



ASSESSING FOREST GOVERNANCE IN MYANMAR

IDENTIFYING KEY CHALLENGES AND INTERVENTIONS TO STRENGTHEN GOVERNANCE

Policy brief



Summary

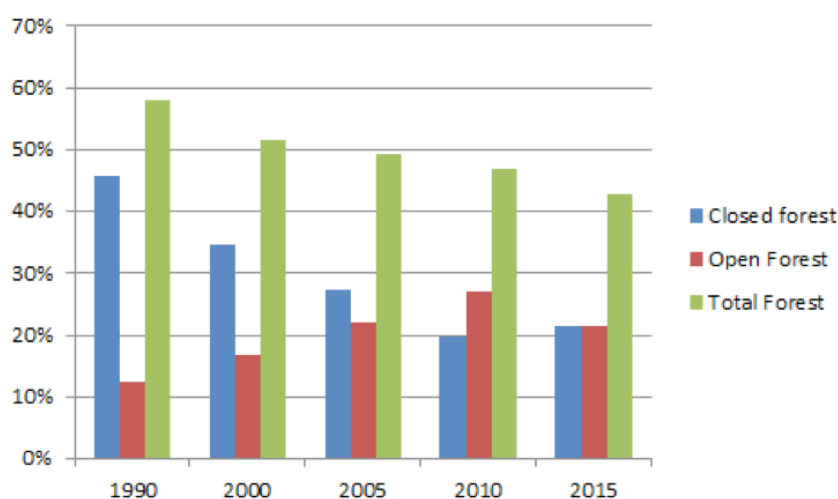
Myanmar is losing its natural forests, with devastating impacts on the lives of millions of people. The losses are killing the country's rich biodiversity and undermining its economy. One of the main drivers is weak governance. RECOFTC – The Center for People and Forests, working with civil society partners as part of the European Union-funded Voices for the Mekong Forests (V4MF) project, is seeking to better understand the governance challenges and opportunities in Myanmar's forestry sector, as well as putting forward a programme to address these through the empowerment of non-state actors (NSAs). This brief summarizes the results of a forest governance assessment carried out in late 2017 and early 2018, and proposes interventions to address the issues identified. The participants, including representatives of government, civil society, and local communities, felt that various challenges permeate all areas of forest governance in the country. There was a feeling that, while the policies and legislation provide a strong foundation, this is undermined by systematic issues in the implementation, enforcement and compliance. The recommendations include the establishment of a forest governance monitoring system. Additionally, a systematic capacity development programme is proposed, including a programme to increase the knowledge and skills of civil society on technical (e.g. timber legality) and operational (i.e. project management) issues. The project partners will work with various stakeholders, particularly NSAs including civil society, to implement a programme to address the challenges and opportunities identified.

Myanmar's forest sector

Myanmar's richly biodiverse forests provide a livelihood for most of the country's rural population (at 36 million, around 70 percent of the national total), as well as a valuable contribution to the national economy and immeasurable environmental services.

However, deforestation at an annual rate of 400,000 hectares from 1990 to 2015 saw forest cover fall from 58 percent of the country's territory to 44 percent (Figure 1)¹.

Figure 1. Forest cover change in Myanmar 1990-2015



The largest direct drivers of deforestation are agriculture, mining, hydropower and infrastructure development.² The related problem of forest degradation is driven by illegal logging, poor forest management and over-exploitation, fuelwood extraction, and shifting cultivation. These drivers all have roots in the issue of weak governance.

Poor governance affects deforestation and forest degradation, for example, when a process to allocate land to develop mines or special economic zones lacks transparency and creates opportunities for corruption. Furthermore, the civil conflict in parts of the country exacerbates governance problems.

Recent government measures to address the problem include a temporary logging ban in 2016-17, a ban on the export of roundwood since 2014, and the restructuring of the state-owned Myanmar Timber Enterprise (MTE). Other national and international initiatives to strengthen forest governance include the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan and its Voluntary Partnership Agreement (VPA), as well as the UN Programme on Reducing Emissions from Deforestation and Forest Degradation (REDD+), the international Extractive Industries Transparency Initiative (EITI), and the OneMap Initiative by the Centre for Development and Environment at the University of Bern, Switzerland.

