DEFORESTATION IN MYANMAR: AN EXAMINATION OF ILLEGAL TIMBER SUMGGLING

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Abstract

Myanmar's neighbors: Thai and China have much demand for timber from Myanmar. These countries suffer from deforestation and consequently seem to take up forest areas near the Thai-Myanmar border and in the Kachin State sharing the China border. There is much Logging in Myanmar, and then logs are smuggled to China, Thailand, and a few in the others. The weakness of law, regulations, management and security and the international demand for hardwoods has caused illegal timber smuggling especially, remoteness areas with a few legal compliances. It makes some kind of areas, such as Kachin, serious deforestation. There are many cases relating to illegal timber smuggling in Sagaing and followed by Bago. As a result, numerous illegal logging operations caused environmental damage such as soil erosion, river contamination, and increased flooding. To prevent it, the Government imposed the export of raw logs in 2014, and Forest Law, 2018, etc. Even though the legal framework to control the illegitimate timber trade has developed, illegal timber smuggling continues.

Keywords: deforestation, illegal logging, smuggling

Introduction

Illegal timber smuggling is one of the causes of deforestation. Myanmar suffers the world's highest deforestation rates. A large area of forest of the country places long bordering with China and very closed to Thailand and India as well. Strategically, these places are important borders by tracts of forest. Due to the size and scope of Burma's forests, it is difficult for government organisations like Forest Department to regulate timer smuggling. The deforestation rate has especially increased in 2010-2015. Of major reasons for forest losses, Myanmar's illicit timber smuggling shows big deals in the region. The research includes illegal timber smuggling and forest cover, institutional arrangement, the legal framework for combating illegal timber smuggling, enforcement activities combating Illegal Timber Smuggling, and seizure and implementation of prevention of illegal timber smuggling.

Illegal timber Smuggling and Forest Cover

Illegal timber smuggling includes timber smuggling export/import of tree species banned under national or international law, such as the Convention on International Trade in Endangered Species of Fauna and Flora (CITES Appendix I)²; Export/import of tree species listed under CITES without the appropriate permits (CITES Appendix II and III)³; Export/import of log, lumber or other timber product in contravention of national bans, unauthorized movement of timber across district or national borders; movement of illegally logged timber from forest to market and exporting volumes of forest products in excess of the documented export quantity.⁴

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² Article III of Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973.

³ Article IV and V of Ibid.

⁴ Mikaela Nilsson Rosander, Current Issues and Opportunities for Sida/SENSA Engagement in Southeast Asia, Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC),2008, p.5.

Forest resources are conserved, managed, and utilized in a sustainable manner by the establishment of Reserved Forests (RFs), Protected Public Forests (PPFs), and Protected Areas (PAs). RFs are for production, PPFs are local supply and PAs are for conservation.¹

Myanmar's almost 29 million hectares (ha) of forest are home to one of the world's 36 hotspots of biodiversity (Conservation International 2020), as well as much of the remaining patches of contiguous natural forests in peninsular Southeast Asia. Despite this importance, 27 percent of Myanmar's forests, or 10.7 million ha, was cleared between 1990 and 2020.²

Since 2000, the rate has been accelerating even as the Union Government of Ministry (UGoM) put in place several initiatives to stem the deforestation, including a logging moratorium, reductions in the Annual Allowable Cut (AAC) for industrial forestry, and trade bans (started April 1, 2014). According to Global Forest Watch (GFW), at least one-third of this deforestation was driven directly by logging (Global Forest Watch 2020). Another study found that "inside forest reserves, excessive timber extraction primarily of teak (*Tectona grandis Lamiaceae*) but presumably also other high value species seems to be the major underlying driver of forest degradation".³

Institutional Arrangement

Ministry Office coordinates and facilities the tasks of the Forest Department (FD), Myanmar Timber Enterprise (MTE), Dry Zone Greening Department, Environmental Conservation Department, University of Forestry and Survey Department following the directives of MONREC, and deals mainly with policy matters and issues related to forestry and environmental conservation.⁴

