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Unbalanced:

Review of the Amended Narcotic Drugs &
Psychotropic Substances Law against the National Drug Control
Policy of Myanmar

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CND held a high-level segment meeting in March 2009 and Political Declaration and Plan of Action came out to solve world drug problem. The declaration included an integrated and balanced strategy under the principle of shared responsibility. Supply reduction and demand reduction approaches should be in balanced approach maintaining the principle of shared responsibility. The title of this review report is meant for this concept.

Contents

Foreword	1
National Drug Control Policy	3
Review of the amended drug law	17
Chapter II: Aims	20
Chapter III: The Central Committee	22
Chapter IV: Working Committees, Sectors and Regional Committees	26
Chapter V: Medical Treatment and Rehabilitation	28
Chapter VI: Rehabilitation	30
Chapter VIII: Offences and Penalties	31
Chapter IX: Miscellaneous	39
Reviewing discrepancies between the drug law and the drug policy	42
Supply reduction and alternative development	42
Demand reduction	44
Harm reduction	47
International Cooperation and Research	49
Human rights as cross cutting issue	50
Perceptions of people and drug problem	54
Recommendations	57
References	61
Annex: Comparison table of 1993 drug law and 2018 amended law	63

Acronyms

AHRN	Asian Harm Reduction Network
ART	Anti-Retroviral Therapy
BNN	Badan Narkotika Nasional (National Anti-Narcotics Agency)
CCDAC	Central Committee for Drug Abuse Control
CND	Commission on Narcotic Drugs
CSO	Civil Society Organization
HIV	Human Immunodeficiency Virus
ICD	International Classification of Diseases
IDPC	International Drug Policy Consortium
INCB	International Narcotic Control Board
JAG	Joint Advocacy Group
MANA	Myanmar Anti-Narcotic Association
MDM	Medicine du Monde
NDNM	National Drug User Network Myanmar
NGO	Non-Government Organization
INGO	International Non-Government Organization
MoHA	Ministry of Home Affairs
ONCB	Office of Narcotics Control Board
OST	Opioid Substitution Therapy
PDEA	Philippine Drug Enforcement Agency
PWUD/PWID	People Who Use Drugs/People Who Inject Drugs
SARA	Substance Abuse Research Association
TB	Tuberculosis
UNAIDS	UN Joint Programme on AIDS
UN	United Nations
UNGASS	United Nations General Assembly Special Session on the World Drug Problem
UNODC	United Nations Office on Drugs & Crime
WHO	World Health Organization

Foreword

Amendment to the 1993 Narcotic Drugs & Psychotropic Substances Law was enacted on 14 February 2018. As the amendment was based on 1993 Law, there were still harsh punishments though there were removal of the Section 15 of 1993 Law which punishes for using drugs. 1993 drug law was well known for its punitive nature and not appropriate with the changing situations.

On the other hand, National Drug Control Policy was formulated and the government endorsed the policy on 20 February 2018. As the policy was formulated in accordance with changing situations and international context, international community praised for the National Drug Control Policy of Myanmar.

As the national drug policy will be implemented with strategic plans and operational plans in near future, the policy is of paramount importance for the development of the country. Therefore, the question come out whether the amended drug law would be supportive or would create constraints for the implementation of the drug policy. Hence, the author tried to review the amended drug law (2018) against the national drug control policy. During the review, the author also visited to Myitkyina (Kachin State), Mandalay (Mandalay Region) and Lashio (northern Shan State) during a short time and also met with people who use drugs/people who inject drugs, legal aid groups, NGO/INGOs and branches of NDNM (National Drug User Network Myanmar).

Therefore, I would like to appreciate to those who helped me during the visits, those from AHRN, MANA, SARA, MDM, Legal Aid Groups, Metta Foundation, Lawyers Association in Lashio and members of regional branches of NDNM, U Than Win Shwe (Legal Advisor of Sao Mon) and those who helped to accomplish this work including those who supported funds for this work.

I am solely responsible for the contents of this review document and please forgive me if there are any errors as the work was done in a short period.

The author

Htwe Kyu

Executive Summary

Myanmar was the world's largest producer of illicit opium in the 1980s. In 1991, Afghanistan became the world's largest opium producer and Myanmar was the second largest producer since then¹. Regarding with stimulants (ATS), UNODC report mentioned that Myanmar continued to be a major source of methamphetamine in South - East Asia including opium and heroin and methamphetamines were mainly produced in Shan State in the eastern part of the country. It was also mentioned that significant amounts originating from Myanmar were seized in neighboring countries². HIV prevalence among people who inject drugs also continued to be highest among key populations compared to sex workers and MSMs and according to 2017 results of IBBS, the prevalence among people who inject drugs was 34.9%³.

Myanmar government endorsed National Drug Control Policy on 20 February 2018 and the amendment to the 1993 Narcotic Drugs and Psychotropic Substances Law was enacted on 14 February 2018. It was also noted that though the punishment of drug use in Section 15 of 1993 drug law was removed, the punishments in the amended law was still harsh and punitive. The 1993 drug law was notorious for harsh punishments and in fact, 1993 law was unable to control drug problem in the country in about 25 years period since its enactment. Therefore, it came to a question whether the amended drug law and the newly formulated drug policy were consistent. As the amended drug law of 2018 was based on 1993 drug law, there were still harsh punishments. Therefore, the consistency between the drug law and national drug policy should be reviewed and this review report was prepared.

National Drug Control Policy - The policy aims to build safe and healthy communities by minimizing drug-related health, social and economic harms. The main principle of the policy is to shift Myanmar towards an evidence-based and health focused approach and outlines a comprehensive as well as a whole-of- society approach. There are five priority areas of the policy and are as follows;

- Supply Reduction and Alternative Development
- Demand and Harm Reduction
- International Cooperation
- Research and Analysis
- Compliance with human rights

Above priority areas are reviewed against the drug law in the following sessions.