1–FAO, 2015. Global Forest Resources Assessment. Rome: FAO.

2– UNREDD and MONREC, 2017. Background Report for Identifying the Drivers of Deforestation and Forest Degradation in Myanmar.

Assessing forest governance in Myanmar

RECOFTC – The Center for People and Forests, working with the World Wide Fund for Nature (WWF) and the Myanmar Environmental Rehabilitation-conservation Network (MERN), conducted a forest governance assessment to better understand the challenges and opportunities for strengthening forest governance in the country and the Greater Mekong Subregion as a whole. The work was carried out as part of the EU-funded V4MF project. Based on this increased understanding, the project is putting forward a programme for addressing the identified issues.

The assessment used the Enabling Environment Assessment Tool (EEAT) developed by WWF, based on the PROFOR Framework for Assessing and Monitoring Forest Governance.³ This framework assesses a series of indicators, divided among six cross-cutting principles and three pillars of governance (Figure 2).

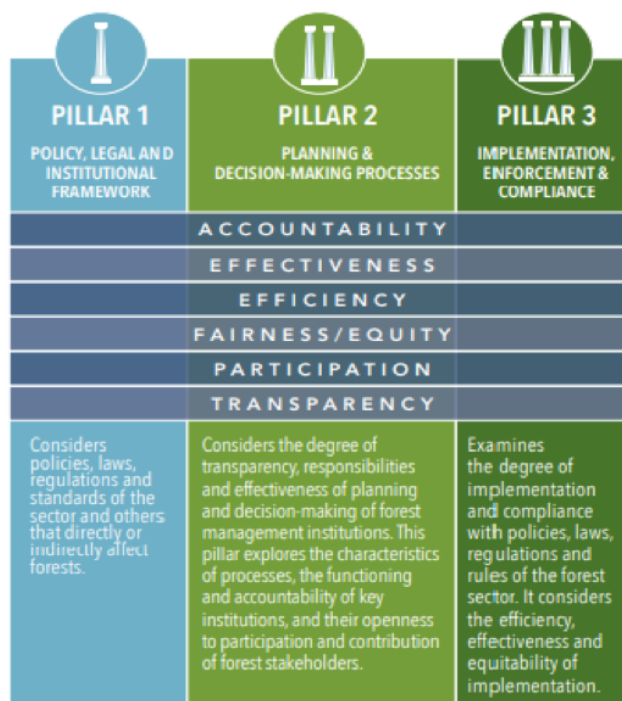


Figure 2. Forest Governance Assessment and Situational Analysis Framework⁴

First, the assessment team reviewed the indicators and tailored them to the national and landscape contexts, in particular in light of ongoing FLEGT and REDD+ developments. Subsequently, the team conducted the assessment with the inputs of various stakeholders. These included government departments and offices (Forest Department, Department of Agriculture, Mining Department, and police), civil society organizations (CSO) active at national level and the level of Dawna Tenasserim Landscape (DTL) in Tanintharyi Region in the southern part of the country, and representatives from local communities, local judiciary, and local academic institutions.

Participants were asked to give their perception of the strength of various institutions, frameworks, policies and implementation measures connected to forest governance, on a scale of 1 to 5, where 1 is "failing", 2 is "weak", 3 is "fair", 4 is "good", and 5 is "close to best practice". Qualitative comments were also collected.

Following this, the capacity development needs of relevant institutions were assessed. These assessments were then used as the basis for the development of a capacity development programme, with a focus on NSAs, mainly on CSOs.

More than 250 individuals participated in the research. Emphasis was on a participatory and consensus-based process. This aimed to create an environment of shared understanding, and also to secure stakeholder buy-in for the subsequent capacity development programme.

³–PROFOR and FAO, 2011. Framework for Assessing and Monitoring Forest Governance. Rome: FAO.

⁴–PROFOR, 2017. Assessing Forest Governance in Mozambique: Identifying Key Challenges and Interventions to Strengthen Governance.

