

# Evaluation of the Myanmar CoC Dossier and MTLAS



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## Acronyms

|         |  |
|---------|--|
| AAC:    | Annual Allowable Cut   |
| ADB:    | Asian Development Bank                                       |
| CoC:    | Chain of Custody   |
| DBH:    | Diameter at Breast Height                                    |
| DFID:   | UK Department for International Development                  |
| DI:     | Departmental Instructions                                    |
| EC:     | European Commission  |
| ETTF:   | European Timber Trade Federation                             |
| EU:     | European Union   |
| EUTR:   | European Union Timber Regulation                             |
| FD:     | Forest Department  |
| FLEGT:  | Forest Law, Enforcement, Governance and Trade                |
| FME:    | Forest Management Enterprise                                 |
| FMU:    | Forest Management Unit                                       |
| FSC:    | Forest Stewardship Council                                   |
| GBH:    | Girth at Breast Height                                       |
| HT:     | Hoppus Ton (corresponds to 1.8027 cubic meters)              |
| IAF:    | International Accreditation Forum                            |
| MFCC:   | Myanmar Forest Certification Committee                       |
| MONREC: | Ministry of Natural Resources and Environmental Conservation |
| MTE:    | Myanmar Timber Enterprise                                    |
| MTLAS:  | Myanmar Timber Legality Assurance System                     |
| NGO:    | Non-Governmental Organisation                                |
| P&C:    | Principles and Criteria                                      |
| RIL:    | Reduced Impact Logging                                       |
| SOS     | Standing Orders for Extraction Staff                         |
| TLAS:   | Timber Legality Assurance System                             |
| UN:     | United Nations   |
| VFVL:   | Vacant, Fallow and Virgin Lands                              |
| VPA:    | Voluntary Partnership Agreement                              |

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We sincerely thank the Multi-Stakeholder Group (MSG) members from the Private Sector and Civil Society Organizations (CSOs), and the representative from Myanmar Forest Certification Committee (MFCC), for their active and dynamic participation in constructive dialogues. Their observations and suggestions during the evaluation trip are really appreciated.

# 1 Introduction

The Myanmar Government, through the Myanmar Forest Certification Committee (MFCC), have implemented actions to provide transparency of the timber supply chain in Myanmar, specifically to provide traceability and access to legally required documents for timber exported to the European Union. Among these activities are the development of the Myanmar Timber Legality Assurance System (MTLAS) and the publication of the CoC Dossier.

The **MTLAS** was developed in 2013 based on the Association of Southeast Asian Nations (ASEAN) Criteria and Indicators for Legality of Timber. It is currently being used as a means for verifying the legality of timber exports from Myanmar. The MTLAS includes a definition of legal timber and six associated Principles and 15 Criteria. It specifies relevant laws and regulations, as well as the means for verifying that specific indicators are met. Currently, the MTLAS is functioning as a voluntary certification system, but the intention is to develop the system into a mandated regulatory system that all timber for export shall be certified against.

The MTLAS standard and related documents can be downloaded here:

<https://www.myanmarforestcertification.org/standards/>

The **Chain of Custody (CoC) Dossier** was endorsed by the Interim Task Force (ITF)/Multi-stakeholder Group (MSG) and approved by the Ministry of Natural Resources and Environmental Conservation (MONREC) in March 2018 and in May 2018, respectively. The ITF and MSG were created during the VPA preparatory phase and the MSG is expected to continue playing a role in guiding the development of roadmap for activities related to timber legality verification. The Dossier was developed as a response to the EU Timber Regulation (EUTR) and as a start of a potential FLEGT VPA process, to help EU importers (operators) understand the steps in the supply chain, including responsibilities of the different authorities involved and the documents that provide evidence that each step has been carried out. Because it provides details on different steps in the process, including a description and translation of each document, it is considered an important tool for operators (international buyers) commissioning 3<sup>rd</sup> party verification as part of their risk mitigation measures that may conduct independent third-party verification of the legality of exported timber products.

The Dossier can be downloaded here:

<https://www.forestdepartment.gov.mm/sites/default/files/Documents/%28R%29Myanmar%20Timber%20Chain%20of%20Custody%20Process.pdf>

Currently the MTLAS and the CoC Dossier are not directly linked, even if there is a great deal of overlap in the objectives of the two.

## 1.1 About this report

The current report contains the findings of an evaluation conducted by NEPCo on behalf of the European Timber Trade Federation (ETTF).

The purpose of the evaluation is to evaluate the extent to which the CoC Dossier and the MTLAS can be used to meet EUTR requirements for verifying origin and species and to indicate the legality of the timber imported from Myanmar.

The report outlines how the documents listed in the Dossier can be used by operators as evidence that they have access to sufficient information about the origin of material and indications of legality to enable an efficient due diligence exercise on the material. This

report also includes an evaluation of how the FD and MTE controls, described in the CoC dossier, is being implemented on the ground by relevant authorities.

The evaluation described herein also include an assessment of the robustness of the Myanmar Forest Certification Committee's (MFCC) current 3<sup>rd</sup> party audit/certification services as implemented under the Myanmar Timber Legality Assurance System (MTLAS). It is noted that the evaluation of the MTLAS was done based on the available documented procedures and review of one audit report, but that no evaluation of actual audit activities was possible. This obviously is not a representative sample, and the quality of auditing cannot be evaluated from only one report. This is a limitation to this work that have to be kept in mind. We have tried to avoid making any conclusions about the auditing itself but have instead focused on the systems themselves.

We also include in the report evaluation of activities taken by MFCC to meet the findings and gaps identified in the study conducted on behalf of the MFCC, with support of FAO, in 2017<sup>1</sup>.

The Myanmar Timber Legality Assurance System GAP Analysis can be downloaded here:

<https://www.myanmarforestcertification.org/project/mtlas-gap-analysis/>

The outcome of the evaluation is expected to provide input into how EU Operators may potentially meet due diligence requirements for timber from Myanmar, with the aim of improving the ability of EU importers to conduct high quality due diligence and meet the requirements of the EUTR. The evaluation will also seek to provide findings that could help Myanmar strengthen its current government controls (CoC dossier) and its 3<sup>rd</sup> party national legality certification system or MTLAS.

### 1.1.1 Methodology and overview of the report

This report contains an evaluation of the CoC Dossier controls and documentation from the point of view of potential EU buyers of timber from Myanmar. The evaluation was based on terms of reference developed through local consultation involving the Forest Department and the FLEGT Multi-Stakeholder Group (MSG). The report has been developed using secondary sources such as publicly available reports and data, as well as an on-site visit to Myanmar in July 2019, where the authors visited Gangaw District to observe and evaluate forest operations and evaluate the availability of documents and traceability of timber. We also interviewed several stakeholders from relevant government departments and industry and NGO representatives.

**Chapter 1 is a background section** outlining relevant information about the forest sector and the governance system, to provide context for the study.

**Chapter 2 contains the evaluation of the MTLAS system** using the NEPCon Certification System Evaluation Standard to assess the contents of the P&C, as well as the surrounding policy and procedural framework.

**Chapter 3 contains the evaluation of the CoC Dossier.**

**Chapter 4 contains a table summarizing the observations** made in Chapters 2 and 3, as well as the findings from the evaluation of the MTLAS against the NEPCon Certification System Evaluation Standard found in Annex 2.

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<sup>1</sup> <https://www.myanmarforestcertification.org/project/mtlas-gap-analysis/>

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**Chapter 5 contains recommendations for the MFCC.**

**Chapter 6 contains recommendations for Operators in the EU.**

**Annex 1 contains an evaluation of the 2017 Gap Analysis activities.** The table provides an overview of the activities reported by MFCC to close the gaps from the 2017 Gap Analysis, along with the NEPCon evaluation of whether the gaps are fully closed or not.

**Annex 2 contains table summarising the evaluation of the MTLAS** against the NEPCon Certification System Evaluation Standard.

**Annex 3 contains a brief overview of the on-site visit** and a list of key people interviewed.

**Annex 4 contains a list of species in the Species Groups.**

## 2 Background

Export of timber and wood products have long been an important source of foreign revenue for the Myanmar Government. However due to concerns about illegal logging and deforestation, the Myanmar Government is engaging in a reform process to improve transparency and accountability in the timber sector. Myanmar banned exports of raw logs (HS4403) from 1 April 2014; there is currently no indication of when this ban will be lifted. All logging activity was temporarily banned in 2016, with the ban lifted 1st April 2017. Logging of teak in the Bago-Yoma Range was banned for 10 years from 2016. Export of products based on confiscated timber are prohibited as of April 2017.

### 2.1 Forest governance and legality – a perspective on current situation

For many years there has been regular reports of illegalities and corruption in the Myanmar forest sector (see e.g. Nellemann, 2012, World Resources Institute, 1998 or EIA, 2019). Illegal timber trade has taken place between Myanmar and China, Thailand and India. There have been reports of illegal direct trade of timber (especially teak) between the northern parts of Myanmar and China for decades. This trade seems to persist to this day, partly made possible by ethnic conflict and independence movements in several of these states (Kachin, Rakhine and Shan States). Timber has long been a source of revenue for independence movements in the states, as well as for the Myanmar government to support their large military presence in border areas.

A recent report from the Myanmar Extractive Industries Transparency Initiative (MEITI, 2019 and Forest Trends, 2019) clearly indicates that the illegal trade with China has a significant scale and is ongoing. Even if the timber harvested and traded illegally with China does not enter the authorized trade route via the port of Yangon, this timber may well end up in wood products being traded worldwide with fraudulent information about origin. Furthermore, a recent UN report (UN, 2019) has highlighted the role of the Myanmar military in the extractives sector (including forestry), including serious human right violations and crimes against humanity in the States of Kachin, Shan and Rakhine.

Verifying the legality of timber from Myanmar has been challenging for various reasons. The legal framework for forest management has not been clearly developed and it has not been possible for independent auditors to travel and visit forest management entities to conduct independent evaluation. In addition, timber has traditionally been sold in Yangon by auctions as “Lots” allocated by quality, under which process the information on origin of harvest has been lost or made impractical. This has allowed timber from areas harvested in ethnic areas, and conversion of natural forest to be auctioned. Recent political actions have been initiated to address some of these issues (see later in this report).

Mixing of potentially illegal timber with timber from known sources, remains a concern as the government continues to auction its stockpiles of teak harvested before 2017. It is estimated that MTE have stockpiles of up to 100,000 HT, while the private and state-owned timber processing enterprises may stockpile more than twice of that. This stockpiled material harvested prior to 2017 is now entering processing for export.

European enforcement officials implementing the EUTR came to a common position across the EU regarding imports from Myanmar in June 2018<sup>2</sup>, in minutes of the EU

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<sup>2</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32789>

FLEGT Expert Group The EC also stated that *"it would appreciate more information on the process for recognition of verification bodies and on how their work could mitigate the risk of illegal logging"*, something this report is seeking to clarify.

The EUTR/FLEGT Expert Group concluded that the lack of sufficient information on harvesting volumes authorized for cutting, sufficient data for clear attribution of origin within the country to exclude conflict timber, and the high risk of mixing legally harvested with illegally harvested logs in the saw mills often owned by MTE, combined with the high corruption index, make it impossible for any verification service to mitigate risk to a negligible level that timber from Myanmar was illegally harvested.

This position essentially means that all timber from Myanmar is considered to have a risk that cannot be considered "negligible" under the EUTR because companies cannot effectively carry out a risk assessment or mitigate the risks of buying illegal timber until changes are made to improve traceability of the supply chain back to stump.

The position of the EUTR/FLEGT Expert Group was confirmed at their meeting in end of June 2019:

*"The EG (Expert Group ed.) maintains its assessment that it continues to be impossible to come to a negligible risk of illegally harvested timber or derived products being placed on the EU market when the timber was harvested in MM (see, in particular, Conclusions of the EG regarding timber from MM of 19 April 2019, 19 June 2018, following the meetings with the Delegation from MM, and 20 September 2017, tab 'Additional Information'). To the EG's knowledge, there are currently no other cases of countries with a significant trade volume into the EU, where the deficiencies in the national systems are as clear as in MM. Cases brought to the attention of the EG demonstrate that the approach established here (making operators aware and put on notice) makes it possible to take action after that."* (EC, 2019a).

In the following section we will seek to evaluate, if, or to what degree, the MTLAS and the CoC Dossier, can play a role in mitigating these risks.

## 2.2 Forest resources

The impact of illegal timber harvest and trade is visible in the forest, with Myanmar seeing a rapid decline in forest resources. The Food and Agriculture Organization of the United Nations (FAO, 2015) estimated that Myanmar's forest cover dropped from 58 percent of the country's total land area in 1990 to 43 percent in 2015, amounting to a loss of about 10 million hectares. On average, 407,000 hectares of forest were lost per year between 1990 and 2015, or an annual deforestation rate of 1.2 percent. Myanmar is ranked third in the countries with the highest deforestation rates after Brazil and Indonesia.

Latest figures (2017-2018) state that Myanmar has a forest cover of 29 million hectares or 41.30 percent of a total land area, according to a statement issued by the Planning and Statistics Division of the Forest Department (Eleven Myanmar, 2018).

The process of deforestation is gradual, and number show how closed or intact forest is being converted to open or degraded forest (Figure 1). The data also reveal significant degradation of Myanmar's forests with the transition from closed to open forest.

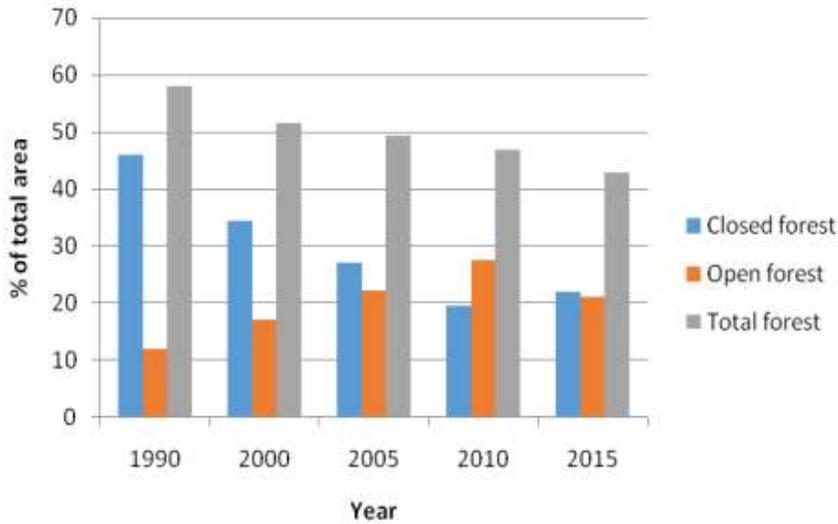
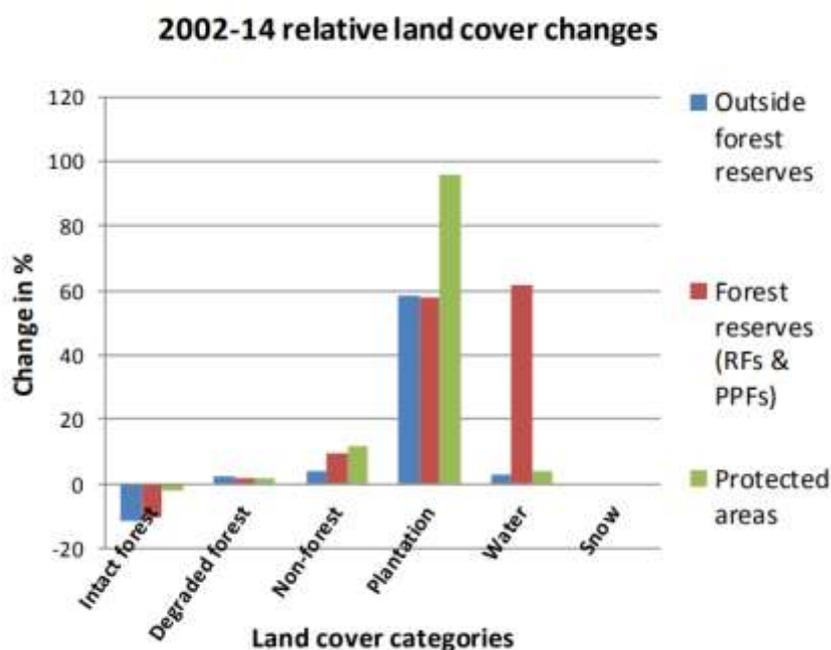


Figure 1: Forest cover change in Myanmar 1990-2015. Source: FAO 2015.

Loss of intact forests is also a key issue, as a consequence of illegal and unsustainable forest harvesting. ALARM et al. (2016) found that most of Myanmar's intact forests are concentrated in the hilly and mountainous states and regions of Kachin, Sagaing, Tanintharyi, Shan and Chin. These areas have also experienced the greatest loss of intact forest. Shan State and Sagaing Region experienced the largest overall losses of intact forest, possibly due to those intact forests being severely fragmented and often surrounded by agriculture (Treue, Springate-Baginski and Htun, 2016). The declines were also high in more remote and inaccessible areas, such as Kachin State and Tanintharyi Region, as well as in some of the other hill regions, including Bago Region and Chin, Kayin and Rakhine States (ALARM et al., 2016). The rapid decline in forest in ethnic areas underlines the severity of illegal forest harvesting in those areas and the impact of the illegal cross-border trade with China.



*Figure 2: Land cover changes relative to Forest Reserves. Source: Treue, Springate-Baginski and Htun, 2016.*

In summary, forests are being reduced at a high rate in Myanmar, and pressures has meant increased areas of degraded or open forest and significant loss of intact forests. Also noted is that primary reserves of intact forest are found in remote areas, often in states controlled by ethnic minorities.

### 2.2.1 Natural forest classification

In Myanmar, forest areas are legally protected as Permanent Forest Estate in the form of:

- (i) Reserved Forests (RF),
- (ii) Protected Public Forests (PPF), and
- (iii) Protected Areas System (National Parks, Wildlife Sanctuaries, and Nature Conservation Areas).

Forested areas that are not included in any of these legal categories are termed Unclassified Forests (UCF) by the Forest Department. These areas may be subject to re-classification to Forest Reserve or other uses, based on decision of the Government.

Protected public forest is mainly for domestic timber supply and conservation purposes. Protected areas are set aside for national parks, wildlife sanctuaries and nature conservation areas. Unclassified forests, or other wooded land (approximately 15 million hectares), are forested areas that do not fall under these three categories and were historically kept as "land banks". That means that of the total app. 29 million hectares of forest, approximately half is not classified as Permanent Forest Estate (PFE), but are considered unclassified. In these unclassified forest areas, the Forest Department and the Ministry of Agriculture and Irrigation have overlapping authority and conflicting land classification may occur.

## 2.2.2 Plantations

In Myanmar, plantations have historically been established as compensatory planting inside natural forest. This means that teak trees were planted in areas where forest had been degraded or converted previously. These types of plantation have taken place over the last decade, and today these areas are commonly similar to natural forest and are considered within the natural forest domain and treated as natural forest.

Normally, plantations are established inside PFE which is under the jurisdiction of MONREC. Plantations can be established by MONREC on both Reserve Forest area and Protected Public Forest. Private plantations can also be established in Reserved Forest and Protected Public Forest if decided by MONREC – in this case the plantation is allocated under a lease agreement.

There are some plantations established inside Unclassified Forest areas under certain conditions. For example, fuelwood plantations are normally established close to villages, and in these cases, the plantations fall inside unclassified forests. There are also a limited number of state-owned commercial plantations and private plantations established in unclassified forests, mostly in cases where Reserve Forest or Protected Public Forest Areas are not close by.

East Pegu Yoma Project (EPP) plantations and Asian Development Bank (ADB) project plantations were established from 1981 until 1984 with the assistance of the World Bank and from 1983 until 1987 with the assistance of the Asian Development Bank (ADB) respectively. Teak plantations were established from 1998-1999 to 2005-2006 for eight years during which 160,000 acres of plantations were established. The Forest Department established forest plantations on the annual average of 60,000 acres with the maximum annual planting rate of 80,000 acres in 1985 and with the minimum annual planting rate of 7,600 acres in 2015.

Private forest plantations have been allowed since 2006 under long-term land leases from the State. Investors can plant teak, hardwood, rubber, palm, and industrial crops in the concession areas, up to a permissible limit set by MONREC. Beyond this limit, a bidding process was applied for land allocations for private forest plantations.

Data has been collected on plantation establishment since 1981.

Table 1: Establishment of plantations by type and tree species from 1981 to 2017.  
Source: Natural Forest and Plantation Division (2019), FD, MONREC.

| Types of plantation        | Area (acre) | Percentage % |
|----------------------------|-------------|--------------|
| Commercial plantation      | 1,232,365   | 56           |
| Fuelwood plantation        | 449,586     | 15           |
| Industrial plantation      | 179,121     | 8            |
| Watershed plantation       | 341,159     | 20           |
| Mangrove forest plantation | 6,480       | 0            |
| Total                      | 2,208,711   | 100          |

Table 2: Establishment of commercial plantation areas 1981-2017 by species. Source: Natural Forest and Plantation Division (2019), Forest Department, MONREC

| Type of plantation               | Area (acre) |
|----------------------------------|-------------|
| Teak                             | 964,521     |
| Pyinkado ( <i>Xylia kerrii</i> ) | 137,434     |
| Padauk                           | 41,102      |
| Pine                             | 54,064      |
| Others                           | 35,244      |
| Total                            | 1,232,365   |

## 2.3 Forest management and harvesting

The Ministry of Environmental Conservation and Forestry includes the following departments:

1. Forest Department (FD)
2. Dry Zone Greening Department
3. Environmental Conservation Department
4. Survey Department
5. Myanmar Timber Enterprise (MTE)

The key departments responsible for forestry are the FD and MTE. The FD is responsible for protection, conservation and sustainable forest management of forest resources of the country, and allocation of harvest permits to MTE. MTE is responsible for timber extraction, processing, milling and marketing.

The authority of the FD is exercised through local District Forest Offices, which are responsible for developing and implementing District Forest Management Plans. Each District has its own management plan and is considered as a Forest Management Unit (FMU). One district can have several Reserved Forests and a Reserved Forest can consist of several compartments. Numbers of reserved forests in one district and number of compartments in one reserved forest may vary from district to district. If one reserved forest area spans more than one district, each district will be responsible for managing the portion of the reserved forest falling in their respective districts.

The activities of MTE are implemented through 25 "Extraction Agencies" throughout the country.

Each Extraction Agency may span 2-3 Districts, e.g. West Mawleik Extraction Agency spans Kalay, Mawleik and Tamu Districts. Districts can also have separate Extraction Agencies, e.g. Katha district includes three separate Extraction Agencies: East Katha, West Katha and Kawlin, since Katha district is a sprawling area consisting of several reserved forests.

This overlapping allocation of management and extraction responsibility respectively, between the FD and MTE, is relevant when tracking timber based on origin and when certifying specific areas as FMUs (see table 3 for overview of MTE Extraction Agencies).

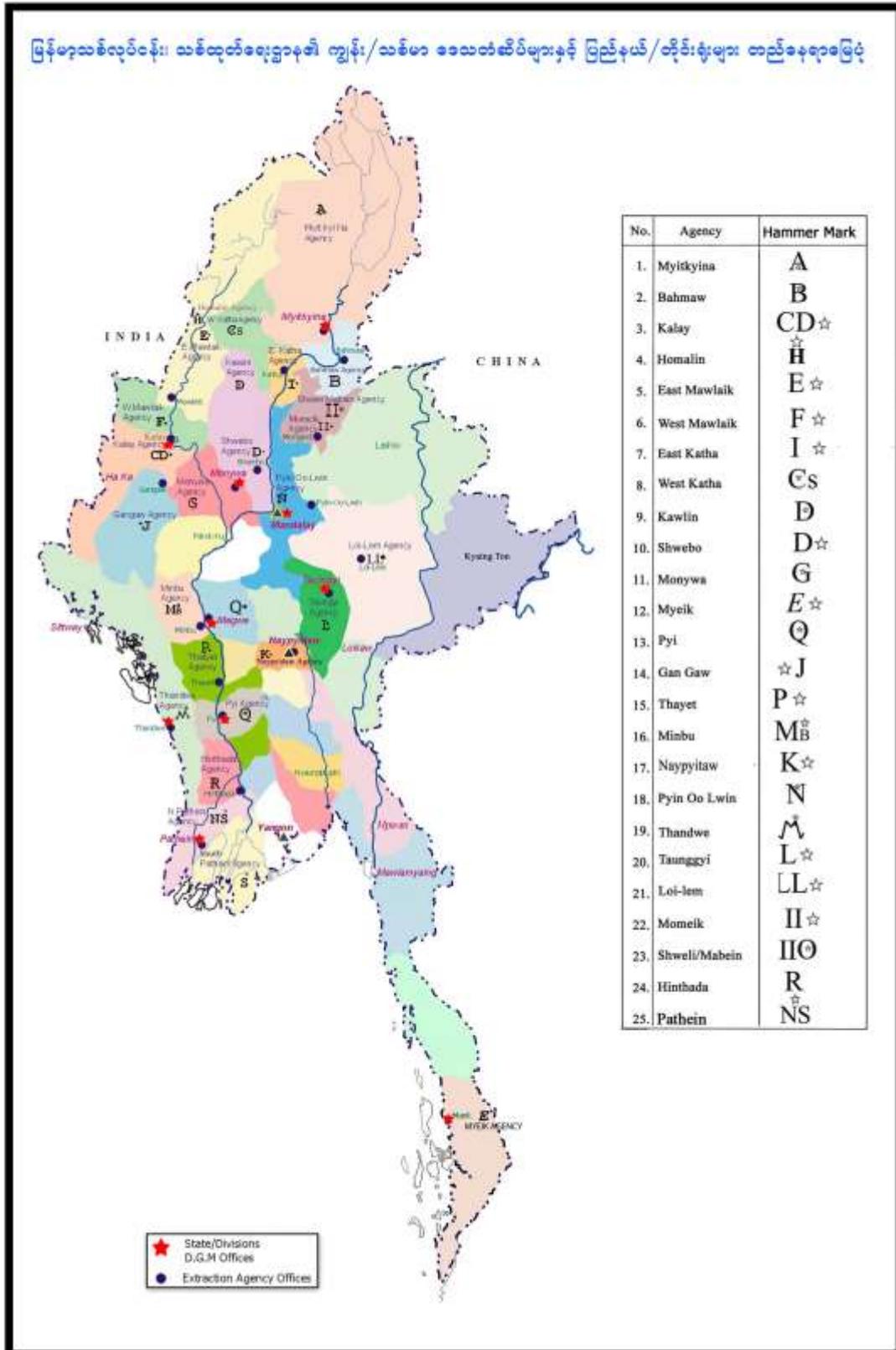


Figure 3: Map of MTE extraction agencies 2018-2019. Source: MTE.

