



ENVIRONMENTAL
INVESTIGATION
AGENCY

Forests

**Forest governance in
Myanmar**



Introduction

The extraction of timber from Myanmar's forests is controlled by the Central Government, with many different actors reaping the profits. But for the ethnic communities who depend upon the rich and diverse landscape for their survival, including the use of timber, years of corrupt and opaque timber deals have resulted in a crisis that needs urgent governance reform, including a transparent process and full stakeholder engagement.

Front cover: illegally logged timber in Myanmar
Above: Myanmar Timber Enterprise logs

ABOUT US

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants and tigers, and forest crimes such as illegal logging and deforestation for cash crops like palm oil. We work to safeguard global marine ecosystems

by addressing the threats posed by plastic pollution, bycatch and commercial exploitation of whales, dolphins and porpoises. Finally, we reduce the impact of climate change by campaigning to eliminate powerful refrigerant greenhouse gases, exposing related illicit trade and improving energy efficiency in the cooling sector.

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A grim forestry history

Originally having diverse forests covering most of the country, since the mid-1800s Myanmar has suffered from excessive timber harvesting, often underpinned by corruption, cronyism and conflict. Under British colonial rule, the Brandis method – which became known as the Myanmar Selection System (MSS) – was implemented. This silvicultural system harvested trees over specified girths, with a 30-year rotation of annual coups subject to detailed inventories, used to define an Annual Allowable Cut (AAC) and pre-harvest tree selection. Used to justify an opaque system, the MSS has neither survived the passage of time nor covered the full extent of the country.

From 1962-88 under General Ne Win, Myanmar adopted policies which isolated it from the international community; not much is known of what happened to Myanmar's forests during this time. However, with no burgeoning trade from the country, when Ne Win was ousted in 1988 Myanmar's valuable hardwoods became extremely important to the finances of the new regime, the State Law and Order Restoration Council (SLORC).

In 1989, desperate for hard currency, the SLORC granted logging concessions to Thai businessmen and other elites. Thailand had just imposed a national ban on logging and, with a need for raw material, looked west to Myanmar and struck deals with both the KNU (an ethnic armed group whose territory included parts of the Thai/Burmese border) and the Burmese military regime. In that same year, Thailand and Myanmar negotiated 47 logging concessions controlled by 35 Thai companies – beginning a major onslaught into Myanmar's forests.

It was also during this time that the Myanmar Timber Enterprise (MTE) was established. Run by the Burmese military, MTE sold teak well in advance, resulting in a discrepancy in 1991 between sale and delivery of up to two years.

During this period, the AAC was calculated from the entire national forest estate, including inaccessible areas where ethnic armed groups had control of the territory. This national AAC was then logged from only those areas under control of the Burmese military, resulting in serious levels of overharvesting. Government

figures show how MTE significantly violated the AAC for teak every year between 1995-2014, and the AAC for other hardwoods every year from 2003 onwards.

Similar to the huge volume of logs and timber traded from Myanmar to Thailand is the enormous and ongoing illicit timber trade from Kachin State into Yunnan, China. From 2000-06, and again from 2012-15, this trade alone was often considerably in excess of Myanmar's official national production figures.

In Kachin State, taxes from the transport of timber to China are managed through a criminal syndicate, the Dazu, with a percentage given to ethnic armed groups. Payments are also made through Burmese military-controlled checkpoints and to army commanders, all profiting from the illicit trade in timber.

Log yard in Myanmar



Current era

In 1997, SLORC was abolished and reconstituted as the State Peace and Development Council (SPDC). After Myanmar's 2010 general election in March 2011, head of the Military General Than Shwe officially dissolved the SPDC. During Thein Sein's presidency, important milestones in Myanmar's transition to democracy took place. Working from a very low baseline and years of human and environmental abuse, Myanmar's reform and transition to democracy was greeted with enthusiasm from the international community. However, the reform process continues to face a major impediment as the Myanmar constitution ensures the power of the military, which has shown a severe reluctance for the country to become a democracy.

The vast volumes of logs and timber crossing Myanmar's porous borders was addressed in 2014 with a log export ban – but without a reciprocal approach from Myanmar's neighbors, the country will continue to lose precious forest resources.