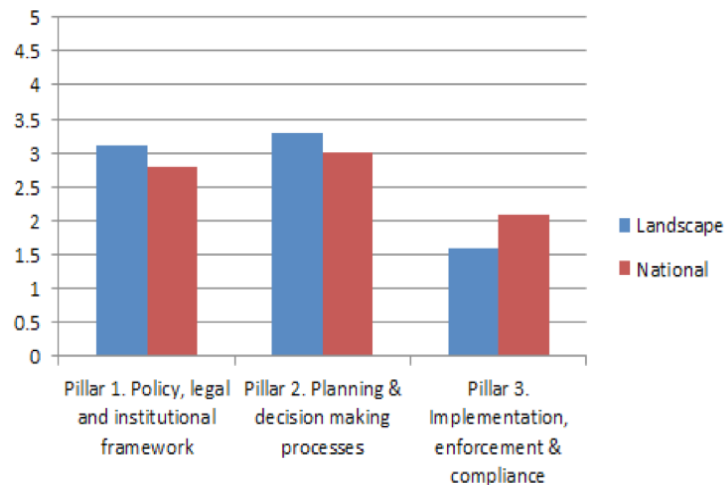
Results

General findings across pillars

Participants agreed that while forest governance in Myanmar is facing many challenges, there are numerous opportunities to address these.

The most significant challenges were perceived to be in Pillar 3, "Implementation, enforcement and compliance", at both national and landscape levels. Pillar 1, "Policy, legal and institutional framework" scored higher, and the reported perceptions were slightly better still for Pillar 2, "Planning and decision-making processes" (Figure 3).

Figure 3. The three pillars of governance ranked at landscape and national levels

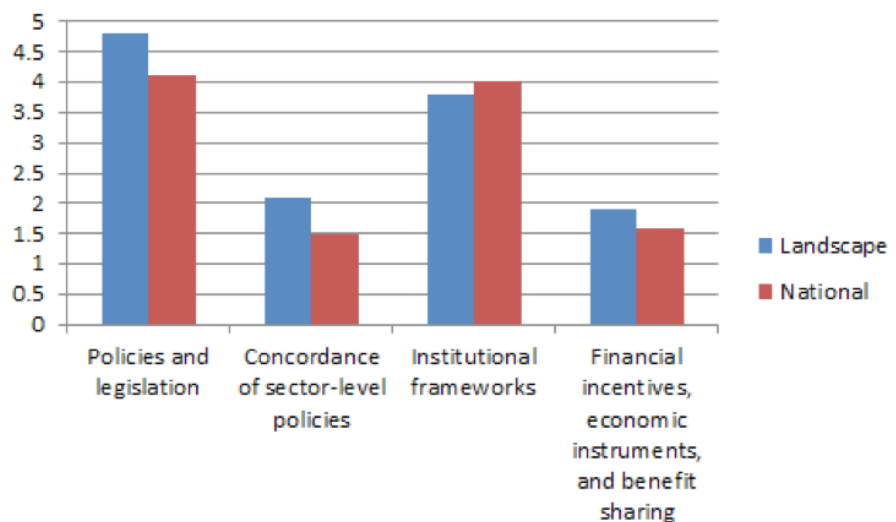


The general perception is that the enabling environment for good forest governance is in place, but undermined at the implementation stage. This is broadly supported by previous research.⁵

Pillar 1: Policy, legal and institutional framework

There are notable differences within Pillar 1, with strong scores for "policies and legislation" and lower scores being given to the components of "concordance of sector level policies" and "financial incentives, economic instruments and benefit sharing" (Figure 4).

Figure 4. Average score per component of Pillar 1



⁵–Cho, B., et al., 2017. Stabilizing and Rebuilding Myanmar's Working Forests: Multiple Stakeholders and Multiple Choices. Bangkok: The Nature Conservancy and RECOFTC- The Center for People and Forests.

Policy and legislation

Adequate legislation in place, including recent measures: Participants said the legal framework is in place, citing the National Land Use Policy (2016). They also emphasized the revised Community Forestry Instruction (CFI [2016]) as well as the Forest Policy (1995), and the upcoming new Forest Law. Implementation guidelines include the Standard Operating Procedures for Reduced Impact Logging and the National Code of Forest Harvesting Practices.

Concordance of sectoral-level policy

Poor coordination: One issue in this pillar was the limited coordination between sectors on legislation. This was attributed more to a lack of resources more than to the institutional framework.

Institutional framework

Strong institutional framework: The institutional framework was felt to be reasonably strong. The Community Forestry National Working Group (CFNWG) and Community Forestry (CF) Unit were given as examples of multi-stakeholder bodies with mandate and power to address issues of coordination.