¹ Myanmar Opium Survey 2017, UNODC

² Trends and Patterns of Amphetamine-type Stimulants and New Psychoactive Substances, 2017. UNODC

³ Myanmar Integrated Biological and Behavioural Surveillance Survey and Population Size Estimates among People Who Inject Drugs 2017-2018, National AIDS Program, Ministry of Health & Sports, Myanmar.

Supply Reduction and Alternative Development: Some of recommended activities in the policy document under this topic include strengthening of joint operations for combined counter-narcotics task forces and increasing law enforcement activities, promoting the role of the community in combatting drug supply and production, strengthening cooperation mechanisms on drug control and rule of law with ethnic armed groups, enhancing participation of CSOs, implementing alternative development programs, ensuring farmers' land rights and empowering communities to engage in sustainable livelihood activities.

Comments: According to drug law, opium farmers are cultivating illicit crops and growing for personal use also is not allowed. Therefore, status of opium farmers offenders violating the provisions in the drug law. In national drug control policy document, it is mentioned that those involved in cultivating poppy are mostly poor subsistence farmers. 72% of poppy-growing villages in Myanmar reported that they cultivated opium to make more (or easy) money, or to cover basic living expenses, such as food, education and housing⁴. When alternative development activities are implemented, the development activities have to be started on one hand and opium cultivation has to be reduced gradually on the other hand. During such transition period, there will be constraints and limitations for opium farmers due to illegal status of their lives to deal with authorities and law enforcement personnels.

According to national drug control policy, it can be found that participation of communities and CSOs but it is not mentioned clearly in the law. Under the Aims of the law, Section 3(e) describes about cooperation and collaboration where 'local non-government organizations and community people' can be found and in Chapter 3, Section 6(a) mentioned about coordination with others included 'non-government organizations'. In other areas of the law, there are no specified areas about participation of communities, non-government organizations and CSOs.

Another important matter is related to the Central Committee. According to drug policy recommendations, the Central Committee will need to deal with ethnic armed organizations and its functions involve development, health and social related activities. As the Ministry of Home Affairs takes the main responsibility of Central Committee, it is taking extra burden for the ministry busy with public security responsibilities. In case of Thailand, Office of the Narcotics Control Board (ONCB) is formed as an independent body and there are 10 Bangkok based offices and 21 regional offices across the country⁵. Regarding with Philippines, Philippine Drug Enforcement Agency (PDEA) is formed under the supervision of the Office of the President of the Philippines. There are 17 regional offices and PDEA is supported by anti-drugs task forces and customs/chemical taskforce on dangerous drugs and controlled chemicals.^{6,7} Regarding with Indonesia, National Anti-Narcotics Agency (BNN - Badan

⁴ Page 14, National Drug Control Policy.

⁵ https://www.oncb.go.th/EN_ONCB/Pages/Organization.aspx

⁶ <http://pdea.gov.ph/>

⁷ https://en.wikipedia.org/wiki/Philippine_Drug_Enforcement_Agency

Narkotika Nasional) is formed and the Head of BNN directly reports to the President.^{8,9} Therefore, the Central Committee should be formed as a separate body under direct control of the President. As with multidisciplinary nature of drug control activities, the MoHA may experience difficulties in issuing orders and notifications to other ministries and it would be more appropriate to form an independent body involving multiple ministries. In case of dealing with ethnic armed organizations, there may be issues related to peace and conflicts and it will be more appropriate to deal with such matters by a Committee under the President control.

Demand reduction and Harm reduction: This topic involves drug use prevention, reducing consequences of drug use, drug treatment, rehabilitation and reintegration activities. Under this topic, national drug policy document mentioned with five subtopics and those were discussed in summary;

Drug use prevention: Recommendations include educating about illicit drugs at schools and community (including social media activities), mental health services for youths, changing perceptions of drug use (schools, workplace, community), developing and promoting social alternatives to drug use (schools/family/community) and favorable legal environment to implement activities.

Comments: In drug law, there were no specific indications about prevention activities as well as for youths except under the aims of the law. Under Section 6(e), it is found as 'Collecting the list of drug users and formulating programmes in respect of providing medical treatment, imparting knowledge and educative incitement and reducing harms caused by using narcotics and psychotropic substances', which seemed to reduce consequences for people who use drugs rather than prevention. There are no specific indications related to prevention of drug use for youths (in and out of school). Similarly, there is no indications in the drug law for other strategies to reduce drug use as mentioned in policy document.

Harm reduction: Policy recommendations include decriminalization of drug use, promote and expand a comprehensive package of harm reduction including overdose prevention and treatment according to WHO, UNODC and UNAIDS technical guidelines, capacity building for frontline providers including law enforcement officers and health care providers on harm reduction and promoting enabling environment: favorable legal environment for implementation of activities.

Comments: Regarding with decriminalization of drug use, IDPC described following activities would no longer constitute a criminal offence or be subject to criminal penalties:

- Drug use
- Possession of drugs for personal use
- Cultivation and purchase of controlled plants for personal use
- Possession of drug use paraphernalia.¹⁰

¹⁰ IDPC Drug Policy Guide, 3rd edition.

In the amended drug law (2018), Section 15 of 1993 drug law which punishes people who use drugs for using drugs is removed. As explained earlier, only the punishment for drug use is removed in the amended law and possession for personal use is not allowed, people who use drugs are still being punished by Section 16(c) and experiencing 5 – 10 years imprisonments. In June 2018, the president office set up a Drug Activity Special Complaint Department and issued notifications regularly about arrests and seizures. Among notifications issued from the President office, the reviewer analyzed the data of arrests and seizure from July – December 2018. The data was only for the cases in the tables of description and the reviewer focused about charges of Section 16(c) of amended drug law;

Total number arrested as per complaints – 698

Those who were charged with Section 16(c) – 320 (46%)

Gender distribution among those charged with Section 16(c) –

Male – 290 (91%) Female – 30 (9%)

According to above data, 46% of cases were charged with Section 16(c) related to possession of drugs and this also reflected inconsistency of the drug law and drug policy. Though the policy document mentioned about enabling environment, the drug law appeared to be punitive and criminalized nature. In 2017 report of INCB, the report mentioned as ‘the board has also clarified on many occasions that, under the United Nations drug control treaties, **parties are not obliged to apply criminal justice sanctions to people who use drugs.**’¹¹

Regarding with punishments in the drug law, it can be found that unproportionality of sentences with harsh punishments and there are no provisions for alternatives to imprisonment. In 2018, Myanmar Human Rights Commission visited to the prisons and labor camps across the country and told that there were double of prisoners more than they could accommodate and regarding with drug related cases, there were many prisoners convicted for mere possession of one to two tablets of drugs and only a few prisoners sentenced for large amount of drugs.¹² The national drug control policy includes about prison reforms and to promote alternatives to imprisonment. In fact, there are ways to apply alternatives to imprisonment as mentioned in ‘United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)’.