### 2.2.3 District forest management planning

District Forest Management Plans are developed by the FD and cover a period of 10 years and are drawn up at the district level (FMU level). Plans are reviewed at the end of 5 years (in the middle of the plan period) and revised after 10 years (at the end of the plan period), considering changing situations. The current plans are drawn up for the period (2016 – 2026).

There are 68 districts (68 FMUs) across the country and each FMU has its own district forest management plan. Forests are managed under the prescriptions of the forest management plan. In addition to the districts used by the FD, the MTE uses their Extraction Agencies as the unit of planning. The MTE Extraction Agencies do not correspond with the FD Districts i.e. one FD District, may contain one or more MTE Extraction Agency and one MTE Extraction Agency may operate in one or more Districts.

### 2.2.4 Harvest planning process - AHP (Annual Harvesting Plan)

Each district has its own district forest management plan. There are no plans at a compartment level. The District unit is the Forest Management Unit (FMU). This is also reflected in the MTLAS system, where the terms FMU or FME seem to be used synonymously with a District. The fact that Extraction Agencies does not correspond to administrative Districts adds complexity.

The AAC developed for planning purposes is based in pre-harvest inventories (see also section 2.3.3). Upon receipt of AAC declaration, the Assistant General Manager (AGM) or Manager of MTE who oversees an extraction agency will co-ordinate with the Assistant Director (AD) of the FD who is a district forest officer. They coordinate based on the AAC and felling series in the District Forest Management Plan. The AD of the FD can propose the felling series (FS), reserves, and compartments in the district forest management plan which are due to be harvested and have enough stocking of teak and other hardwoods to acquire the desired AAC.

When they agree, the Manager informs the Managing Director (MD) of the MTE.

In December and January, there is a coordination meeting between the MTE and the FD in Nay Pyi Taw. The MTE proposes areas of extraction (felling series, reserves, compartments) and amount of timber to be extracted.

The FD can reject the proposed areas if they lie outside the felling series in the management plan. They coordinate until both sides reach an agreement. When both sides agree, MTE prepares an Annual Harvesting Plan (AHP). The MTE submits the Annual Harvest Plan (AHP) to the Minister of MONREC. The Minister forwards it to the Cabinet, for the president's approval. Once the President has approved the AHP, the MONREC Minister informs the relevant Chief Ministers, the MTE and the FD.

### 2.2.5 Annual Allowable Cut (AAC) allocation and production

Annual Allowable Cut (AAC) is calculated by the FD based on national inventory data and allocated nationally for each district. In addition to this, the FD conducts forest inventory samples annually in selected districts.

**The last national forest inventory was conducted in 1981** – this obviously mean that data may be inadequate to forecast harvestable volumes in today's forests, given the high

rate of deforestation and forest degradation. Even if local inventories are conducted as part of the annual planning phase, the fact that inventory data on a national level is out of date, must mean that planning of harvest rates are at risk of being inaccurate, which may lead to unsustainable levels of harvesting.

When a district lacks inventory data, the national forest inventory data are extrapolated to calculate district level AAC. The AAC is assigned only at district level – there is no compartment level AAC.

If a district has neither inventory data nor covered by the forest inventory was not carried out mainly due to security reason, one-shot inventory was conducted. A one-shot inventory is an inventory using a limited number of 0,5 ha sample plots at district level to evaluate standing volume. The data from one-shot inventory is used to determine AAC.

AAC is calculated based on the number of trees above the exploitable girth limit. Stand tables which show number of trees by girth classes and Stock tables which show volume by girth classes are generated using volume equations developed for all states and regions during the National Forest Survey and Inventory project.

The AAC is then calculated based on inventory data and approved by MONREC. Each MTE Extraction Agency is then allocated the AAC, on which they plan the volume of timber to extract.

Once the planned volume is obtained, MTE stops harvesting even if trees marked are not exhausted. The remaining AAC will be taken as a balance for next year. Note that the AAC and the planned volume are not the same. AAC is the number of trees that can be cut, while the planned volume is the volume that will in fact be extracted. Currently the planned volumes are below the AAC, and the residual trees will be maintained for future production.

### ***AAC, target and performance***

Historically there has been significant overharvesting in Myanmar, compared to the formally approved AAC. Even if the AAC was set by the FD, the targets were set higher based on need for revenue, by the Government.

This has changed with the new government and AAC and harvest targets have been drastically reduced. During the fiscal year 2019/2020, MTE will extract below 50% of the AAC for both teak and other hardwood species as directed by the Union Minister.

Statistics have been made available on AAC and total production for Myanmar compared to the AAC. The Myanmar Government publishes AAC at district level on the MTE website: <http://www.myanmaritimer.com.mm/index.php/en/announcements/1229-aac>. As can be seen in Table 3, the target set by the government, as well as the actual production, have exceeded the AAC significantly in the past. It is noted that recent changes to management have reduced the reported production to levels below the AAC in current time.

Table 3: Actual Production of teak and other hardwoods against target set from 2008-2009 to 2018 – 2019. Source: MTE.

| Year      | Annual Allowable Cut (AAC) |                                | Target (Hoppus Ton) <sup>3</sup> |                 | Performance (Hoppus Ton) |                 |
|-----------|----------------------------|--------------------------------|----------------------------------|-----------------|--------------------------|-----------------|
|           | Teak (No. of trees)*       | Other hardwoods (No. of trees) | Teak                             | Other hardwoods | Teak                     | Other hardwoods |
| 2008-2009 | 147,300                    | 1,131,461                      | 438,809                          | 1,595,854       | 335,626                  | 1,392,444       |
| 2009-2010 | 147,300                    | 1,131,461                      | 371,850                          | 1,418,100       | 299,197                  | 1,401,106       |
| 2010-2011 | 147,300                    | 1,131,461                      | 364,882                          | 1,698,200       | 257,225                  | 1,254,872       |
| 2011-2012 | 48,897                     | 817,343                        | 344,600                          | 2,033,150       | 246,755                  | 1,535,165       |
| 2012-2013 | 48,897                     | 817,343                        | 308,200                          | 1,520,900       | 247,989                  | 1,554,359       |
| 2013-2014 | 48,897                     | 817,343                        | 158,844                          | 807,950         | 151,100                  | 800,028         |
| 2014-2015 | 48,897                     | 817,343                        | 60,000                           | 670,000         | 44,360                   | 627,652         |
| 2015-2016 | 48,897                     | 817,343                        | 60,000                           | 670,000         | 60,052                   | 619,742         |
| 2016-2017 | (No Extraction)            |                                |                                  |                 |                          |                 |
| 2017-2018 | 19,210                     | 592,330                        | 15,000                           | 350,000         | 15,201                   | 328,542         |
| 2018-2019 | 19,210                     | 592,330                        | 15,000                           | 330,000         | 15,201                   | 305,116         |

\*The AAC is allocated in numbers of trees – not in hoppus ton or volume. The Myanmar Government uses an estimation that one teak tree corresponds to 1.2 hoppus ton, or 2.16 cubic meter. In 2018 MTE changed the conversion rate to one teak tree equals 1.5 HT, and one HW tree equals 2 HT. The change is reported to have been effectuated as extraction has become more efficient.

The past discrepancy between AAC and target and actual production has relevance today due to the fact that significant stockpiles of timber are reported to be stored both by MTE and private operators in Myanmar – that means large stock of timber with a very uncertain legal basis from before 2016.

It should be highlighted that the formal plan from MONREC currently is to harvest only 50% of the available AAC in the years to come. As can be seen from [table 4](#), below the future for harvesting have significantly reduced the AAC and planned harvest. It is noted that AAC in Myanmar is interpreted as the available number of trees above the prescribed girth limit – while the planned volume is what is expected to be harvested.

It is also noted that the production from plantations are estimated to contribute 50% of the total harvested teak volume (see section on plantations below).

<sup>3</sup> Hoppus Ton is an old empirical measure for volume. 1 HT corresponds to 1.8 cubic metres.

Table 4: Target/ration set to be extracted of teak and other hardwoods from 2019 - 2020 to 2023 - 2024 by the Extraction Department of MTE.

| Year      | Annual Allowable Cut (AAC) |                                | Target            |                              | Teak           |            |        | Hardwood       |
|-----------|----------------------------|--------------------------------|-------------------|------------------------------|----------------|------------|--------|----------------|
|           | Teak (No. of trees)        | Other Hardwoods (No. of trees) | Teak (Hoppus ton) | Other hardwoods (Hoppus ton) | Natural Forest | Plantation | Total  | Natural forest |
|           |                            |                                |                   |                              | 50%            | 50%        | 100%   | 100%           |
| 2019-2020 | 19,210                     | 592,330                        | 10,000            | 285,000                      | 5,000          | 5,000      | 10,000 | 285,000        |
| 2020-2021 | 19,210                     | 592,330                        | 8,000             | 250,000                      | 4,000          | 4,000      | 8,000  | 250,000        |
| 2021-2022 | 19,210                     | 592,330                        | 6,000             | 220,000                      | 3,000          | 3,000      | 6,000  | 220,000        |
| 2022-2023 | 19,210                     | 592,330                        | 6,000             | 220,000                      | 3,000          | 3,000      | 6,000  | 220,000        |
| 2023-2024 | 19,210                     | 592,330                        | 6,000             | 220,000                      | 3,000          | 3,000      | 6,000  | 220,000        |

As mentioned above the AAC is allocated at District level, and then divided between different MTE Extraction Agencies. MTE and the FD use what is called a Cutting Balance Sheet, which is used to record the number of trees marked for harvesting, plus any balance from previous years AAC that has not been harvested.

Seen from the perspective of trying to consolidate AAC with actual production, this is only possible at a district level, since AAC is not allocated compartment level. Also, consolidation requires access to district level records of harvesting. It therefore is possible to evaluate over harvesting at district level.

### 2.2.6 Species groups

In Myanmar species are grouped based on their value (see Annex 4 for a full list of the species groups).

The groups are:

- Teak
- Group 1 with six species,
- Group 2 with 26 species,
- Group 3 with 23 species,
- Group 4 with 17 species, and
- Group 5 with 10 named species and other species.

To date, nearly 500 tree species have been recognized. All high-value species such as Pyinkado (*Xylia dolabriformis*), Padauk (*Pterocarpus macrocarpus*), Thingun (*Hopea odorata*), Thitya (*Shorea obtusa*), Ingyin (*Shorea siamensis*) and Tamalan (*Dalbergia cultrata*) are accumulated in Group 1.

Revenue are collected according to species and groups for every Hoppus Ton. Revenue for species like Teak is the highest (30,000 MMK), for Group 1 (20000-30000 MMK), for Group 2 (10,000 MMK) and for Group 3-5 (6,000 MMK).

## 2.3 Timber trade

The sales of logs for export is managed exclusively by MTE. All sales of logs destined for export markets shall occur in Yangon in open tender auctions. No other process is legal for trading logs for export in Myanmar.

Data quality limits the possibility to draw conclusions from official statistics of log production and export in Myanmar and the supply from Myanmar of logs, sawnwood and veneer (which account for the great majority of the wood-based products which are exported by Myanmar). This is not a problem unique to Myanmar. Discrepancies in such statistics are a notoriously weak indicator of illegality.<sup>4</sup>

An insufficient number of years has passed since the introduction of the current log export ban to draw robust conclusions about the reliability of official statistics of log production and related trade. However, statistics from Myanma Timber Enterprise, which indicate a steep decline in log production (for teak and other hardwood) to roughly 600,000 cubic metres per year, are consistent with what one might expect - for 2017 and 2018 - given 1) estimates of the roundwood equivalent volume of logs, sawnwood and veneer imported by Myanmar's trading partner countries (550,000 cubic metres) and 2) the likely volume which entered end-use in Myanmar (if this was in the order of 100,000 cubic metres).<sup>5</sup>

India is the destination for most of the roundwood equivalent volume supplied from Myanmar during 2017 and 2018. This was supplied primarily as veneer.

### 2.3.1 Data quality

Official statistics for the supply of logs in Myanmar are of varying quality and units of measure –presumably including for reasons of 1) poor governance and 2) the definition of those logs.<sup>6</sup>

The actual quantity supplied would have exceeded the amount stated in official statistics if, during the given time period, a substantial proportion of the total supplied were under-reported and/or not reported. The latter might arise, for example, in regions over which the government of Myanmar has little formal control and which export overland. Most of the volume imported (illegally) by China since 2010 has derived from such sources.

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<sup>4</sup> In general, it is not appropriate to assume that discrepancies between quantities reported by partner countries for a given bilateral trade flow imply customs fraud and/or illegalities specific to the supply chain. The difference between statistics (often estimated) for the volume of logs produced in a country and the sum of estimates for 1) the roundwood equivalent volume of 1) that country's net trade in wood-based products (i.e. exports minus imports) and 2) the volume of that log production which enters end-use in that country (i.e. excluding mill residues) is even less likely to indicate illegality.

<sup>5</sup> CIFOR indicate in the context of Cameroon, it is very unlikely that anyone will ever determine how much timber enters end-use in the country of production. CIFOR suggest roughly 150,000 m<sup>3</sup> of sawnwood per year from formal sawmills enters end-use in Cameroon's largest two cities – Douala and Yaoundé – and nearly 700,000 m<sup>3</sup> per year from informal supplies. As such, 100,000 m<sup>3</sup> per year for formal log production might be an underestimate for Myanmar.

<sup>6</sup> Poor data quality characterises statistics for several countries' log production and exports of wood-based products.

Published statistics for annual log production do not indicate how much derives from plantation-grown trees. Reasons for this are unclear. The volume of such logs might have been negligible in the past.

### 2.3.2 Trade

Myanmar has prohibited the export of logs since 2014.<sup>7</sup> The impact of this on trade volumes is shown on the following chart.<sup>8</sup>

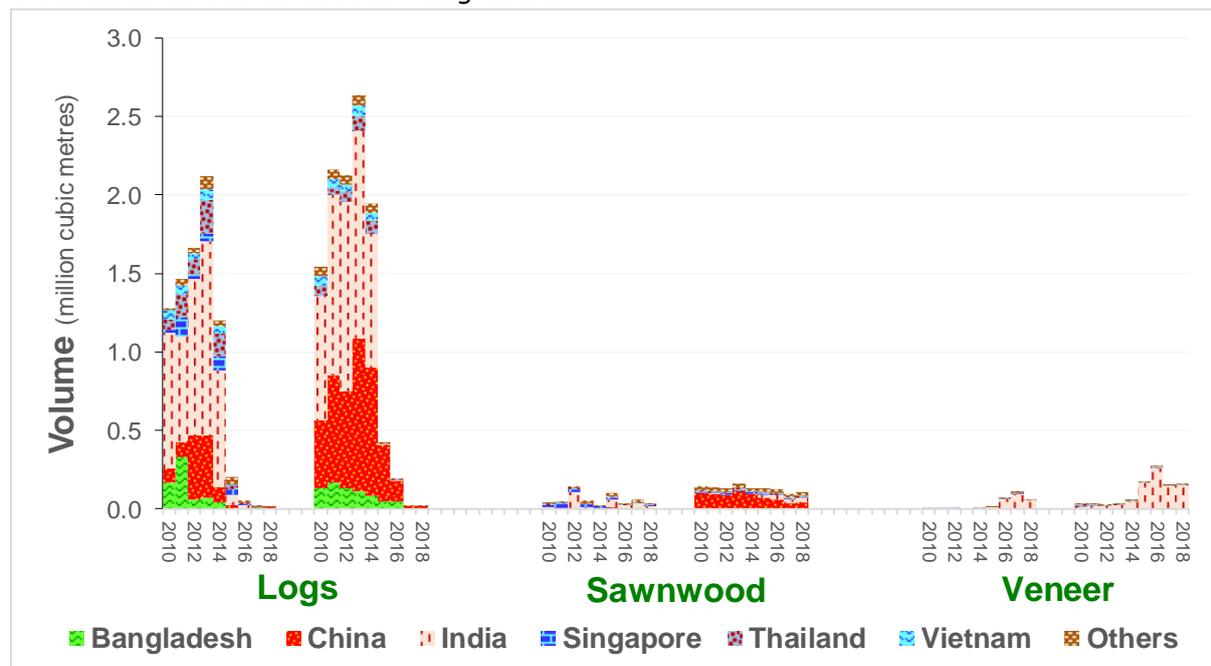


Figure 4: Log, Sawnwood and veneer export in million m3 to specific countries in the period 2010 – 2018. Source of data: UN Comtrade.

The annual volume of logs being exported officially by Myanmar declined by approximately one million cubic metres (to about 20,000 cubic metres per year) in response to that ban. The volume of *unofficial* logs being imported from Myanmar fell by roughly 500,000 cubic metres per year. If data quality were not a problem, the official volume of logs produced in Myanmar would have declined correspondingly – while not being affected by the unofficial 500,000 cubic metres.

The volume of logs milled in order to produce Myanmar’s official exports of sawnwood and veneer cannot be estimated precisely. However, since the log export ban, that volume is likely to have been in the order of 200,000 cubic metres per typical year (primarily as veneer and to a lesser extent sawnwood). This is roughly 300,000 cubic

<sup>7</sup> Since 2006, the export of logs was prohibited other than via Yangon. The log export ban was imposed in April 2014. <https://www.brookings.edu/wp-content/uploads/2017/05/myanmar-maneuvers-how-to-break-political-criminal-alliances-in-contexts-of-transition.pdf> In addition, logging in some states is (or has recently been) temporarily prohibited.

<sup>8</sup> Based on data for Myanmar’s exports published by UN Comtrade – most of which comprise estimates (which, as the reporting country, Myanmar can contest if it considers these too erroneous).

metres less than milled to supply the timber reported as imports from Myanmar by its partner countries.<sup>9</sup>

The volume of logs supplied per year from Myanmar increased by about one million cubic metres (whether as official exports or official imports) between 2010 and the log export ban. The difference between the volumes reported as imported by buying countries and exported by Myanmar was, typically, 500,000 cubic metres per year.

During 2019, the volumes supplied from Myanmar have continued to be limited.<sup>10</sup>

### 2.3.3 Production

Statistics for production are reported for 12-month periods between April and May. In order to compare these with data for trade, production is assumed for purposes of this assessment to take place at a constant rate particular to each 12-month period.

The following chart show the difference between reported production and export from Myanmar and reported import from Myanmar from buyer countries.<sup>11</sup>

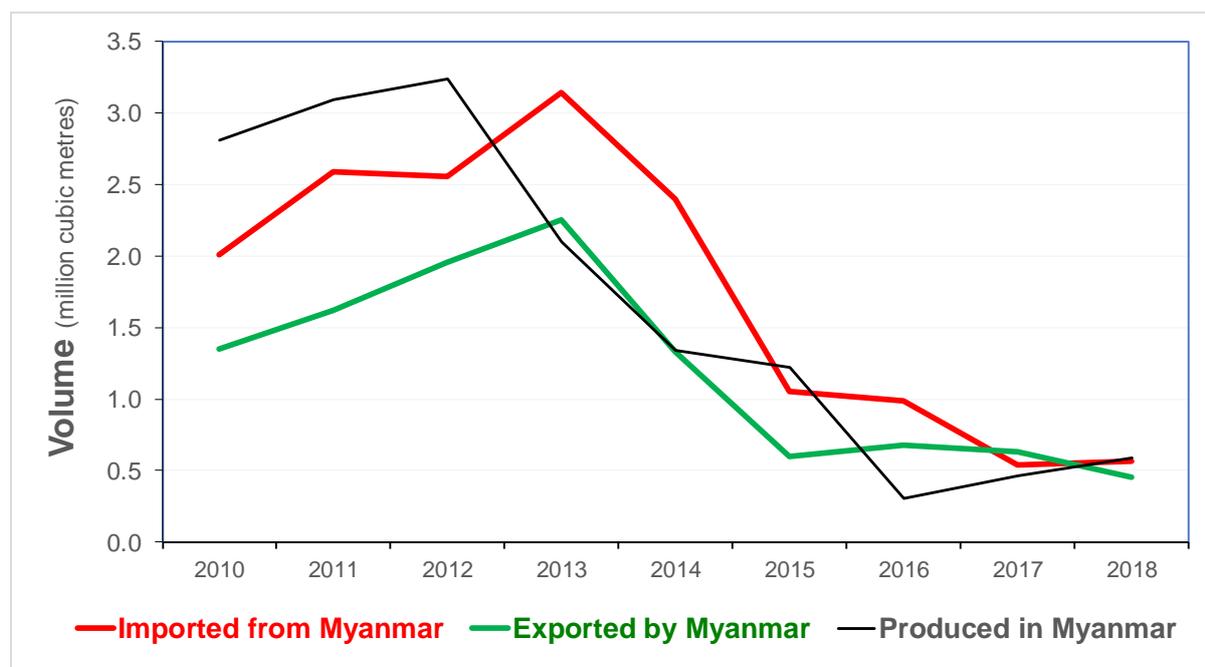


Figure 5: Production data in million m3 from 2010-2018. Source of data: UN Comtrade, MTE.

<sup>9</sup> Assuming that the volume of logs entering a mill is roughly double that of the sawnwood and veneer leaving it. The ratio between input and output varies widely – see for example Table 10.08 “[MEITI : EITI Report for the period April 2015 - March 2016 : Forestry Sector](#)” Moore Stephens (01 2019). The quantities presented in this paragraph are based on data (much of it estimated) from UN Comtrade.

<sup>10</sup> Imported by China: 45,000 cubic metres of sawnwood (Jan-Jul 2019) China Customs;

Imported by India: 12,000 cubic metres of sawnwood (Jan-Jul 2019) [Department of Commerce](#)

Imported by the EU: 3,000 cubic metres of sawnwood (Jan-Jun 2019) [Eurostat](#)

Imported by Thailand: 5,000 cubic metres of sawnwood (Jan-Jul 2019) [Thai Customs](#)

<sup>11</sup> Chart based on Myanma Timber Enterprise (production); UN Comtrade (exports); UN Comtrade and national sources – see [Appendix 2](#) (imports)

The chart suggests 1) that very little production has entered end-use in Myanmar since the log export ban (or is not systematically registered) and that 2) between 2010 and that ban, the volume doing so amounted to roughly one million cubic metres or more per year. However, end-use in Myanmar would have been between the two if there were only minor changes in Myanmar's economy since 2010.

Official statistics for log production do not include the volumes deriving from forest clearance. A leading set of reports suggest that those latter volumes are (or have been) substantial but have not provided quantitative estimates.<sup>12</sup> For 2014/14 and 2015-2016, the former reports log production of approximately 860,000 tons while the latter reports 680,000 tons.<sup>13</sup> Robust statistics are not available from other sources either, as indicated below.

FAO statistics for log production (or to be more precise, production of sawlogs and veneer logs) during 2018 amounted to 2.2 million cubic metres, down from a peak of 4.9 million cubic metres in 2013, the third of four consecutive years during which production amounted to four million cubic metres or more. However, those figures are unofficial.<sup>14</sup> We assume that the FAO data is the most authoritative source.

ITTO statistics for log production are considerably greater – declining from six million cubic metres in 2014 to 4.5 million cubic metres in 2015 and declining a little since then. They also suggest that nearly four million cubic metres have entered end-use in Myanmar during each of the last few years,<sup>15</sup> which is unlikely.

During each year between 2000 and 2010, Myanmar Statistical Information Service suggests that approximately 350,000 cubic tons of logs was transformed in mills, generating roughly 220,000 cubic tons of transformed product per year<sup>16</sup> (typically sawnwood). This contrasts with exports of about 50,000 cubic metres. Thus, the roundwood equivalent volume of the timber which entered end-use in Myanmar during that time period amounted to roughly 350,000 cubic metres per year – predominantly as sawnwood (rather than as logs or veneer). Although that volume might be reasonable<sup>17</sup>, the corresponding amount for 2015 and 2016 was near to zero<sup>18</sup> (of the 60,000 cubic tons produced during each of those years, almost all was for export).

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<sup>12</sup> ["MEITI - Scoping Study Report - Forestry Sector"](#) Moore Stephens (02 2018) and ["MEITI : EITI Report for the period April 2015 - March 2016 : Forestry Sector"](#) Moore Stephens (01 2019)

<sup>13</sup> There is no rule of thumb with which to estimate volume from weight for these products.

<sup>14</sup> <http://www.fao.org/faostat/en/#data/FO>

<sup>15</sup> ["Biennial review 2017-2018 tables"](#) ITTO

<sup>16</sup> ["Statistical Yearbook 2010"](#) Note: 1.415 cubic metres = 1 cubic ton (= 50 cubic feet)

<sup>17</sup> Although it is unclear what the parameters refer to, the "Local distribution of teak and hardwood" data available from <http://mmsis.gov.mm/statHtml/statHtml.do> might indicate the volume of logs which entered end-use within Myanmar and perhaps the volume of logs milled.