More rules needed for minority rights and foreign trade: Despite the positive legislative progress in recent years, areas where more progress is needed were identified, for example to safeguard the needs of minority and marginalized groups, and to work with trading partners such as China on addressing trade in illegal timber.

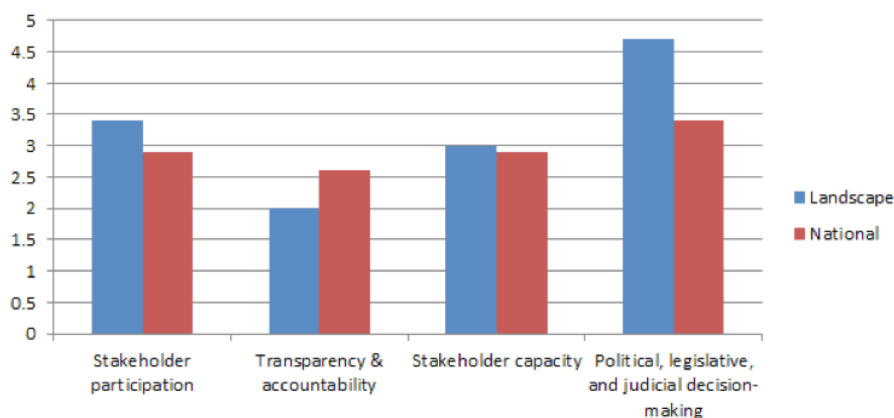
Financial incentives, economic instruments, and benefit sharing

Framework for benefit sharing is improving: There was also the concern that some regulations actually discourage the application of financial incentives, economic instruments and benefit sharing. However, respondents cited positive developments, including provisions in the revised CFI to move the focus of CF from subsistence to livelihood development. The value of environmental and social impact assessments is gaining recognition, but has yet to be mainstreamed in the legal frameworks. There is also a lack of legally mandated provisions for benefit sharing of the income from forest management.

Pillar 2: Planning and decision-making processes

The lowest scores under Pillar 2 were given to the components of “Transparency and accountability”, with the highest going to “Political, legislative and judicial decision making”. Again there was a feeling that notable progress has been made in recent years, but that much work remains to be done (Figure 5).

Figure 5. Average score per component of Pillar 2



Stakeholder participation

No feedback mechanism: Where information is shared by decision makers, there are no mechanisms for stakeholders to provide feedback, participants said.

Transparency and accountability

Recently improved transparency: There was little perceived political interference in decision making by government agencies, and legislative activity was seen as increasingly open and transparent. Again, the emphasis was on the recent nature of this progress and the need to build on it and ensure its sustainability.

Persistent opacity over private-sector concessions: One area emphasized was a lack of transparency in allocating forest rights to private companies. Access to information between government agencies and for local communities in these cases was characterized as very poor. The problem was compounded by a lack of accountability when problems are identified.

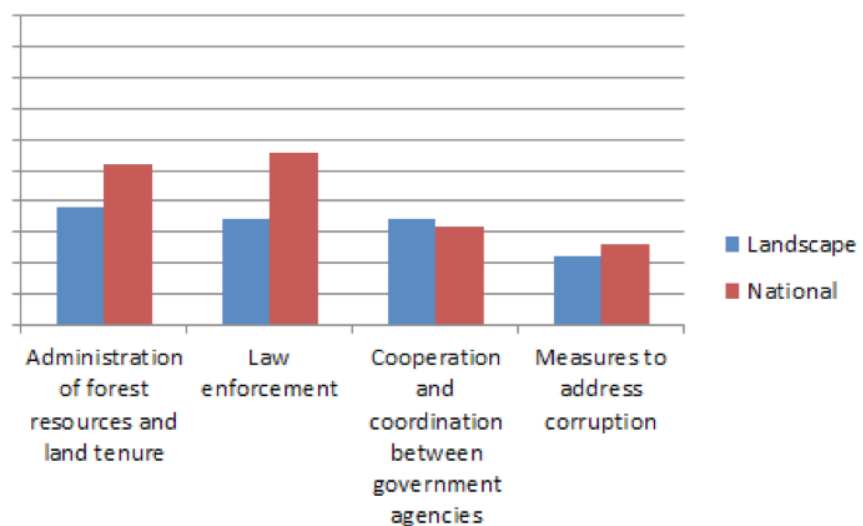
Political, legislative, and judicial decision making