Forests are largely owned and managed by the Forest Department, an agency under the Ministry of Natural Resources and Environmental Conservation (MONREC); the Forest Department sets the annual allowable cut (AAC) of timber for the country. The Myanmar Timber Enterprise (MTE), also under MONREC, is authorised to log forests by the Forestry Department; MTE then transports logs to depots and sells to private companies, which can only purchase logs from the State.⁵

Exports are supposed to be approved by the MTE, and exported through ports in Yangon⁶, with the Forest Department approving private sector exports. Cross-border trade in illegally harvested timber to neighbouring countries such as China, India and Thailand is significant.⁷ The process applies to manage natural forests and conversion forests. Currently, most timber is harvested from natural forests.⁸

¹ Section 2 (h), (J), (k) of the Forest Law, 2018.

² Treue, Thorsten, Oliver Springate-Baginski, and Kyaw Htun. 2016. Legally and Illegally Logged out; Extent and Drivers of Deforestation & Forest Degradation in Myanmar. Yangon: EcoDev/ALARM. Accessed December 8, 2020.

³ Ibid.

⁴ https://www.monrec.gov.mm/department/8.

⁵ Leal, I. Iona Leal, EU FLEGT Facility pers. comm. to UNEP-WCMC 23 March 2017. (2017).

⁶ Woods, K. Timber Trade Flows and Actors in Myanmar: The Political Economy of Myanmar's Timber Trade. (Forest Trends, 2013).

⁷ UNODC. Criminal justice response to wildlife and forest crime in Myanmar, 2015.

⁸ MFCC. Myanmar Timber Legality Assurance System (TLAS). (Myanmar, Working Group of the Timber Certification Committee of Myanmar, 2013).

Institutions under the Ministry of Natural Resources and Environmental Conservation (MONREC) are performing their specific duties and responsibilities mainly related to forestry and environmental conservation.

As combating illegal timber trafficking and wildlife crime is a cross-cutting issue, Forest Department is promoting collaboration with international organizations, government institutions, community-based organizations (CBOs), and non-government organizations (NGOs) in law enforcement activities. Law enforcement task force is also conducted with the following organizations: Forest Department, National Police Force, Customs Department, Union Attorney General Office and Directorate of Trade and General Administrative Department. The export process was witnessed by Minister Ohn Win and supervised by the Forest Department, the General Administration Department, the Custom Department, the Immigration Department and the Myanmar Police, etc.²

Myanmar is also participating in global and regional initiatives of combating illegal wildlife and timber trafficking such as United Nations Office on Drugs and Crime (UNODC)³, The International Criminal Police Organization (ITERPOL)⁴ and International Union for Conservation of Nature and Natural Resources (**IUCN**), The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, etc.

Legal Framework for Combating Illegal Timber Smuggling

To protect and conserve natural environment, "ensure environmental sustainability Goal" is one of the Millennium Development Goals (MDGs).⁵ The Republic of the Union of Myanmar shall protect and conserve natural environment.⁶ Every citizen has the duty to assist the Union in carrying out the following matter, such as environmental conservation.⁷

Myanmar's evolving governance structures relating to forest are for the protection of significant deforestation and degradation of the country's forests. In order to evaluate specific legal compliance in the forest sector, one must identify appliance legislation governing specific legal criteria. The latter lists are the framework of legislation in Myanmar directly applicable to forest management and transport of timber. They are Environmental Law, 2012; Forest Law, 2018; Forestry Policy, 1996; Forest Rules, 1995; National Code of Practice for Forest Harvesting, 2019; MTE Extraction Manual, 2015; Community Forestry Instructions (CFI), 2019; National Environmental Policy of Myanmar, 2019; Myanmar Climate Change Policy, 2019; Myanmar's National Biodiversity Strategy and Action Plan (NBSAP) 2015-2020; Protection of Wildlife and Wild Plants and Conservation of Natural Areas Law, 2018; Notification 127/2019; and international commitments.

The Environmental Conservation Law, 2012 is designed "to reclaim ecosystems as may be possible which are starting to degenerate and disappear" and to ensure that "The relevant Government departments and Government organizations shall, in accord with the guidance of the Union Government and the Committee, carry out the conservation, management, beneficial use, sustainable use and enhancement of regional cooperation of…forest resources."

