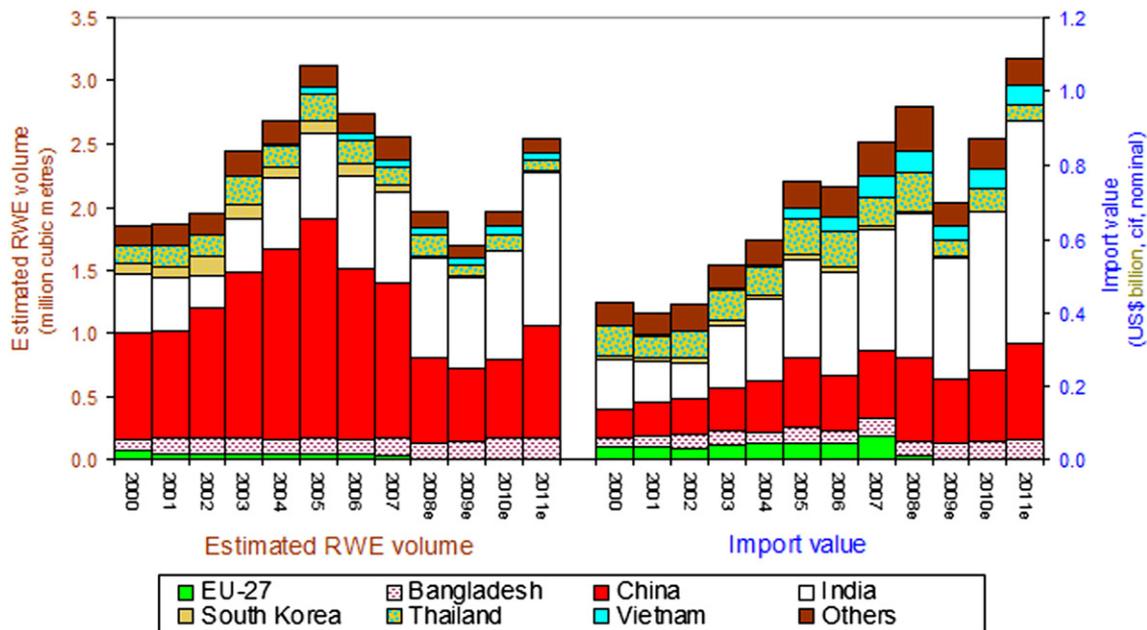


Fig. 2. Trade in timber from Burma (Myanmar) EU 2012.

the import of illegally sourced timber and wood products in the 1990s. This campaign, eventually supported by the private sector and European member states, resulted in the adoption of the EU FLEGT Action Plan in 2003. In 2008 the EU FLEGT Regulation was adopted, controlling the import of timber into the EU from countries that have entered into a Voluntary Partnership Agreement (VPA). Producer countries are able to import timber outlined within their VPA to the European markets with FLEGT licences, which provides the assurance that the timber has been legally harvested. On March 3, 2013 the European Union Timber Regulation (EUTR) came into force, prohibiting the placing on EU markets of illegally harvested timber and products derived from such timber; and requiring EU traders who place timber products on the EU market to exercise 'due diligence'.

The FLEGT principles put the fundamental problems of Myanmar's forest sector into sharp relief: timber from Myanmar could command far higher prices in EU markets, but it is currently considered 'high risk' for European traders. Without a transparent chain of custody verified by a robust system that includes independent monitoring by civil society (as currently being implemented in Indonesia the first country in SE Asia to agree to a VPA) European traders risk breaking the current EUTR.

With EU sanctions currently suspended against Myanmar's timber a space has been created for Myanmar's timber merchants to gain direct access to lucrative European markets. However, with the EUTR now in force access would require a programme of reforms in order to abide by European Law, and Myanmar's timber merchants are therefore already asking what necessary reforms are required to satisfy the EU.¹¹ Scholars and practitioners feel that such a reform programme would at minimum require: 1) a timber legality assurance system (TLAS) and chain of custody, 2) credible independent monitoring mechanisms, and 3) effective governance: rule of law, field enforcement, and anti-corruption measures.

Whilst these reforms are urgently needed and will undoubtedly be challenging to achieve, stakeholders and scholars assert that to address Myanmar forest sector's profound structural problems broader efforts are necessary. Reforming the legality of the timber trade without addressing its underlying non-democratic nature would neither fulfil citizens' democratic aspirations nor have lasting impact and political stability. With democratisation emerging after almost half a century of military dictatorship and more than a century of colonial disenfranchisement before that, the task of social and institutional reorganisation is inevitably profound. Effective forest sector reform therefore demands a fundamental programme, in which the FLEGT process can play a necessary part, but is not in itself sufficient. At this critical juncture in Myanmar's history structures may be set for decades to come, so a broader democratizing reform is needed to achieve principles of citizenship, rights, equity and sustainability in forested landscapes. One of the most valuable aspects of the FLEGT process is its potential catalytic role in initiating this process: the prescribed EU VPA process requires full stakeholder participation in negotiations, involving civil society organisations (CSOs) and political representatives from parliament and along with the private sector and the bureaucracy from the earliest stages. CSOs therefore must have a seat at the table, setting an important precedent for inclusive democratic policy development in all sectors.