According to drug control conventions of UN, the provisions include special attention to take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved¹³ and not about prison punishment. In UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 also mentioned for the cases of minor nature to provide alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when

¹¹ Chapter 1, INCB Report 2017.

¹² <https://www.myanmar-now.org/mm/news/770> (In Burmese)

¹³ 1961 Convention, article 38; 1971 Convention, article 20.

the offender is a drug abuser, treatment and aftercare.¹⁴ Under the aims of the drug law, section 3(b) mentioned as to implement provisions of UN drug control conventions but the punishments in the drug law were found to be inconsistent for such cases.

Treatment, Rehabilitation and Reintegration: Policy recommendations include transforming compulsory treatment systems to voluntary drug treatment, referrals to various treatment options, community-based service delivery programmes, Peer involvement in drug treatment and rehabilitation services.

Comments: Under provisions Section 9, it can be found about drug treatment for people who use drugs. As per Section 9(a), the person who use drugs must undertake drug treatment and according to Section 9(i), whoever may inform to police about a person who is found to be using drugs or suspected of using drugs. In fact, everybody who uses drugs does not need medical treatment and only those with drug use disorders or drug dependent persons need drug treatment. It is also mentioned in World Drug Report that about 11% of people who use drugs are estimated to suffer from drug use disorders/dependency and need drug treatment.¹⁵ It can be seen that the drug law indicates compulsory treatment while the drug policy mentions to take voluntary drug treatment reflecting discrepancy between the law and the policy.

In addition, national drug policy intends to scale up comprehensive package of services. Those implementing harm reduction services in Myanmar are mainly of NGOs. As per comments of NGO staffs, law enforcement activities increased after mid-2018 and people who use drugs and peers are experiencing search, arrests and interrogations with consequent reduction of service uptake. As the existing service providers are experiencing constraints related to drug law, expansion of services as per policy document may invariable meet with legal constraints.

The policy recommendations on various treatment options and community-based services are good for the county. To implement such services, services providers may be from the government services as well as from non-government services which will need to work together. However, provisions of Section 9 are directed mainly to government authorized services only.

According to policy document, participation of peers in drug treatment and rehabilitation services. Such a recommendation is good for the respective community as well as offering the right to participation of such people. However, peers working with NGOs are experiencing search, arrests and interrogations and this is obvious about inconsistency between the drug law and the drug policy.

Coordination and response mechanisms: Policy recommendations include to define clear role and responsibilities, strengthen coordination mechanism, establish coordination structure with meaningful involvement of other stakeholders such as CSOs, promoting comprehensive service delivery approaches (prevention, harm reduction, treatment, reintegration available in one location)

¹⁴ Article 3(4-c), UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

¹⁵ World Drug Report 2018, UNODC.

Comments: Regarding with coordination and response mechanism, the matter of discussion is related to the Central Committee. According to the drug law, the minister of MoHA takes the role of chairperson of the Central Committee and as per Section 27, secretarial functions will be borne by the Ministry of Home Affairs. In fact, drug issue involves many disciplinary areas. Ministry of Home Affairs is mandated for peace and stability of the country and additional duties of drug problem is added wholly upon MoHA according to the drug law. As with the nature of activities of the Central Committee, the Committee may need to issue orders and notifications as necessary and as such, there may be delays and difficulties in practical work as the situation is issuing orders/notifications by a ministry to other parallel ministries. Instead, it will be more appropriate if the Central Committee is formed independently under control of the President.

Access to controlled drugs: Policy recommendations include ensuring adequate availability and access to controlled drugs and substances for medical and scientific use, developing notifications, orders and regulations (availability and accessibility, to prevent diversion) and providing education and capacity building relevant personnel.

Comments: Those suffering from painful illnesses (e.g. cancer, operated patients etc.) should be able to access controlled drugs and law or procedures should not be a barrier to access. In 2017 report of INCB, the report mentioned that INCB also reviewed the situations in member states and regarding with Myanmar, the report said that “As in many countries in the region, the availability of narcotic drugs and psychotropic substances for licit purposes in Myanmar is very low and likely insufficient to meet medical needs. The Board has therefore continued to encourage the Government to review its methodology for evaluating its needs regarding narcotic drugs and psychotropic substances, identifying obstacles to availability and taking corrective action to ensure that actual medical needs are met.”¹⁶ If it is viewed from the perspective of the drug law, it also relates to the Central Committee. The MoHA takes to role of the Central Committee while the matter relates mainly to the Ministry of Health & Sports and procedures should be revised in order to facilitate the process in timely manner.

International Cooperation and Research: Regarding with international control, policy recommendations include increasing effectiveness of border management, effectiveness of cross-border and transnational criminal justice, seeking and sharing information and best practices from/with international partners, seeking support from international partners including the contribution of financial, technical, diplomatic and knowledge resources.

Policy recommendations related to research area includes studies on drug use and impacts, supply and production of illicit substances, needs for alternative development, drug related crimes, legislative reviews (repealing death penalty), success stories of PWUD/PWIDs and their potential to contribute to society, traditional medicine and alternative treatment options.