The Myanmar authorities waited a year before enacting the log export ban, resulting in a huge timber rush as loggers and traders tried to get as many logs as possible out of the country. These logs, which are not independently verified and have little to no harvest information, remain in stockpiles in countries such as India, Malaysia and Singapore, and continue to be sold onto the European market to this day.

In 2014, the Thein Sein administration supported the first discussions for a Myanmar-EU Forest Law Enforcement,

Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA). The 2015 election of a civilian Government has provided opportunities for civil society to engage with this process, with representatives from across the country elected to a multi-stakeholder group that also includes the Government and private sector in 2018.

In 2017, the Forestry Ministry, responding to decades of over-harvest, announced a one-year logging ban throughout the country, expanded to 10 years for the extraction of teak across the Pegu-Yamo mountain range, known as 'the home of teak'.

That year also saw unprecedented commitments from MTE, including:

- the removal of subcontractors (crony companies) from harvesting operations;
- a dramatic reduction in the AAC (from the Forestry Department) and a commitment from MTE to harvest significantly under this;
- various commitments to transparency, including an in-principle agreement to allow independent monitoring of forestry operations.

While significant hurdles remain, these commitments show there is political will for reform in Myanmar and there is hope that Myanmar is gradually shifting closer to achieving European Union Timber Regulation (EUTR) compliance in its exports to Europe and other laws within the international markets.



Since independence through to the present day, Myanmar has experienced numerous civil wars and conflicts between the military and ethnic groups

1948 - Independence. Anti-Fascist People's Freedom League rules Myanmar until military coup

1962 - General Ne Win's Military coup d'état

1974 - Constitution of the Socialist Republic of the Union of Burma. Burma Socialist Programme Party (BSPP) in power.

1988 - The 8888 Uprising. Security forces kill thousands. General Saw Maung stages coup d'état, forming State Law and Order Restoration Council (SLORC) in power.

Logging appears to follow the Myanmar Selection System (MSS)

Consistent overharvest in excess of Annual Allowable Cut (AAC). Logging levels driven by production targets as Myanmar Selection System is ignored



Convoy of trucks carrying illegally harvested logs

Enforcement in Europe

Following the submission of numerous cases by EIA and independent action by Sweden, work by EUTR Competent Authorities and the European Commission has resulted in unified enforcement of the placement of Burmese teak across Europe. A consensus, communicated via the FLEGT/EUTR Group of Experts, exists around the lack of compliance possible under current conditions:

“While the CAs reiterated that efforts in Myanmar to move in the right direction are appreciated, it was concluded that, at the moment, none of the assurances that the CAs have received can be relied upon as sufficient for demonstration of compliance with the EUTR Due Diligence obligations”¹.

At least 19 operators placing Burmese teak on the market have been found in breach of the EUTR in Sweden, Denmark, Germany, Belgium, the UK and the Netherlands (including every operator in both Denmark and the UK). EIA cases remain under investigation in the Netherlands, Spain and Italy.

EUTR enforcement has helped support the reform process in Myanmar. The threat of losing access to the lucrative EU market has provided incentives to the Myanmar Timber Enterprise to commit to a series of reforms (detailed overleaf), including many specifically aimed at achieving EUTR (and other regulated markets) compliance.

¹ - FLEGT/EUTR Expert Group Meeting Minutes 20/09/2017

1989 - SLORC declares martial law. Official change to the “Union of Myanmar”

1990 - National League for Democracy (NLD) election win, but Military junta refuses to cede power

1992 - Senior General Than Shwe takes control of SLORC and Myanmar

2000

2008 - New Constitution reserves 25% of parliamentary seats & Ministry of Home Affairs for military

Trade and financial sanctions by EU, UK, Norway, Switzerland, Canada, USA, Australia

Investing in good forest governance

Despite not yet having begun formal VPA negotiations, Myanmar and the EU have been exploring a VPA since 2013. The first FLEGT workshop was held in Myanmar in 2013 and, following the EU's acceptance of Myanmar's 2014 signaling of its desires for a VPA, a preparatory phase began in 2015.