4. The democratic reform agenda for the timber trade

For such a democratising overhaul, we review key elements of a reform programme that a variety of stakeholders asserted need to be addressed:

1. Conflict resolution,

2. Tenure reform
3. Forest sector review
4. Reform of the state forestry institutions
5. A return to silviculturally-based sustainable production
6. Restructuring of the currently monopolistic timber industry
7. Combating illegal logging and enforcing the rule of law
8. Civil society participation

We discuss these in detail in the section below.

4.1. Conflict resolution – whose timber?

As forested landscapes cover around half of the country, and because many of the areas where timber remains are conflict areas, conflicts in hill areas are to a greater or lesser extent conflicts over timber resources, and therefore it is impossible to realistically envisage democratically legitimate timber harvesting without a just peace in these areas. To proceed with timber trading, especially at increasing prices, without resolving conflicts but would inevitably exacerbate these conflicts, as competition for the timber in these areas:

"Without genuine multi-ethnic participation and a sound regulatory framework, Burma's environment will continue to be a source of conflict" (BEWG, 2011)

Conflict resolution processes are needed across forested areas, and especially in on-going conflict areas of Kachin, Shan, Kayah, and current ceasefire areas of Kayin and Mon. A constructive forest sector reform process could enrich peace negotiations, improve the democratic environment and help mitigate some of the risks to the overall reform process. Peace will require political decentralisation, and, for the forest sector, decentralised forest objective setting and management, and revenue control (according to the provisions of the 2008 Constitution), rather than reassertion of centralised territorial controls involving the military. Democratisation of the forest sector would be an important way to address grievances as part of reconciliation, and promoting a democratic timber trade would be a critical pathway to support the wider democratisation of the nation both for national and regional development. This would create the foundation for good forest governance.

4.2. Tenure reform – whose forested lands?

The current colonial era forest tenure arrangements have benefited the state but often at the expense of local people, who lost livelihood access through both restriction of rights (especially for swidden cultivators) and changes to the forest ecology. Forest tenure and rights must be reformed to acknowledge the rights of local people in forest and forest agriculture interface areas. This must be included before planning timber production or performing harvesting in forest areas. Myanmar's land tenure system is a relic of the colonial era, subsequently modified by the military regime, and due to the numerous injustices and lack of recognition of customary tenures, it needs an overhaul before actual land use choices can be considered. Such democratisation of land tenure would necessarily legitimate the current livelihood-oriented local land uses in forested uplands, particularly (but not only) strengthening the tenure security for upland shifting cultivators and especially their customary tenure institutions (FSWG, 2011). It would require implementation of individual and collective and customary tenure models (e.g. hereditary ethnic domains, village common property and so on). Recent legal reforms, including the Farm Land Law 2012 and Vacant, Fallow and Virgin Land Law 2012 have however failed to incorporate shifting cultivators, and increased the ease for large scale agri-business concessions. Only once citizen's de facto land occupation and livelihood land use is recognised, should management of the remaining forest estate be considered. Additionally, the process of reviewing tenure must

¹¹ Personal correspondence – U Barber Cho, Chair Myanmar Timber Merchants Association (March 2013).

ensure community participation: currently local communities are not involved in official decision making and management of areas in which they live.

In 2013 the President's Office announced that occupants of reserved forests without title would indeed be granted tenure, and the implementation of this initiative by the Forest Department has begun in 2014, estimated to affect 0.8 million acres.

4.3. Forest sector review

The timber trade is but one element of the forest sector, but under the colonial and military regime it came to predominate as the primary consideration in forest management. Currently, as Myanmar's society strives for democratisation, timber production as a forest management objective needs to be put back into context as one amongst a range of objectives, and the processes of management objective setting reviewed: There is therefore a need for a national sectoral policy review, based on a participatory process including CSO's, and communities, in order to consider the full spectrum of forest management objectives, such as livelihood use and non-timber forest product (NTFP) production, ecosystem service provision and conservation. Chaotic and non-transparent spatial planning often driven by corrupt practices has been driving extensive clearing of natural forests outside of the Protected Forest Estate. In particular, much forest conversion is occurring driven by agri-business that are currently acting with impunity to even the minimal existing regulations. Furthermore, conversion of land is often used to access the forest for 'conversion timber' and subsequently the proposed new land use is often not practiced. Although civil society and parliamentary groups are already working together on this agenda, there is an urgent need for inter-ministerial policies in order to preserve forests and plan for their integrated management.

Beyond FLEGT there are a number of additional pressing forest sector policy priorities, for instance the promotion of Community Forestry (Tint et al., 2012) and 'Reduced Emissions from Deforestation and Forest Degradation' (REDD) which need strategic development in a coordinated manner, and which could thus be addressed through such a review.