<sup>18</sup> ["Myanmar Statistical Yearbook 2017"](#) Myanmar Statistical Information Service (01 2019)

Figure 6 illustrates trends in log production by state or division.<sup>19</sup>

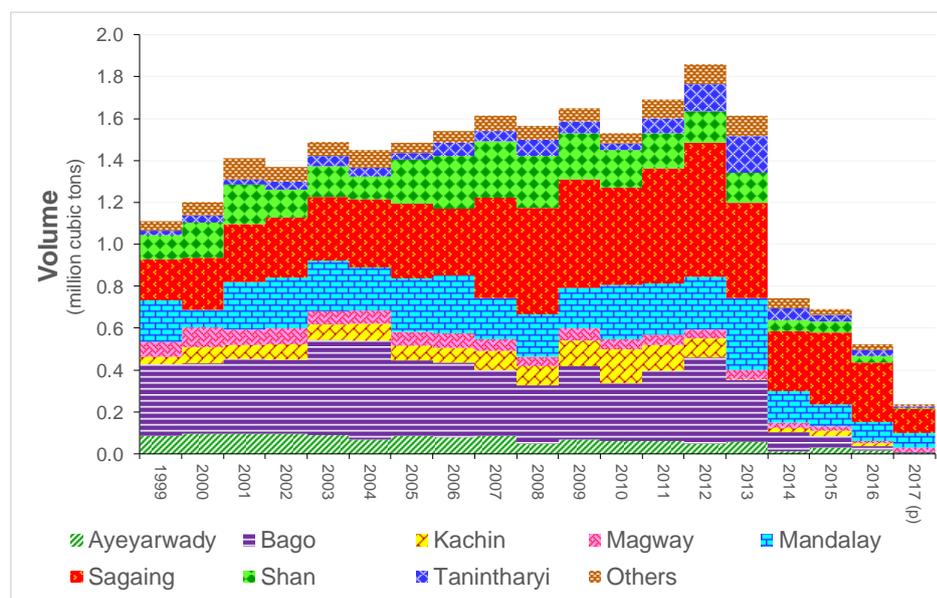


Figure 6: Trends in log production in million m3, divided by Extraction Agency.

## 2.4 Applicable forest laws and regulations

In recent years some changes have been made to policies and regulations related to the forest sector. A new Forest Law and new Forest Rules and Community Forestry Instructions have been significant additions to the applicable legislation. It is important for the MTLAS to reflect a current state of legal regulations, especially if the intend is that MTLAS certification will be used as part of EU Operators due diligence.

The main laws and regulations governing forest management in Myanmar are outlined as follows.

### 2.4.1 The Forest Policy (1995)

The Forest Policy includes policy on the protection of the forest resource, sustainable forest management, economic efficiency, people's participation, and public awareness. The policy stipulates the need to increase the area of forest reserves to 30% of the overall land area, and the protected areas system to 5% over the short-term, and 10% over the long-term, to ensure the security of forest resources.

Six imperatives for the forestry sector in Myanmar have been derived in accordance with the forestry principle adopted at the UNCED, political commitments and the goals and objectives of the national development policy:

1. Protection
2. Sustainability
3. Basic Needs
4. Efficiency
5. Participation
6. Public Awareness

<sup>19</sup> ["Myanmar Statistical Information Service : Statistical Database"](#).

While the Forest Policy outlines these key areas it also outlines and details some of the key limitations in the Myanmar government's ability to reach these goals.

#### 2.4.2 The Forest Law (2018)

The Forest law was revised in 2018 and has been updated on several areas to improve forest management practices. The law assigns responsibility for forest management and stipulates rules for timber extraction as well as plantation development.

It also includes penalties for offences like illegal harvesting and misuse of power by forest staff.

#### 2.4.3 The Forest Rules (2019)

The Forest Rules have been updated in 2019 and as of the time of writing are undergoing a public consultation review which will conclude at the end of 2019. The Rules include requirements to implement the Forest Law.

The Forest Rules deal with reserved forest, the declaration of areas as protected public forest, the management of forest land, the establishment of forest plantations, and the procedures for obtaining permission to extract forest produce. They also cover:

1. Constitution of reserved forest and declaration of protected public forest
2. Management of forest land
3. Establishment of forest plantations.

#### 2.4.4 National Code of Forest Harvesting (2000)

In line with the forest principles adopted at UNCED 1992 (Agenda 21)<sup>20</sup> and other international obligations, the new Myanmar Forest Policy was promulgated in 1995. The UN Food and Agriculture Organisation (FAO) published the Model Code for Forest Harvesting in 1996, on which the Myanmar National Code of Forest Harvesting from 2000 is based. The Code is not actively used.

#### 2.4.5 The MTE Extraction Manual

The MTE extraction manual has not been translated into English. The Manual is an important tool for the MTE in their extraction work as the manual sets out the detailed working procedures.

The Extraction Manual is only available in Burmese language.

#### 2.4.6 Departmental Instructions

Extraction Department is one of the major departments of MTE. All the extraction procedures shall be in accordance with the principles of Sustainable Forest Management (SFM) encompassing the three aspects of environmental, social and economic functions.

The MTE are legally bound to adhere to Departmental Instructions (DIs), Standard Orders for Extraction Staff (SOS), Extraction Manual and the Guidelines for Reduced

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<sup>20</sup> <https://searchworks.stanford.edu/view/2734503>

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Impact Logging (RIL). Departmental Instructions includes a total of 122 instructions in order to facilitate the work of harvesting activities.

It is highlighted that this document is only available in Burmese, available here: <https://www.dropbox.com/s/ix27tbm0xwk76f3/D%20I.pdf>

#### **2.4.7 Standing Orders for extraction Staff (SOS)**

The extraction department of MTE is the responsible division of timber harvesting for the supply of logs both for local and export demands. In order to run the process of extraction activities smoothly, the whole department is comprised of one head office located in Yangon and 24 extraction and 2 rafting agencies throughout the country (See Figure 3). Various sections are sub-divided for the matters of human/ elephant/ mechanical strength and management, budget, planning, and work. All of the staff has to comply with all of the rules /regulations/ order/ instructions by its own department in addition to Forests Laws and Rules. The "Standing Orders for Extraction Staffs" known as "SOS" are prescribed for the staff to facilitate the office matters as well as the harvesting operations.

The SOS includes the procedures for the general office matters, pre/ during/ post-harvest plans, extraction of logs, counting logs stranded along floating streams, railing of logs, rafting and management of main river depots, employing, store management, care and management of timber working elephants, maintenance of trucks, loader, dozer, etc.

This document is only available in Burmese, available here: <https://www.dropbox.com/s/82b5uwe8n9gd9rg/SOS.pdf>

#### **2.4.8 The Myanmar Reduced Impact Logging (RIL) Guidelines**

MTE adopted reduced impact logging guidelines to meet the objectives of sustainability of valuable tropical forests of Myanmar. The extraction staff of MTE are accordingly implementing and practicing these guidelines.

Under the supervision of FAO and according to the project entitled "Enhancing Sustainable Forest Harvesting in Asia" which was implemented from 2004 to June, 2008, government officials and government employees from the FD and MTE, and representatives from private timber extraction companies were given trainings on National Code of Forest Harvesting Practices in Myanmar (NCOHP) and Reduced Impact Logging (RIL).

The extraction staff are instructed before the actual extraction is carried out every year. Particularly, extraction staff are instructed to carry out forest road construction, transportation of logs (trucking), elephant skidding, and tree felling to be in line with the standards of RIL.

It is highlighted that this document is only available in Burmese, available here: <https://docs.google.com/file/d/0Bxa0yIftLLAeeE9xYmwxM2x5eG8/edit?pli=1>

#### **2.4.9 Community Forestry Instructions (2016)**

The Community Forestry Instructions were revised and updated in 2016. The Instructions stipulates rules for setting up community forest areas. One key change to the new law has been allowing commercialization of Community Forestry products. An

important focus area of the original 1995 version of the Instruction was on community forest members meeting their daily subsistence needs. There was very little consideration for livelihood development. The revised 2016 version of the Instruction, however, created a legal foundation to ensure that community forestry members can commercially benefit from their forests. This includes supporting the establishment of community forest-based enterprises producing value added products.

#### 2.4.10 Environmental laws

Myanmar have enacted several environmental regulations in recent years:

- Environmental Conservation Law (2012)
- Environmental Conservation Rules (2013)
- Myanmar Environmental Impact Assessment (EIA) Procedures (2016) -The EIA procedures have been developed by MOECAAF with technical assistance from the Asian Development Bank Core Environment Program, with expertise from partners such as the World Bank and JICA.
- Environmental Quality Standards (EQS) (2016)

It has not been fully evaluated how these laws and regulations relate to forest operations.

#### 2.4.11 Legal framework for employment

The legal framework regulating employment in Myanmar is found in a variety of different Laws and Rules enacted over the last century.

Myanmar's parliament has created a new law on health and safety. The Occupational Safety and Health (OSH) Law was enacted on 15<sup>th</sup> March 2019. It is expected to pave the way for the first legally established health and safety standards in the country.

The law stipulates that OSH standards will be designed "in accordance with international and regional standards and compatible to the nation's situation".

The regulations apply to both domestic and foreign companies, joint ventures, government departments and Organisations. The law cover extractive, transport, construction, retail, services and manufacturing industries.

The Draft Employment Compensation Law 2018 (the Draft), published on or around August 2018, aims to refine the existing Workmen's Compensation Act. The Workmen's Compensation Act was issued on 1 July 1924, and the Law Amending the Workmen's Compensation Act was issued on 11 May 2005.

In addition, Myanmar have enacted several acts and laws related to employment. See <https://www.mol.gov.mm/en/laws-and-regulations/> for a list.

#### 2.4.12 National Land Law

The Myanmar government is currently undergoing a process to develop a new Land Law. The government has committed to establishing a National Land Law in line with the principles of the National Land Use Policy.

Myanmar currently have a contradictory, fragmented and outdated legal framework related to land rights. The country has more than 40 laws on the books – some of which

date back to the colonial era – that are administered by a range of government departments and bodies.

The legal confusion, often coupled with limited or incorrect implementation, has had severe consequences – enabling, for example, a wave of land acquisitions by powerful companies, individuals and organisations that has resulted in the dispossession of vulnerable groups (Frontier Myanmar, 2019)

Also, recently enacted legislation, the Vacant, Fallow, and Virgin Land Management Law and the Farmland Law from 2012, amended in 2018, have been criticised for facilitating land grabs across the country and putting the livelihoods of local farmers at risk (UN Human Rights, 2019).

It is considered important the Land Law, when finalized in incorporated into the definition of legality, also related to forestry.

## 2.5 Timber sources in Myanmar

Timber can be extracted for export and domestic use from different classifications of forest. Forests under the management of MONREC are classified as the Permanent Forest Estate (PFE). The PFE consists of different sub-classifications with different uses, as follows.

### 2.5.1 The Permanent Forest Estate

The current possible sources from which timber can be legally sourced for export are:

1. Reserved Forests (RF);
2. Protected Public Forests (PPF);
3. Plantations;
4. Community Forests; and
5. Unclassified forest

These types of forests are areas where timber can be legally extracted under the control of the Forest Department.

These timber sources are described in the following sections below.

### 2.5.2 Unclassified forest areas (land at the disposal of the government)

Two other land categories related to forestry fall outside the permanent forest estate: Public Forest (formerly known as “unclassified forest”) and “waste land”. Forest on both types of land can be subject to timber extraction, if so, decided by MONREC.

Even if the land as such is not under the jurisdiction of MONREC, the trees on the land is still within their jurisdiction.

Only unclassified forest, also known as “land at the disposal of the Government”, or VFVLs are allowed for agro-business activities. The Ministry of Agriculture, Livestock and Irrigation (MOALI) is the focal ministry responsible for the allocation of VFVLs.

The Central Committee for Management of VFVLs permits the right to cultivate or utilize VFVLs for agriculture, livestock breeding, mineral production and other lawful business.

Anyone wishing to cultivate or utilize VFVL must apply to MOALI for the right

Since 2015, the Central Committee has asked FD's opinion on suitability for land clearing. FD scrutinizes the lands when requested - its opinion is mainly based on the status of growing stock on the lands. The land is not recommended for clearing when more than 50 trees with 1 foot in girth are present (about 20 trees in the Dry Zone area). FD measures and marks standing trees to be felled and MTE harvests.

The timber on the land remains State property under FD control and *should be* disposed of through MTE's timber sales procedures.

All timber except teak from land conversion will be domestically sold through an auction in respective states and regions.

Where land is converted to other uses, the timber will be harvested by MTE. However, the timber will not be allowed for export (see also below).

### 2.5.3 Conversion timber

As mentioned, Myanmar has experienced one of the highest rates of deforestation in the world.

The reasons for this high level of deforestation are complex but involves conversion of natural forest to other land uses, such as farming, agribusiness concessions, hydro-power development, road construction, mining, and illegal logging (Enters, 2017). These conversion areas may mostly be located in Unclassified Forest areas, and thus be subject to overlapping claims from different Ministries within the Myanmar government.

It is noted that timber from conversion can, legally, only be marketed for domestic use and is not permitted to be exported.

### 2.5.4 Seized timber

The Myanmar government confiscates a significant amount of timber each year. Table 5 contains official data on timber confiscations.

*Table 5: Summary of seized timber from 2010 to 2019 in Hoppus Ton. Source: Natural Forest and Plantation Division, Forestry Department.*

| Year                      | Species   |                |                           | Total (HT) |
|---------------------------|-----------|----------------|---------------------------|------------|
|                           | Teak (HT) | Hardwoods (HT) | Others <sup>21</sup> (HT) |            |
| 2010-2011                 | 31,542    | 13,549         | 32,997                    | 78,089     |
| 2011-2012                 | 32,066    | 13,743         | 34,508                    | 80,319     |
| 2012-2013                 | 29,206    | 13,745         | 37,356                    | 80,308     |
| 2013-2014                 | 32,104    | 19,238         | 38,361                    | 89,704     |
| 2014-2015                 | 31,378    | 31,248         | 42,138                    | 104,765    |
| 2015-2016                 | 31,311    | 25,591         | 43,369                    | 100,273    |
| 2016-2017                 | 24,929    | 18,298         | 33,470                    | 76,698     |
| 2017-2018                 | 23,018    | 22,421         | 36,173                    | 81,613     |
| 2018 – 2018 (mini budget) | 18,321    | 14,472         | 23,990                    | 56,784     |

<sup>21</sup> Others refer to species groups 4 and 5.

|   |        |        |        |        |
|---|--------|--------|--------|--------|
| 2019 (Oct 18 - June 2019) <sup>22</sup> | 31,030 | 18,502 | 29,809 | 79,342 |
|---|--------|--------|--------|--------|

Seized timber is not considered legal to export but is formally only marketed for domestic use.

It is noted that the amount of seized teak logs in recent year exceeds the amount of legally allocated AAC by a significant amount. Obviously, the amount of timber being confiscated and entered into formal records of seizures indicates a very significant scale of illegal activity. It must be speculated how much illegal timber is produced, that is not being confiscated, and/or how much timber being confiscated at various location is entered into the formal records.

### 2.5.5 Community forests

There is no commercial timber production from community forests until today<sup>23</sup>. However, it should be noted that the new Forest law and Community Forestry Instructions permit timber harvested under Community Forestry management to be exported. CF timber is therefore a potential future source of timber but as of writing this report no timber from community forests has been officially exported.

### 2.5.6 Timber from ethnic areas

Until recently (Financial Year 15/16) the MTE operated in areas under ethnic state control, using what was known as "Modified Procedures". This was a system whereby MTE organised extraction from areas where the Myanmar Government does not have access or control, by using contractors and procedures not in line with the existing legal framework for forest management, planning and extraction. This system is no longer in use.

None the less, it is reported by the Environmental Investigation Agency (EIA) that a timber deal with the Kayah State has been negotiated (EIA, 2018). Local media in Kayah State are cited to have reported on an unclear agreement to allow the trade of 5,000 tons of valuable hardwoods, including 3,000 tons of teak, from logging operations in the state – a state known for being home to armed conflict with the Myanmar Government. According to the news reports, the timber will be extracted from areas controlled by the Karenni National People's Liberation Front (KNPLF), an ethnic-armed organisation which signed a ceasefire with Myanmar's military government in 1989 and was subsequently converted into a pro-government border guard force in 2009 (EIA, 2018).

Timber from ethnic states has long been an issue of controversy in Myanmar – both due to the direct trade between these states and China, in the form of unlawful land transport of timber across the border, but also by using modified procedures.

<sup>22</sup> Myanmar is changing the Fiscal Year to run in the period 1st of October to 30th of September. The period above for 2019 is covering 1st October 2018 to 30th June 2019. The year 2018-2018 covers from the 1st April 2018 to the 30th September 2018. (In order to bridge for the period from April to September 2018, a 6-months budget was developed called mini-budget).

<sup>23</sup> FAO is supporting FFI to conduct a pilot commercial timber harvest in a community forest in Kachin State, which will also test the CF Timber Legality Operating Procedures (CFTLOPs) developed by FFI as a legality grid for CF timber. This pilot harvest would be completed during the 2019-2020 harvesting season, and FAO/FFI hope that the CF TLOPs would be used to advise any TLD developed by the MFCC or MSG

According to interviews conducted for this study, this timber is not going to be exported, but only used for domestic markets.

### 2.5.7 Direct sales

The practice of Direct Sales has been discontinued. There was direct sale until 2013-2014 fiscal year, but the practice was terminated from 2014-2015 fiscal year. The direct sale was given at an Executive Meeting within MONREC and mainly exporters and the traders who was not been involved in logging activities applied for direct sales for export.

### 2.5.8 Stockpiled timber

An important challenge currently is stockpiled timber. It appears that significant volumes of teak and other hardwoods have been stockpiled in preceding years, before a reduction of the Annual Allowable Cut (AAC) was introduced in 2018 (See Table 3).

It is estimated, based on personal communication with MTE staff) that MTE currently have 20,000 hoppus tons of stockpiled timber which were harvested before 2015. According to MTE, all these logs can be traced back to their harvest sites, using the hammer marks and tracking system. MTE is still auctioning logs from these stockpiles.

In addition, it is estimated that the private sector could have 100,000 hoppus tons of stockpiled timbers today which were harvested before 2015, however these numbers have not been confirmed.

In any case it is obvious that this presents a challenge since the stockpiled timber has been harvested before the reduction of the AAC, and in a period when the Modified Procedures and Direct Sales, were still being applied. The challenge for this timber will be to retrospectively verify legality and origin, something that is not considered best practice.

It was observed that timber from FY 13/14 is still being processed in factories for export markets.

### 2.5.9 Timber from plantations

Myanmar is increasingly looking to plantation development to provide materials for domestic industry and export markets.

Even if there is a log export ban for logs from natural forests, logs from private forest plantations can now be exported as of July 2018 (Myanmar Times, 2018), which means that the markets will see an increasing volume of logs and wood products with claims of being from plantations in Myanmar.

Also, these areas are now harvested by the same extraction procedures as in natural forests, after Selection Felling (SF) marking is done by FD. Currently the same Revenue Mark is used both for plantations and for natural forests.

It has been reported from FD that from 2019-2020, separate Revenue Marks on logs will be used for state-owned plantations, for private plantations, and for natural forests, in order to distinguish between logs from natural forest and logs from plantations.

Extraction from commercial plantations is reported to only have started in 2018. The Minister of MONREC allows to extract trees with only Girth at Breast Height (GBH) of 5 feet (49 cm in diameter) and above and only after SF marking by FD.

Table 6: Forecast of possible extraction of teak logs from commercial plantations 2019-2049. Source: Natural forest and plantation division (2019), Forest Department, MONREC.

| Region/State    | Area of establishment (acre) | Situation for possible timber extraction |  |                           |                      |
|-----------------|------------------------------|--|--|---------------------------|----------------------|
|                 |                              | acre                                     | No of trees lower than 3 feet in girth | More than 3 feet in girth |                      |
|                 |                              |  |  | no of trees               | estimated hoppus ton |
| Kachin          | 2,837                        | 605                                      | 53,062                                 | 15,625                    | 6,236                |
| Kayah           | 0                            |  |  |                           |                      |
| Kayin           | 2,919                        | 492                                      | 21,784                                 | 7,692                     | 2,537                |
| Chin            | 5,300                        | 609                                      | 13,5364                                | 67,226                    | 17,400               |
| Sagaing         | 24,066                       | 20,087                                   | 27,0660                                | 26,7707                   | 72,599               |
| Thaninthayi     | 3,650                        | 510                                      | 13,332                                 | 653                       | 130                  |
| Bago            | 93,124                       | 3357                                     | 121,819                                | 7,172                     | 2,918                |
| Magway          | 28,692                       | 12468                                    | 408,895                                | 13,367                    | 5,256                |
| Mandalay        | 2,246                        | 1547                                     | 15,434                                 | 48,693                    | 19,642               |
| Nay Pyi Taw     | 35,808                       | 769                                      | 2,671                                  | 119                       | 116                  |
| Mon             | 700                          | 0  |  | 0                         | 0                    |
| Rakhine         | 6,451                        | 1,057                                    | 51,383                                 | 12,797                    | 6,512                |
| Yangon          | 10,362                       |  |  |                           |                      |
| Shan (Taungyi)  | 6,550                        |  |  |                           |                      |
| Shan (Lashio)   | 7,208                        | 2,026                                    | 31,579                                 | 7,735                     | 1,548                |
| Shan (Kengtung) | 0                            |  |  |                           |                      |
| Ayeyarwaddy     | 11243                        | 1473                                     | 57,749                                 | 1,894                     | 631                  |
| <b>Total</b>    | <b>241,158</b>               | <b>45003</b>                             | <b>1,183,732</b>                       | <b>450,680</b>            | <b>135,530</b>       |

During a visit to a sawmill it was observed that logs below 5 feet GBH were found in the log yard and being processed. It was reported by MTE that these logs originated from plantations and that the government could allow plantation harvest of trees with lower GBH.

In evaluating documents from these logs, it was found that it was possible to track the documents back to the district of origin, while it was not possible to ascertain whether the logs originated from plantations or from natural forest. As outlined above, it appears that what may be called plantation are sometimes areas within Forest Reserves that have been planted with teak as "compensatory planting" in the past.

With the new allowance for export of round logs from plantations it is considered very important that plantation logs can be clearly identified and traced back to their plantation of origin.

## 2.6 Timber tracking

The timber tracking system of Myanmar is extensively described in the CoC Dossier.

It is worth noting that MTE has implemented changes to the log tracking system to increase traceability and simplify identification of logs. A key change has been the revision of log marking by marking hammers.

The new system has been simplified, allowing less marks on logs and stumps. Each MTE Extraction Agency has its own agency hammer. The District Forest Department is informed of and approves the agency hammer.

Prior to harvesting the FD staff mark standing trees with the tree number – this number is maintained o records after harvesting.

For teak, the Extraction Department of MTE, put the following hammer marks on the face of every teak log:

1. Agency hammer mark
2. Standing tree no. and log no.
3. Extraction Year

FD put the following hammer marks.

1. Revenue mark
2. Revenue serial number

For hardwood, the Extraction Department of MTE put the following hammer marks on the face of every hardwood log.

1. Agency hammer mark
2. Standing tree no. and Log no.
3. Extraction Year
4. Hardwood Group Number and species code

FD put the following hammer marks.

1. Revenue mark
2. Revenue serial number

The hammer marking process is detailed on the MTE website:

<http://www.myanmarimber.com.mm/index.php/en/extraction-department/operation/75-hammering-process-flow-chart-for-harvesting>

The steps involved in the harvest process is described in details in the CoC Dossier and on the MTE website: <http://www.myanmarimber.com.mm/index.php/en/extraction-department/operation/74-working-process-flow-chart-for-harvesting>

It was found during the on-site visit for this report that the hammer marks, combined with the relevant forms and documents as outlined in the CoC dossier, does make it possible to trace back logs from log depots, to the area of harvest. It does require review of physical documents or copies. All relevant documents related to log tracking are stored at district or MTE Agency level and can be viewed by accessing their file storage.

In addition to this simplified system, the FD, MTE and MFCC are currently piloting a georeferencing system using QR codes attached to logs. The QR codes refers to a folder for each log, containing the coordinates of the tree and a map of the compartment of extraction, as well as other related information. The FD aspires to secure funding support to roll-out this geo-referencing system in all districts in the future.

It should be underlined that, as with other paper-based systems, it may be prone to wilful manipulation and is susceptible to human error.

### 3 Evaluation of MTLAS

The Myanmar Timber Legality Assurance System (MTLAS) is developed and managed by the Myanmar Forest Certification Committee (MFCC).

The MTLAS is not a formal FLEGT VPA Timber Legality Assurance System. In its current form, MTLAS is functioning as a voluntary timber legality certification scheme, managed by MFCC as a semi-independent government supported organisation. The plan is to develop the system further and over time implement it as a mandatory national regulatory system.

The evaluation of how well the standard covers the EUTR definition of applicable legislation:

- a. rights to harvest timber within legally gazetted boundaries,
- b. payments for harvest rights and timber including duties related to timber harvesting,
- c. timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
- d. third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
- e. trade and customs, in so far as the forest sector is concerned.

This evaluation is done using the NEPCon Certification System Evaluation Standard (see Annex 2). Also, reference is made to the 2017 Gap Analysis.<sup>24</sup> The NEPCon Certification System Evaluation Standard has been developed to cover the requirements and definitions of the EU Timber Regulation 995/2010, the implementing Regulation 607/2012, as well as the guidance document published by the European Commission.

In the text in the following section, observations will be made and referenced – a summary of observations is included in table 8 below.

NEPCon have evaluated the quality assurance system (policies and procedures) against the NEPCon Certification System evaluation standard (see annex 2 for details).

Where findings are considered to represent a gap and observation is made and referenced with a number as e.g. OBS 01/19 (number/year). An overview of all observations is included in table 8 below.

Note: No observation of on-site audits where conducted as part of this evaluation. The NEPCon team were given access to one forest level audit report during the preparation of this evaluation.

On 29<sup>th</sup> September 2019, MFCC posted the certification of one consignment based (see below for explanation) and four forest management level certificates that have all been completed by Double Helix.