¹ Notification No.(20/2011).

² ITTO. Tropical Timber Market Report 24, no. 2 (January 2020).

³ UNODC, Criminal Justice response to wildlife and forest Crime in Myanmar: A Repaid Assessment, Pg.2.

⁴ Forest Department, Forest Mirror, October, 2017, Pg.14.

⁵ The Millennium Development Goals (MDGs), 2020.

⁶ Section 45 of the the 2008 Constitution of the Republic of the Union of Myanmar.

⁷ Section 390(b) of Ibid.

⁸ Environmental Conservation Law No 9/12 (2012).

The Forest Act, 1902 was repealed by the Forest Law, 1992 (The State Law and Order Restoration Council Law No. 8/92). The Forest Law, 2018 replaced in the Forest Law, 1992. However, rules, notifications, directives issued under the Forest Law, 1992 may continue to be applicable in so far as they are not inconsistent with this Law.¹

The National Forest Master Plan provides a guiding framework for five- and ten-year forest management plans developed by the Forest Department for each forest district, based on estimated figures for timber and non-timber forest products.²

The Forest Rules, 1995 which were issued soon after the Forest Policy (1995), focus on increased formation and protection of reserved forests and protected public forests, the sharing of forest management responsibilities with local communities, the establishment of fast-growing plantations on degraded forestland to conserve soil, water and biodiversity, the harvesting of timber and other forest products in an environmentally sound manner and the establishment of woodbased industries.

Enforcement Activities Combating Illegal Timber Smuggling

In 2005, 600000 m3 out of one million of illegal logs came from Dehong. Dehong is important one in illegal timber trade. Timber can directly be exported to the province from "further afield", such as northern Shan State and Sagaing Division because transportation is quite good in border line on the part of Myanmar. At its log plot, most of the timber is those from nearby the Madalay and South Kachin area, Monywa and Ingyi, and Tamalan and Padauk derived from Kalay and Tamu, in Saging Division.³

In 2006, when illegal logging and trade took place in northern in Myanmar and the central Government realized that because of illegal purchasing business, the government loses much revenue. In May 2006, an agreement regulation on the timber trade between Myanmar and Yunnan was made.⁴

The high value of the trade may reflect increasing Chinese demand for luxury hardwoods such as Padauk and Tamalan, two species used in the production of high-end rosewood furniture. If the trade continues at current growth level, there are concerns that Padauk and Tamalan are soon being logged to commercial extinction. For example, the logging situation in Kachin mostly found illegal which made the environmental degradation. The mountains are completely mined out. 6

Qing and Ming dynasty furniture in China made with high-value luxury redwood, or rosewood species – known as Hongmu – is placing completely unsustainable demands on forests throughout the Mekong region and worldwide. Hongmu species include tamalan / Burmese rosewood, Burmese padauk, etc.

Tamalan is Endangered A1cd ver 2.3 (Needs updating)⁷ A 1998 Dutch study proposed a CITES Appendix II listing.⁸ Also, Legal Status in Myanmar: both tamalan and padauk are "group

¹ Section 56 of Forest Law, 2018.

² National Forest Master Plan 2001–2031.

³ EIA, "The Illicit Overland Timber Trade between Myanmar and China", 2015, Pg. 10-12.

⁴ Office of Yunnan Provincial People's Government, "Interim measures to manage timber and mineral cooperation between Myanmar and Yunnan Province", May 11, 2006.

⁵ ITTO, Status of Tropical Forest management, 2005.

⁶ EIA, "The Illicit Overland Timber Trade between Myanmar and China", 2015, Pg. 9.

⁷ http://www.iucnredlist.org/details/33247/0 & http://www.iucnredlist.org/details/32306/0.

⁸ https://archive.org/stream/ contributiontoev98wcmc/contributiontoev98wcmc_djvu.txt.