4.4. Institutional reform and the Myanmar Timber Enterprise (MTE)

The current 1992 Forest Law (based on the colonial-era 1902 Forest Law) and the related institutional structures and working practices are also relics of the military era, are in need of a fundamental democratic rethink, in line with contemporary international best practice on rights-based integrated management for the full range of livelihood and ecosystem services, not simply timber production. However, because the forest sector and timber trade are so embedded and linked across numerous sectors (such as Ministry of Commerce, Ministry of Land, Ports Authority), no one ministry alone is able to implement significant reform within the forestry sector. Therefore a multi-agency response is required to address forest extraction and production, export and revenues. A significant part of any reform would be to address budget financing issues where ministries are required to fulfil government revenue targets. A competitive institutional culture within the bureaucracy incentivised ministries and departments to generate revenue in order to increase their status and influence. This in effect has undermined sustainability, and created aversion to citizen participation. There are a range of associated institutional and governance challenges which require restructuring:

While Myanmar's system of government appears centralized, in reality it is highly fragmented and characterized by opaque decision making procedures and means of governance that can have a direct impact on forestland resources in the country. At the state and division level, military regional commanders take advantage of the limited autonomy granted by the central government. At the township and village level, local Peace and Development Councils exist. In territories still controlled

by ethnic political organizations, ethnic leaders determine and implement policies that can be relevant to the forest sector, depending on the degree of their autonomy granted by regional commanders and the central government (Woods and Canby, 2011)

At the centre of Myanmar's institutional arrangements around timber is still the military-era MTE, which has enjoyed a monopoly on harvesting, processing and exporting most timbers. The MTE system is now widely recognised to be obsolete, and the central challenge for timber reform in Myanmar is to find a politically acceptable pathway to ending the monopoly position; and either shutting down or at minimum drastically reforming the organisation.

Reform is necessary for a range of reasons. The target-based MTE extraction regime has proved wasteful, prone to corruption and unsustainable. Furthermore corrupt practice is reported to be widespread, particularly in relation on securing a concession, and many Forest Department staff perceive that the MTE 'often operates illegally' (Woods and Canby, 2011), but have enjoyed the protection of the ruling military regime in the past. The export of raw logs at 'bargain prices' has been disastrously inefficient for Myanmar's revenue earnings and also undermined the development of a local processing industry. Ultimately the FD must regain control of harvesting levels within sustainable levels.

In early 2014 extremely promising steps were initiated by the Ministry of the Presidents Office to put the Forest Department back in control of forests, and transform the MTE into a non-monopoly enterprise which would need to bid competitively for Forest Department felling licenses, and would need to shed most of its 50,000 permanent staff. Although it is rumoured that the MTE is bringing major political leverage to bear, particularly to defend its staffing levels, the authors understand that the MTE has become heavily indebted and so unlikely to survive as a viable going concern for very much longer in its present state.

4.5. Return to silvicultural-based sustainability

Burma became rightly famous for its sustainable and low impact 'Burma Selection System', (subsequently the Myanmar Selection System). (Bryant, 1997) through which the FD calculated the sustainable offtake. But, as discussed above, this was superseded by Military directed revenue targets leading to accelerating over-extraction. Along with an overhaul of the institutions, there will be a need for a revival of silvicultural practice: a return to sustainable production based on conservative calculations well within annual allowable cut levels. Harvesting prescriptions and regulations will need to be properly enforced. There is also a need to challenge the current non-transparent leasing system where bribes are routinely paid to secure leases,¹² (and logically therefore it can be assumed that bribes are paid to secure official positions where discretion can be exercised in allocation of leases). If leasing arrangements are necessary they must be transparent and non-discretionary, (as is of course routine in most legal national governance structures.)

A major and obvious problem in forest areas is that, due to unsustainable harvesting, Myanmar is now experiencing forest exhaustion. Introducing a sustainable management regime will inevitably require that harvesting is restricted for decades to come, as the forests recover.

Lastly, there is a need to re-establish reliable information systems on basic forest related indicators. At present, there is limited information of the most basic kind. Beyond remote sensing assessment of forest cover data is very weak, especially on forest inventory and off-take levels. As a starting point forest inventories will need to be updated, a lengthy process. Reliable monitoring systems are also needed to support a return to systematic and regulated harvesting. Trade data is also highly unreliable with numerous discrepancies between Myanmar exporter declarations

¹² Personal correspondence – anonymous timber trader Yangon 2013.

and data provided by importer countries and also needs overhaul (Woods and Canby, 2011)

4.6. Restructuring Myanmar's timber industry: the export and domestic sectors

The current structure of the timber trade has emerged from military-era power politics. Breaking the grip of military oligarchy interests on the timber trade is one of the greatest challenges for forest sector reform. There is a pressing need therefore, for stronger space for countervailing civil society influence. Democratic reform of the economic structures around timber trading must occur, to gradually change it from a highly concentrated industry with a predominance of patronage based military and proxy/cronies, sharing the benefits of the nation's wealth amongst themselves, to a de-concentrated industry where small and medium enterprises could also increase value addition of timber before export providing jobs and also revenues for the national budget. Opening the trade to smaller scale and rurally based enterprises without track records of corruption is highly desirable for several reasons: good governance, rural livelihood opportunities and poverty reduction, ethnic empowerment and decentralised government, in country value addition and so on.