The list of certified FMUs and companies is found here:

<http://www.myanmarforestcertification.org/certificates/>

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[http://www.fao.org/fileadmin/user\\_upload/FLEGT/docs/MTLAS\\_Gap\\_Analysis\\_Consolidated\\_Report\\_2017.pdf](http://www.fao.org/fileadmin/user_upload/FLEGT/docs/MTLAS_Gap_Analysis_Consolidated_Report_2017.pdf)

### 3.1 The role of MFCC

Myanmar Forest Certification Committee (MFCC) is responsible for the operation of the MTLAS, as well as for the operation of the Myanmar Forest Certification Scheme (MFCS).

More information can be accessed through the MFCC website:

<http://www.myanmarforestcertification.org/>

MFCC has recently been restructured via government Notification Number (140/2018) dated 7 August 2018. The newly restructured MFCC is directed by a committee formed with a total of 14 members with the Permanent Secretary of MONREC as Chairman. The Director-General of Forest Department (FD) and Managing Director of Myanmar Timber Enterprise (MTE) are the members along with the representatives from enterprise and departments under the MONREC, concerned ministries, Private Government Entrepreneurs Association, NGO (Environment Conservation), and CSOs who also represent the Multi-Stakeholder Group (MSG).

Currently the members include U Kyaw Min Htut (MSG member), U Aung Thant Zin (CEO, MERN), and U Zaw Myo Aung from the Private Entrepreneurs Association. Director (Union Attorney General Office), Director (Department of Labour) and Director (Department of Research and Innovation) are also members of the MFCC. U Barber Cho is the Secretary assigned by the Chairman.

It is underlined, therefore, that the MTLAS, as a certification system, is not independent of the government.

### 3.2 MTLAS documented procedures

The following documents constitutes the documented procedures of the MTLAS. These include the standard, audit forms and policies and procedures used in the application of the standard.<sup>i</sup>

*Table 7: List of documents constituting the MTLAS documented procedures (Source: MFCC website - <https://www.myanmarforestcertification.org/standards/>).*

| ID             | Title                                       | Type      | Notes   |
|----------------|---|-----------|---|
| NA             | Myanmar Timber Legality Assurance System    | Standard  | Legality certification standard containing the Principles and Criteria for legality.  |
| NA             | Audit Forms                                 | Template  | AUDIT FORMS for Verifying Legality of Timber against Principles and Criteria of Myanmar Timber Legality Assurance System (Version 2.0/2019)   |
| MFCC P 1 IA    | Implementation Arrangements                 | Guidance  | This document acts as MFCC's 'umbrella' guidance document. It summarises the formation of MFCC, the MFCC mission and some of the key operating and value principles.  |
| MFCC P 2 GP    | Guiding Principles                          | Policy    | MFCC's four main guiding principles are covered in this policy. These are impartiality and conflict of interest, confidentiality and anti-corruption.   |
| MFCC P 3 SS    | Standard Setting                            | Policy    | This policy specifies how MFCC sets the MFCC Standards (currently MTLAS and MFCS). MFCC's Standard development processes are carried out according to international best practices and in compliance to the standard setting process requirements of the PEFC Council.        |
| MFCC P 4 SEPD  | Stakeholder Engagement and Public Documents | Policy    | This policy adds to the Standard Setting process in as much it describes more generally how MFCC will engage with stakeholders during a consultation period. MFCC states that they follow international best practices in stakeholder consultations and subsequent reporting. |
| MFCC P 5 CBR   | Certification Body Requirements             | Policy    | This policy specifies the minimum requirements MFCC demands from Certification Bodies that audit against MFCC Systems. Areas covered are auditing team requirements, the audit process, managing non-conformances and issuing certification.                                  |
| MTLAS P 1MTU   | MFCC Trademark Usage                        | Policy    | This particular policy applies to MTLAS only and specifies MFCC's policy and procedures with regards MFCC trademark use. With MTLAS, MFCC does not allow on-product labelling, but does endorse off-product labelling carried out in accordance to MFCC policy.               |
| MFCC SOP 1 NCB | Notification of Certification Bodies        | Procedure | This procedure specifies the conditions, and procedures for Certification Body notification, along with obligations of MFCC notified Certification Bodies and the validity of notification.   |
| SOP 2 CAD      | Complaints, Appeals and Disputes            | Procedure | As the name implies this procedure explains how MFCC handles complaints, appeals and disputes, and what interested parties can expect in such a process   |
| CBA G 1 A      | Certification Body Application Guidelines   | Guideline | Guideline for the application process of prospect CBs.  |

### 3.3 The MTLAS standard

The MTLAS standard (latest version dated February 2013) outlines the principles, criteria and indicators for verifying legal origin from:

1. Reserved Forests (RF);
2. Protected Public Forests (PPF);
3. Plantations
4. Unclassified forest areas (land at the disposal of the government)

Note that, at the time of developing the current MTLAS standard timber from Community forests could not be exported and was therefore not included in the standard. This has since changed allowing timber from community forest areas to be exported.

The standard covers the following product types:

- Logs
- Sawn timber
- Veneer
- Plywood
- Furniture.

Note that export of raw logs of teak has been banned since April 2014, after the current version of the MTLAS standard was developed.

#### 3.3.1 Standard structure and formulation

The main document of the MTLAS is the 2013 MTLAS standard. However, MFCC has also developed Audit Forms, which are published on the MFCC website and dated 2019. The MTLAS standard 2013 is the original legality standard that was developed as the Principles and Criteria for evaluation of legality. The Audit Forms were developed later and are used as the audit or assessment tool for on-site evaluation. Whereas the Standard from 2013 contains more broad principles and criteria, it is found that the Audit Form contains more specific indicators and verifiers.

It is noted that the standard would need to be updated to reflect recent changes in legal frameworks such as the Forest Law of 2018, the Community Forestry Instruction of 2016 and the Health and Safety Law of 2019. See observation OBS 01/19 in table 8, below.

The indicators of the Audit Forms are primarily focused on the availability of documents. Only 2 of the 12 indicators (of the Audit Form for Forest operations) mention performance thresholds. The rest focus on the availability of documents.

It is the opinion of NEPCon that a legality verification standard should verify performance, as well as verifying that legally required documents are in place and being used as intended. In any case, the justification for sending auditors to the forest is limited if the key role of the MTLAS is to ascertain that documents are available. It should be noted that the audit Form does include some Verifiers that require on-site evaluation. However, in general terms the Form seems focused on document review. See OBS 02/19.

One specific comment to the standard scope relates to third parties' rights. The Standard (2013) only refers to the Forest Law (1992) Section 15 and 17 as an indicator, whereas the Audit Form includes a performance related requirement that "*4.1: User rights of local communities in and around the harvesting area are taken into consideration*". The

verifiers of the Audit Form also refer to the Forest Rules and the Forest Law that contains legal requirements for the Constitution of Reserved Forest.

It is found that using a broad term like "...taken into consideration", as the indicator for third parties rights does not provide for evaluation of these issues. See also the evaluation in Annex 2, regarding the MTLAS inclusion of third parties' rights.

In terms of standard application in practice it is found that the scale of a verification audit is conducted at District level. This means that it is relatively large areas being certified as one FME. What was found in the one report of an evaluation against the MTLAS standard, the sampling within a District was limited to a single compartment. While it may be the only area with active harvesting, it should be clear how the scope of audits against the standard are determined.

### 3.3.2 MTLAS standard Principles and Criteria (P&C) for legal timber

The detailed evaluation of the requirements of the MTLAS standard has been included in Annex 2. In that evaluation it was assessed how well the formulation of the normative requirements of the MTLAS covers a complete set of legal requirements, seen from the perspective of NEPCon's legality framework. The Framework used by NEPCon has been developed in order to provide a framework to benchmark certification systems against the EUTR.

### 3.3.3 Supply chain control

The MTLAS system relies on the paper-based tracking system (as described in the CoC Dossier) implemented by MTE and FD. The standard itself includes requirements that these different documents are *available*, but not how they are being used. There is no evaluation in any section of the standard or Audit Forms that requires the auditor to evaluate if these documents are in fact related to the material or in other ways verify that timber is correctly recorded and traced through transport or processing.

The issue of traceability is something MFCC and the MTE have been working on to improve the system being applied by MTE and FD (see also section on traceability).

See OBS 30/19.

## 3.4 MTLAS as a legality assurance system (quality management)

The MFCC has developed a system of procedures around the MTLAS standard and the process for evaluation of compliance and issuing MTLAS certificates. The system and documented procedures are modelled on ISO standards for system management, accreditation and certification.

MFCC have developed a range of quality assurance policies and procedures in the last two years. These were formally adopted at the "soft launch" of the MTLAS as a certification system in August 2018.

### 3.4.1 Scheme ownership and management

The MTLAS has been set up as a legality certification system owned by the Myanmar Forest Certification Committee. The MFCC has several roles: standard setting, system management, as well as accreditation or recognition of Certification Bodies (CBs).

According to personal communications with MFCC members, there are discussions about MFCC's accreditation role. Currently MFCC is responsible for accreditation, but plans are being discussed to use an international or another independent accreditation organisation to evaluate and accredit CBs. However, currently MFCC acts as both scheme owner and accreditation body for CBs. According to international best practices, such as ISO and ISEAL guidelines, the scheme owner should not also function as the accreditation body (see OBS 03/19).

### 3.4.2 Standard setting and review

As mentioned above, the MFCC is responsible for the development and revision of standards used under the MTLAS. Several individuals have commented during personal conversations conducted for this study, that the standard has not been developed in a way that is consistent with international best practices for standard development, and specifically that the standard was developed without sufficient stakeholder involvement (OBS 04/19).

The Policy MFCC P 3 SS on Standard Setting requires that the standard setting organisation (in this case MFCC) will identify stakeholders relevant to the objectives and scope of the standard-setting work in accordance with MFCC P 4 Stakeholder Engagement and Public Documents. Since the Policy is from 2018 and the standard is from 2013, this Policy has obviously not been applied.

In addition, as also mentioned above, the Audit Forms published in 2019, seems to contain significant additions and changes to the normative requirements compared to the 2013 TLAS. It is not clear what process has been implemented to review the TLAS (2013) requirements and develop the Audit Forms (2019). See observation OBS 05/19.

### 3.4.3 Accreditation of certification bodies

Accreditation<sup>25</sup> of CBs is the responsibility of the MFCC. The procedures and system for recognition are found in MTLAS SOP 1 Notification of Certification Bodies.

Currently all the three CB that are working under the MTLAS are operating under an interim Phase I as described in the Certification Body Application Guidelines and the Certification Body Requirements:

*"MFCC will require all Certification Bodies that audit against MTLAS/ MFCS to achieve accreditation against ISO/IEC 17065: 2012: Conformity Assessment - Requirements for Bodies Certifying Product, Processes and Services (hereafter ISO/IEC 17065), and ISO 19011:2011, Guidelines for auditing management systems (hereafter ISO/IEC 19011).*

...

*The Myanmar Government has a Department of Research and Innovation (DRI) that has accreditation capabilities, and international accreditation cooperation agreements. However, DRI is still seeking IAF recognition, and needs to develop a process for the accreditation of MTLAS and MFCS. Ultimately, DRI will be able to*

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<sup>25</sup> Note that the MFCC policies and procedures use the word recognition, acknowledgement and notification respectively, to describe the process of evaluating and accrediting CBs under MTLAS.

*accredit Certification Bodies against the required ISO Standards, but until this time MFCC will operate a two phased approach:*

- 1. An interim Phase I, whereby MFCC will 'notify' Certification Bodies, before accreditation by an IAF recognized body;*
- 2. Certification Bodies in Phase II will have achieved required ISO accreditation.*

*In Phase I, any Certification Body auditing against MTLAS or MFCS must demonstrate a commitment towards developing a system that is compatible with applicable ISO Standards within two years following full MFCC notification. Associated plans must include indicators and be made freely available for MFCC monitoring and evaluation."*

Despite the commitment to meet international standards, the above provides CBs two years before they are required to comply with ISO requirements after receiving full MFCC Notification in Phase I. Also, just showing a "commitment" is not considered to be a strong requirement.

The Annex 1 of the Certification Body Requirements also reiterates that:

*"MFCC will require all Certification Bodies that audit against MTLAS/ MFCS to achieve accreditation against ISO/IEC 17065: 2012: Conformity Assessment - Requirements for Bodies Certifying Product, Processes and Services (hereafter ISO/IEC 17065), and ISO 19011:2011, Guidelines for auditing management systems (hereafter ISO/IEC 19011). In addition, Certification Bodies auditing against MFCS, will be required to become accredited against ISO/IEC 17021-1, Conformity assessment – Requirements for bodies providing audit and certification of management systems (hereafter ISO/IEC 17021-1)."*

Currently none of the CBs holding Notification hold an ISO certification covering the MTLAS as a system. The three CBs are:<sup>26</sup>

1. Nature Watch
2. United Forestry services, and
3. Double Helix

It is the view of NEPCon that the use of such stepwise arrangements is inadequate and does not provide sufficient systematic assurance of the competence, capacity or qualifications of the CBs (OBS 06/19 and 07/19).

#### **3.4.4 Certification process and scope**

The certification process is managed by the Notified CBs, and primarily described in the Certification Body Requirements.

For all entities that are audited, the verification process consists of the following elements:

- Full assessment audits every three years;
- Review of progress against non-conformances;
- Annual surveillance audits

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<sup>26</sup> Initially four Organisations received Notification at the soft launch of the MTLAS in 2018 – however one organisation has since been withdrawn from the list. The reasons are not clear.

On behalf of MFCC the Certification Body will issue MTLAS certificates to entities in the supply chain. Certificates are issued to the operator following full assessment audits every three years. Certificates are issued after the first audit and extended/withdrawn/suspended after successive audits.

Certification can also be withdrawn/suspended following any of the various auditing requirements (such as annual surveillance audits).

### ***Consignment certification***

The Certification Body Requirements contain an option for certification called consignment certification:

*"Under MTLAS consignment certificates can also be issued. Consignments of product (from a sawmill for instance) will be certified against MTLAS criteria 5 - 6. A consignment at a forest level would be certified against MTLAS criteria 1 - 4. No operator can be certified until they have had a consignment verified." (Section 2.4.2).*

And:

*"NOTE: Whilst a consignment-based audit is possible under the MTLAS system (but not under MFCS), such audits can only be conducted if related entities hold a valid MTLAS certificate." (section 2.2.2)*

These clauses seem to allow processing companies to become MTLAS certified contingent on meeting principles 5 and 6 only. The note included above could indicate that "related entities" means that FMEs from which processing entities source shall hold a valid MTLAS certificate, but it is not clear in the current wording, as it is not defined what a related site is?

Principle 5 of the Standard relates to mill operations including license to operate, control of value-added process and workers health and safety. Principle 6 relates to export requirements. In the Audit Form (2019) Principle 6 contains one criterion:

*"Criterion 6.1: The FMU shall document clear evidence of possession of all applicable official documents related to timber products for export and import in accordance with relevant laws and regulations."*

This wording of the CB Requirements seems to mean that a sawmill can achieve MTLAS certification by conforming to operational requirements on the sawmill and export document availability. The fact that the MTLAS allow processing facilities to be certified only against Principles 5 and 6, with no chain of custody requirements indicates that the system is structured under the assumption that all sources of timber will be certified, and that there is no risk of mixing of material from non-certified areas. (OBS 08/19).

There are no further mentions of consignment-based certification in any of the MTLAS systems documents.

### ***Audit scope***

It is also observed that the CB Requirements does not specify what the scope of audit is. The only reference to defining the scope of the audit is found in the Audit Form 2019, where Forest Management Enterprise (FME) is defined as<sup>27</sup>:

*"Forest Management Enterprise (Include FD, MTE and PTC which involve in the supply chain)"*

From the recently published certificates it appears that the scope of audit is conducted at MTE Extraction Agency level, and at sawmill or processing unit, when implementing consignment-based certification. In the audit report that was made available to NEPCon during the on-site inspection, this was not specified. The report includes information on where the audit was conducted by MTE Extraction Agency and Forest Department District, township and compartment, but does not define for what area the evaluation is relevant beyond that.

It is found that this level of definition of the FMU in the procedures does not provide the necessary level of detail that would normally be expected from a forest level audit, where the unit of certification should be clearly specified (OBS 09/19).

The MTLAS will issue certificates to document certification status of certified forests and processing facilities. The certificate will not be accompanied by additional information, but the CB may submit documents on request of the buyer. The documents that the CB have direct access to are the following:

1. Permit to Process Timber (issued by FD)
2. Outturn percentage approval (issued by FD)
3. Certificate of legality of timber products (issued by FD)
4. Specification (issued by MTE)
5. Sales contract (issued by MTE)
6. Commercial invoice (issued by MTE)
7. Delivery order (issued by MTE)
8. Advanced information for Parcel Transfer (issued by MTE)
9. Reference for Parcel Transfer
10. Purchase Confirmation Letter (issued by MTE)
11. Certified Letter of Source of Origin (issued by MTE)

If additional information is requested by buyers, the CB must request MFCC to access documents from the FD and the MTE – the CB will not have direct access to those additional documents.

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<sup>27</sup> Note that the term Forest Management Unit and Forest Management Enterprise has been used in different documents with the same meaning.

## 4 The CoC Dossier

The CoC dossier was published by MONREC in 2018 with the objective of providing information to overseas buyers of Myanmar timber about the legality and origin of the timber in question. The Dossier aims to do that by providing an overview of all legally required documents in a timber supply chain, from the assignment of the Annual Allowable Cut (AAC), to export.

The dossier itself is therefore not a legality verification system, but a collection of documents relevant to tracking of timber, with information about the role of each of these in the supply chain. As such this information can play a role relating to indicating legality, using each document in the supply chain to verify that each step in the process has been followed.

The CoC Dossier contains detailed overview of the timber tracking and timber flow process and explains in detail the role of each document used in the process, from the allocation of AAC, until export of timber product.

During the on-site visit NEPCoN tracked logs up-stream from log depot in Yangon, back to the forest of harvest in Gangaw District (see Annex 3). During the trip each step in the process and associated documents were evaluated to test the ability to track logs and verify origin. It was found that the documents were available upon request.

### 4.1 Structure of the CoC Dossier

The Dossier is structured according to the different steps in the process from allocation of AAC, through harvesting and transport to processing and export. So, the Dossier is divided into 30 different steps according to the process:

- A. Pre-harvest
- B. Harvesting
- C. Post-harvest
- D. Open tender sales
- E. Processing
- F. Exporting

For each step there is a description of the responsible authority, procedures, evidence of compliance and the signing staff of the specific document.

#### 4.1.1 Pre-harvest (step 1-6)

The activities related to the pre-harvest stage (Steps 1-6) are included in the Dossier with the following documents:

1. Annual allowable cut notification – as described above the AAC is allocated on a district level in number of trees based on the forest inventory data. The approval of the AAC happens at ministry level.
2. MTE Annual Harvesting Plan – based on the AAC the AHP is developed by MTE and approved according to the procedure described earlier.
3. Tree marking, standing tree map and marking notebook – this is the process of measuring and marking the trees to be harvested by FD and preparation of a compartment level map with approximate location of trees.
4. Request to enter the forest – MTE request FD for permission to enter forest to initiate harvest.

5. Permit to enter the forest – FD provides permit to enter the forest to MTE.
6. Hammer mark registration

The Government of Myanmar make public the AAC on the following websites:

- <http://www.fdmoecef.gov.mm> (FD)
- <http://www.myanmaritimer.com.mm> (MTE)

Note that at the time of writing none of the links were functioning.

**Findings:**

In step 1, the AAC notification provides the AAC at District level. However, MTE Extraction Agencies' areas do not correspond to the District - i.e. one MTE Agency may extract in more than one district. The challenge seems to be that even if the AAC is available and production can be verified at forest level, there is no practical way to reconcile volume data in other points of the supply chain. It is therefore difficult to evaluate if the volume has been adhered to or not, even where actual production is made available.

At the District level it would be possible to compare the production data from the relevant MTE Extraction Agencies, through use of the AAC, the pre-harvest inventory and the Cutting Balance Sheet, that is used by MTE to record marked and felled trees. It would also be possible to summarize volumes based on timber transported from local log depots and reconcile that data with the AAC.

This issue relates to the findings of the 2017 gap analysis, (OBS 12/17 in Annex 1), that also mentions the lack of ability to reconcile data on volumes and qualities.

For Step 10 there is a report from the Compartment in-charge on check of skidding of logs from stump to measuring point. This could be included in the Dossier.

See OBS 31/19

The above steps conclude the steps prior to harvesting. It was found that the processes are followed, and the documents are available.

#### 4.1.2 Harvesting (Step 7-13)

The harvesting phase includes the following steps:

7. Exploration report – report developed by MTE and FD to plan harvest and extraction.
8. Tree felling and bucking: Felling order (form AG) and Logging Notebook (Form B)
9. Daily summary and compilation of form C – Form C is a summary of the in-forest information collected upon harvesting and recorded in the filled in Form B. Form C is a key document and contains the Standing tree number, the log numbers, measurements of logs, number of logs from each tree.

Form F is a summary of Form B and contain volume summary for payment of fellers.

10. Skidding of logs to measuring point – transport form logging site to measuring or landing site (usually by elephants).
11. Measuring and marking of logs by FD and MTE – at the measuring point MTE measures the logs and assures conformance with Form C. Once all logs are measured FD remeasure and the Revenue hammer mark is placed on the log end.

FD fills in Form S-18. Subsequently Form D is filled in by MTE with key information on standing tree number, revenue mark number, dimensions of logs, hammer mark copy, species and grade.

12. Forest road construction – road construction is done in the dry season to transport logs from forest to the depot.
13. Trucking Note - Transport of logs from measuring point to MTE Agency Log Depot requires the trucking note, which contain information on each log referring to Form D.

### ***Findings***

At the harvest steps Forms B, C, D and the Trucking Note are key. They contain the reference to the compartment and the standing tree in that compartment, as well as the log number resulting from each marked tree. The revenue hammer mark and the hammer mark of tree number are also constituting the basis for evaluating legality and tracing logs up-stream.

It was found that these documents are efficiently used and that it is possible to track the logs. The system, as implemented can be used to track logs back to the standing tree if used correctly and the data consistently entered and transferred from one form to the next.

A document not mentioned in the Dossier is the Revenue Agreement Letter, which is issued based on Form S-18 and contains the agreed revenue payment due to FD from MTE. Current revenue rates due to FD is 30,000 MMK/HT for Teak

See OBS 31/19.

#### **4.1.3 Post-harvest (Step 14- 19)**

The post-harvest steps are focused on verifying by FD that the trees are correctly harvested and removed and closing of the logging compartments

14. FD inspection – Forms 1, 2 and 3 of the FD are used during and after harvest for FD to control MTE actions and ensure the logs are extracted correctly (left logs, logs with no hammer marks etc).
15. Receiving logs at Depot – upon receiving the logs at the Depot, the MTE fills in the Depot register Entry Log List, noting the logs that are received with reference to standing tree number revenue mark number, dimensions of logs, trucking slip and tree species.
16. Forest road decommission report – after inspection of the compartment that logs are extracted, stumps are correct height, marks are on all stumps, fees are paid, FD decommission the roads to the compartments. Usually by destroying bridges to hinder access.
17. Completion report – MTE prepares a summary report for each compartment, noting the totally extracted volume, any log left etc.
18. Log Sorting and Grading at Depot – as of 17/18 FY logs are only sold by Open tender and no more sales through contractors and direct sales contracts. At grading the logs are placed in Lots with Lot Serial numbers also referring to the original revenue Mark Number.
19. Log transportation – logs may be transported directly to a factory for local processing or transported to Yangon for sales in auction. Depending on the case the logs may be accompanied by different document.

## ***Findings***

It was found that the log tracking can be verified using the different forms and that the Depot Entry Register Log List can be used to track the logs.

A document not mentioned in the Dossier which may have relevance is the Cutting Balance Sheet, which has been mentioned in connection to AAC. The Sheet is a summary of production data from MTE. It is not fully clear if or how this could be directly used but is mentioned here as a potential addition.

See OBS 31/19.

### **4.1.4 Open tender Sales (step 20-24)**

Logs are received from transport by barge or truck in Yangon Log Depot:

20. Receipt of logs in Yangon log depot – All legal timber trade shall happen from Yangon Depots. Upon receiving logs at the depot in Yangon, the trucking note or AU-form are checked and the forms T1 and T2 are filled in, which includes information that refer to the standing tree number and revenue number.
21. Log measurement and grading- the logs are re-measured and graded a final time (Form T4).
22. Preparation for sale – prior to auction MTE fills in the Specifications Form listing the measurements, grades and species of logs. Since 17/18 FY MTE are adding reference to the standing tree number and revenue number in order to ensure ability to track timber back to the origin this was no included in the old form.
23. Log sales – the open tender is conducted in US \$. MTE will provide the winner of each Lot with the following:
  - Specifications
  - Sales contract
  - Commercial invoice
  - Delivery Order
  - Advanced information parcel transfer
  - Reference parcel transfer
  - Purchase confirmation letter
24. Transport of logs after sales – the buyer is responsible to remove the logs, which requires a removal pass.

## ***Findings***

An important improvement of the tracking system is the addition of the revenue mark number and standing tree number to the Specifications Form at the log depot. This allows traceability back to the forest by reference to the preceding chain of documents.

The use of the open tender auction system is a way of seeking a transparent sales process. However, the use of open tender does not allow for buyers to implement their own verification system prior to purchase, as they do not know if they will win the auction. The auction system therefore makes verification of legality prior to purchase but buyers practically impossible.

#### 4.1.5 Processing (step 25 – 26a)

Once logs arrive at private processing facility the following documents are issued:

25. Receipt of logs at private log yard – FD staff receives logs at the log yard of the processing entity and verifies the logs and documents. They fill in the Ground Check Document.
26. Permit to process timber (permit to cut) – FD issues permit to process when log identity is confirmed.
- 26a. Outturn percentage approval – based on the log grade and log volume the FD shall approve the outturn volume post-processing.