Strong local decision making, but concerns over rural rights: Another notable issue was that decision making was seen as performing better at landscape level than at national level, perhaps thanks to better interdepartmental coordination. However, the protection of local rights at local level were still seen as a challenge, with the perception that disputes over forest and tenure rights are not addressed in a fair and timely manner, in particular regarding rural communities. This was attributed to contradictions between some laws, gaps in others (e.g. the Vacant, Fallow and Virgin Lands Management Law), and inconsistent implementation.

Pillar 3: Implementation, enforcement and compliance

Pillar 3 scored low at both the landscape and national levels (Figure 6). The component “Measures to address corruption” was of particular concern.

Figure 6. Average score per component of Pillar 3



Law enforcement

Some impact from civil conflict: While there have been few armed clashes in Tanintharyi since the 1990s, the simmering civil conflict still impacts forest governance. For example, arbitrary taxation and land grabs create unease and can prompt local communities to form militias, which in turn further undermines the rule of law.

Under-resourced community monitoring: An additional challenge at the landscape level is that local communities are ill-equipped to address illegal logging. The Forest Department encourages community-based monitoring against illegal logging, and procedures exist. But communities often lack human and financial resources for the patrols, and need a better understanding of the laws and how to apply them to forest activities. The issue is further clouded when members of the same communities encroach on forests for subsistence agriculture in times of hardship.

Cooperation and coordination between government agencies

Silo mentality among officials: Many participants said government departments and even ministries operate as “distant islands”, with no solid bridge to ensure cooperation or synergies. This partly stems from traditional top-down decision making, but also from territorial attitudes by departments over their remits.

Civil conflict undermines cooperation: Regarding the DTL, there is a coordination platform between the Forest Department, the Karen National Union (KNU) and relevant CSOs. But although it meets regularly, there is distrust and limited information sharing.

KNU representatives expressed concern that CSOs that have signed memoranda of understanding with the government will automatically take its side in any discussions.

Measures to address corruption

Endemic corruption: Participants said the fight against corruption was facing many challenges, including a lack of transparency, poor capacity and the lack of incentives. This is supported by Transparency International's Corruption Perception Index: Myanmar's score was 15 in 2012, and has only risen to 30 by 2017, where a score under 50 indicates a high level of corruption.⁶

Priority issues and suggested interventions

The legal environment is perceived as comparatively strong, but there are challenges regarding implementation, enforcement and compliance. The interlinked ways forward can be categorized based on the framework, with emphasis on implementation - primarily at the landscape level.

Concordance of sector-level policies and laws

- Ensuring common definitions, aligned procedures and consistent and equitable benefits across different land uses would create significant efficiencies for government staff and local communities. Examples include creating a common definition of forest land across the Forest Law (1992), the Vacant, Fallow and Virgin Lands Management Law (2012) and National Land Use Policy (2016) that would address loopholes in land allocations. The harmonization of laws also needs to take into account the various national level strategies (e.g. Forestry Products Sector Strategy (2015-2019)) and programmes (e.g. Myanmar Reforestation and Rehabilitation Programme (MRRP)), as well as requirements under the VPA.

Coordination and cooperation between agencies

- Better coordination between government agencies would reap numerous benefits. For example, closer cooperation between the Ministry of Natural Resources and Environmental Conservation (MONREC) and the Ministry of Agriculture, Livestock and Irrigation (MOALI) over land classification and administration would improve the legal rights of local people over their lands. The ministries' respective certification procedures also need aligning. For example, Form-7, issued through the Department of Agricultural Farmland Management and Statistics under MOALI differs widely in terms of process and rights granted from the CF certificate, which is issued by the Forest Department under MONREC.
- In theory both FLEGT-VPA and REDD+ require an environment for improved communication and coordination between government departments and with other stakeholders. Participants suggested the creation of an information management platform such as a Forest Governance Monitoring System (FGMS) as well as a multi-stakeholder working group including high-level representatives from relevant government departments. Investment is needed to make sure members have the resources and skills to participate effectively.
- A FLEGT CSO Network could help develop the capacity of its members on technical issues (e.g. on timber legality verification) as well as operational management (such as information and knowledge management). This could also support the government. The Network should aim to provide technical input to the FLEGT processes and act as a watchdog. One consideration could be a joint FLEGT and REDD+ CSO Network, perhaps also linked to the Myanmar Alliance for Transparency and Accountability. Such a network should be formally linked to the multi-stakeholder working group mentioned above.