A major challenge for the reform of forest management is the domestic timber trade (encompassing harvesting and processing, and domestic demand), and its future relationship with the export trade. The domestic timber trade and domestic wood use intersects with timber production for exports in a number of important ways. In rural areas most citizens are depending on wood for fuel. As Myanmar's economy grows so will the domestic demand for timber. Yet extraction for domestic use is very poorly regulated and typically informal. Improvements in the export markets may also threaten supply for the legitimate domestic demand. However data on the domestic timber extraction and consumption is very limited and unreliable, and needs to further research.

4.7. Combating illegal logging and assuring the rule of law

There have been fundamental problems for the effective rule of law in Myanmar, causes for which have been linked to the 'shadow state' and crony influence, putting the country close to the bottom of Transparency International's Corruption Perceptions Index: at 172 of 176 countries (TI, 2012). The rule of law issue has been recently recognised to be a major national challenge, and a National Rule of Law Commission was formed in 2012 under the chair of Daw Aung San Suu Kyi.

[I]ndividuals and bodies, including civil society activists and journalists, should ... be given the legal protections and practical assistance they need to monitor the lawfulness of state action. Normalising the principle that the state is bound by its own laws will contribute to a climate of certainty that benefits Myanmar's population as well as its economy. (IBA, 2012)

In terms of the forest sector, the Forest Department staff have been disempowered from enforcement abilities, including to ensure harvesting recommendations are observed, and also to challenge illicit harvesting. Challenging cases of illicit timber trading by powerful 'crony' interests has been very likely to be at best 'bad for one's career'. This is not to say that there is no enforcement, as there have been several legal cases against malpractice, but overall the system is dysfunctional and porous, across the state apparatus (police, border guards and port authorities, revenue and tax officials).

Enforcing the rule of law in the forest sector would involve prosecution, or at least prohibition, of hitherto monopolistic 'crony' and proxy military trading companies who have achieved their positions and attained their incomes through corrupt practices and preferential patronage relationships. Although in Myanmar's current transitional

context full culpability for past systemic corruption may not yet be possible to enforce, it may become an important issue for the future.

4.8. Civil society participation

A democratic society is founded on its citizen's participation, and so there is a need to find legitimate spaces for involvement, and at the same time there is a need for citizens and their representatives to develop an understanding of the issues. Civil society has been systematically excluded from political life until very recently, and this culture has some residual inertia affecting current practices, limiting citizens assertiveness. However this is beginning to rapidly change through growing mobilisation and engagement in a range of issues.

There is a range of possible areas where there should be full and effective citizen participation in relation to the timber trade: firstly, in policy deliberation processes, including the FLEGT/VPA; secondly, participation in monitoring of the timber trade, including VPA implementation and TLAS monitoring (e.g. as in Indonesia); and thirdly, participation in forest control and management itself, through different forms of participatory forest management and community forestry.

Civil society participation is both a necessary and mandated part of the FLEGT process, as civil society provides legitimacy for the process, and also a necessary intrinsic objective of FLEGT. FLEGT may help catalyse citizen and CSO participation in forest sector reform in a number of ways: A Myanmar-EU VPA will be created through multiple stakeholders identifying what Myanmar needs to do to implement reform within the overarching principles of good governance and democratic institutions. As the FLEGT VPA process proceeds it should lead to the gradual rolling out of a legal and transparent timber trading regime which will provide the space for citizen participation in independent monitoring systems and community forest management, as well as the possible eventual emergence of community forest-based timber production and enterprises in the longer term.

4.9. Next steps

There is undoubtedly a need for a fundamental overhaul, but where to start? We argue that the first step is mobilising civil society, political representatives and the relevant public servants to understand the issues of FLEGT as it relates to the timber trade, and the need for reform and engagement in policy development. The next step would be lobbying the Government of Myanmar, particularly the MOECF to initiate the formal bilateral process with the EU to begin to develop a VPA. Thirdly, and beyond the FLEGT process, we recommend, as discussed above, that there is a pressing need for a multi stakeholder, participatory forest sector review process with the widest possible scope. Such a review process ought to be initiated and led by civil society.

5. Analysis of the interest groups involved

Having reviewed the key elements of the timber trade reform process above, in this final section of the analysis we identify the different interest groups and assess their motivations and structural roles for reform.

As we have seen the current timber regime is so dysfunctional and undemocratic that a fundamental overhaul is necessary for the forest sector to be congruent with Myanmar's wider democratisation process. Such an overhaul would both converge with wider civil society aspirations for a democratic political-economic environment, and would support Myanmar's fulfilment of FLEGT requirements including a Voluntary Partnership Agreement (VPA) process.

We can expect an inevitable tension in the timber trade reform process between the minimum programme necessary for timber traders to access EU markets, and a more complete democratic overhaul according to citizen aspirations.

Through analysis of the stakeholders involved, their structural positions and motivations, we discern the emerging alliances of interests for reform, and against reform. The interests and orientation of the various stakeholders are here discussed and summarised in a table and chart below.