#### *Findings*

During on-site inspections at a processing facility NEPCon evaluated the availability of documented records according to the CoC Dossier (and additional documents used internally in processing). It was found that the factory did have a good internal system to keep track of material flows and was able to track specific bundles of material back to a log lot by using a batch-based processing system. The factory used an internal document system to track material.

It was however observed that logs from FY 13/14 were being processed and that some of these logs were below the legal diameter limit. It was explained from FD that the logs originated from plantations areas and that they have a lower DBH limit. It was found that it was not possible to verify if the logs are in fact originating from plantation areas.

See OBS30/19.

#### 4.1.6 Export (step 27-30)

The export preparation process includes the following steps:

27. Preparation for shipment – after processing FD inspects final product and issues:
  - a. Certificate of legality of Products
  - b. Packing list
28. Approval for export – after the Certificate of legality of products are issued the buyer can request an export declaration.
29. Loading container – After export license is issued the material can be loaded into containers and FD staff prepares an inspection report verifying the contents.
30. Customs at Yangon port – loaded containers are transported to the port and resealed if no irregularities are found.

#### *Findings*

Upon on-site visit documents were inspected and no issues were identified – the documents were available and appeared to be filled in as required.

One document that was not included in the Dossier is the Certified Letter of Origin. This letter is a summary letter issued by the Extraction Department of the MTE. When an importer from abroad requests for the Certified Letter for Source of Origin from MTE, the respective exporter who won the timber auction applies for the certified letter for Source of Origin from the Extraction Department, presenting DO, specification note, and contracts which were initially issued by the Export Milling and Marketing Department (EMMD). Extraction agency, harvesting year and revenue number are mentioned in the specification.

The Extraction Department asks back the respective Extraction Agency to provide the information relating to the following:

1. Extraction Agency /Range
2. Administrative District/Township
3. Reserved/Unclassified forest & Compartment number
4. Extraction year
5. Species
6. Entry permission by Forest Department
7. Revenue mark
8. Agency Classification by hammer mark
9. Production Deport

When the information relating to the nine points is received, the Extraction Department issues the Certified Letter for Source of Origin with which the timber can be traced back to stumps.

This letter has been developed as a support for buyers to track timber but is not mentioned in the Dossier as it is not part of the legal supply chain forms.

For step 29, there is no example included in the CoC Dossier of the Inspection Report from the container loading.

See OBS 31/19.

#### **4.2 Assessment of the applicability of the documents in the supply chain**

As briefly stated in the findings under each of the steps in the CoC Dossier process it was found that the documents used from harvest to export does provide the possibility to track logs from the point of export back to the stump.

It was found that document copies were available upon request at the District and MTE Agency level and it was possible to trace back logs from different locations in the supply chain.

For the purpose of this study it is found that accessing the different documents provides a useful tool in identifying the origin of logs and thus may contribute positively to fulfilling EUTR requirements for access to information about origin and for documents indicating legality.

The documents included in the CoC dossier is only part of the total amount of different forms and documents applied in the forests sector in Myanmar. The CoC dossier obviously is made to focus on tracking timber origin. Other issues of legal harvesting and processing are not represented in the dossier.

As such the Dossier can play a role in the due diligence process as a guide to understanding the different document in the supply chain. However, the documents are not covering all issues and should not be considered as a stand-alone source of information for indicating legality.

The following points are highlighted specifically with regards to the use of the CoC Dossier documents as part of a due diligence process:

1. The AAC approval is included as step one – however there is no real practical ability for outsiders to use that information. It is not clear how an outsider would be able to reconcile district level AAC with actual production data from different MTE extraction Agencies.

2. The Dossier is currently being revised to include changes already, but it is highlighted that the Dossier shall reflect the new forest law 2018 and the Forest Rules and other changes to legal requirements should be included in the development of the Dossier. Also, some Forms have been updated since the publishing (e.g. Form D) OBS 32/19
3. For Step 10 there is a report from the Compartment in-charge on check of skidding of logs from stump to measuring point. This could be included in the Dossier.
4. For Step 29, there is no example of the container inspection report. It is proposed to include this.
5. The CoC dossier is wholly focused on tracking timber from harvest point to export. The dossier therefore does not include other documents relevant to legality. As mentioned elsewhere, the MTLAS is also very focused on these documents used by the MTE and FD to manage harvesting and logs. There is little available information regarding other aspects of legality, such as e.g. third parties' rights, harvesting regulations (beyond selection of harvestable trees), health and safety and environmental requirements. OBS 33/19.

## 5 Overview of observations

Based on the NEPCon Certificating system Evaluation Standard, and the general evaluation above, the following observations are made.

*Table 8: Summary of observations. Observations are drawn from the report sections, as well as from Annex 2. Observations are numbered chronological.*

| OBS   | Issue<br>(numbering refer to criteria in the table in Annex 2) | Findings  |
|---|--|---|
| <b>MTLAS as a legality assurance system (quality management system)</b> |  |   |
| 01/19   | Standard revision  | The MTLAS 2013 document is not used for certification. In its place the Audit Form 2019 is used. There are found to be certain differences in these two documents. There has been no clear public process (as far as NEPCon is informed) to revise the MTLAS and use the Audit Form, instead of the standard as basis for certification. MFCC have developed a standard development and revision procedure, and it is recommended that this procedure is implemented to revise the Principles and Criteria of the MTLAS.  |
| 02/19   | Standard formulation   | Regarding the formulation of the standard and audit forms as a tool for efficient verification, it is noted that the indicators of the Audit Forms are primarily focused on the availability of documents. Only 2 of the 12 indicators (of the Audit Form for Forest operations) mention performance thresholds. The rest focus on the availability of documents.<br><br>It is recommended to consider revising the indicators (normative requirements) to include performance-based indicators as well as document based. This should preferably be done with clear reference to the detailed requirements relevant to forest management and harvesting activities, such as those found in the legally mandated MTE Extraction Manual, The Annual Harvest Plans, Departmental Instruction's, Standing Orders for extraction Staff, the RIL Guidelines and other key legal documents. |
| 03/19   | Scheme ownership   | The MFCC is responsible for several roles: standard setting, system management, as well as for accreditation or recognition of Certification Bodies (CBs). It I considered a challenge for the MFCC in terms of their experience and capacity to manage accreditation.<br><br>This observation has been made in the 2017 Gap Analysis as well, and MFCC is currently seeking to outsource accreditation to an independent entity.   |
| 04/19   | Stakeholder engagement in standard development                 | The Policy MFCC P 3 SS on Standard Setting requires that the standard setting organisation (in this case MFCC) will identify stakeholders relevant to the objectives and scope of the standard-setting work in accordance with MFCC P 4 Stakeholder Engagement and Public Documents.<br><br>Since the Policy is from 2018 and the standard is from 2013, this Policy has not been applied.  |
| 05/19   | Standard revision and the Audit Form                           | There are differences between the MTLAS 2013 and the Audit Form 2019. It is not clear what process has been implemented to review the TLAS (2013) requirements and develop the Audit Forms (2019).<br><br>The P&C of the MTLAS differ from the 2019 Audit Form in contents and structure.   |

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|       |  | It is recommended that the Audit Form should reflect the normative requirements of the approved standard.  |
| 06/19 | CB recognition   | <p>It is found that the Certification Body Requirements Policy allow CBs to show compliance with ISO requirements as long as two years after receiving full MFCC "notification".</p> <p>Such a timeframe is not found to reflect the stated focus that MFCC have put on ISO certification on their website, the Implementing Arrangements and in the Certification Body Requirements.</p>  |
| 07/19 | CB competence and qualification  | It is appreciated that MFCC is working on an initial phase, while also the intention to bring MTLAS certified material to the international market. As such the quality assurance system applied should be at a level that is comparable to international best practices. It is found that the MTLAS, as applied currently, as well as the use of phased approach to CB accreditation, does not effectively ensure the quality and performance of CBs, as could be expected of a system certifying legality for international markets.   |
| 08/19 | Consignment certification  | The MTLAS allowance of a consignment-based certification and the connected standard requirements are not considered to provide assurance that material is not mixed along the supply chain. Also, the requirements for consignment-based certification are not clearly outlined in the policies and procedures.  |
| 09/19 | Audit scope  | <p>It is found that this level of definition of the area under certification does not provide the necessary level of detail that would normally be expected from a forest level audit, where the unit of certification should be clearly specified.</p> <p>The Certification Body Requirements (MFCC P 5 CBR) includes in the definitions mention of "Entity" as either a concession or manufacturer. As concessions are not a term normally used in Myanmar it does not appear to provide clarity on the scope of the entity under certification.</p> <p>It appears that the FD District will be the unit of audit and certification in the actual audit report. However, the procedures do not describe this or define how audits shall consider the fact that one District may include different MTE Extraction Agencies.</p> |
| 10/19 | 3.2 The System shall ensure that the procedures of certified organisations are evaluated and revised - when necessary - on a regular basis.        | There are no specific system related requirements of the MTLAS that are used to evaluate if the certified FMU have in place up-to date procedures that are being followed. Again, there seems to be a reliance on the fact that all forest management and extraction is conducted by FD and MTE respectively where a reference to harvest plans and procedures could be relevant.  |
| 11/19 | 4.3 The System shall ensure that certification reports (or at least summaries with relevant findings) are made publicly available on the internet. | There are no requirements in the MTLAS system to make summaries of audit reports publicly available.   |
| 12/19 | 5.1 The Standard shall include requirements and ensure that certified Organisations have qualified and   | The MTLAS standard or other system documents does not include any requirements related to the qualifications and competence of staff ensuring compliance. This issue is also reflected in the 2017 Gap Analysis where the fact that there seems to be a lack of oversight of internal procedures.  |

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|       | competent staff who are able to consistently assure that standards are met and enforced.  |   |
| 13/19 | 6.3.1 System owner shall ensure that the competence and consistent performance of assurance providers is periodically reviewed.   | Currently MFCC is the only body overseeing the activities of the CBs. If an independent accreditation system is implemented, this could be covered also considering ISO accreditation requirements. See Policy MFCC P 1 IA: Implementation arrangements.  |
| 14/19 | 6.3.2 System owners shall specify the approach to be used in oversight, ensuring that the oversight mechanism is independent of the assurance providers being assessed.                         | The requirement is addressed in the following documents: 1) MFCC Policy MFCC P 5 CBR: Certification Body Requirements, and 2) Policy MFCC P 1 IA: Implementation arrangements and 3) MFCC SOP 1 NCB: Notification of Certification Bodies.<br><br>However, the system does not clearly describe how oversight of the CBs will function and based on what criteria the CBs will be evaluated and with what frequency.  |
| 15/19 | 6.3.3 System owner shall define the frequency of oversight or the procedure for determining the frequency, applicable in the case of risk-based oversight                                       | Currently there are no determined frequency of oversight of the work of the notified CBs.   |
| 16/19 | 7.1 System shall include requirements to ensure that assurance providers apply the documented methodology for assessment of clients.  | The Certification Body Requirements (MFCC_P_5_CBR_010818) includes a clause to require that CBs have in place audit procedures. However, the CB Requirements does not specify requirements for conformance evaluation. A lot seems to be expected to be included in the procedures of the individual CB, but without clear instructions on how CBs should evaluate conformance. It is considered of particular importance in the case of MTLAS, as the CBs will operate in an environment where they are evaluating the performance of Government Bodies like the FD and the MTE. It is relevant to consider how third-party verifiers should deal with evaluating and grading non-conformance by government employees. |
| 17/19 | 7.2 System shall include measures to ensure that assurance providers apply stakeholder consultation as appropriate during the audit (only applicable where necessary for evaluating compliance) | There are no requirements to use stakeholder consultation during the certification process. Stakeholder consultation is mentioned only as part of the standard setting process (See the Procedure "Stakeholder Consultation and Public Documents").<br><br>The Audit Form 2019 does include verifiers that mention stakeholder consultation as a possible means of verifying compliance to health and safety regulation and user rights of local communities. However, none of the system procedures of documents mention stakeholder consultation as part of the certification process.  |
| 18/19 | 7.3 System shall ensure that the assurance provider applies a clear basis   | As mentioned above, there are no clear instructions on how to establish conformance thresholds. It should be mentioned that the Audit Form 2019, contain clear indicators and verifiers in the Form   |

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|   | for establishing conformance and corrective actions for non-compliance and certification decision making.  | itself. However, it is not addressed in any of the normative documents addressing the CBs.   |
| 19/19   | 7.4 System shall ensure that assurance provider have in place and implement procedures for audits.   | <p>The Certification Body Requirements does specify the need for CB procedures.</p> <p>However, it is not apparent that these procedures shall include requirements that meet the intent of this clause:</p> <ul style="list-style-type: none"> <li>• There is no requirement in the MTLAS for sampling protocol – this has also been highlighted in the report text as an issue identified during review of an example of a verification report from Taungoo FD District.</li> <li>• It is not clearly mentioned how CBs shall sample or determine the scope of auditing. There seems to be no definition of what the scope of an audit might be, but it seems to be the intention to use the FD Districts as basis.</li> </ul> |
| <p><b>MTLAS standard - Principles and Criteria (P&amp;C) for legal timber</b></p> <p><b>(Observations from Annex 2)</b></p> |  |  |
| 20/19   | <p>Land tenure and management rights</p> <p>The System shall ensure that the certification standards contains requirements that relate to or cover applicable legislation (1.1.1. Land tenure and management rights)</p> | <p>Principle 1, Criterion 1 of MTLAS 2013 standard partly cover this requirement, by requiring approval from FD to harvest. It is noted that the standard does not address issues of constitution of land as Forest Reserve, as outlined in the Forest Law Chapter III. The standard does not include evaluation of the process of constituting Reserved Forest for management by the FD.</p> <p>The 2017 Gap Analysis: MTLAS P&amp;C does not sufficiently address the use of legal methods to obtain tenure or management/harvesting rights.</p>   |
| 21/19   | 1.3.2 Protected sites and species  | Criterion 1.2 of MTLAS standard and Audit Form relates to management of environmental requirements. Protected sites and species are not specifically mentioned.  |
| 22/19   | 1.3.3 Environmental requirements   | <p>Criterion 1.2 of MTLAS standard and Audit Form contains requirement for availability of records related to environmental management. However, there are no requirement to comply with actual requirements or show evidence of environmental compliance in the field.</p> <p>This finding was also reflected in the 2017 gap analysis report.</p>  |
| 23/19   | <p>1.3.5 Legal Employment</p> <p>The System shall ensure that the certification standards contains requirements that relate to or cover applicable legislation</p>   | <p>Criterion 2.6 of MTLAS standard includes a reference to the Workmen's Compensation Act. However, the Audit Form only refer to H&amp;S, not to legal employment, insurance etc. for forest workers. This is a discrepancy between the two documents.</p> <p>The 2017 Gap Analysis also includes this finding and relates also to ILO conventions ratified by Myanmar but not being included in the MTLAS standard.</p>   |
| 24/19   | 1.4.2 free prior informed consent and  | The MTLAS standard only refer to the Forest Law (1992) Section 15 and 17 as an indicator. Whereas the Audit Form includes a performance related requirement that <i>"4.1: User rights of local communities in and around the harvesting area are taken into consideration"</i> .   |

|                             |  |   |
|-----------------------------|--|---|
|                             |  | <p>The verifiers of the Audit Form also refer to the Forest Rules and the Forest Law that contains legal requirements for the constitution of Reserved Forest.</p> <p>It is found that using a broad term like "...taken into consideration", as the indicator for third parties rights does not provide for a thorough evaluation of these issues in Myanmar. These issues are not found to be sufficiently covered in the MTLAS standard.</p> <p>This finding was also reflected in the 2017 gap analysis report.</p>   |
| 25/19                       | 1.4.4<br>Indigenous/traditional people's rights        | <p>The MTLAS standard does not mention indigenous or traditional peoples' rights. The Burmese government refers to groups considered indigenous as ethnic nationalities. These include the Shan, the Karen, the Rakhine, the Karenni, the Chin, the Kachin and the Mon. However, there are more ethnic groups that are considered indigenous, for example, the Akha, the Lisu, the Lahu or the Mru, among others.</p> <p>It is noted that the Myanmar legal framework is not adequately recognizing indigenous people's rights. It is therefore underlined that the MTLAS standard can only be expected to include third parties' rights, as far as the legal framework exists. The current wording of the MTLAS standard and the Audit Forms are not considered to provide a clear basis for evaluating this issue.</p>  |
| 26/19                       | 1.5.3 Offshore trading and transfer pricing            | <p>Regulations related to illegal manipulation of transfer pricing or other tax evasion is not mentioned in the MTLAS and is not covered by current legislation.</p> <p>The point can be considered not applicable to legal compliance, since there is no legal framework.</p>  |
| 27/19                       | 1.5.5 CITES  | <p>The MTLAS standard does not mention CITES requirements, whereas the Audit Form does include the mention "instructions related to trees not to be harvested under CITES" in the verifiers of Criterion 1.2). It is not clear how the requirement on CITES species is audited based on that verifier.</p> <p>This finding was also reflected in the 2017 Gap Analysis.</p>   |
| 28/19                       | 1.6.2 Environmental requirements for processing        | <p>The MTLAS standard does not cover environmental requirements for processing facilities.</p>  |
| 29/19                       | 1.6.5 Legal employment in the timber processing sector | <p>The MTLAS standard does not cover legal employment requirements in the processing sector.</p>  |
| <b>Supply Chain Control</b> |  |   |
| 30/19                       | 2 Chain of Custody                                     | <p>The MTLAS mentions that legally required records and documents shall be available. However, there is no CoC or traceability standard per se. It is therefore important that timber is traceable and an efficient CoC system is included to physically and administratively separate certified from non-certified material.</p> <p>This issue was also included in the 2017 Gap Analysis and thus found not to be fully closed.</p> <p>A second point of this relates to plantation timber. As the Myanmar Government have allowed export of plantation round-logs from 2019, it will be important to enable identification and tracking of logs to plantations. If not, the plantation log export allowance could become a loophole for the export of round-logs.</p> <p>In addition, the fact that stockpiles of timber harvested prior to 2017 are still being processed and that timber from confiscations and timber</p> |

|                    |                            |  |
|--------------------|----------------------------|--|
|                    |                            | <p>deals in ethnic areas are still available on the market increases the risk of potential mixing.</p> <p>It is underlined that MFCC, MTE and FD are currently piloting a project to attach a QR code tag to logs. The QR code refer to an online folder which contains documents with information about the log, including geographical coordinates and a map of the compartment of harvest. It was found during on-site evaluation that the system did work, but also that some errors had been introduced due to human error in data entry.</p>   |
| <b>CoC Dossier</b> |                            |  |
| 31/19              | Dossier documents          | <p>Some documents were found to be useful in the supply chain but are missing from the dossier. The documents identified as having a potential role in the supply chain that were not in the Dossier are:</p> <ol style="list-style-type: none"> <li>1. For Step 10 there is a report from the Compartment in-charge on check of skidding of logs from stump to measuring point. This could be included in the Dossier.</li> <li>2. Revenue Agreement Letter</li> <li>3. Cutting Balance Sheet</li> <li>4. For step 29, there is no example included in the CoC Dossier of the Inspection Report from the container loading.</li> <li>5. Certified Letter of Origin is not included in the Dossier.</li> </ol> |
| 32/19              | Dossier revision           | <p>The Dossier is currently being revised to include changes already, but it is highlighted that the Dossier shall reflect the new forest law 2018 and the Forest Rules and other changes to legal requirements should be included in the development of the Dossier. Also, some Forms have been updated since the publishing (e.g. Form D)</p>  |
| 33/19              | Scope of Dossier documents | <p>The CoC dossier is wholly focused on tracking timber from harvest point to export. The dossier therefore does not include other documents relevant to legality. As mentioned elsewhere, the MTLAS is also very focused on these documents used by the MTE and FD to manage harvesting and logs. There is little available information regarding other aspects of legality.</p>  |

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## 6 Conclusions and recommendations for MFCC

Based on the findings of the on-site visit to Myanmar, a few observations were made on the structure and management the MTLAS. These findings are mostly related to the language and structure of the MTLAS standard, as well as the contents of the quality assurance system surrounding the standard implementation under a certification system. The following key findings and recommendations are made.

**Revision of the MTLAS standard:** Based on the findings of the MTLAS standard 2013, as well as the Audit Forms 2019, it is recommended that MFCC establishes a process to review and revise the MTLAS legality verification standard (and the definition of legality used), including a multi-stakeholder process to allow for broad input to definitions and contents. It is also recommended to add specific requirements for community forestry, as well as a full range of forest level performance indicators.

As part of the MTLAS standard revision it is also recommended that the documents of the CoC dossier, and the control steps contained herein, are included and referenced under the relevant criteria and indicators of the MTLAS standard.

**Revision of MTLAS procedures and policies:** It is recognised that MFCC have come a long way in developing MTLAS policies and procedures. It is a big step forward and a significant change to the system as was evaluated in 2017. It is nevertheless observed that the system is not yet fully implemented which is to be expected of a system in development. However, the challenge in this regard is that MFCC have moved forward with certification using the phased approach of CBs and using the 2013 standard that has yet to be revised according to the new policies.

As outlined above, it is found that the quality assurance system, as presented in the normative policies and procedures contain several gaps. These gaps would, in the opinion of NEPCon, mean that the system is not currently able to ensure an adequate level of assurance of integrity and quality. Also, it does not currently meet international best practices.

It is therefore recommended that MFCC considers the provisions currently in place for the Notification, such as ensuring that the system and CBs operate within a system with improved quality assurance.

MFCC should also consider facilitating translation of relevant legal documents, such as the RIL Instructions, the MTE Extraction Manual, The Departmental Instructions and Standing Orders for extraction staff – these, as mentioned, should also be integrated clearly as part of the revision of the MTLAS standard.

## 7 Conclusions and recommendations for EU Operators

As stated, the objective of this report was primarily to identify to what extent the documents in the CoC Dossier and material certified under the MTLAS standard can be used to meet the EUTR requirements for due diligence by EU Operators.

As already highlighted, it is important to underline that the EUTR does not recognise the use of certified material as a green lane to cover all due diligence requirements, so no matter what scheme is used, an evaluation of the systems alignment with the EUTR requirements and additional evaluation of potential shortcomings to provide traceability and indication of legality is necessary.

As part of this analysis we have included requirements for the EUTR 995/2010<sup>28</sup> as well as implementing regulation 607/2012<sup>29</sup>. The requirements from the EUTR and implementing regulations are included in the requirements of the NEPCon Certification Scheme Evaluation Standard, as outlined in Annex 2.

The EUTR defines applicable legislation as legislation in force in the country of harvest covering the following matters:

1. *"rights to harvest timber within legally gazetted boundaries,*
2. *payments for harvest rights and timber including duties related to timber harvesting,*
3. *timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,*
4. *third parties' legal rights concerning use and tenure that are affected by timber harvesting, and*
5. *trade and customs, in so far as the forest sector is concerned."*

Also, the Article 6(1)(c) of the EUTR imposes on the operator that its due diligence system, which according to Article 4 (3) shall:

*'maintain and regularly evaluate' 'shall contain the following elements: (a) measures and procedures providing access to the following information concerning the operator's supply of timber or timber products placed on the market:*

- *description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name,*
- *country of harvest, and where applicable:*
  - *sub-national region where the timber was harvested; and*
  - *concession of harvest,*
- *quantity (expressed in volume, weight or number of units),*
- *name and address of the supplier to the operator,*
- *name and address of the trader to whom the timber and timber products have been supplied,*
- *documents or other information indicating compliance of those timber and timber products with the applicable legislation;'*

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<sup>28</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>

<sup>29</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0607&from=EN>

The implementing regulation 607/2012 includes the following requirements for certification schemes when these are used as part of the due diligence process:

*"Certification or other third-party verified schemes referred to in the first indent of the second paragraph of Article 6(1)(b) and in Article 6(1)(c) of Regulation (EU) No 995/2010 may be taken into account in the risk assessment and risk mitigation procedures where they meet the following criteria:*

- a) they have established and made available for third-party use a publicly available system of requirements, which system shall at the least include all relevant requirements of the applicable legislation;*
- b) they specify that appropriate checks, including field-visits, are made by a third party at regular intervals no longer than 12 months to verify that the applicable legislation is complied with;*
- c) they include means, verified by a third party, to trace timber harvested in accordance with applicable legislation, and timber products derived from such timber, at any point in the supply chain before such timber or timber products are placed on the market;*
- d) they include controls, verified by a third party, to ensure that timber or timber products of unknown origin, or timber or timber products which have not been harvested in accordance with applicable legislation, do not enter the supply chain."*

In addition, the EUTR Guidance document<sup>30</sup> contains some examples of issues that are of importance to the integrity and scope of the certification schemes:

- Are all requirements under Article 4 of the Commission implementing Regulation (EU) No 607/2012 fulfilled?*
- Is the certification or other third party-verification scheme compliant with international or European standards (e.g. the relevant ISO-guides or ISEAL codes)?*
- Are there substantiated reports about possible shortcomings or problems of the third-party verification schemes in the specific countries from which the timber or timber products are imported?*
- Are the third parties that perform the checks and verifications referred to under Article 4 (b)(c) and (d) of the Commission implementing Regulation (EU) No 607/2012 independent accredited Organisations?*

As found in the analysis of the MTLAS and the CoC dossier there are key aspect of these that are considered to contain gaps, that would have to be considered if they are being used as part of a due diligence system.

Regarding the fundamental aspect of access to information, it is noted key legal requirements, such as the MTE Extraction Manual, Departmental Instructions, Standing Orders for Extraction Staff and the RIL Guidelines are only available in Burmese. This fact makes access to information for outside entities difficult and hampers independent verification of legal compliance.