1 species" and are classified as "reserved" in Myanmar. Therefore, they can be harvested and traded with permission of Ministry of Environmental Conservation and Forestry (MOECAF).¹

The Forest Department estimated 100,000 hoppus tons of timber is smuggled annually, taking "a heavy toll on the ecosystem especially in Kachin and Shan States Kachin State, Shan States and the Sagaing Division".²

For Appendix I species, an import and export permit is required and may be issued only if: the specimen was legally obtained; the trade will not be threat to the survival of the species; and an import permit has already been issued.³ For species under Appendixes I and II, CITES insists on sustainability, and requires Non Detriment Findings (NDFs) in determining whether the level of harvest of a species for export would be threat to the species' ecosystem throughout its range through its Review of Significant Trade.⁴

And the ministry of MONERC issued a notification in accordance with Section 30 of the Forest Law, 1992 restricted to use of the chain saw in 2013.⁵ MTE also controls the timber trade and logging operations. In 2013, after a large amount of number of 35,000 tonnes of illegal timber including 5,000 tonnes of teak being seized by the Government, the authority issued prohibition of log export in 2014.⁷ The hammer mark of MTE must be put on all timber and they must be shipped through Yangon port to be legal trade in the notification.

MTE has responsibility for doing a hammer marking stamp for logs extracted. Yet due to without being distinguished by MTE on original places, timber from various areas may be mixed. It cannot be able to trace back on timber original places, routes which is one of the difficulties to explore timber smuggling.

It was expected that when China's ban on the import of logs from Myanmar ended at the end of the year, as the recognition of Myanmar's log export ban and stop felling and smuggling of timber from the forests in northern Myanmar". In 2015, MoU with China aimed to halt cross-border timber trade.

Until recently, there was a special case involving 15 foreign suspects who were acquitted later on. ¹⁰ Similarly, as Major seizure in Kachin State in January 2014, 155 Chinese labourers were arrested and very soon later released "life imprisonment" with the "present of Myanmar". ¹¹ Consequently, that legal enforcement and implementation under forest law and rules would be weak for prevention of illegal timber smuggling.

Accordingly, The FD Deputy Director General commented that smugglers were "attempting to use a new route for illegal exports. Previously, smuggled timber crossed the border

¹ EIA, Myanmar's Rosewood Crisis, June, 2014.

² ITTO. Tropical Timber Market Report 19, no. 1 (January 2015).

³ Hewitt, J. 2007. An assessment of tree species which warrant listing in CITES. Friends of the Earth Netherlands; Keong C.H. 2006. The role of CITES in combating illegal logging – current and potential. TRAFFIC Online Report Series No. 13. TRAFFIC International.

⁴ Article III and IV of CITE; Mikaela Nilsson Rosander, ILLEGAL LOGGING: Current Issues and Opportunities for Sida/SENSA Engagement in Southeast Asia, p.54.

⁵ Notification 29/2013.

⁶ Eleven Media, "Myanmar seized 35000tons of Illegal Timber over past nine months", January 19, 2014.

⁷ Export of raw logs and exports through ports except Yangon, 2014.

⁸ Forest Trends, Analysis of the China-Myanmar Timber Trade, December, 2014, Pg. 5-6.

⁹ ITTO. Tropical Timber Market Report 19, no. 20 (October 2015).

¹⁰ UNODC, "Criminal Justice Response to Wildlife and Forest Crime in Myanmar", November 2015, Pg. 17.

¹¹ *Ibid*, Pg. 3.

with China, but since the crackdown on the border and strict controls in China, smugglers have switched to ocean transport out of Yangon Port". 1

Some of the most serious deforestation has occurred in conflict areas. Large area of forest of the country places out of the control of authority concerned, such as Chin State and Kachin State. Strategically, these places are important borders by tracts of forest. Karen State bordering with Thailand, runs a system of "modified procedures", where it is weakness in legal compliance. But, logging in such kind of areas is taken into granted illegal under Myanmar forestry laws.²

And, conflict between the government and ethnic groups and the lack of cooperation among relevant ministries is exacerbating the problem". The FD reported that "illegal timbers are being seized almost every day largely as a result of the Community Monitoring and Reporting System (CMRS)...Between 2016 and 2019, 160,000 tons of illegal teak was seized and 23,000 offenders including 59 foreigners were apprehended...U Tin Aye, former director of the Forestry Department and now acting Secretary of Myanmar Forest Association said timber is smuggled to China and other neighbouring countries but the Forestry Department alone is not capable of preventing these cross border activities. Thus, there has been necessary for transboundary collaboration, cooperation among relevant ministries to combat illegal timber trafficking.