¹⁶ Chapter 2, INCB Report 2017.

Comments: Cooperation may involve cooperation with various partners within the country, cooperation for border management, Asia region or international cooperation. As the activities may be various matters of multidisciplinary areas from functional aspect while the Central Committee lies with MoHA according to the drug law structurally, it will be appropriate with a separate body rather than a body under MoHA as discussed earlier. Due to lack of proper studies in the past, there is no data available regarding with the numbers of people who use drugs in the country. Under the recommendation 1 of the report of INCB, the board urged the governments to gather data on prevalence of drug use data and the accessibility and utilization of treatment in 2017 report.¹⁷

Human rights as cross cutting issue: Policy recommendations include promoting non-discriminatory access to justice, health care and social service; treating drug users as patients, promoting human right based approach through awareness raising and education, promoting policies and criminal justice sector responses to drug use that respect human rights, including proportionate legal response mechanisms, considering to repeal the death sentence for drug related offences, gender sensitive programmes and interventions in line with CEDAW, ensuring tailored drug control interventions to vulnerable populations including disabled persons, children, youth and women.

Comments: In the 1993 drug law, people who use drugs are criminalized for using drugs and resulted stigma and discrimination. In the amend drug law (2018), people who use drugs are still being punished with possession of drugs as per Section 16(c) and those accompanying at the scene are also punished with Section 21 though the punishment for using drugs is removed in the amended law. As such punishments related to possession continues and it is still far away to reduce stigma and discrimination of people who use drugs. Though the drug policy describes about non-discriminatory access, there is still legal barriers related the drug law. Drug use is defined as ‘chronic relapsing health condition’ by WHO and the drug policy also describes health focused approach to drug use but the drug law is leading to punitive and criminalized approach. Though the policy mentions about proportionality of sentencing, punishments in the drug law are still harsh and unproportionate which is also mentioned above in the findings of a member of Myanmar Human Rights Commission during his visits.

According to the amended drug law, collecting the list of people who use drugs (Section 6-c), asking people who use drugs for drug treatment, having medical checkups by police for the people suspected of using drugs, referring to a court if failed to take medical checkup, informing to police by anyone regarding with a someone suspected of using drugs etc. as per Section 9 are not consistent with the policy description which mentioned as ‘The Myanmar government is committed to developing a drug control policy that respects, protects and promotes all human rights, fundamental freedoms

¹⁷ Recommendation 1, Chapter 4, INCB 2017 Report.

and the inherent dignity of all individuals and the rule of law.’¹⁸ The provisions in drug law reflects ‘no tolerance policy’ on drug use and also affects human rights of the people who use drugs.¹⁹

Policy recommendation includes to consider repealing death sentence for drug related offences which is still present in the amended drug law. During 27th Human Rights Council meeting of General Assembly, the Secretary-General answered the question on death penalty that it should be only for the most serious crime such as a crime that involves intentional killing. At paragraph 31 of the report, it can be found that INCB also encourage to member states to abolish death penalty for drug offences.²⁰

Though the policy document mentions about tailored drug control interventions to vulnerable particular groups such as disabled persons, children, youths and women, there is no provisions in the law for such groups.

Perceptions of people and the problem of drugs

During meeting with various people, there are notable things and some of the point should be discussed;

- mindsets of criminalization
- understanding of the nature of drug problem
- the need to distinguish between decriminalization and legalization of drug use

Mindsets of criminalization of drug use: As the 1993 drug law enacted for decades of criminalization of drug use, people’s perceptions are deeply rooted to punish people who use drugs. In fact, it is also related to lack of pragmatic studies whether such criminalization approach practiced for about 25 years can actually reduce the problem drug use or not. It is noticed that such perceptions are deeply rooted among many people due to lack of research and poor exposure with changes in policy and practice among other countries.

Poor understanding of the nature of drug problem: Though drug use problem becomes more prevalent, it can be found that proper understanding of drug use problem is still poor among people. In World Drug Report of UNODC, it is mentioned with risk factors and protective factors of using drugs. If people can know about genetic predispositions, environmental factors (family, friends, neighbors, school etc.) and easily availability of drugs, it can be understood that responsibility lies with everybody. However, many people view people who use drugs with blaming attitudes and overwhelms to punish with criminalization.

¹⁸ Page 24, National Drug Control Policy.

¹⁹ Article 3 and 12 of the Universal Declaration on Human Rights, 1948

²⁰ UN General Assembly, Report of the Secretary – General on the Question of the death penalty, A_HRC/27/23

The need to distinguish between decriminalization and legalization of drug use: When the 1993 drug law is amended, the punishments for imprisonment for using drugs is no longer included in the amended law. Many people raise concerns that people can use drug as much as they like without fear of being arrested and the number of PWUDs will be increased. In fact, such assumptions are based on not being able to distinguish between decriminalization and legalization of drug use. As decriminalization is not legalization, it does not mean that people are allowed to use drugs legally. Instead of criminal sanctions, administrative sanctions combined harm reduction services, treatments and rehabilitation services can be provided.

Recommendations

1. The new drug law should be rewritten appropriately with current situations and in accordance with the National Drug Control Policy –
 - the amended drug law (2018) is merely based on the 1993 drug law and there are total of 32 areas (removals/additions/revisions). In general, a new law should be drafted instead of amending the existing old one if such amendments exceed the one third of the existing law as per legal drafting practices.²¹
 - Though the national drug policy aims to approach with health oriented, evidence-based manner and in line with human rights standards, the amended law is still punitive and not in conformity with human rights. Moreover, such a restrictive law may impede reaching to sustainable development goals of the country.
 - According to the Rules of the Union Attorney General, Section 21 mentioned about the basic principles on scrutinizing bills. Under Section 21(d), it provides as “to scrutinize whether the bill is consistent with policies and aims laid down by the Government”. Therefore, drafting a bill which is consistent with national policy is in conformity with stipulations and more necessary if there are inconsistencies between the law and the policy.²²
 - Under Section 3(a) of the amended drug law, there includes the usage with regards to danger of drugs such as ‘degeneration of mankind’. Such assumptive usages should not be included as such expressions might give rise to stigma and discrimination. For example, there was an educational message at early periods of HIV/AIDS interventions in Myanmar as “*ku yar nathti say ma shi* (means ‘there is no cure for AIDS’ in English)”. In its sense, it sounded like those with HIV infections were people with no curable disease but communicable to others and such message might worsen the stigma and

²¹ Page 143. The art of Drafting Law, U San Lwin, Supreme Court Advocate, 2012.