5.1. An emerging alliance for reform

Despite the somewhat bleak current scenario, there is a growing alliance of interest groups with strong interests and incentives for reforming the timber trade and wider forest sector. These include citizens, particularly those located in forested landscapes, civil society organisations, who are some of the best informed individuals on these issues in the country, parliamentary groups – specifically pro-democratic political parties, and lastly the ‘non-crony’ private sector, especially the many small and medium forest enterprises whose businesses could take off if the ‘crony’ dominance in the sector was reduced.

5.1.1. Citizens

Direct forest users, including ethnic forest dwellers and shifting cultivators, seek at the most basic level physical security: an environment safe from conflict and forced displacement, and tenure security for their habitation and cultivation lands (especially important for protection from the extensive land appropriation taking place in recent years in Myanmar). Displaced people and refugees are estimated to number over 1 million, and many of these are in the process of returning to their homes, in some cases after 20 years absence. Access to justice mechanisms for legal recourse remains very limited for these groups. Forest-adjacent populations are also concerned to achieve sustainable livelihoods, food security and enterprise opportunities, which forest use can provide; and also protection of their cultural identities.

Beyond direct forest users, virtually all of Myanmar’s estimated 60 million citizens also benefit from forests in a range of ways, including service provision funded from government tax revenues, and ecosystem services and averted ecosystem disservices, particularly at the river basin level, e.g. flood control and drought protection, climate moderation and extreme weather event protection.

5.1.2. Civil Society Organisations (CSOs)

Civil society organisations are becoming less restricted and increasingly able to engage politically, even though current government legislation explicitly excludes CSOs from political activity, creating a legal hazard for advocacy work. Nevertheless CSOs have a key role to play as from field experience some exhibit the most thorough grasp of the forest reform issues here discussed. Many CSOs are highly motivated to campaign for rights, legitimisation of forest use, transparent information, and participation in policy deliberation and involvement in monitoring. Civil society is becoming increasingly influential in Myanmar in pursuit of these objectives, and opportunities are growing to mobilise alliances and campaign in order to influence policy. There is a growing range of national and regional level CSOs and networks, for instance Myanmar Environmental Restoration Network (MERN); and the regional Forest User Group Network in Kachin. Also the ‘88 Generation’ movement have become dynamic, playing a crucial advocacy and mobilisation role. And these are increasingly working with pro-democratic parliamentary members to influence policy formulation and decision-making.

The effectiveness of civil society environmental advocacy was clearly demonstrated in 2012 by the Myitson Dam campaign which led to the president suspending the \$3.7 billion contract with a Chinese consortium due to ‘the will of the people’. CSO’s concerns regarding several sectors have been growing in conjunction with citizen mobilisations.

As Myanmar opens to international funding support there is a risk of ‘de-politicisation’ of CSOs. Donor funding and ‘project-isation’ of advocacy work can redirect CSO’s stance towards becoming ‘service providers’, especially as donors are typically risk averse. Also multi-

stakeholder processes may be managed to selective inclusion of only ‘tame’ CSOs, and exclude more vocal ones, seen as more ‘difficult’ or threatening to the *status quo*, discouraging adversarial conduct.

Civil society participation is an EU requirement in order to validate the Voluntary Partnership Agreement (VPA), and so if there is government commitment to the VPA process CSOs need to have a strong platform. However resistance and non-participation may become necessary tactics if the process is compromised.

5.1.3. Parliamentary political groups

Most non-military parties are showing increasing interest in forest issues, particularly regional ethnic groups. Ethnic parties are seeking decentralisation of powers particularly over resource control, and are strongly focussed on regional development at state level and ethnic identity; achieving redress for ethnic grievances around centralised resource control and revenue and crony and military profiteering. They also seek to build alliances with citizens and achieve election/re-election through representing citizen aspirations. As such they are strongly motivated for the reform agenda.

The National League for Democracy (NLD) is mainly focussed at the National level on ‘national development’ issues including constitutional reform, rule of law, accountability, budgetary transparency and increased government revenue flows to improve service provision, improving the role of the legislature in policy making to balance the power of the executive (including cutting military expenditure). As such whilst the timber trade and forest sector may not be a primary concern, the governance aspects certainly are. Representatives are increasingly concerned to achieve credibility and legitimacy amongst the electorate, especially as the anticipated 2015 national election draws nearer.

5.1.4. The private sector

There is a major schism in the private sector between the currently predominant oligarchical groups who have a vested interest in the status quo and those smaller traders who have been marginalised in this system who are interested in reform to improve their access to market opportunities. The Myanmar Timber Merchants Association (MTMA) is the official body for this group, although it only involves export-oriented merchants. The association is composed of the handful of dominant ‘crony’ companies and hundreds of smaller companies. These numerous small to medium enterprises seek to improve their role in the market and see potential opportunities for reform. Many domestic saw mills and traders are also motivated to move towards more sustainable regime but are uncertain over how the regulations will change, the extent of restrictions into the new era, and the risk of export prioritisation likely, especially if prices increase.