The volume of teak confiscated by the FD is almost same as the annual allowable cut for 2017-18.⁵ Myanmar has harvested well above the sustainable limits set by the FD through their Annual Allowable Cut. Reality is likely much worse.⁶

In some cases, foreigners may give certain amount of money to inhabitants in order to assist them for logging. Lack of branch of Forestry Department in some conflict areas seems to drive such kind of cases. According to the organization of the Forest Department, each working person is responsible for 8882 acres of forest, which is five or six times compared to Thai, Cambodia, and Lao situations. And over the past five years, few foreigners took part in trafficking timber cases. According to the Myanmar Police Force reports, there was weakness in investigation accused in the area of the illegal timber trade.

The Regional Minister of Forestry for Bago "stated there has been an increase in illegal logging in the Bago Yoma Range where the 10-year logging ban has been in place since 2016-17...the Minister proposed activating an existing regulation which restricts entry into the forest."

"According to the Sagaing Region Forestry Department, corruption, poverty, limited employment opportunities and high market demand are the causes of illegal felling and deforestation...Sagaing Region and Shan State have experienced the worst illegal felling...According to the Minister, Forestry staff were recently attacked while apprehending suspects." ¹⁰

 $^{1\} ITTO.$ Tropical Timber Market Report 21, no. 3 (February 2017).

² EIA, "The Illicit Overland Timber Trade between Myanmar and China", 2015, Pg. 5.

³ ITTO. Tropical Timber Market Report 24, no. 6 (March 2020).

⁴ Forest Trends, Illegal Logging and Associated Trade in Myanmar: Impacts of Government Measures to Address Illegal Logging, January 2021, P.47.

⁵ ITTO. Tropical Timber Market Report 21, no. 8 (April 2017).

⁶ Forest Trends, Illegal Logging and Associated Trade in Myanmar: Impacts of Government Measures to Address Illegal Logging, January 2021, P.27.

⁷ WWW.forestdepartment.gov.mm/hluttaw data (18.5.2017).

⁸ UNODC, "Criminal Justice Response to Wildlife and Forest Crime in Myanmar", November 2015, Pg.18.

⁹ Forest Trend, Illegal Logging and Associated Trade in Myanmar: Impacts of Government Measures to Address Illegal Logging, January 2021, Pg. 47.

¹⁰ ITTO. Tropical Timber Market Report 21, no. 9 (May 2017).

Harwell and Blundell have further documented that illegal logging and the associated revenues can be weak the rule of law, fuel corruption, and hamper development. Logging in Myanmar has historically suffered issues of corruption, weak forest governance and law enforcement.

The Myanmar Timber Merchants Association (MTMA) estimated that "illegally harvested timber leaving the country via overland routes could be worth over US\$200 million annually and that the extent of the problem has been made worse by an escalation of the conflict between government forces and ethnic groups in the Shan and Kachin states... . Exported logs are being 'legalised' through the payment of local **taxes** where the logs will be processed.² It hinders the good governance of to implement sustainable forest management in order to support sustainable development.

Seizure and Prevention of Illegal Timber Smuggling

Between the fiscal year 2009-10 and 2015-16 (up to September), 87,206 illegal timber trafficking cases were detected. Sagaing Region is the highest with 16,577 cases followed by Bago Region 157,87 cases.³ In Fascal Year 2017-18 (April to November), 6637.9 tonnes of teak, 9028.7 tonnes of hardwood and 16820.3 tonnes of others were seized.⁴ Between the fiscal year 2018-19 and 2019-20, illegal timber trafficking cases, accused in Sagaing, followed by Bago are more than the other regions.⁵

Currently, the forest department not only conserves the environmental factors and maintains a sustained yield of the forest products, but search, arrest and seizure illegal timber and forest products by the following ways of:

- (a) Regularly or casually search and arrest by the Town or District Forest Department;⁶
- (b) Search and arrest illegal timber by monthly columns according to Region or State;⁷
- (c) Inspect and arrest by DG Office, the Forest Department, depending on the information;⁸
- (d) Search and arrest by Chindwin and Irrawaddy Columns;⁹
- (e) Arrest collaborating with Tatmadaw, and other related organizations; 10
- (f) Arrest collaboration with Forest Security Polices in 8 Regions/States, 19 Districts; 11
- (g) Arrest by Community Monitoring and Reporting System- CMRS taking information. 12

The Forest Law, 2018 highlights "forest administration", "permission for exaction of forest products". The 2018 Forest Law also expands "search, arrest and administrative action", and encourages a stronger community participation, institutional cooperation and related sectors

¹ E. Harwell, Forests in Fragile and Conflict affected States, Washinton DCf Program on Forests, 2010.

² ITTO. Tropical Timber Market Report 17, no. 9 (May 2013).

³ MOECAF, "Summary on Combating Wildlife Crimes and Illegal Timber Trafficking in Myanmar", 2015.

⁴ Forest Department, Forest Mirror, December, 2017, Pg.12.

 $^{5\} https://www.forestdepartment.gov.mm/illegal_logging.$

⁶ Forest Department, Forest Mirror, April, 2018,Pg 6.

⁷ Forest Department, Forest Mirror, November, 2019 Pg 8.

⁸ Forest Department, Forest Mirror, November, 2017 Pg 8.

⁹ Forest Department, Forest Mirror, September, 2017, Pg 10.

¹⁰ Forest Department, Forest Mirror, August, 2019 Pg 6.

¹¹ Forest Department, Forest Mirror, April, 2018, Pg 6.

¹² Forest Department, Forest Mirror, December, 2019 Pg 8-9 and 2020, Pg 7-8.

collaboration in search, arrest of illegal trafficking. The Law also provides reforestation, prevention of deforestation such as offences, and penalties to some extent.

After 2018 most of the cases can be taken action under forest law, 2018. Whoever extracts moves or keeps in possession of over one ton of teak timber without a permit shall be punished with imprisonment for a term from a minimum of five years to a maximum of 15 years and shall also be punished with a fine not exceeding three million kyats. Illegal timber trade is a great crime in some countries. Therefore, it would be considered in the same way in Myanmar to prevent deforestation.

Moreover, Myanmar identifies illegal logging as an environmental matter, and not as a criminal act, which makes the Forest Department to suit against the offenders. Mostly, in illegal timber smuggling cases, it is only the accused who is punished and not the persons behind the scene.

Conclusion

Forest Law enforcement in Myanmar is weak. FD is continuously making efforts to improve law enforcement and fight illegal timber smuggling, but its resources are extremely limited. Although the theoretical framework for sustained yield forest management exists, the policies, laws and rules do not appear to be followed in practice. FD does not have a presence in many areas where illicit timber smuggling occurs especially along the border with China, and there is a general lack of resources to investigate possible crimes.

On the other hand, the demand on timber is growing in the neighbouring countries and consequently, illegal timber trade is conducted by several illegal means and ways. One of the challenges for combating illegal timber smuggling is the security problem in the border area that law enforcement is fragile. Community monitoring and reporting system had developed to fight illegal timber smuggling. But, it would be also necessary for the cooperation of ethnic armed groups across the country to combat illegal timber smuggling. Moreover, there has been necessary for transboundary collaboration, cooperation among relevant ministries to combat illegal timber trafficking.

And another problem is that illegal logging is still classified in Myanmar as an environmental matter, and not as a criminal act that makes question for the FD to suit against the offenders. Illegal timber sumggling is a great crime in some countries. It should therefore be considered in the same way in Myanmar. In order to overcome such difficulties, it would instantly need to reinforce above the weaknesses.

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¹ Forest Department, Forest Mirror, April, 2018-2020.

² Section 43 of Forest Law, 2018.

³ Forest Act of Thailand, B.E. 2484 (1941); The Forest Law of the People's Republic of China, 1998.

Forest Act of Thailand, B.E. 2484 (1941).

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