²² Rules of the Union Attorney General, Notification 8/2016 (7 January 2016)

discrimination of affected persons. Therefore, health staffs tried to avoid using such educational messages later. Similarly, if the drugs are used as degenerating mankind, people who use drugs might be viewed as those involving in the matters that would degenerate mankind resulting compounded stigma and discrimination.

2. The new law should be drafted based on the principle of ‘balanced approach’ which was mentioned in the report of high-level segment meeting of CND held in 2009.²³ That meeting released a political declaration and also included to cooperate among member states to solve the world drug problem. The declaration mentioned to work with integrated and balanced approach with regards to interventions of supply reduction and demand reduction measures under the principle of shared responsibility. Therefore, the law should also reflect this principle and the provisions should reflect it. On one hand, the provisions of the law should focus to deter effectively illicit drugs and to be able to take action effectively for those who should be punished while on the other hand, demand reduction and harm reduction measures should be health oriented, evidence based and supportive from the provisions of the law.
3. In the new drug law, the responsibility of the Central Committee or main body of drug control should be lies with the Union Government rather than putting it over a Ministry –
 - Since the enactment of the 1993 Narcotic Drugs and Psychotropic Substances Law, the Ministry of Home Affairs took the main responsibility of the Central Committee and the same responsibility with the amend drug law (2018). In fact, the Ministry of Home Affairs (MoHA) is mandated for security of the State, prevalence of law and order, community peace and tranquility and to carry out social rendering services and burdened in itself. Adding the responsibilities of drug control upon the MoHA also means putting extra burden for the ministry and rather, it should involve mainly for the law enforcement operations. Similar hierarchic structure existed at wards/village tract levels and the findings on ward/village tract level drug control committees by a project implemented by JAG also reflected situations at grassroot level that there were limitations to perform their roles and responsibilities effectively. The recommendations of JAG also included that local drug control committees should be formed separately in order to perform effectively.
 - Drug control measures for the country involves various ministries of the Government. If main duties and responsibilities lies with a single ministry, there may be constraints to coordinate among parallel ministries as the leading role lies with a ministry among same structural levels. Therefore, taking the main responsibility by the Union Government

²³ Political Declaration and Plan of Action on International cooperation towards an Integrated and Balanced Strategy to Counter World Drug Problem, Commission on Narcotic Drugs, 11-12 March 2009

will be more appropriate for the workflow which will be distributed among respective ministries.

- As discussed during the session of review of the law, forming the Central Committee with a separate structure/department similar to examples in some countries would be more appropriate with the growing drug problem. Similar local example could also be found in the national natural disaster management committee and the law provided a Vice President to chair the committee.²⁴
4. As mentioned in the national drug control policy, the transition of the law to decriminalization should also directed to reduce stigma and discrimination upon PWUD/PWIDs including reintegration to the society. Application of administrative sanctions instead of criminal penalties, possession for personal use, not allowing to submit drug use paraphernalia as evidence along with necessary medical treatments, harm reduction services, rehabilitation, after care and reintegration services could be provided.
 5. When the new drug law is drafted, proportionality of offences and punishments should be paid attention. Punishments should be based on background situation, evidences and intent of committing crimes rather than focusing mainly on amount/quantity of drugs. Punishments for offences of minor nature could be considered to apply as per non-custodial measures (Tokyo Rules).²⁵
 6. The provisions of the law with regards to supply reduction should take into account of alternative development to prevent consequences of legal actions upon development attempts. The national drug control policy also describes to promote alternative development activities.
 7. The provisions of the law should be supportive for prevention, voluntary treatment, rehabilitation and reintegration which should be in conformity with description in the drug policy.

Regarding with rehabilitation, this area is also needing services extensively. Compared to availability of drug treatment sector, resources and activities are insufficient with regards to rehabilitation sector and still needs to be strengthened.

Therefore, there should be provisions for rehabilitation sector to implement measures extensively. There should be various models of rehabilitation services such as center-based services as well as community-based services. In addition, there are also services for aftercare and social reintegration and therefore, it also needs to take into account of not to have limitations in the provisions of the new drug law in order to implement such measures.

²⁴ Natural Disaster Management Law (31 July 2013)

²⁵ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

As there may be various requirements for people who use drugs such as occupational opportunities, educational needs and homeless people etc. depending on developmental status of country, there should not be limitations in the law to work with a variety of organizations.

As the drug use problem in the country is huge, the arrangements for response should accommodate such situation. The provisions of the law should allow to provide various service options, participation of various organizations such NGOs, CSOs, private sectors and communities. This would also be in conformity with 'a whole-of-society approach' mentioned in the basic principles of national drug control policy.

8. Harm reduction is pragmatic, humane and cost - effective approach and there are thousands evidences on its effectiveness. Myanmar national drug control policy also mentioned harm reduction and there are also harm reduction programmes across the country, mainly in upper Myanmar areas. The new law should also include provisions supportive for harm reduction as the main players of harm reduction are NGO/INGOs. In the existing drug law, the provisions focused to centers of government services or government authored centers only. The new law should be directed to allow participation of various service provides in addition to the government services so that it would be in conformity with actual situation on ground as well as be aligned with national drug policy which encouraged comprehensive and holistic approaches.
9. The provisions of the law should allow to be able to access controlled drugs easily and adequately as well as during emergency situations. In addition, it is of vital importance to prevent treatment interruptions for incarcerated people or those in closed settings. Common encounters related to this was experiencing treatment interruptions of HIV, TB, OST and those with needing continuation of treatment when they were arrested for some reason. On the other hand, such treatment gaps may lead to drug resistant problems giving rise to public health threats and the provisions in the new law should aim to prevent such situations.
10. Particular groups such as students, females and those with disabilities should also be taken into account when new drug law has to be drafted. National drug policy document also mentioned about such particular groups and described to consider alternatives to imprisonment as well.
11. Some people were accused of the provisions in the law and after attempts of appeal or decisions at the court, some were released as they were found to be innocent or irrelevant to the offence but those people suffered and there were losses for them. Regarding with such cases, the provisions of the law should include to lessen or prevent such situations.