**Regarding the CoC Dossier**, the key findings are the following:

- a. Limitations of document as part of DDS - Documents cannot be used as a stand-alone tool in due diligence, especially when sourcing from areas with

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<sup>30</sup> [https://ec.europa.eu/environment/forests/pdf/eutr\\_guidance.zip](https://ec.europa.eu/environment/forests/pdf/eutr_guidance.zip)

a low score on the Corruption Perception Index (CPI) and other indications of risks in the forest sector. This means that even if the documents are furnished and available, they would have to be supported by on-site verification.

- b. Insufficiency related to the EUTR applicable legislation – as described the documents included in the Dossier does not provide indication of legality related to all legality categories included by the EUTR. E.g. the Dossier does not include documents that could be used to indicate compliance with implementation of legal requirements related to third parties' rights, or to specific harvesting regulation such as implementation of environmental requirements in the forest. The EUTR Guidance Document specifically includes indicative examples of such possible documents. There is therefore a need to include additional documentation is part of a comprehensive document evaluation to be used to indicate legality under a definition as laid out in the EUTR.
- c. Inability to access information related to key aspect of legality – the Dossier contains a copy of the approval of AAC (which is also made public at district level on the MTE website) however there is no current way to reconcile AAC with actual harvest at compartment level. Also, the documents needed to indicate legality are only accessible through on-site audit, as some of them are labelled "only for internal use". This means that external review of legality becomes difficult or impossible

**Regarding MTLAS, the key findings are the following:**

- a. Standard scope - As outlined in the findings of this assessment the MTLAS is considered to also contain some gaps in terms of the standard itself (formulation of MTLAS standard as well as scope), The MTLAS standard is not considered to be up-to date and have not been revised using the new policies and is therefore not referencing current applicable legislation. In addition, the MTLAS standard does not fully incorporate all relevant legal requirements for harvesting, such as reference to the Departmental Instructions, the Extraction Manual for MTE, The Standing Orders for Extraction Staff or the RIL Guidelines – it is also noted that these are not translated to English which makes verification difficult.
- b. Standard efficiency - The MTLAS standard is not formulated as normative auditable requirements, and the Audit Forms being used currently focus heavily on the availability of documents – there are very few performance related indicators in the Audit Forms, which does not enable an effective evaluation of legal compliance. An example is third parties' rights (see OBS 25/19).
- c. Auditing system - The MTLAS P&C from 2013 and the 2019 Audit Forms are not consistent with each other.
- d. ISO certification – none of the three CBs currently operating under MTLAS Notification are certified against or comply with ISO for MTLAS certification activities.
- e. Chain of Custody - The MTLAS lacks a strong material control system that would be able to efficiently manage the risk of controlling product flow. Even if the current traceability system is being implemented, there are still considered to be significant risk that material with unknown origin enters the supply chain. This is significant as large volumes of timber harvested

before 2015/2016, which must be considered to not to be of negligible risk under the EUTR, is still available on the market in stockpiles. Large volumes are also still being confiscated as illegal and timber is still being harvested in ethnic areas under unclear circumstances. This timber may potentially enter the formal stream of timber by illegal means.

- f. Accreditation – the MFCC currently holds multiple roles, both as a governing body, standard developer and scheme owner, as well as responsibility for accreditation (or notification) of CBs, which constitutes a conflict of interest.

**General areas of risk:** in addition to the above-mentioned issues related to the CoC Dossier and the MTLAS the following areas of general country level risk should be considered when sourcing timber from Myanmar. As noted in the introduction and background Myanmar has taken steps to improve the transparency and integrity of the timber tracking system by revising procedures, hammer marks and some of the forms used in tracking as well as reducing the AAC and planned production significantly. Also, the curtailment of practices like using sub-contractors for harvesting, the use of modified procedures in ethnic states, direct sales and export of logs from conversion and confiscations have been positive developments. However there still exist several issues that needs to be taken into consideration:

- a. Stockpiled timber from harvests prior to 2015/2016 is reported to still be in depots of MTE and processing entities. This timber has been harvested in an era before recent developments where implemented and should be regarded as high risk since the origin and legal status is not possible to verify.
- b. The Myanmar government seems to have made separate timber deals in ethnic states, apparently outside the formal planning and approval process. Even if this timber is reported not to be allowed for export, such deals would allow significant volumes of timber with questionable origin to enter the markets.
- c. The Myanmar government confiscates significant amounts of timber each year from illegal harvesting. This timber is only allowed for domestic markets, but, as above, the existence of large quantities of timber with illegal origin increases the risk of mixing in the supply chains.
- d. Corruption is still a significant issue in Myanmar, which needs to be considered in addressing risks in supply chains.

The availability of large amounts of timber that cannot be considered to have negligible risk according to the EUTR, is an obvious risk that needs to be considered. Without a very strong CoC system in place, the risk remains that timber from these sources are mixed with sources from known origin through manipulation of documents.

As mentioned at the beginning of the report, the purpose of the evaluation described is to provide recommendations to EU Operators on the extent to which the CoC Dossier and MTLAS certification can be used as means of fulfilling the EUTR due diligence obligations.

In terms of the CoC dossier, it is clear from the above-mentioned gaps that the documents mentioned in the Dossier may have a role as part of fulfilling EUTR requirements on access to information about the origin and indications of legality of the material. However, the limitations of the CoC Dossier documents are also clear. Therefore, any use of the CoC Dossier documents in a due diligence process needs to be

carefully supplemented with additional information to cover the full legality definition of the EUTR. In addition, the use of the supply chain documents, even if they covered all aspects of legality, would not currently, on their own, be sufficient to enable a conclusion of negligible risk in Myanmar. Several issues, including volume reconciliation at harvest, chain of custody and compliance to legal requirements are not possible using the CoC Dossier. Therefore, the application of the CoC Dossier, in an attempt to conduct a DDS process for timber from Myanmar, should be supplemented with activities that can address all of the gaps identified in terms of scope and use, as well as on-site verification to enable assessment of legal compliance at forest level and in the supply chain.

The CoC Dossier therefore is considered to be useful in understanding the different steps in the timber supply chain in Myanmar from a traceability perspective, but also to have significant gaps in other aspects of legality and limited use when it comes to addressing actual legal performance on the ground.

With regards to MTLAS certification, the conclusion is that the system does not currently have the necessary coverage, in terms of the standard, or quality assurance system in place to be able to meet the EUTR regulation requirements for third party verification schemes.

If Operators buy MTLAS certified material and will try to place this material on the EU market, it is therefore necessary that the certification claim would have to be supplemented with additional verification to cover areas where the standard is weak or does not cover. This would potentially include activities such as document evaluation, forest level verification and supply chain verification covering the shortcomings of the MTLAS.

As can be seen from the conclusions here, it is the opinion of NEPCon, that the CoC Dossier and the MTLAS certification scheme, are steps towards greater transparency and integrity in the supply chain. However, due to the gaps and issues identified they should be supplemented by additional collection of information and verification on the ground, at all stages of the harvesting, transport and processing of the timber in question.

NEPCon is of the opinion that it is possible to trace timber back to the forest of harvest using on-site supply chain verification and controlled using supporting tracing technology such as stable isotope or DNA tools. In addition, it would also, while considering the gaps identified above, be possible to evaluate legality, if access is achieved to all levels of the supply chain prior and subsequent to harvesting.

With regards to ensuring known origin, it is important to note that the fact that open tender auctions are used as the means of selling timber for export makes it difficult for a buyer to ensure that timber under a potential origin verification activity, from harvest to point of purchase, is the same timber as is available at auction, as it may be sold to the highest bidder. The auction system therefore makes it more complex for individual operators to put in place their own verification system and ensure that they obtain timber from a verified supply chain.

In addition to these findings of NEPCon, it is emphasised that the conclusions of the EUTR Expert Group is that currently, it is not possible to take adequate mitigation measures to come to a negligible risk assessment of illegally harvested timber being placed on the EU market, if importing timber or derived products from Myanmar. It is therefore recommended to contact the competent authority/ies in charge along the supply chain in the EU (country of import, country of seat of the operator) before

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acquiring teak from Myanmar, to explain the DDS and the concrete measures to be taken to exercise due diligence in order to be able to come to a negligible risk.

Finally, it is underlined that even if traceability is achieved, and legal requirements in the forest of harvest is evaluated to be met, Myanmar is still considered a high-risk country for issues such as armed conflict, illegalities in the wider forest sector and human rights issues. Therefore, it is considered difficult to regard legality in a specified area/forest district as isolated from these overarching governance issues.

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## Annex 1: Evaluation of MFCC activities to close gaps from 2017 gap analysis

The below table contains a summary of the gaps identified in the 2017 Gap Analysis, and associated actions taken by MFCC (or MONREC), as well as comments to these activities from NEPCon.

One note is made on the scope of the gap analysis and the response from MFCC. The Gap Analysis 2017 was conducted with the aim of evaluating gaps of the MTLAS system compared to the timber legality assurance systems used under the FLEGT VPAs. During the current evaluation is clear that the MTLAS has developed towards operating as a voluntary certification system. Therefore, some responses by MFCC seems to have focused on the role of MTLAS as a voluntary legality certification system, rather than the role of MTLAS as a potential formal system to be included under a possible FLEGT VPA.

See the 2017 Gap Analysis report for details of findings and overview of the framework used as basis for the evaluation.

[http://www.fao.org/fileadmin/user\\_upload/FLEGT/docs/MTLAS\\_Gap\\_Analysis\\_Consolidated\\_Report\\_2017\\_.pdf](http://www.fao.org/fileadmin/user_upload/FLEGT/docs/MTLAS_Gap_Analysis_Consolidated_Report_2017_.pdf)

| Gap  | Gap description in the 2017 Gap Analysis report   | MFCC actions to close gap (provided by MFCC)   | Findings on status of gap by NEPCon   | NEPCon evaluation of Gap Status |
|------|---|--|---|---------------------------------|
|      | <b>MTLAS as a legality assurance system</b>   |  |   |                                 |
| 1/17 | MTLAS does not incorporate specific licensing or attestation to the compliance of the timber or an operator with specific legality requirements (MTLAS gap analysis framework, Element 4- Criterion 4.1-4.3), independent oversight or monitoring for continuous assessment of the system (MTLAS gap analysis framework, Element 5- Criterion 5.1-5.6) or mechanisms to ensure transparency, stakeholder engagement, rigor, relevance and impartiality (MTLAS gap analysis framework, Element 6-Criterion 6.1-6.5). | <p>Organisational competence is covered by the MFCC System documentation. Moreover, Certification Body acceptance is contingent on Certification Bodies achieving ISO accreditation. For MTLAS Certification Bodies must demonstrate, "beyond a reasonable doubt, to MFCC, that the applicant is not involved in any way in the process and decision making for MFCC Standard setting, and that the applicant will operate impartially".</p> <p>Further checks and balances to competence and independence are ensured through the MFCC requirements that MTLAS Certification Bodies become accredited against ISO/IEC 17065, and ISO 19011:2011, Guidelines for auditing management systems (hereafter ISO/IEC 19011).</p> <p>In the current MTLAS Phase I the Myanmar Department of Research and Innovation has accreditation capacities or the possibility of engaging external ABs from China or Singapore is being explored for accreditation. However,</p> | <p>Currently none of the CBs notified have achieved ISO certification covering eh activities of MTLAS.</p> <p>It is acknowledged that MFCC have worked on development of quality assurance systems for oversight of the system functions, but also found that these procedures are not in fact implemented in this Phase I of MTLAS.</p> <p>This gap is considered partially closed as steps has been taken. However, full implementation is needed for the gap to be fully closed.</p> | Partially closed                |

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|  |  | <p>these systems are not yet formalised and set up for accreditation against MTLAS (this is expected in the next six months or so). Therefore, until that time MFCC will take on this Certification Body monitoring role.</p> <p>MFCC only accepts and notifies Certification Bodies once they have formalised their own complaints, appeals and disputes (CAD) mechanism. Certification Bodies also need to develop a timebound and demonstratable commitment to implement their own management systems that are ISO compliant.</p> <p>MFCC has a Standard Setting policy that specifies how MFCC sets the MFCC Standards (currently MTLAS and MFCS). MFCC's Standard development processes are carried out according to international best practices and in compliance to the standard setting process requirements of the PEFC Council.</p> <p>In addition, MFCC has its own Stakeholder Engagement policy – this document adds to the Standard Setting process in as much it describes more generally how MFCC will engage with stakeholders during a consultation period. MFCC follows international best practices in stakeholder consultations and subsequent reporting.</p> <p>Its key touchstone documents for stakeholder engagement are:</p> <ul style="list-style-type: none"> <li>• AA1000 Stakeholder Engagement Standard Exposure Draft: AA1000 SES, London (2005);</li> <li>• The Stakeholder Engagement Manual Volume I and II.</li> <li>• For reporting best practices MFCC aims to adhere to:</li> </ul> <p style="padding-left: 40px;">Global Reporting Initiative (GRI) Sustainability Reporting Guidelines- GRI</p> <p>MFCC publishes a record of all Certification Bodies that are operating assessments against MTLAS along with</p> |  |  |
|--|--|--|--|--|

|   |   |  |   |            |
|---|---|--|---|------------|
|   |   | <p>details on certifications they themselves as Certification Bodies, have issued.</p> <p>This can be found through the MFCC website:<br/> <a href="http://www.myanmarforestcertification.org/certification/">http://www.myanmarforestcertification.org/certification/</a></p> <p>At the time of writing (September 10th 2019) audits against the MTLAS Third Party Verification system have been completed (under the processing of the MFCC trial shipment stage). In addition, the MFCC makes certification details and summary reports publicly available.</p> <p>MFCC has its own complaints, appeals and disputes mechanism that is publicly available.</p>                                      |   |            |
| <b>MTLAS Principles and Criteria (P&amp;C) for legal timber</b> |   |  |   |            |
| 2/17  | <p>MTLAS P&amp;C does not sufficiently address:</p> <p>The use of legal methods to obtain tenure or management/harvesting rights.</p> | <p>Very recently, MFCC has reformed its Committee to include a wider range of stakeholders that include NGO's, CSOs, Employment Department and academia. CSO's representative is coming from the FLEGT Multi Stakeholder Group and NGO's representative is from Myanmar Environmental Rehabilitation-Conservation Network (MERN). When MTLAS next comes under review the GAPS identified in the Standard will all be considered in full. Moreover, it is worth stressing again that MFCC now has a Standard Setting policy that follows international best practices and covers issues such as ensuring wide and comprehensive consultation, and the representation of disadvantaged stakeholders.</p> | <p>NEPCon notes that the MTLAS 2013 have not been changed and so far no process to review the Standard have been implemented.</p> <p>It is appreciated that the MFCC have increased the diversity of the Committee, but so far the changes have not been incorporated into the P&amp;C.</p> | Not closed |
| 3/17  | <p>MTLAS P&amp;C does not sufficiently address:</p> <p>Provisions for the granting of customary rights</p>                            | <p>New Forest Law 2018 covers recognition traditional conserve natural forest and mangrove and customary rights.</p>   | <p>Changes to the forest law has not been incorporated into a new revised version of the MTLAS Principles and Criteria.</p>   | Not closed |
| 4/17  | <p>MTLAS P&amp;C does not sufficiently address:</p>   | <p>New Forest Law 2018 covers recognition traditional conserve natural forest and mangrove and customary rights.</p>   | <p>Changes to the forest law has not been incorporated into a new revised version of the MTLAS Principles and Criteria.</p>   | Not closed |

|                             |  |   |  |                  |
|-----------------------------|--|---|--|------------------|
|                             | Free prior and informed consent in connection with transfer of forest management rights<br><br>and customary rights to forest Organisations in charge of harvesting.   | Also mention to include community representative in the settlement committee when inspection forest reservation. (so that can claim customary rights)   |  |                  |
| 5/17                        | MTLAS P&C does not sufficiently address:<br><br>Legal requirements pertaining to environment and biodiversity considerations <sup>9</sup> .  | MFCC already addressed in MTLAS checklist version 2 (Audit Forms 2019), Principle 1, Criterion 1.2, indicator 1.2.1, verifier FD. And also updated forest law, Community Forestry Enterprise and Biodiversity and Conservation of Protected Area Law.   | It is recognised that the Audit Forms have included more specific indicators. However, the MTLAS standard has not been revised.<br><br>This also underlines the issue that MFCC is not implementing the standard setting policy.                   | Not closed.      |
| 6/17                        | MTLAS P&C does not sufficiently address:<br><br>International laws and regulations to which the country is signatory (e.g. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), The Convention on Biodiversity (CBD), and relevant ILO Conventions which have been ratified by Myanmar).   | MFCC already addressed in MTLAS checklist version 2, Principle 1, Criterion 1.2, indicator 1.2.1, verifier FD. And also updated forest law, Community Forestry Enterprise and Biodiversity and Conservation of Protected Area Law.  | Changes to the forest law has not been incorporated into a new revised version of the MTLAS Principles and Criteria.   | Not closed       |
| <b>Supply chain control</b> |  |   |  |                  |
| 7/17                        | 1. The system for tracking logs from forest of origin to forest depots and point of export is largely paper based and supported by hammer markings applied to stumps and logs in the forest and at MTE depots. Important paper based information can be lost by human error or discrepancy or e.g. fires, water damage or loss. Whilst carbon copies are made for some | To address these GAPS, MTE and the Forest Department have carried out (and continue to improve) a number of activities aimed at streamlining, strengthening and simplifying the existing paper-based control documents.<br><br>In addition, a number of computer-based record keeping tools have been formulated and are being rolled out with associated trainings and evaluations undertaken.<br><br>FD recorded the standing tree number and royalty number with the computerized system by using Microsoft Excel. | It is recognised that MTE and FD have taken action to simplify the tracking system. As such some of the issues in this gap are addressed. However, the system is still n development and different options are being discussed to improve further. | Partially closed |

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|      | documents others may have no back up.  | <p>MTE Implement log registration by computerized system in order to trace back the source of origin of the log.</p> <p>MTE share information of logs sold by open tender through MTE website.</p> <p>MTE practiced QR code system in 2018-2019 at Gangaw extraction agency and plan to extend all agency following year.</p>   |   |                  |
| 8/17 | <p>2. Hammer marks are applied to logs in the forest provide information on e.g. species, grade, district of origin, forest department responsible person and royalty payment. However, hammer marks on logs are often partly visible or missed altogether.</p>  | <p>FD/MTE simplified the existing hammering system, especially applying only the hammer marks which are essential for the traceability of timber and timber products and reduced some of the hammer marks.</p> <p>Announced AAC on the FD website and allowing the timber extraction within AAC.</p> <p>Published annual harvesting plan of timber production for each extraction agency at MTE website since harvesting season 2017.</p> <p>MTE provided necessary information Form D (Log measurement Book) related to the Logs sold.</p> | <p>Hammer marks have been simplified. However, this does not solve the issue that some marks are not visible.</p> <p>Also, it is appreciated that AAC is published on the MTE website. However, if the AAC data is to be used as a means of verification, there have to be a system whereby the AAC and actual harvest can be reconciliated at some level of detail. Currently the AAC is only calculated and published at district level. As such it is hard to confirm harvest against AAC and therefore hard to use that data efficiently for outsiders,</p> | partially closed |
| 9/17 | <p>3. Logs from different forest sources may be mixed at MTE depots. If hammer marks pertaining to forest of origin and/or revenue number cannot be distinguished on the logs, traceability may be lost. Whilst it may be still possible to trace logs based on log measurement statistics, this may be difficult when dealing with large volumes.</p> | <p>FD/MTE simplified the existing hammering system, especially applying only the hammer marks which are essential for the traceability of timber and timber products and reduced some of the hammer marks.</p> <p>Announced AAC on the FD website and allowing the timber extraction within AAC.</p> <p>Published annual harvesting plan of timber production for each extraction agency at MTE website since harvesting season 2017.</p> <p>MTE provided necessary information Form D (Log measurement Book) related to the Logs sold.</p> | <p>MTE and FD have taken action to simplify the hammer marking system. As in other CoC systems there will still a risk that logs from outside are mixed.</p> <p>Options should be considered to verify origin such Isotope testing or IT based tracking system.</p>   | Partially closed |

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| 10/17  | 4. The revenue number and royalty number (issued by the Forest Department at the forest of origin and essential for demonstrating traceability) are carried on relevant documentation until the MTE depot. This number is not usually carried on MTE logs lists that accompany timber from MTE depots to mills. This can make traceability more difficult to establish. | <p>MTE modified the format of the log registration used for harvesting activities.</p> <p>MTE developed the standard ledger format used for harvesting activity and revising the existing forms in order to link each other.</p>  | This was verified. It is possible to track back logs from sawmill to the forest, based on documents.   | Closed      |
| 11/17  | 5. At the processing facility, the origin of incoming material may be able to be established through log markings and paperwork, however tracking of input materials through production to the final product is not addressed.  | MFCC has recently implemented a widely supported plan to support a number of timber processing mills to create Management Systems compliant to the PEFC CoC Standard - Chain of Custody (PEFC ST 2002:2013) Second Edition.   | The MTLAS system does not include a CoC standard that meets PEFC standards.  | Not closed  |
| 12/17  | 6. There is no mechanism for reconciliation of species and quantities at each step in the supply chain.   | <p>Each and every step in the supply chain, FD/MTE prescribe forms include species and quantities for reconciliation.</p> <p>Audits by an accredited PEFC CoC Certification Body conducted at May 2019. It is expected that the first CoC certificates could be issued by end of 2019.</p>  | This is still work in process, and it is found that the CoC system of MTLAS and MTE/FD, still does not allow ability to reconcile volumes along the supply chain.  | Not closed. |
| <b>Verification in the forest and supply chain</b> |   |   |  |             |
| 13/17  | 1. Checks in the forest focused on compliance with the Annual Allowable Cut (AAC) and royalty payment and do not provide specific assurance that other broader aspects of legality have been met.   | <p>A number of training events (classroom and field visits) were, and continue to be, carried out. The Courses (entitled Auditor Training Course and Participatory Audit on Assessing Timber Legality Under The Myanmar Timber Legality Assurance System (MTLAS)) were conducted:</p> <ul style="list-style-type: none"> <li>• 27 Nov – 4 Dec 2017</li> <li>• 12 – 20 Mar 2018</li> </ul> | It is the opinion of the gap from the 2017 report relates to the scope of the MTLAS Principles and Criteria as well as the interpretation of these P&C in the field. As also noted in the current evaluation by NEPCoN, the language of the MTLAS P&C and the Audit Forms 2019 are very focused on availability of documents. The P&C and indicators | Not closed. |

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|       |   | <ul style="list-style-type: none"> <li>• 18 – 22 Jun 2018</li> <li>• 26 – 28 Feb 2019</li> <li>• 14 – 16 Aug 2019</li> </ul> <p>The overall aim of the courses was to train a number of independent third party Certification Bodies proficient in carrying out assessments against MTLAS (that includes broader aspects of legality).</p> <p>Other supporting training events have been given to the Certification Bodies. These have been aimed at preparing them to meet against ISO/IEC 17065: 2012: Conformity Assessment - Requirements for Bodies Certifying Product, Processes and Services (hereafter ISO/IEC 17065).</p> <p>Training has been supplemented with the opening of a knowledge sharing portal (through the MFCC website) and training manuals - MFCC has written two related Guidance manuals (one supporting the participatory training and the other supporting the ISO preparation).</p> <p>MFCC Certification Bodies must demonstrate a measurable commitment to putting systems compatible to ISO 17065 in place (starting immediately). ISO 17065 demands Certification Bodies have a 'documented management system', which provides for transparency and impartiality.... 'and aims to ensure 'conflicts of interest are identified, documented and effectively controlled'. MFCC has gone beyond the requirements of ISO 17065 and requires that Certification Bodies integrate anti-corruption policies and practices within their official operations.</p> <p>The longer-term aim is for these Certification Bodies to achieve formal ISO accreditation through an IAF recognised Myanmar Accreditation Body.</p> | does not effectively allow for evaluation of broader aspects of legality as mentioned in the 2017 report. |             |
| 14/17 | 2. The completeness and effectiveness of internal FD/MTE checks are not independently monitored or evaluated. | MFCC has now finalised its system documentation that specifies the minimum policy requirements for operator verification and the collection of relevant information from external parties.  | This gap lies outside the control of MFCC and is related to overall governance structures.                | Not closed. |

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|       |  | As stated above the longer-term aim is for Certification Bodies to achieve formal ISO accreditation through an IAF recognised Myanmar Accreditation Body. Initially compliance to the MFCC system will be monitored by MFCC (through a documented system), before, as stated above, the Myanmar AB will take over this role.   | It is not found that the activity of MFCC address the gap identified.<br><br>The problem mentioned seems to relate to the fact that the checks conducted by FD on MTE are not being evaluated externally. This evaluation should be part of the MTLAS P&C to ensure that the internal controls at FMU level are effective and implemented correctly.   |            |
| 15/17 | 3. There is no implemented system for requiring and enforcing appropriate corrective and preventative action where non-conformities are detected.  | MFCC Policy (Policy 5 Certification Body Requirements) specifies the minimum procedures and requirements for Certification Bodies for managing the non-conformance process.<br><br>Certification Bodies will only be accepted and notified by MFCC once they have formalised a number of documents that include auditing procedures and dealing with operator Non-Compliances. | This gap lies outside the control of MFCC and is related to overall governance structures.<br><br>The finding in the Gap Analysis refers to legal penalties and corrective actions according to the forest law – not to MTLAS.<br><br>The gap and the response from MFCC underline the note inserted above this table, that it seems that the MTLAS has developed further towards a voluntary certification system, rather than a mandatory national system. | Not closed |
| 16/17 | 4. The FD is limited in its resources and capacity to ensure timber extraction and supply chain checks are carried out in accordance with required laws, regulations and operational procedures. | FD cooperated with Forest Police Force to control the illegal logging and trade.<br><br>FD implemented the Community Monitoring and Reporting System CMRS to control the illegal logging and trade.<br><br>The Independent monitoring of CoC dossier by CSOs. (ALARM – FAO/EU-FLEGT project 2018-2019)   | This gap lies outside the control of MFCC and is related to overall governance structures, however the MTLAS P&C does not include verification of internal control mechanisms.   | Not closed |
| 17/17 | 5. The adequacy of checks undertaken by the FD can be affected by e.g. physical risk to FD personnel, dishonest or unethical conduct or conflicts of interest.                                   | <b>Same as above</b>   | This gap lies outside the control of MFCC and is related to overall governance structures.<br><br>However, the MTLAS P&C could be strengthened by including verification   | Not closed |