5.1.5. Non-state armed and ‘ceasefire’ groups

Armed and so-called ‘ceasefire’ groups are mainly ethnic groups in upland areas who have a range of grievances and concerns mainly the Bamar lowland military dictatorship. They seek to protect local resources from central exploitation; maintain control of timber resources for their own revenue; maintain political power and promote decentralised budget allocation. In most areas ceasefires have been negotiated, or are in the process of negotiation. Armed groups typically have an interest in forest lands and timber issues, which are increasingly being taken account of in negotiations. They are generally cautiously optimistic regarding the reform agenda, in anticipation that equitable reform would allow decentralised resource control to continue, but with reconciliation. However this category covers a complex range of different interests, some of whom are much less committed to political progress, particularly armed groups who are currently benefiting from illicit trading including drug production and trade. However, ultimately this reform process will be welcomed by virtually all groups as a way to resolve grievances related to resource conflict though sustainability, transparency and benefit sharing.

5.1.6. The President's office

The current President Thein Sein's recently created a 'Ministry of the President's Office' to coordinate the momentum of moderate reformers, advisors and other political allies. The President's office is in a unique position within the government, standing above specific departments' and ministries' interests, and therefore able to drive structural reform and restructuring. Some observers believe that recent MOECAF missteps during 2013 on regulating timber harvesting and export of raw logs are thanks to pressure from the President's Office. Presidential advisory groups include Myanmar Development Research Institute and Myanmar Egress are supporting democratic reforms through policy influence and capacity building.

5.1.7. Local government

There is an emerging decentralisation agenda for local government, linked to growing funding allocation for local government and the ongoing rural development policy design process. Local governments are now able to generate tax revenues from NTFP trading, and as they assume a growing role they would have a strong case for negotiating for a share of timber revenues too, and also for promoting local businesses and job creation against extractive national monopoly companies.

5.2. Groups hostile to reform

Although there is a growing unity of interests across civil society, political representatives, the private sector and reformers within the military, there is still countervailing force from those benefiting from the status quo. However the military era 'business as usual' is no longer viable, undermined by the current process of democratic reform: the systematic and overt military patronage through hard line senior general like Than Shwe have ended, and the current patronage networks are necessarily becoming more furtive, under the current moderate leadership. However some argue that the Than Shwe clique still remains highly influential behind the scenes, substantiated by the continuing predominance of his protégés such as Tay Za, head of the Htoo Trading Company.

Reform of the timber trade is highly unwelcome for the powerful interests that currently predominate, both the large 'crony'-dominated private sector and the 'shadow state' benefiting from illicit rents. Several of the most powerful groups currently involved in the timber trade are unlikely to want reform and or transparency.

5.2.1. Large scale 'crony' companies

Oligopolistic crony and proxy companies have benefited from political protection for their positions, which have allowed them vast profits through access to international trade. They are inevitably averse to threats to their existing monopoly institutions, and make seek rapid profits whilst the opportunities persist, including through illicit and informal trading. However, these groups' space for illicit practice and political leverage is shrinking due to an improving regulatory environment of the economy, and through measures such as tightening taxation regulations and border trade regulations

5.2.2. The 'ex-military' Union Solidarity and Development Party (USDP)

These groups are seeking to maintain a grip on political power in government and parliament through existing networks of influence to maintain their economic and political positions. They are particularly concerned to maintain the military budget, and also to maintain the predominance of existing proxy and crony commercial enterprises (e.g. UMEHL) and generals' and their families' individual businesses. Due to the increasing pressure for rule of law and justice, and in the light of their history of illicit practices and extensive human rights abuses they are particularly fearful of their political-economic downfall, which may partly explain their conciliatory reaching out to the NLD. USDP has little popularity beyond its patronage circle, and is losing the power to manipulate electoral outcomes. However their continuing

influence beyond the 2015 election cannot be discounted, as they 're-brand' themselves as the technocratic 'safe pair of hands' for the country — a laughable narrative to the citizens who have suffered under the kleptocratic mismanagement, self-aggrandisement and abuse of powers their members have perpetrated, yet one which surprisingly has some traction with some, more gullible, international observers.

5.2.3. Myanmar Timber Enterprise bureaucracy

The MTE is unlikely to want to concede its monopoly control over timber harvesting due to the significant rents available from discretionary allocation of timber harvesting licenses. Therefore reforming it will inevitably be difficult. Furthermore, because the institutional engineering of MTE makes it appear as a revenue generating agency, and consequently enjoys significant political influence. Furthermore, MTE staff (estimated at approximately 30,000 in spring 2014 — MTE official correspondence) will inevitably be averse to changes which threaten their positions. Of any group threatened by transparency and accountability, the MTE staff probably has the most to lose, in terms of rents to senior staff.

5.3. Neutral and intermediary groups

These groups may also play a critical role in supporting democratisation (Fig. 3).