12. The provisions of the new drug law should also pay attention to be in accord with the principles of legality. This recommendation is meant for accurate and to be in accordance with fair trial standards.²⁶ Under Section 25 of the current drug law, it includes an order relating to someone ‘who habitually commits or is notorious for committing’ and it may lead to be on a bond or imprisonment of 1-3 years which PWUDs are also in potential.
13. The new drug law should also pay attention to be in accordance with human rights provisions which might also be in conformity with UN Conventions.

In current drug law, collecting the list of PWUDs by local authorities, informing to police about drug use, channeling to compulsory treatment and taking action with notoriousness of committing are affecting fundamental rights of the people.
14. In the provisions of the new law, awareness raising about drug issues and improved understanding on law and policy should be included as old perceptions and criminalizing mindsets may impede effective implementation of the law and policy.

²⁶ Fair Trial Guidebook for Law Officers, Union General Attorney’s Office, February 2018. (Page 22. Protection from Arbitrary Detention; (‘no crime nor punishment without law’)

National Drug Control Policy

Formulation of national drug policy is based on UN drug control conventions and aligned with the 2016 UNGASS outcome. As the policy also intends to support achieving Sustainable Development Goals for the country, it is quite comprehensive and in line with international best practices. The UN and international community praised for the significant shift towards an evidence – based and health-oriented approach as well as the first country in Southeast Asia to adopt UNGASS framework at a national level.

Myanmar Sustainable Development Plan (2018 – 2030) document mentioned about National Drug Control Policy under Pillar 1: Peace and Stability. Drug control activities are mentioned under the Strategy 1.3 (Promote greater access to justice, individual rights and adherence to the rule law) under Pillar 1.

Aims of the Policy

To build safe and healthy communities by minimizing drug related health, social and economic harms

Principles of the Policy

- To shift Myanmar towards an evidence – based and health focused approach in developing drug legislation and creating practical strategies
- Comprehensive approach to both illegal and legal drugs based upon long term and comprehensive planning
- Promoting a whole-of-society approach

Priority areas of the Policy

- Supply Reduction and Alternative Development
- Demand and Harm Reduction
- International Cooperation
- Research and Analysis
- Compliance with human rights

Among recommended activities of priority areas, technical and programmatic areas will be focused in summary tables during the session of discussion on the amended drug law against the policy whereas suggested areas related to training, capacity building and fund raising will be omitted in my review.

Reviewing the areas of the amending Narcotic and Psychotropic Substances Law

If revised areas, removals and added areas of the drug law are summarized, it can be seen as below;

Chapter	Name of a Chapter	Sections	Number of revisions, removals, additions ²⁷
I	Title and Definition	1, 2	1
II	Aims	3	1
III	Formation of the Central Committee and the Functions and Duties of the Central Committee	4-6	4
IV	Formation of Working Committees, Sectors and Regional Committees	7, 8	2
V	Medical Treatment and Rehabilitation of a Drug User	9, 10	3
VI	Rehabilitation	11,11(a),12	3
VII	Search, Arrest and Seizure of Exhibits	13, 14, 14 (a)	2
VII-A	Performing Community Service	15	2
VIII	Offences and Penalties	16 - 25	5
VIII-A	Raising, Maintenance and Management of Funds	25 (a), (b), (c)	4
IX	Miscellaneous	26 - 31	5
	Total		32

Full texts of 1993 drug law and the amended law (2018) are shown in comparison table in annex. As this review is focused to review the amended law against national drug policy, only the areas of the law that reviewer would like to discuss will be extracted from programmatic point of view. Therefore, main areas to be reviewed will be seen as below;

²⁷ <https://www.mlis.gov.mm/IsScPop.do?lawordSn=10680>

Chapter II

Aims

3. The aims of this Law are as follows: -

- (a) to prevent the danger of narcotic drugs and psychotropic substances, which can cause degeneration of mankind, as a national responsibility;
- (b) to implement the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which Myanmar signed agreement;
- (c) to carry out more effectively measures for imparting knowledge and education on the danger of narcotic drugs and psychotropic substances and for medical treatment and rehabilitation of drug users;
- (d) to impose more effective penalties on offenders in respect of offences relating to narcotic drugs and psychotropic substances;
- (e) to lay down local framework in accordance with United Nations narcotics and psychotropic substance control conventions and to collaborate with other countries, member States of United Nations, international organizations, regional organizations, local non-government organizations and community people in order to prevent use of narcotics and psychotropic substances, illicit trafficking, transportations and production;
- (f) to increase the momentum of prevention, protection and fight against narcotic and psychotropic substances by utilizing regional and international cooperation mechanism;
- (g) to solve related socioeconomic problems occurred due to illicit production and trafficking of narcotic drugs and psychotropic substances by growing opium substitution crops, laying down drug control policies, developing sustainable development plans, and short term and long-term plans and goals.