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|       |   |   | of issues related to fraud and corruption.   |                  |
| 18/17 | 6. Verification by external parties may be hindered by permissions or access to information.  | It has been already mentioned in the statement issued by the MONREC on 23 <sup>rd</sup> November 2017 that buyers or their representatives be allowed to visit and verify the areas from where timber is harvested, Myanmar Forest Certification Committee (MFCC) the national governing body for forest certification activities carried out the third-party certification body (CB) audit under the Myanmar Timber Legality Assurance System-MTLAS. MFCC has recognized 3 CBs, (2 local Co., and 1 foreign Co.,) and processing trial shipment. | This has been verified.  | Closed           |
|       | <b>Stakeholder engagement in standards development, governance and assurance</b>  |   |  |                  |
| 19/17 | In the case of MTLAS the P&C was developed by MFCC based on the current legal framework. At the time, MFCC did not have a mandate to develop or adapt legislation and/or consult stakeholders on the appropriateness of the legal framework. Thus, only limited stakeholder engagement was achieved. Furthermore, the current MTLAS does not incorporate mechanisms for CSO involvement in 3rd party verification, governance and monitoring or mechanisms for receiving and handling complaints and disputes related to activities and/or results. | <b>Same as 1/17</b>   | It is acknowledged that MFCC have worked on development of quality assurance systems for oversight of the system functions, but also found that these procedures are not in fact implemented in this Phase I of MTLAS.<br><br>The P&C are still in the 2013 version, while the Audit Forms 2019<br><br>This gap is considered partially closed as steps has been taken. However, full implementation is needed for the gap to be fully closed. | Partially closed |
|       | <b>MTLAS operational processes</b>  |   |  |                  |
| 20/17 | In the case of MTLAS, the documented element is the MTLAS P&C (February 2013). The operational processes of MTLAS essential to transparency and   | List of the MFCC technical standards.<br><br>Upload website.  | As included in the report, the MFCC have developed and published a range of system documents.  | Closed           |

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|       | defined by international frameworks (e.g. assigning responsibility for developing and or amending standards, conducting verification, monitoring and oversight) have yet to be defined and or clearly specified.   |  | It is noted that some observations and gaps are identified, that will need follow-up.   |                   |
|       | <b>Forest Sources addressed by MTLAS</b>   |  |   |                   |
| 21/17 | MTLAS would be strengthened by addressing within its scope all the possible sources of timber and, for each, defining legal framework and/or requirements for meaningfully incorporating or isolating such sources from the verified legal supply. In the case of isolation of specific timber sources from the legally verified supply, robust mechanisms for their segregation would need to be established. | Ministry (MONREC) prohibited the export of timber products that include confiscated timber, timber from land clearing and timber from conflict areas.  | MTLAS should still be updated to reflect changes to the Forestry Law to allow export from Community Forestry. Also, there should be consideration of how material not allowed for export is separated from other source types.  | Partially closed. |
|       | <b>Dishonest or unethical conduct</b>  |  |   |                   |
| 22/17 | MTLAS would be strengthened by identifying risks for dishonest or unethical conduct/corruption and or conflict of interest within the existing system and building in necessary checks and balances to address them.   | <p>The <b>Anti-Corruption Commission of Myanmar (ACC)</b> is a 15-member body responsible for investigating corruption allegations in Myanmar. It was formed under the 2013 Anti-Corruption Law, which was enacted in September 2013.</p> <p>The commission was formed on 25 February, 2014. Initially, most of the appointed members were former high-ranking military personnel. On 23 November 2017, in accordance with the Section 7 of the Anti-corruption Law, the commission was reformed with 12 commission members by President Htin Kyaw.</p> <p>Ministry is now forming "Corruption Preventive Unit' (CPU) at Ministerial level to prevent the dishonest or unethical conduct/corruption.</p> | The improvements in Myanmar to address corruption have made significant progress. However, the gap relates to systems in the MTLAS P&C to address the risk of dishonest conduct and corruption. So far there have been no changes to the P&C that address this issue. | Not closed        |

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|  |  | According to the Transparency International's Corruption Perception Index (CPI), Myanmar ranked 180 <sup>th</sup> (score 1.5) in 2011. Only North Korea and Somalia were lower. In 2015, Myanmar's rank became 147 (score 22) with 16 countries below. In 2018 it ranks at 132/180 (43 countries behind it). |  |  |
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## Annex 2: NEPCON evaluation of certification systems: MTLAS

The following contains a table containing and evaluation of the MTLAS scheme against the NEPCON Certification System Evaluation Standard<sup>31</sup>.

| P | C | I | Requirements                      | Guiding description of the criteria and sub criteria  | Evaluation<br>Is the<br>indicator<br>covered by<br>MTLAS? | Analysis<br>Include reference from certification System and analysis<br>and explanation of evaluation   |
|---|---|---|-----------------------------------|---|---|---|
| 1 |   |   | Legal Compliance                  | The System shall ensure that the certification standards contains requirements that relate to or cover applicable legislation as defined by to the categories below.  |   |   |
| 1 | 1 |   | Legal rights to harvest           | The System shall include a definition of applicable legislation related to harvesting, trade and transport enabling efficient evaluation of legal compliance where needed. The system shall clearly specify the applicable laws that shall be complied with in order for harvesting of timber to be considered legal. In this regard it shall not be considered adequate where a generic statement like "all relevant laws and regulations shall be met".                 |   |   |
| 1 | 1 | 1 | Land tenure and management rights | Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. There shall be safeguards to ensure that licenses, right of tenure etc. has been issued according to the legally prescribed procedure and excluding corrupt practices | PARTLY COVERED  | <p>Principle 1, Criterion 1 of TLAS 2013 partly cover this requirement, by requiring approval from FD to harvest. It is noted that the standard does not address issues of constitution of land as Forest Reserve, as outlined in the Forest Law Chapter III. The standard does not include evaluation of the process of constituting Reserved Forest for management by the FD.</p> <p>The Audit Form includes require that Annual Harvesting Contract between Extraction Agency (MTE) and District Forest Office (FD) is available.</p> <p>There are no requirements that evaluates that any permits or permissions are issued excluding corrupt practices. This issue was also highlighted in the 2017 Gap Analysis. OBS20/19</p> |

<sup>31</sup> <https://www.nepcon.org/library/standard/nepcon-certification-system-evaluation-standard>

|   |   |   |  |  |                |   |
|---|---|---|--|--|----------------|---|
| 1 | 1 | 2 | Concession licenses                      | Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses.  | NOT APPLICABLE | NA. Myanmar does not issue forest concessions in natural forest.  |
| 1 | 1 | 3 | Management and harvesting planning       | Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities.   | COVERED        | Principle 1, of TLAS and criteria 1.3 of Audit form require the forest management plan and operational plan to be in place.   |
| 1 | 1 | 4 | Harvesting permits                       | Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit, considering that corruption is a well-known issue in connection with the issuing of harvesting permits.   | COVERED        | Covered by TLAS principle 1, Criterion 1.3.<br><br>NOTE: There are no requirements that evaluates that any permits or permissions are issued excluding corrupt practices. This issue was also highlighted in the 2017 Gap Analysis.     |
| 1 | 2 |   | Taxes and fees                           |  |                |   |
| 1 | 2 | 1 | Payment of royalties and harvesting fees | Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume-based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification. | COVERED        | Criterion 3.1 of the TLAS and Audit Form covers this.<br><br>There are no requirements that evaluates that any permits or permissions are issued excluding corrupt practices. This issue was also highlighted in the 2017 Gap Analysis. |
| 1 | 2 | 2 | Value added taxes and other sales taxes  | Legislation covering different types of sales taxes which apply to the material being sold, including selling material as growing forest (standing stock sales).   | COVERED        | Criterion 3.1 of the TLAS and Audit Format forest level and 6.1.2 of Audit Form for mill operation covers this.<br><br>Value added taxation regulations are not covered.  |
| 1 | 3 |   | Timber harvesting activities             |  |                |   |

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| 1 | 3 | 1 | Timber harvesting regulations | Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically, this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered. | COVERED           | Criteria 2.1, 2.2, 2.3 and 2.4 of TLAS cover this. The Audit Form also includes this as Principle 2.  |
| 1 | 3 | 2 | Protected sites and species   | Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats.   | PARTIALLY COVERED | Criterion 1.2 of MTLAS and Audit Form relates to management of environmental requirements. Protected sites and species are not specifically mentioned.<br>OBS21/19  |
| 1 | 3 | 3 | Environmental requirements    | Covers legislation related to environmental impact assessment in connection with harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, sessional limitation of harvesting time, and environmental requirements for forest machineries.   | PARTLY COVERED    | Criterion 1.2 of MTLAS and Audit Form contains requirement for availability of records related to environmental management. However, there are no requirement to comply with actual requirements or show evidence of environmental compliance in the field.<br>OBS22/19 |
| 1 | 3 | 4 | Health and safety             | Legally required personal protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations).  | COVERED           | Criterion 2.6 of TLAS and Criterion 2.5 of Audit Form cover requirements related to health and safety in the forest.<br>Note that the indicator focus entirely on the availability of documents.  |

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| 1 | 3 | 5 | Legal employment      | Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personal involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. | PARTIALLY COVERED | Criterion 2.6 of TLAS includes a reference to the Workmen's Compensation Act. However, the Audit Form only refer to H&S, not to legal employment, insurance etc. for forest workers. This is a discrepancy between the two documents.<br><br>OBS23/19  |
| 1 | 3 | 6 | Conversion            | Legislation related to permission to convert natural forest to other land used. This may include identification of the laws regulating conversion in different land classification types and/or different permit types. This analysis will identify under which land types and permit types conversion can be legally carried out and the scale of any illegal conversion.   | NA                | The MTLAS standard is not covering conversion timber.  |
| 1 | 4 |   | Third parties' rights |  |                   |  |
| 1 | 4 | 1 | Customary rights      | Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.  | COVERED           | The TLAS partly include this with reference to "use right of local community" in Principle 4. However, it does not mention customary rights directly. The reference to the Forest Law Section 15 and 17 includes the right of villagers to establish firewood plantations and to extract forest produce for non-commercial purposes.<br><br>The Audit Form directly mention customary rights and refer to the Forest Rules section 6, which includes activities that will be prohibited upon constitution of Forest Reserve "except the rights that existed on that day.". It is not clear how this is interpreted in day to day governance of forest reserves, but verification measures in the Audit Form includes review of Community Forest Areas and areas excluded from Forest Reserves for settlements within the forest. |

|   |   |   |                                 |  |             |  |
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| 1 | 4 | 2 | Free prior and informed consent | Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation. | NOT COVERED | <p>Myanmar law does not mention the UN Declaration on the Rights of Indigenous People (UNDRIP) or FPIC. However, mention of FPIC has been made in the context of a few other government documents copied from or drafted by other sources such as those relating to REDD+ (Reducing Emissions from Deforestation and Forest Degradation) and extractives.</p> <p>The current legal framework does not adequately recognize customary and communal land tenure arrangements, which are therefore not sufficiently protected. Indigenous peoples lack land tenure security under the existing legal framework governing land use rights. The 2008 Constitution provides that the State owns all land and natural resources on or in the land and grants conditional land use rights. It makes no reference to indigenous peoples, nor does it recognize their collective land rights or customary land use practices in their territories. The Constitution also recognizes private property. In addition, new land laws do not sufficiently recognize customary land rights. What this means in practice is that indigenous peoples who practice shifting cultivation in a communal fashion on their traditional lands are particularly at risk of having their land taken in the absence of land registration documents and formal recognition of their land resource property rights. The Government has already expropriated land in Myanmar's borderlands where indigenous peoples have practiced shifting cultivation for decades.</p> <p>OBS24/19</p> |
|---|---|---|---------------------------------|--|-------------|--|

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|---|---|---|--|---|-------------|--|
| 1 | 4 | 3 | Indigenous/ traditional peoples rights           | Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands. | NOT COVERED | <p>The standard does not mention Indigenous or traditional people. The Burmese government refers to groups considered indigenous as ethnic nationalities. These include the Shan, the Karen, the Rakhine, the Karenni, the Chin, the Kachin and the Mon. However, there are more ethnic groups that are considered indigenous, for example, the Akha, the Lisu, the Lahu or the Mru, among others.</p> <p>Within the Constitution of Myanmar, there is reference to the recognition of different ethnic groups- referred to as 'National Races' (Article 22a). There are no provisions, however, specifically tailored to protect these National Races in terms of policies implemented by the Government.</p> <p>The current legal framework does not adequately recognize customary and communal land tenure arrangements, which are therefore not sufficiently protected. Indigenous peoples lack land tenure security under the existing legal framework governing land use rights. The 2008 Constitution provides that the State owns all land and natural resources on or in the land and grants conditional land use rights. It makes no reference to indigenous peoples, nor does it recognize their collective land rights or customary land use practices in their territories. The Constitution also recognizes private property. In addition, new land laws do not sufficiently recognize customary land rights. What this means in practice is that indigenous peoples who practice shifting cultivation in a communal fashion on their traditional lands are particularly at risk of having their land taken in the absence of land registration documents and formal recognition of their land resource property rights. The Government has already expropriated land in Myanmar's borderlands where indigenous peoples have practiced shifting cultivation.</p> <p>OBS 25/19</p> |
| 1 | 5 |   | Trade and transport                              |   |             |  |
| 1 | 5 | 1 | Classification of species, quantities, qualities | Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a  | COVERED     | Covered by Criterion 2.5 of the MTLAS.   |

|   |   |   |                                       |   |                   |  |
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|   |   |   |                                       | well-known method to reduce/avoid payment of legality prescribed taxes and fees.  |                   |  |
| 1 | 5 | 2 | Trade and transport                   | All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation.  | COVERED           | Covered by TLAS Criterion 2.5 to depot from forest.<br>Covered by TLAS Criterion 6.5 from mill to port.  |
| 1 | 5 | 3 | Offshore trading and transfer pricing | Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personal involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. | NOT COVERED       | This is not covered by the standard.<br>OBS26/19   |
| 1 | 5 | 4 | Custom regulations                    | Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).  | COVERED           | Covered by MTLAS Criteria 6.1, 6.3 and 6.5.  |
| 1 | 5 | 5 | CITES                                 | CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention).   | PARTIALLY COVERED | The MTLAS does not mention CITES requirements, whereas the Audit Form does include the mention "instructions related to trees not to be harvested under CITES" in the verifiers of Criterion 1.2). It is not clear how the requirement on CITES species is audited based on that verifier.<br>OBS27/19 |
| 1 | 6 |   | Processing                            |   |                   |  |

|   |   |   |   |   |             |  |
|---|---|---|---|---|-------------|--|
| 1 | 6 | 1 | Legal Registration of business                    | Legislation regulating the registration of business and approval of scope of business and processing. The risk is that companies are operating without being in conformance with legal requirements with regards to legal obligations on business registration (business/sawmill license, operation visas, tax payment cards, approvals, etc.).   | COVERED     | MTLAS Criterion 5.2 and Audit Form Criterion 5.1 cover this    |
| 1 | 6 | 2 | Environmental requirements for processing         | Legislation regulating environmental requirements for the timber processing industry, such as air quality, water and waste-water management, use of chemicals, and other requirements relevant for the environment and eco-system services.   | NOT COVERED | This is not included in MTLAS.<br>OBS28/19                     |
| 1 | 6 | 3 | Processing requirements                           | Legislation regulation processing of the timber processing industry, such as transformation process thresholds, location of processing, conformance of processing equipment, processing quota, etc).  | COVERED     | Criterion 5.2 of MTLAS and Audit Form cover this.              |
| 1 | 6 | 4 | Health and Safety in the timber processing sector | Legally required personnel protection equipment for persons involved in the timber processing sector.<br><br>The health and safety requirements that shall be considered relating to the processing/factory (not office work, or other activities less related to the actual processing). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of workers at significant risk at any step of the primary and secondary processing. | COVERED     | Criterion 5.34 of MTLAS and 5.3 of the Audit Forms cover this. |
| 1 | 6 | 5 | Legal employment in the timber processing sector  | Legal requirements for employment of personnel involved in the timber processing sector including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for   | NOT COVERED | This is not included in MTLAS<br>OBS29/19                      |

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|   |   |  |   | personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale non-compliance with labour and/or employment laws.  |                   |   |
| 2 |   |  | Chain of Custody  | The System shall include requirements to ensure that material included in the scope of certification/verification will not be mixed with material with unknown or non-compliant material, irrespective of the method applied. The requirements below do therefore not require tracking of all timber to the forest but allows for risk-based systems to assure that risks of contamination with illegal or unknown material is managed. |                   |   |
| 2 | 1 |  | The System shall require systematic processes to enable the identification of the country of origin of the material, and where applicable to a higher level of detail, such as the sub-national region or concession level. | Depending on the System's approach to tracking and sourcing, there shall be systems in place either to track all material (product certification systems) or to track and trace products to a level of detail appropriate to the level of risk identified in the supply chain (risk-based Due Diligence Systems).   | PARTIALLY COVERED | <p>The MTLAS include requirements related to log transportation by including reference to the formal log transportation documents.</p> <p>The Audit Form 2019 includes an indicator (2.4.1) requiring availability of log transportation documents, and indicator 2.4.2 requiring traceability from depot to the forest of harvest.</p> <p>However, there is no normative requirement related to tracking or traceability of material from log dept through processing to export. The Audit Forms 2019 does include reference to verifiers in 5.2.1 to have available relevant records of log receipt and processing, but there is no normative requirement of traceability.</p> <p>It should be noted that having in place the legally required documents and records may enable log tracking and traceability, but the MTLAS lacks this as a specific normative requirement.</p> <p>It is also recognized that MTE and FD is politing a project to attach QR code tags to logs containing geographical coordinates, map of harvest area and other relevant information. During the on-site visit this QR system was evaluated and it did work and we were able to find the stumps of logs. However, some errors where detected that seemed to originate from human error in data entry, highlighting the vulnerability of manual data entry and transfer.</p> |

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|   |   |  |  |   |                   | OBS 30/19  |
| 2 | 2 |  | The System shall require systematic processes to enable the identification of the species included in materials or products included in the scope of certification.  | The name of the species of trees included in all products included in the scope of certification shall be available and identified by the common or trade name, as well as the scientific name (genus and species).   | PARTIALLY COVERED | <p>There is not direct requirement in the TLAS relating to traceability, but "log transportation" is mentioned in Principle 2.</p> <p>In the Audit Form Criterion 2.4 requires traceability from depot back to the forest of harvest, referencing form s-18 and form D, as well as verification of hammer marks on logs.</p>   |
| 2 | 3 |  | The System shall include clear and effective measures to prevent material from specified risk, unverified or potentially illegal sources from entering the supply chain.   | Systems to assure segregation of material from unknown or potentially illegal sources shall exist. This may be done via different types of systems, but there shall be a well-documented process to assure that materials are not mixed in cases several different material categories (origins) are handled. | PARTIALLY COVERED | <p>TLAS criteria 5.1 and 5.3, does refer to control of value-added processing and Criterion 2.2 log transportation. However, there is no clear specification of requirements for material segregation or control to manage risk of mixing. The Audit form 2.4 requires traceability from depot back to forest, but Principle 5 for mill operation does not include requirement covering traceability and verification of material.</p> <p>The Standard and Audit Form therefore seem to presume that the tracking system is functioning, if the required documents are available. Also, it leaves a significant gap in case of consignment-based certification, where only Principles 5 and 6 would apply.</p> |
| 2 | 4 |  | Where applicable System shall require a system to track certified or verified legal wood along the supply chain, using appropriate inventory methods and documented controls where necessary to ensure that risks of mixing are managed. | Chain of Custody system requirements shall be formulated and implemented in order to assure that material carrying the certification or verification claim can be traced through processing and transport.  | PARTIALLY COVERED | <p>None of the document include a traditional CoC procedure for tracking material flows, either from forest, nor through processing. There seems to be a reliance on the established procedures used by MTE. However, there are no requirements to track material from areas that carry MTLAS certification specifically.</p> <p>The MTLAS also does not address the issue of potential fraudulent recording of timber grades. Fraudulent grading of timber qualities is a well-known tool to greenwash high quality logs using the paper work issued on low grade material.</p> <p>See findings under point 2.1.</p>  |

| 3 |   | Certification system requirements  | The System shall include requirements for certified or verified Organisations to have in place systems and procedures covering all requirements of the standard/requirements   |             |   |
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| 3 | 1 | If the System includes an option to apply own-verification (using 1 <sup>st</sup> , 2 <sup>nd</sup> or 3 <sup>rd</sup> parties), the System shall contain requirements to ensure consistent implementation of requirements at all levels included in the scope of the certification. | For companies implementing own-verification (1 <sup>st</sup> , 2 <sup>nd</sup> , or 3 <sup>rd</sup> ) systems (of sources or supply chains), the System shall include clear requirements for such systems and for oversight by the assurance provider of the scope and quality of their implementation. In cases where other 3 <sup>rd</sup> party Systems are recognised by the System, it shall be clear on what basis recognition is done and how it is verified that other Systems assure conformance with the specific System requirements. | NA          | The MTLAS does not recognize other types of verification programmed or own verification.  |
| 3 | 2 | The System shall ensure that the procedures of certified organisations are evaluated and revised - when necessary - on a regular basis.  | There should be clear requirements in the System to require certified organisations to regularly review the proper functioning of their own procedures. Ensuring the continued implementation of procedures is important to the on-going ability of the organisation to meet certification requirements.   | NOT COVERED | There are no specific system related requirements of the TLAS that is used to evaluate if the certified FMU have in place up-to date procedures that are being followed. Again, there seems to be a reliance on the fact that all forest management and extraction is conducted by FD and MTE respectively.<br><br>OBS10/19 |
| 3 | 3 | The System shall ensure that whenever there is a change in the risk related to illegal harvest, trade or transport in a verified supply chain - or a supply chain covered by a DDS - the risk shall be assessed and mitigated.   | There should be clear requirements embedded in the System to ensure that any procedures applied by certified companies are able to efficiently address changes to supply chains. Changes in supply chains may introduce new risks and these should be dealt with prior to including products from these new supply chains in the scope of the certification.   | NA          | MTLAS is not risk based   |

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| 4 |   |  | Transparency  | System standards and requirements for both certified organisations as well as assurance providers shall be publicly available<br><br>Standards systems make relevant information publicly available about the development and content of the standard, how the system is governed, who is evaluated and under what process, impact information and the various ways in which stakeholders can engage (ISEAL credibility principles). |             |   |
| 4 | 1 |  | The System shall ensure that standards and requirements for certified organisations are publicly available on the internet.             | The System shall publish all relevant requirements, procedures, standards etc, that constitutes the System. It should be clear what the rules are for different roles within the System. E.g. Requirements for certified organisations or requirements for auditors.   | COVERED     | The MTLAS standard is publicly available and is required to be so by the policy "MFCC P 4 SEPD Stakeholder Engagement and Public Documents".  |
| 4 | 2 |  | The System shall ensure that an up-to date registry of certified/verified organisations are defined, publicly available and verifiable. | Information about certified organisations should be placed on a website with open access to the public.  | COVERED     | There is no information about verified companies online or elsewhere, but MFCC will make public announcement on their website.<br><br>MFCC Policy "MFCC P 5 CBR: Certification Body Requirements", contains the following sentence:<br><br>2.4.8 Public Notifications<br>MFCC maintains a number of publicly available documents. In instances where certificates are withdrawn or suspended (or reinstated) the Certification Body must inform MFCC within three working days of the change in status.<br><br>This is also covered in "MFCC P 4 SEPD - Stakeholder Engagement and Public Documents". |
| 4 | 3 |  | The System shall ensure that certification reports (or at least summaries with relevant findings) are made publicly                     | At the level of the certified organisation, the register should – as a minimum – provide accurate and up-to-date information on:<br><br>i. Scope of the certificate with regards to a full list of sites, facilities or members included.<br>ii. Scope of the certificate with regards to those  | NOT COVERED | There are no requirements in the MTLAS system to make summaries of audit reports publicly available.<br><br>OBS11/19  |

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|   |   | available on the internet.  | material, products or product groups which are included.<br>iii. The date of issue and ordinary date of termination/withdrawal of the certificate.<br>iv. The current state of validity of the certificate (active, suspended, terminated)   |             |   |
| 4 | 4 | The System shall include requirements to implement formal and transparent, publicly available procedures for handling disputes and complaints related to certification and surveillance audits. | Procedures for handling complaints and disputes shall be developed, made publicly available and implemented. The procedures shall be clearly publicized, making it easy for stakeholders to submit comments or complaints where applicable.  | COVERED     | Covered by MTLAS SOP 2 CAD, however there are no requirements for any public information to be made available at any point in the process.<br><br>The MFCC website also holds a contact form for stakeholders to submit comments to MFCC, as described in the MFCC Policy MFCC P 4 SEPD: Stakeholder Engagement and Public Documents. |
| 5 |   | Competence and qualifications   | ISO 1901 definition of competence: (3.14) Demonstrated personal attributes and demonstrated ability to apply knowledge and skills.<br><br>ISEAL: Auditors need to be able to use their judgement to come to a quick understanding of a client's performance. Similarly, individual responsible for audit reviews and decisions also need to be competent in their responsibilities. Among the strategies to mitigate the risks of non-conformity, having competent auditors is one of the most important. Basic requirements for supporting auditor competence are included in ISO17065 (6.1.2) and in ISO 17021-2 Section 7 and Annexes A to D in that document. The System owner must take ultimate responsibility for the competence of auditors working in its assurance programmes, though much of the activity required in Section 6.3 can be undertaken by assurance providers, training organisations, or oversight providers. |             |   |
| 5 | 1 | The Standard shall include requirements and ensure that certified Organisations have qualified and competent staff who are able to consistently assure  | This requirement specifies the importance of ensuring that certified Organisations have qualified, and competent staff tasked with ensuring that the standard requirements are met and enforced.   | NOT COVERED | The TLAS or other system documents does not include any requirements related to the qualifications and competence of staff ensuring compliance.<br><br>OBS 12/19  |