Administration of forest resources and land tenure

- CF is making progress, but in vast areas of forest, including in Tanintharyi, communities still have no statutory rights to the land on which they have lived for generations. This is being addressed through the national CF programme, but needs to be further mainstreamed. One such measure could be a guide and capacity development programme to ensure effective implementation of the revised CFI. One initiative already under way is the CF network at landscape and national levels to facilitate learning and sharing, building on the pilot networks at the township level.
- Guidelines and standard operating procedures should be updated by government departments, using participatory processes to make sure they reflect capacities on the ground. A capacity development programme should support implementation where needed.
- There should be a mainstreaming of the principle of free, prior and informed consent (FPIC). This could include a formalization of how to conduct environmental and social impact assessments. Stakeholders need a clear understanding of their rights, but also the capacity to meet any requirements made of them. A key starting point is to ensure that stakeholders understand the value of FPIC in achieving sustainable win-win outcomes.

Stakeholder participation

- Effective participation is key to strengthening forest governance. While there was a feeling that progress has been made in recent years, there are still numerous challenges including the prevalent top-down model of decision making. The creation of a CSO Network with a systematic capacity development programme will help address this. But a legal mandate is also needed to integrated local communities' needs, particularly women and marginalized groups, in the development of policy and legislation.

⁶–Transparency International, 2018. Corruption Perceptions Index. [online] Available at: <<https://www.transparency.org/country/MMR>>

Transparency and accountability

- One key recommendation was the establishment of a forest governance monitoring system. This could include collection of and access to forest data at landscape and community levels, legislation information at national level, and related materials for raising awareness. The monitoring system should be inclusive and accessible in terms of inputting information, ensuring that stakeholders can effectively use the information to strengthen forest governance. It should also align with the ongoing OneMap Initiative.

Law enforcement

- Stronger penalties for illegal logging, currently under discussion, will only increase deterrence if implemented in conjunction with a strengthening of law enforcement capacity, including within local communities.

Stakeholder capacity

- A systematic and coordinated capacity development programme is needed to address the numerous issues identified. This includes a programme to increase the knowledge and skills of civil society on technical (e.g. timber legality) and operational (i.e. project management) issues. Emphasis needs to be placed on the younger generation, as well as women.
- A key issue undermining stakeholders' capacities, particularly at the landscape level, is access to information, and a lack of understanding of legal and regulatory requirements. The forest governance monitoring system would help address the access issue. But stakeholders also need the capacity to collect, share and use the information effectively. For example, if the Forest Department is promoting community-based monitoring of illegal activities, those communities need to understand the relevant laws, and be able to provide feedback on them. Community members, including marginalized groups, therefore need the capacities and confidence to communicate with government staff. This communication also requires government and CSO staff skills to facilitate the participatory processes.

The Voices for Mekong Forests (V4MF) is a 5-year project funded by the European Union that aims to strengthen the voices of non-state actors (NSA) to improve the governance of the forests in the Mekong region, particularly in the context of FLEGT-VPA and REDD+ processes. V4MF is implemented by RECOFTC – The Center for People and Forests with eight regional and national partners in three trans-boundary landscapes across the five Mekong countries.



RECOFTC's mission is to enhance capacities for stronger rights, improved governance and fairer benefits for local people in sustainable forested landscapes in the Asia and the Pacific region.

RECOFTC holds a unique and important place in the world of forestry. It is the only international not-for-profit organization that specializes in capacity development for community forestry. RECOFTC engages in strategic networks and effective partnerships with governments, nongovernmental organizations, civil society, the private sector, local people and research and educational institutes throughout the Asia-Pacific region and beyond. With over 30 years of international experience and a dynamic approach to capacity development – involving research and analysis, demonstration sites and training products – RECOFTC delivers innovative solutions for people and forests.

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