Comments

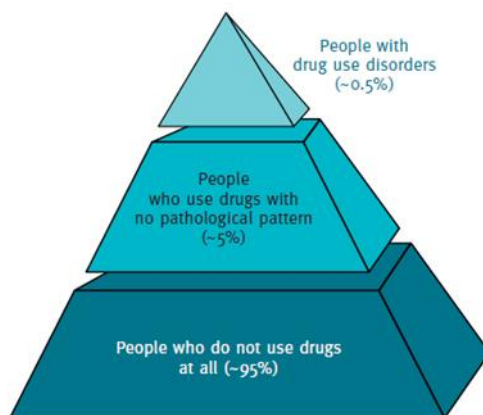
Under subsection (b), it includes to implement provisions of international drug control conventions. Regarding with provisions of those conventions, International Narcotics Control Board (INCB) mentioned that from a criminal justice perspective, in some countries, even the one-time use of a psychoactive substance scheduled as a narcotic drug or psychotropic substance may incur a sanction. INCB also explained that from the perspective of addiction and behavioural sciences, however, a single instance of drug consumption may not necessarily be pathological. It is the pattern of drug use and the resulting consequences that distinguish

pathological from nonpathological, though often dangerous, behaviour. In addition, the board has also clarified on many occasions that, under the United Nations drug control treaties, **parties are not obliged to apply criminal justice sanctions to people who use drugs.**²⁸

Under subsection (c), it can be found that to provide medical treatment and rehabilitation for people who use drugs. Here, it is necessary to be clear that every people who use drugs does not need medical treatment. The tenth revision of the International Classification of Diseases (ICD-10) describes two major diagnostic entities due to drug use as harmful use and dependence syndrome. Harmful drug use is understood as a pattern of drug use that causes damage to the physical or mental health of the individual. Drug dependence is a condition in which drug use becomes one of the highest priorities in the user's life, and carries with it a range of associated behaviours.²⁹

From the perspective of the process of drug use, people who start to use may escalates to frequent use resulting consequences and then, may become harmful use and, ultimately dependence. The patter can be seen as below;

Pyramid of drug use patterns (representational)



In above pyramidal representation³⁰, those in the middle part use drugs but not pathological and only smaller number of people in the topmost layer suffer drug use disorders. That group usually needs medical treatment. According to the 2017 report of UNODC, it is reported that some 10% of people who use drugs are suffering drug use disorders and needing medical treatment.

²⁸ Chapter 1, INCB Report 2017.

²⁹ Chapter 1, INCB Report 2017.

³⁰ Chapter 1, INCB Report 2017.

Chapter III

Formation of the Central Committee and the Functions and Duties of the Central Committee

4. The Government shall form the Central Committee for Drug Abuse Control (CCDAC).
5. In forming the Central Committee: -
 - (a) it shall consist of the Union Minister of the Ministry of Home Affairs as Chairman and persons from the relevant Ministries, Government departments and organizations, experts from respective subjects as members;
 - (b) the Vice – Chairman, Secretary and Joint Secretary of the Central Committee shall be determined.
6. The functions and duties of the Central Committee are as follows: -
 - (a) laying down the policies in respect of the prevention of the danger of narcotic drugs and psychotropic substances, coordinating and implementing with the relevant Union Ministries and organizations at Union level, Region or State Governments, the Nay Pyi Taw Council, Leading Bodies of the Self-Administered Divisions and the Self-Administered Zones and non-governmental organizations;
 - (b) being able to cooperate with States Parties to the United Nations Convention, International and regional organizations in respect of the prevention of the danger of narcotic drugs and psychotropic substances;
 - (c) determining and coordinating as may be necessary the functions and duties of the working committees, Sectors and regional committees in order to carry out successfully the functions and duties of the Central Committee;
 - (d) laying down and carrying out programmes in respect of reclamation of land, allotment of land, contribution of materials and aids and rendering of assistance as may be necessary, in order to carry out substitute crops cultivation and livestock breeding;
 - (e) laying down and carrying out programmes in order to reduce harms occurred as a consequence of using narcotic and psychotropic substances by collecting the list of drug users to provide medical treatment, imparting knowledge and educative incitement;
 - (f) laying down plans in respect of rehabilitation of drug users, mobilizing, counselling, rendering appropriate supports, rebuilding physically and mentally to resume well-being social life and causing to be taught means of livelihood;
 - (g) scrutinizing, supervising and guiding in order to ascertain whether or not the programmes

- laid down by the Central Committee are systematic and successful;
- (h) destroying or causing to be destroyed narcotic drugs and psychotropic substances in accordance with the stipulation;
 - (l) removed;
 - (j) removed;
 - (k) directing by passing an order responsible person of the relevant bank and financial institutions to allow relevant persons authorized to search and seize to inspect financial records relating to an offence under this Law, to make copies thereof and to seize the same as exhibits;
 - (l) disposing of as may be necessary ownerless narcotic drugs and psychotropic substances which have been seized as exhibits;
 - (m) taking such measures as may be necessary for giving reward in respect of an offence against which action has been taken under this Law, with the approval of the Government;
 - (n) reporting from time to time to the Government on the progress of the work of prevention of the danger of narcotic drugs and psychotropic substances;
 - (o) carrying out the functions and duties as are assigned by the Government from time to time;
 - (p) Carrying out in accordance with the Extradition Law if there are matters arise between Myanmar and foreign countries regarding with extradition in respect of offenders of production, possession, transportation, distribution and sale of narcotic drugs and psychotropic substances;
 - (q) Supervising and providing guidance in respect of imparting knowledge effectively in order to achieve public awareness on ill consequences of using of narcotic and psychotropic substances;
 - (r) supervising and providing guidance on the work of prevention of the danger of narcotic drugs and psychotropic substances by providing vocational training classes, improving capacity in order to achieve healthy and wealthy social lives, and encouraging collaboration and participation of social organizations;
 - (s) supervising and providing guidance to organize awareness raising activities widely at schools, outside of schools and at workplaces on ill consequences of using narcotic drugs and psychotropic substances through social medias and other news medias;
 - (t) supervising and providing guidance to have effective cooperation and collaboration among those responsible for public health, Education and those responsible to implement the law in respect of activities of prevention of the danger of narcotic drugs and psychotropic substances;
 - (u) explaining to the public on activities of the work of prevention and control of the danger of narcotic drugs and psychotropic substances at least once in a year;

Comments

Central Committee (CCDAC): Under Section 5(a), it is stipulated that the Union Minister of Home Affairs to serve as the Chairperson of CCDAC. Regarding with functions and duties of CCDAC, the Committee has to deal with region or state governments, self-administered regions internally and also has to deal with UN member states, international organizations. In addition, the activities of CCDAC involves not only related to law enforcement measures but also various matters related to drug issues. While the Ministry of Home Affairs is mainly responsible for law enforcement, it also has to take additional responsibilities to handle drug related health, social, economic, developmental and international relations. It may result additional burden for the Ministry busy with responsibilities of public security and drug related crimes.