Stakeholders in Myanmar convened an Interim Task Force (ITF) to undertake preparations in the country, with the intention of establishing a Multi-Stakeholder Group (MSG) to inform VPA negotiations once formalised.

Since then, civil society organisations in Myanmar have led a remarkable democratic process to prepare for full stakeholder engagement. The ITF implemented series of workshops to educate stakeholders on the role of CSOs and communities in influencing a VPA, the rights of customary or indigenous people, independent forest monitoring and the development of Timber Legality Assurance Systems (TLAS – see box).

In 2017, civil society held elections across all of Myanmar's 14 states and regions, sending an ethnically diverse range of CSOs representatives to sit on Myanmar's FLEGT VPA Multi-Stakeholder Group.

This process alone represents a remarkable step in the move away from top-down approaches to forest policy in Myanmar towards mechanisms for civil society and forest users to participate in forest governance reform.

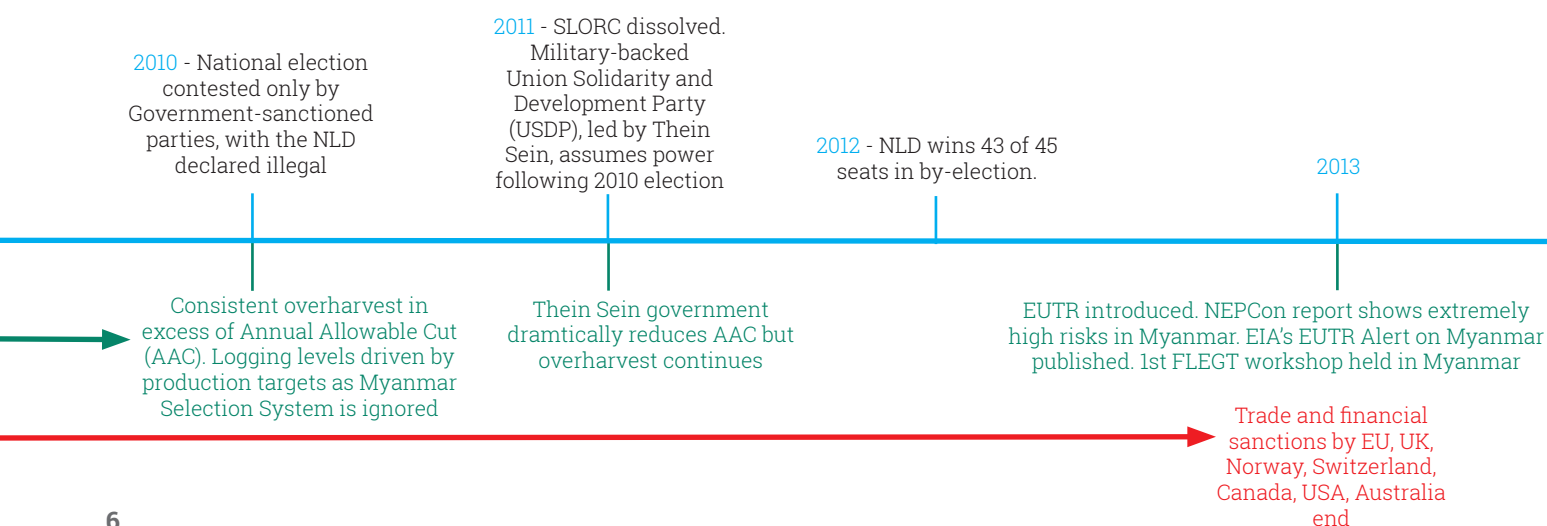
Hopes are high that such ethnic diversity among VPA CSO stakeholders in Myanmar – which includes forestry – can positively contribute towards resolving the resources, rights and rule of law challenges underpinning many of

Myanmar's myriad internal political and military conflicts.

However, these processes take time and, with no formal VPA process in place and impatient traders establishing their own systems of legality verification in response to EUTR enforcement, options for CSOs to formally engage the Government in defining or redefining legality and reforming forestry remains a priority.



Since 2010, reforms including release of Aung San Suu Kyi, National Human Rights Commission, amnesty many political prisoners, labour unions and strikes permitted, press censorship relaxed. Civilian government elected.