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|   |   |  | that standards are met and enforced.   |  |         |   |
| 5 | 2 |  | The System shall have mechanisms to ensure that auditors, and other relevant staff of the Assurance provider, are qualified and competent to evaluate Organisation's compliance with specific standard requirements. | This requirement relates to the existence of clear requirements for competence and qualifications of auditors involved in evaluating standard conformance, as well as personnel involved in the certification decision-making process.   | COVERED | MFCC Policy MFCC P 5 CBR: Certification Body Requirements, contains relevant requirements for CBs to have on staff qualified staff functioning as auditors. |
| 6 |   |  | Impartiality   | <p>Throughout the System evaluations shall be carried out by auditors that are impartial to the entity(-ies) under evaluation)</p> <p>ISO 19011: Independence: the basis for the impartiality of the audit and objectivity of the audit conclusions Auditors should be independent of the activity being audited wherever practicable, and should in all cases act in a manner that is free from bias and conflict of interest. For internal audits, auditors should be independent from the operating managers of the function being audited. Auditors should maintain objectivity throughout the audit process to ensure that the audit findings and conclusions are based only on the audit evidence.</p> <p>ISEAL defines impartiality: standard systems identify and mitigate conflicts of interest throughout their operations, particularly in the assurance process and in governance.</p> |         |   |

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| 6 | 1 | System shall ensure that auditors are impartial, thereby enabling them to make independent assessment of conformance by the entity under evaluation. | Impartiality should be clearly defined and included as a component of the System requirements on auditors and assurance providers that they remain impartial and independent to the organisation under evaluation. Requirements for impartiality should be defined at all levels of the System, from auditing, to certification decision through the development and maintenance of the system itself.   | COVERED | <p>The annex 1 of MFCC Policy MFCC P 5 CBR: Certification Body Requirement, contains text that indicates that CBs shall operate impartially.</p> <p>The MFCC Guiding Principles (Policy MFCC P 2 GP), also contains clear language to manage conflict of interest and ensure impartiality.</p> |
| 6 | 2 | System owner shall ensure that certification decisions are made by bodies impartial to the auditee.  | Certification decisions process should be well defined and include requirements to ensure that the decision on certification is conducted to positions/bodies that are impartial to the auditee.   | COVERED | The MFCC Policy MFCC P 5 CBR: Certification Body Requirements, contain requirements for impartiality in the certification decision process.  |
| 6 | 3 | Oversight mechanism  | ISEAL assurance code: Oversight of assurance providers is typically managed through an ISO 17011 accreditation process, but can be accomplished in other ways, depending on the needs of the standards system. For example, a standards system could employ an independent assurance body to review the assurance System. Alternatively, a standards system owner could arrange to oversee the work of assurance providers directly, recognising that this model provides less independence and requires the owner to have the competencies described in this section. Less formal standards systems could develop a scrutiny committee of peers or stakeholders to oversee the assurance process. In all models of oversight, independence of the oversight mechanism from the assurance provider is necessary. |         |  |

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| 6 | 3 | 1 | System owner shall ensure that the competence and consistent performance of assurance providers is periodically reviewed.   | The owner or operator of the System should have efficient requirements to ensure that the competence and performance of assurance providers is regularly evaluated. The review of performance should be used for subsequent follow up and implementations of corrective actions where shortcomings are identified. | PARTIALLY COVERED | Currently MFCC is the only body overseeing the activities of the CBs. If an independent accreditation system is implemented, this could be covered also considering ISO accreditation requirements. See Policy MFCC P 1 IA: Implementation arrangements.<br><br>However in phase one of the implementation where CBs are not required to hold ISO certification until after maximum two years after notification.<br><br>OBS13/19    |
| 6 | 3 | 2 | System owners shall specify the approach to be used in oversight, ensuring that the oversight mechanism is independent of the assurance providers being assessed. | The procedures to conduct oversight of assurance providers by the System owner, should be developed and implemented in a way that ensures the impartiality and independence of the System owner.   | PARTIALLY COVERED | The requirement is addressed in the following documents: 1) MFCC Policy MFCC P 5 CBR: Certification Body Requirements, and 2) Policy MFCC P 1 IA: Implementation arrangements and 3) MFCC SOP 1 NCB: Notification of Certification Bodies.<br><br>However, the system does not clearly describe how oversight of the CBs will function and based on what criteria the CBs will be evaluated and with what frequency.<br><br>OBS14/19 |
| 6 | 3 | 3 | System owner shall define the frequency of oversight or the procedure for determining the frequency, applicable in the case of risk-based oversight.              | Where the standards system owner is the assurance provider, they shall ensure that oversight is carried out by personnel independent of those engaged in the assurance process.  | NOT COVERED       | Currently there are no determined frequency of oversight of the work of the notified CBs.<br><br>OBS15/19  |
| 7 |   |   | Auditing process (assurance provider requirements)  | Compliance with the System is audited regularly, and the results are publicly available.<br><br>System shall include clear requirements and procedures for the actual auditing and how results are maintained and available to third parties.  |                   |  |

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| 7 | 1 | <p>System shall include requirements to ensure that assurance providers apply the documented methodology for assessment of clients.</p> <p>The methodology shall include procedures for at least the following activities:</p> <ul style="list-style-type: none"> <li>&gt; Evaluation of conformity to the standards (e.g. audit of sites, or inspection of records or of selfassessment declarations);</li> <li>&gt; Review and decision;</li> <li>&gt; Issuance of a certificate; and</li> <li>&gt; Periodic re-assessment.</li> </ul> | <p>The System should have in place efficient and adequate requirements and procedures to be met by assurance providers. These requirements should ensure that assurance providers use the designated methodology for assessments of organisations seeking certification. The requirements should be clear and unambiguous and allow the System owner to verify the level of conformance to these requirements by assurance providers.</p> | PARTIALLY COVERED | <p>The Certification Body Requirements (MFCC_P_5_CBR_010818) includes a clause to require that CBs have in place audit procedures. However, the CB Requirements does not specify requirements for conformance evaluation. A lot seems to be expected to be included in the procedures of the individual CB, but without clear instructions on how CBs should evaluate conformance. It is considered of particular importance in the case of MTLAS, as the CBs will operate in an environment where they are evaluating the performance of Government Bodies like the FD and the MTE. It is relevant to consider how third-party verifiers should deal with evaluating and grading non-conformance by government employees.</p> <p>OBS16/19</p> |
| 7 | 2 | <p>System shall include measures to ensure that assurance providers apply stakeholder consultation as appropriate during the audit (only applicable where necessary for evaluating compliance)</p>   | <p>Stakeholder consultation may be required in some cases. This could be evaluation of compliance to laws relating to third parties' rights to resources. Where required, Time and place of initial evaluation and surveillance audits should be made known to stakeholders, together with an invitation to provide comments about the assessed operation to the assurance or accreditation provider.</p>                                 | PARTIALLY COVERED | <p>There are no requirements to use stakeholder consultation during the certification process. Stakeholder consultation is mentioned only as part of the standard setting process (See the Procedure "Stakeholder Consultation and Public Documents").</p> <p>The Audit Form 2019 does include verifiers that mention stakeholder consultation as a possible means of verifying compliance to health and safety regulation and user rights of local communities. However, none of the system procedures of documents mention stakeholder consultation as part of the certification process.</p> <p>OBS17/19</p>  |

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| 7 | 3 | <p>System shall ensure that the assurance provider applies a clear basis for establishing conformance and corrective actions for non-compliance and certification decision making.</p> | <p>Clarity in the performance threshold for organisations seeking certification should be clear and unambiguous. The procedures for assurance providers should ensure that a uniform threshold is applied to evaluate conformance by ay auditees.</p> <p>This criterion relates to the ability of the assurance providers to make consistent and standardized decisions on conformance by clients. This is important as clarity of conformance thresholds are necessary for the client to understand the requirements they are supposed to meet and for the auditors to be able to make consistent decisions of conformance.</p> | <p>PARTIALLY COVERED</p> | <p>As mentioned above, there are no clear instructions on how to establish conformance thresholds. It should be mentioned that the Audit Form 2019, contain clear indicators and also verifiers in the Form itself. However, it is not addressed in any of the normative documents addressing the CBs.</p> <p>OBS18/19</p> |
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| 7 | 4 | <p>System shall ensure that assurance provider have in place and implement procedures for audits that include at least the following:</p> <ul style="list-style-type: none"> <li>&gt; frequency of audits; (minimum annually)</li> <li>&gt; requirements for field visits where applicable</li> <li>&gt; sampling protocol for audits (if applicable)</li> <li>&gt; structure of the audit team</li> <li>&gt; minimum set of issues that need to be checked in every audit;</li> <li>&gt; minimum content of audit reports, including non-conformances, clarification of scope, audit process, evaluation findings.</li> </ul> | <p>As the requirements reflected in 7.1, the assurance provider should have in place procedures to ensure that they are following the System requirements for auditing. The assurance provider therefore should have in place an efficient set of procedures to ensure consistent and uniform implementation of the System's audit requirements.</p> | <p>PARTIALLY COVERED</p> | <p>The Certification Body Requirements does specify the need for CB procedures.</p> <p>However, it is not apparent that these procedures shall include requirements that meet the intend of this clause:</p> <ul style="list-style-type: none"> <li>• There is no requirement in the MTLAS system for sampling protocol – this has also been highlighted in the report text as an issue identified during review of an example of a verification report from Taungoo FD District.</li> <li>• It is not clearly mentioned how CBs shall sample or determine the scope of auditing. There seems to be no definition of what the scope of an audit might be, but it seems to be the intention to use the FD Districts as basis.</li> </ul> <p>OBS19/19</p> |
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## Annex 3: Field trip report

Report on Field trip to Myanmar (Gangaw district)

(from 8-7-2019 to 11-7-2019)

### Objective

To conduct an evaluation of the Myanmar timber legality and verification system on behalf of the European Timber Trade Federation (ETTF).

8-7-2019

A meeting was held at the Myanmar Timber Enterprise (MTE) Managing Director's Office located in west Gyogone, Insein township and the MTE, FD, and MFCC made the presentations to update the information. The meeting was attended by the representatives of CSO, the private sector, MFCC, the staff members the FD and MTE. After the meeting, a study tour was made to the log depot located in the south Dagon of the Export Milling and Marketing Department (EMMD) of the MTE to study the experimental use of Quick Response (QR) code which were applied on the logs which were extracted from the compartment no. 40 of the Kunze forest reserve in 2018-2019. The logs are piled in lots which were being prepared to be sold.

### Field visit objectives

The objective of the field trip was to check the stumps left by the standing teak trees which were extracted from the compartment no. 63 of the Kunze forest reserve in 2015 – 2016 and the stumps from teak trees extracted from compartment no. 40 of the same forest reserve in 2018-2019 in Gangaw district as part of Change of Custody (CoC) dossier piloting.

The trip saw participating from Ms. Erica Pohnan of the FAO, staff members of Myanmar Timber Enterprise (MTE) and Forest Department (FD), representatives of Myanmar Forest Certification Committee (MFCC), Civil Society Organization (CSO) and the private sector who are the FLEGT MSG members.

List of participants during the field trip to Gangaw is included below.

9-7-2019

The inspection team left Yangon at 11:45 hours by the Air KBZ for Kalemyo and arrived at Kalemyo at 14:15 hours. The team proceeded to Gangaw town by cars and arrived at Gangaw town at 18:30 hours. Christian Sloth met with the representatives of CSO: Kyaw Min Htut (Sagaing region), Than Htun (Yangon region), and Shein Gey Ngai (Chin state) at night at the Aung Si Hein hotel where the team stayed overnight.

10-7-2019

The inspection team left the hotel at 6:30 hours to go to the compartment no. 63 of the Kunze forest reserve in Gangaw Forest division to inspect the stumps left by the standing teak trees which were extracted in 2015-16. On the way, the FD and MTE personnel stopped for a while to show the status of selection felling (SF) markings done on the standing hardwood tree no. 360 which will be extracted from the compartment no. 61 in the Kunze forest reserve in 2019-2020 extraction year. Then the team proceeded to the compartment no. 63 of the Kunze forest reserve in which the FD and MTE personnel inspected the stumps left by the standing teak trees nos. 26, 27, 28, 29 and 23 which were extracted in 2015-2016 extraction year against the records and forms used by the FD and MTE. At the base camp, Christian Sloth met with U Win Sein,

timber Ranger and U Aung Kyaw Naing, Assistant Manager of MTE and U Myint Win, Forest Ranger of Gangaw District Forest Department.

In the evening, Christian Sloth met with the Gangaw Extraction Agency Manager U Salai Thawng Lian Thang of MTE and Assistant Director, U Win Myint of Gangaw District, Forest Department.

11-7-2019

The inspection team arrived at the compartment no. 40 of the Kunze forest reserve in Gangaw Forest division at 6:30 hours and checked the stumps left by the standing teak tree nos. 5, 4, 3, 35, 52, 53, 54, 61 and 62 which were extracted in 2018-2019 extraction year against the relevant records and forms maintained by the FD and MTE as records.

Then the inspection team proceeded to the Myittha depot. The FD and MTE staff members checked the logs transported through trucking from compartments against trucking notes and depot entry notebooks. The team also checked the SF markings on logs against the statistics on trucking notes.

In the evening, Christian Sloth had a review meeting with staff members FD and MTE, representatives FAO, MFCC, CSO and the Private sector including the local timber extraction staff members at the Gangaw Extraction Agency office.

With respect to the inspection of the stumps left by the standing teak trees which were extracted in 2015-2016 in the compartment 63 of the Kunze forest reserve and the stumps left by the standing teak trees which were extracted in 2018-2019 in the compartment 40 of the Kunze forest reserve, the stakeholders made the following reviews and suggestions.

U Kyaw Min Htut (FLEGT MSG-CSO)

It is encouraging to see that government institutions have made various reforms and the documents which are linked unlike before. It would be more helpful for the third parties to conduct inspection without meeting the departments concerned if compartment numbers are marked on top of the log in place of species code which are printed in rows. When MTE undertakes CSR, a certain portion of the total amount of harvest should be set aside for the sake of local communities.

U Thein Chee (FLEGT MSG-Private Sector)

He is very much hopeful that there would be a positive view of Myanmar. The report should be available to EU Competent Authorities. As teak from Myanmar is supposed to meet the requirements of EUTR, Myanmar teak from other countries should also be in line with the EUTR requirements.

In the EU report (2019), it mentions that the export of teak from Myanmar amounts to 77,000 hoppus tons. Actually, Myanmar exports in this year only 10,000 hoppus tons. I wonder what the reason behind this discrepancy could be.

U Than Htun (FLEGT MSG-CSO)

He has witnessed that reforms have been made in order to meet the international standards and requirements. Transparency is more and more practiced. The QR Code system should be extensively used through the current experiment scale towards Teak and hardwood export steps. Local communities should be made aware of the system. In this regard, CSO is ready to provide any assistance needed.

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U win Hlaing (CEO-MFCC PEFC)

It was already mentioned that it would be difficult to trace back stockpiled timber to the origin which were extracted before 2015 according to the facts of the present CoC Dossier. Today we realized some positive conditions in tracing back the stockpiled timber which were extracted after 2015. He is really happy to learn that the report when finished will be shared with MFCC.

Assistant Director, Gangaw District FD and Timber Extraction Manager

They expressed their sincere thanks for coming and inspecting their works to be strengthened. They are committed to be cooperative according to the requirements and suggestions.

U Khin Maung Kyi (DGM, MTE and U Phyo Zin Mon Naing (AD, FD)

They expressed their satisfaction with the forms and documents prepared to meet the requirements at different stages during the inspection. The current CoC Dossier could be updated based on the findings and suggestions. The new version of CoC Dossier could be reprinted with the financial support of the FAO. The Capacity Building programme would be implemented not only for the MTE and FD staff members but also for the stakeholders from CSO and the private sector.

Table 9: List of participants during field and people met during in-country visit.

| No  | Name                         | Remark  |
|-----|------------------------------|---|
| 1.  | U Khin Maung Kyi             | DGM, MTE  |
| 2.  | U Kyaw Zayar                 | Assistant Manager, MTE  |
| 3.  | U Phyo Zin Mon Naing (NPT)   | Assistant Director, FD  |
| 4.  | U Min Min Oo(NPT)            | Staff Officer, FD   |
| 5.  | U Kyaw Min Htut (Minkhin)    | FLEGT MSG (CSO) (Sagaing region)  |
| 6.  | U Than Tun                   | FLEGT MSG(CSO) (Yangon region)  |
| 7.  | U Shein Gei Ngai (Kanpetlet) | FLEGT MSG (CSO) (Chin state)  |
| 8.  | U Win Hlaing                 | MFCC, PEFC  |
| 9.  | Thawda Nyein                 | MFCC, PEFC  |
| 10. | Ms. Erica Pohnan             | FAO, Bangkok  |
| 11. | Ms. Thiri Hmwe Maung Maung   | FAO, Myanmar  |
| 12. | U Ye Min Thu (MDY)           | FLEGT MSG (Private Sector)  |
| 13. | U Thein Che                  | FLEGT MSG (Private Sector)  |
| 14. | U Win Myo Thu,               | Chairman of Advancing Life And Regenerating Motherland (ALARM);   |
| 15. | Dr. Tint Lwin Thaug          | Chairman of The Nature Conservancy (TNC)  |
| 16. | U Myo Min                    | Retired Director of Forest Department and Advisor to Myanmar Forest Products and Timber Merchants Association (MFPTMA). |

## Annex 4: Myanmar species groups

| Group                     | Common name  | Scientific name                   |
|---------------------------|--------------|-----------------------------------|
| <i>Group I</i>            |              |                                   |
| 1. Pyinkado               | Iron wood    | <i>Xylia xylocarpa</i>            |
| 2. Padauk                 | Rose wood    | <i>Pterocarpus macrocarpus</i>    |
| 3. Thingan (Thingan-net)  |              | <i>Hopea odorata</i>              |
| 4. Thitya                 | Yellow balau | <i>Shorea oblongifolia</i>        |
| 5. Ingyin                 |              | <i>Pentacme siamensis</i>         |
| 6. Tamalan                | Rose wood    | <i>Dalbergia oliveri</i>          |
| <i>Group II</i>           |              |                                   |
| 1. Anan                   | Tembusu      | <i>Eagraea fragrans</i>           |
| 2. Binga                  |              | <i>Mitnagynu</i> spp.             |
| 3. Hmanthin               |              | <i>Cinnamomum iners</i>           |
| 4. Hnaw                   | Haldu        | <i>Adinacordifolia</i> spp.       |
| 5. In                     |              | <i>Dipterocarpus tuberculatus</i> |
| 6. Kanyin                 | Keruing      | <i>Dipterocarpus</i> spp.         |
| 7. Karawe                 |              | <i>Cinnamomum inunctum</i>        |
| 8. Kashit (Thitka)        | Melunak      | <i>Pentace burmanica</i>          |
| 9. Kokko                  |              | <i>Albizzia lebbek</i>            |
| 10. Kyana                 |              | <i>Xylocarpus molluccensis</i>    |
| 11. Magyipway             |              | <i>Diospyros pendula</i>          |
| 12. Pinle-Kanazo (Kanazo) |              | <i>Heritiera fomes</i>            |
| 13. Sagawa (Saga)         | Champaca     | <i>Michelia champaca</i>          |
| 14. Sit                   |              | <i>Albizzia lebbek</i>            |
| 15. Taung-tama            |              | <i>Cedrela serrata</i>            |
| 16. Thadi                 |              | <i>Protium serratum</i>           |
| 17. Thitkado              | Suren        | <i>Cedrela toona</i>              |
| 18. Thitkhaya             |              | <i>Diospyros oblonga</i>          |
| 19. Thitmagyi             |              | <i>Albizzia odoratissima</i>      |
| 20. Thitsho               |              | <i>Pentace griffithii</i>         |
| 21. Thitsi                | Rengas       | <i>Melanorrhoea usitata</i>       |
| 22. Tinyu                 |              | <i>Pinus</i> spp.                 |
| 23. Yemane                | Yamane       | <i>Gmelina arborea</i>            |
| 24. Yindaik               | Rose wood    | <i>Dalbergia cultrata</i>         |
| 25. Yinma                 |              | <i>Chukrasia tabularis</i>        |
| 26. Thinwin               | Rose wood    | <i>Millettia pendulan</i>         |
| <i>Group III</i>          |              |                                   |
| 1. Aukchinsa-ni           |              | <i>Amoora wallichii</i>           |
| 2. Gangaw                 |              | <i>Mesua ferrea</i>               |
| 3. Kanyaung               |              | <i>Shorea thorelii</i>            |
| 4. Kaunghmu               | Mersawa      | <i>Anisoptera scaphula</i>        |
| 5. Kyilan                 |              | <i>Shorea assamica</i>            |
| 6. Maniawga               |              | <i>Carallia brachiata</i>         |
| 7. Nyan                   |              | <i>Quercus serrata</i>            |

|                     |                       |   |
|---------------------|-----------------------|---|
| 8. Panga            |                       | <i>Terminalia chebula</i>               |
| 9. Peinne-bo        |                       | <i>Palaquium polyanthum</i>             |
| 10. Pyinma          |                       | <i>Palaquium polyanthum</i>             |
| 11. Sandawa         |                       | <i>Lagerstroemia speciosa</i>           |
| 12. Talainggaung    |                       | <i>Madhuca longifolia var-latifolia</i> |
| 13. Taukkyan        | Myanmar Walnut        | <i>Terminalia tomentosa</i>             |
| 14. Taung-peinne    |                       | <i>Artocarpus chaplasha</i>             |
| 15. Taung-thayet    | Taung thayet/Merapauk | <i>Swintonia floribunda</i>             |
| 16. Taw-thayet      |                       | <i>Mangifera caloneura</i>              |
| 17. Thabye          | Kelat/Jaimba          | <i>Eugenia</i> spp.                     |
| 18. Tharapi         |                       | <i>Calophyllum kunstleri</i>            |
| 19. Thingadu        |                       | <i>Parashorea stellata</i>              |
| 20. Thitcha         |                       | <i>Quercus</i> spp.                     |
| 21. Thit-e          |                       | <i>Castaneopsis</i> spp.                |
| 22. Yingat          |                       | <i>Gardenia coronaria</i>               |
| 23. Yon             |                       | <i>Anogeissus acuminata</i>             |
| <i>Group IV</i>     |                       |   |
| 1. Baing            |                       | <i>Tetrameles nudiflora</i>             |
| 2. Chinyok          |                       | <i>Garuga pinnata</i>                   |
| 3. Didu             |                       | <i>Salmalia insignis</i>                |
| 4. Gwe              |                       | <i>Spondias pinnata</i>                 |
| 5. Kokhe            |                       | <i>Salmalia anceps</i>                  |
| 6. Letkok           |                       | <i>Sterculia foetida</i>                |
| 7. Letpan           |                       | <i>Salmalia malabarica</i>              |
| 8. Linlun           |                       | <i>Sapium baccatum</i>                  |
| 9. Ma-u-lettan-she  | Kadum                 | <i>Anthocephalus cadamba</i>            |
| 10. Myaukngo        | Duabanga              | <i>Daubanga grandiflora</i>             |
| 11. Nage            |                       | <i>Lannea coromandelica</i>             |
| 12. Odein           |                       | <i>Ailanthus triphysa</i>               |
| 13. Sawbya          |                       | <i>Pterocymbium tinctorium</i>          |
| 14. Setkadon        |                       | <i>Pterocymbium tinctorium</i>          |
| 15. Thitto          |                       | <i>Sandoricum koetjape</i>              |
| 16. Wetshaw         |                       | <i>Erythropsis colorata</i>             |
| 17. Other Softwoods |                       |   |
| <i>Group V</i>      |                       |   |
| 1. Kuthan           |                       | <i>Hymenodictyon excelsum</i>           |
| 2. Kyun-bo          |                       | <i>Premna pyramidata</i>                |
| 3. Lamu             |                       | <i>Sonneratia caseolaris</i>            |
| 4. Leza             |                       | <i>Lagerstroemia tomentosa</i>          |
| 5. Myaukchaw        |                       | <i>Homalium tomentosum</i>              |
| 6. Myauklok         |                       | <i>Artocarpus lakoocha</i>              |
| 7. Ondon            |                       | <i>Litsaea glutinosa</i>                |
| 8. Pyaukseik        |                       | <i>Holoptelea integrifolia</i>          |
| 9. Tayaw            |                       | <i>Grewia tiliaefolia</i>               |
| 10. Thitpyu         |                       | <i>Wendlandia glabrata</i>              |

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|                     |  |  |
|---------------------|--|--|
| 11. Other Hardwoods |  |  |
|---------------------|--|--|

## About NEPCon

NEPCon (Nature Economy and People Connected) is an international non-profit organisation working to support better land management and business practices that benefit people, nature and the climate in 100+ countries around the world. We do this through innovation projects, capacity building and sustainability services. We focus on forest and climate impact commodities and related sectors, such as tourism.

We are accredited certifiers for sustainability schemes such as FSC™ (Forest Stewardship Council™), PEFC (Programme for the Endorsement of Forest Certification), RSPO (Roundtable on Sustainable Palm Oil), Rainforest Alliance Sustainable Agriculture and SBP (Sustainable Biomass Program). We also certify to our own LegalSource™, Sustainable Tourism and Carbon Footprint Management standards. A self-managing division of NEPCon promotes and delivers our certification services. Surplus from certification activities supports the NEPCon's non-profit activities.

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