5.3.1. The Ministry of Environment, Conservation, Agriculture and Forestry (MOECAF) and the Forest Department

The role of MOECAF and the Forest Department with it, is to fulfil national mandate of sustainable forest management. The ministry as a civil service bureaucracy is ostensibly policy-neutral. However the institutions are in a more complex situation, as they are also motivated to maintain staff position and credibility, promotion prospects, and it must be recognised, also professional performance in forest management. This is partly achieved through seeking to maintain control of the forest estate and technical management. Although the de facto superior power of MTE has been a source of resentment to forestry staff and it is clear the Forest Department staff express strong positive sentiments about resuming effective control of forests.

The role of the Minister of MOECAF is very important in determining the Ministries practices, and at time of writing the Minister is an ex-military appointee who unsurprisingly has shown little impetus for reform. The institutional culture retains some inertia from the hierarchical military era, where approval from seniors was needed for almost every step. But MOECAF is experiencing increased pressure from the Parliament, the minister being obliged to answer questions and present new initiatives, and their credibility and legitimacy to maintain their role and power are coming into question in the new constitutional arrangements.

5.3.2. The European Union

The EU delegation to Myanmar and the European Commission also play an important role in ensuring FLEGT principles are implemented. Before formal negotiations begin it must be understood by the Government of Myanmar that without a full stakeholder consultative process, there will be no VPA. Of the current VPA's being negotiated in Asia (currently numbering six:) civil society involvement has been extremely important to ensure any approach to reform within the sector is without prejudice

This analysis is summarised in the figure below. (See Table 1.)

5.4. Discussion of stakeholder alliances

The alliance of interests around progressive FLEGT reform appears to be relatively strong, and offers great potential for a constructive process. This process is likely to be highly beneficial in strengthening the wider democratisation process in several ways. It may be particularly valuable

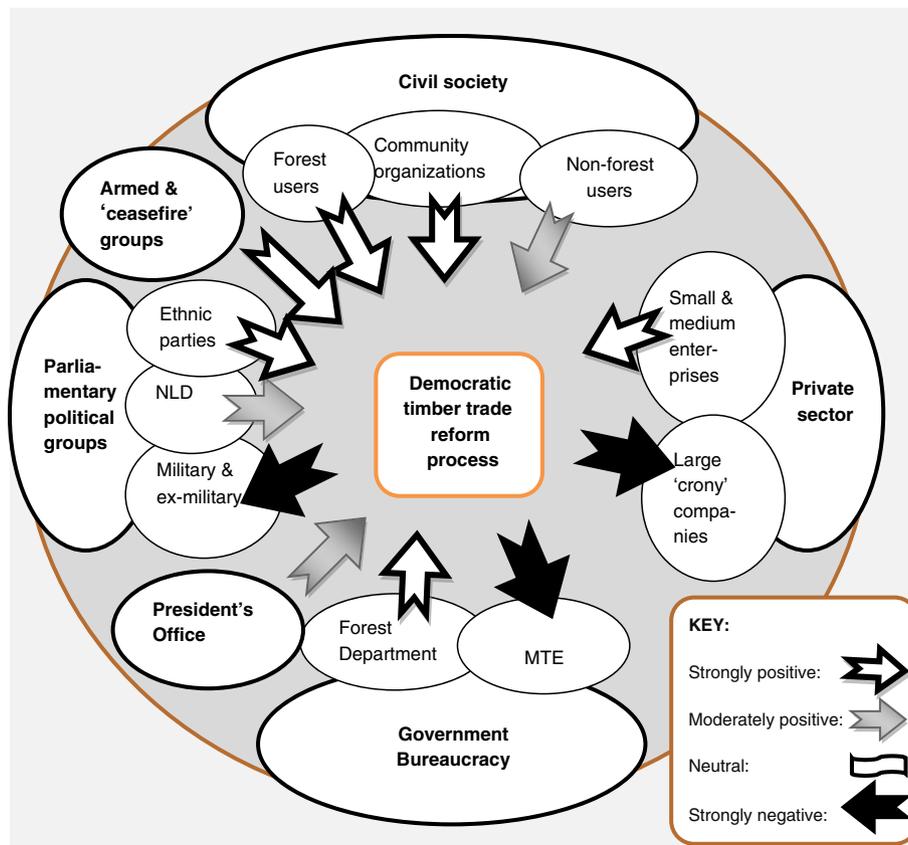


Fig. 3. Representation of political–ecological environment in relation to timber trade reform.

in supporting economic democratisation, by helping lift the monopolistic power of crony companies, promoting small and medium enterprises and local interests, and establishing patterns for more socially responsible business conduct that may even spread to other sectors. This process may also empower civil society to raise its voice, and provide space for more effective bargaining.

However the challenges ahead should not be underestimated. The entrenched power of cronies and the military demands not only political reform but also the rebuilding of trust across the key stakeholders, already a major challenge to current peace negotiations: a 'National Peace Committee' has already been formed and is attempting to re-establish peace, but political negotiations without economic settlement would be incomplete, and this has been a key stumbling block so far. Current contracts and revenue flows would be threatened by reform.