Log trucks queuing in Myanmar

Defining legality

A Timber Legality Assurance System (TLAS) is a core component of a VPA. The EC's definition states it is "built around a practical definition of legality that has been agreed through participatory processes involving stakeholders from government, the private sector and civil society".

Since 2013, traders and Myanmar's Government have sought to promote an untested scheme designed by the Myanmar Forest Certification Committee (MFCC – a government body) as a "Myanmar Timber Legality Assurance System (MTLAS)", while continuing to trade under MTE's existing systems, with western traders continuing to violate the EUTR and US Lacey Act.

The current "MTLAS" was developed prior to Myanmar entering the VPA preparatory phase and has not had sufficient input from civil society in Myanmar; the consensus-based approach the VPA process seeks to achieve simply hasn't occurred.

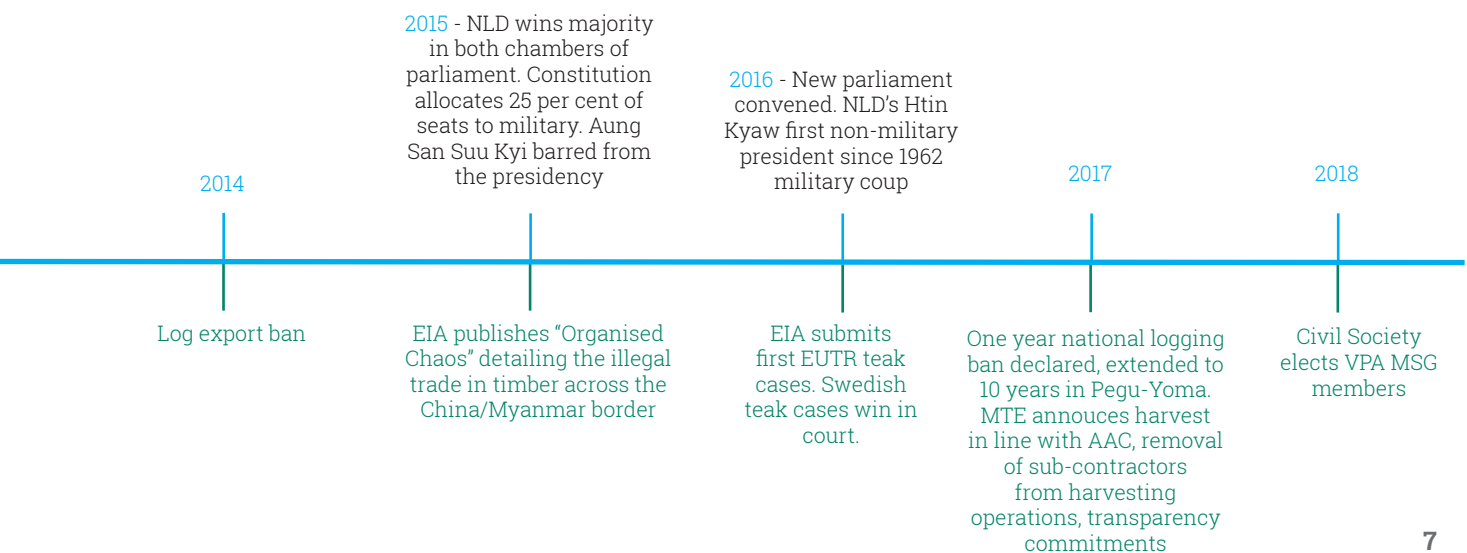
Supported by FAO, MFCC commissioned a gap analysis of the "MTLAS" in 2016, with results presented in early 2017. The membership of the core expert group contributing to this process reflects the lack of a multi-stakeholder approach, with only one of 13 members representing civil society.

Nonetheless, the MTLAS gap analysis concluded that it does not attest to the compliance of the timber or an operator with specific legality requirements, provides for no independent oversight or monitoring, incorporates no mechanisms to ensure transparency or stakeholder engagement and lacks rigor, relevance and impartiality³.

For Myanmar's VPA to succeed, the MTLAS will need to be significantly amended – with full stakeholder involvement.

2 - <http://ec.europa.eu/environment/forests/flegt.htm>

3 - EIA, Organised Chaos, 2015, and Global Witness, 2005





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