In such a reformed forest sector there must be effective separation of powers between the legislature, executive and judiciary, and also participation of citizens in policy deliberations. But in Myanmar's current transitional institutional environment, although powers are gradually being separated, democratic institutions are still weak and there remains great space for well-placed corrupt individuals to capture 'rents' through illicit practice. Although military and ex-military staff are gradually being replaced with civilians, they still sit in numerous key government positions. There is also a lack of information sharing, and access to government materials is very difficult (exacerbated by the recent move of government offices to Naypyidaw) leading to poor awareness and understanding of policies, laws and regulations. There have as yet been no formal mechanisms for civil society organisations and citizens to participate or articulate their concerns over the democratisation of the forest sector.

Yet the power and influence of cronies and proxy companies are evidently declining as the democratisation process continues, and furthermore their companies are diversified and so can perhaps shift attention to other less sensitive activities.

6. Concluding observations

For sustainable and equitable economic development to occur in Myanmar many scholars argue a democratic process is necessary (e.g. Humphreys and Stieglitz, 2007), otherwise economic growth threatens to deepen the existing developmental crisis and exacerbate conflicts. Democratic policy development for instance is already constitutionally mandated in Myanmar's 2008 Constitution:

Article 118 (a) in the English version of the Constitution of the Republic of the Union of Myanmar adopted in 2008 says, "If there arises a need to study the remaining matters other than those studied by the Pyithu Hluttaw Committees, the Pyithu Hluttaw may form Commissions and Bodies with the Pyithu Hluttaw representatives or including suitable citizens." This indicates that it would be permissible for citizens to participate in the development of new legislation. (Mark, 2012)

Democratisation of timber issues through FLEGT are high priorities for both the local/regional and National development of Myanmar, and can help achieve a better balance between economic developed, sustainability principles and social justice and equity. The FLEGT process can be anticipated to enhance the current democratic reform process, and play a crucial role in reconciliation of ethnic groups in forested landscapes with the Burmese military. Proper revenue generation through progressive taxation of a democratised and sustainable timber trade could generate significant revenues for local development: poverty alleviation, investment in public infrastructure like transportation and service provision such as public education and health.

Our analysis of the current constellation of alliances suggests promising outcomes can be anticipated. There are however some serious risks for the FLEGT process: if it does not support the wider democratisation process it may even become part of the problem, especially in the conflict-sensitive upland areas where most of the forests

Table 1
Summary analysis of major actors' relationship towards reform.

Stakeholders	Aspirations for reform	Motivation	Discussion
Civil society		Strongly positive	
Forest users & forest dwellers/ shifting cultivators	Safe environment, avert forced displacement & land appropriation, livelihoods & food security, cultural identities & hereditary domain, legal protection, fear of insecurity	Strongly positive	Internally displaced people and refugees number over 1 million, a large proportion evidence shows returning to their homes, in some cases after 20 years of absence.
Civil organisations	Rights, legitimate use, priority in policies, common property, information, participation in policy deliberation	Strongly positive	
Non-forest users	Ecosystem service benefits and avert ecosystem disservices (e.g. drought), service provision from government revenues	Positive	
Parliamentary political groups		Mixed	
Ethnic parties	Decentralise resource control and power, build alliances with citizens; achieve election through representing citizen aspirations; participation in decision-making	Strongly positive	Regional development focus at state level and ethnic identity; ethnic grievances around centralised resource control and revenue, crony and military profiteering
NLD	National development, budgetary transparency, rule of law improved accountability, improve government revenue flows to improve services; reduce military expenditure and syphoning	Positive	Daw ASSK is chair of Rule of Law Parliamentary Commission
Military and USDP ex-military party	Maintain grip on political power in government and parliament, maintaining military budget; mainlining predominance of existing commercial enterprise (e.g. UMEHL) and generals' and their families' individual businesses. Re-election. Fear of rule of law.	Strongly negative	
Private sector		Mixed	
Small to medium enterprises	Sustainable profits	Mixed	Some are strongly reliant on current arrangements, but many see potential opportunities for reform
Large scale crony companies	International trade, rapid profit whilst opportunities persist, maintain political protection for their position	Strongly negative	Seek to maintain existing monopoly institutions, persist in illicit & informal trading
Domestic saw mills and traders	Investment	Mixed	Motivated to move towards more sustainable regime but uncertainty over extent of restrictions, and risk of export prioritisation persisting
Government bureaucracy		Mixed	
MOECAF & Forest Department	Fulfil national mandate of sustainable forest management; staff to maintain position and credibility, promotion prospects; technical control of forest estate and legitimate role	Neutral	Following central control orders
Myanma Timber Enterprise	Maintain high level of harvesting; rents' to senior staff	Strongly negative	A desire to maintain lack of transparency over rent seeking practices – don't want to concede monopoly control to others ...
Armed and ceasefire groups	Protect local resources from central exploitation; maintain control of timber resources for their own revenue; maintain political power and decentralised budget allocation	Cautiously positive	Desire for just reform which would allow decentralised control to continue, but with reconciliation.

exist. However, since the VPA can only emerge with civil society agreement, this puts civil society in a very strong bargaining position to push a vision for a democratic and equitable forest sector, and so there is every reason for guarded optimism.

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