The structure of drug control bodies in other countries, especially in Asian countries should also be looked as an example. In case of Thailand, Office of the Narcotics Control Board (ONCB) is formed as an independent body and there are 10 Bangkok based offices and 21 regional offices across the country.³¹

Regarding with Philippines, Philippine Drug Enforcement Agency (PDEA) is formed under the supervision of the Office of the President of the Philippines. There are 17 regional offices and PDEA is supported by anti-drugs task forces and customs/chemical taskforce on dangerous drugs and controlled chemicals.^{32, 33}

Regarding with Indonesia, National Anti-Narcotics Agency (BNN - Badan Narkotika Nasional) is formed and the Head of BNN directly reports to the President.^{34, 35}

Among other countries in the world, Portugal is also famous for implementing positive changes related to drug policy and the authority body of drug control is the Council of Ministers which is composed of 10 members chaired by the Prime Minister. The Council appointed the Commission for the National Strategy to Fight against Drugs which is formed of nine members (five from legal/health experts, two from health and justice ministries, the assistant minister of the Prime Minister, an internationally recognized researcher who chaired the Commission).³⁶

With regards to the members of CCDAC, one the comments coming out from “People’s forum on Drug Control” held in Naypyitaw on 17-18 December 2018 at Hotel Max included as “to include the role of civil society organizations (CSOs) and people who use drugs in the mechanism of drug control of the government and to mention it officially in the drug law”.

³¹ https://www.oncb.go.th/EN_ONCB/Pages/Organization.aspx

³² <http://pdea.gov.ph/>

³³ https://en.wikipedia.org/wiki/Philippine_Drug_Enforcement_Agency

³⁴ [https://en.wikipedia.org/wiki/National_Anti-Narcotics_Agency_\(Indonesia\)](https://en.wikipedia.org/wiki/National_Anti-Narcotics_Agency_(Indonesia))

³⁵ <https://bnn.go.id/sejarah/>

³⁶ Drug Policy Profiles: Portugal, European Monitoring Centre for Drugs and Drug Addiction

In addition, Joint Advocacy Group (JAG)³⁷ in Mon State implemented a four-month project on capacity building of ward/village tract level drug control committees at three townships. After completion, JAG presented about their findings during implementation to local government authorities and their findings included that local control committees did not know well about their roles and responsibilities, and poor knowledge on national drug control policy and amended narcotics and psychotropic substances law (2018). Among their recommendations, the recommendation on ward/village tract level control committees was; ‘there should be an independent local drug control committee which could focus solely on drug control activities rather than the current structure laid down by CCDAC headed by the ward/village administrators.’³⁸

Collecting the list of drug users: Under Section 6 (c) of amended drug law, it can be found that collection of the list of drug users in the area. Though the stipulation on compulsory registration of drug users in 1993 drug law is removed in the amendment, inclusion of collecting the list of drug users is affecting personal privacy of individuals. The other thing related to this is about local drug control committees formed as per hierarchic structure of CCDAC. Those committees consist of local police officers and those responsible for local administration. Taking the list of people who use drugs in the area by local police and administrative authorities may give rise to the risks of harassment upon people who use drugs. One of the recommendations coming out from “People’s forum on Drug Control” held in Naypyitaw on 17-18 December 2018 at Hotel Max includes as “Not to use people who use drugs as informers by ward/village level drug control authorities”.

³⁷ JAG: Consortium of local community – based organizations formed of Mon State MANA, Legal Light, Pluralism Peace and Mon branch of NDNM.

³⁸ Findings and policy recommendations of community - based drug prevention & reduction of harms project.

Chapter IV

Formation of Working Committees, Sectors and Regional Committees

7. The Central Committee shall form the following Working Committees and Sectors and shall determine the functions and duties thereof respectively: -
 - (a) Law Enforcement and management Committee;
 - (b) Alternative development implementation management committee;
 - (c) Crop Substitution Sector;
 - (d) Livestock Breeding Sector;
 - (e) Medical Treatment Sector;
 - (f) Rehabilitation Sector;
 - (g) Sector for Education the students and youth;
 - (h) Mass Media Information Sector;
 - (i) Controlled Chemicals Supervisory Committee;
 - (j) International Relation Sector;
 - (k) Social Services Supervisory Committee.
8. The Central Committee shall form the following Regional Committees and shall determine the functions and duties thereof respectively; -
 - (a) Region/State, Union Territory, the Self-Administered Division or the Self-Administered Zone, District, Township, Ward and Village Tract Committees for Drug Abuse Control;
 - (b) Anti-narcotic Task Forces.

Comments

At Section 8 (a), formation of regional committees at Region/State levels hierarchically which is the same as in 1993 drug law. The Ministry of Home Affairs takes the main responsibility for Central Committee and similar positions at Region/State, district, township and ward/village tract levels which can be seen as below;

	Region/State	District	Township	Ward/village tract
Chair	Minister of Security and Border Affairs of Region/State	District Administrator	Township Administrator	Ward/Village Administrator
Vice Chair	Administrator of Region/State	District Police Commander	Township Police Officer	Surveillance Police Officer
Secretary	Police Commander of Region/State	Deputy District Police Commander	Deputy Township Police Officer	Selected person from community
Joint Secretary	Police Company Commander/ Platoon			
Commander of local anti-narcotic task force	Police Company Commander/ Platoon			
Commander of local anti-narcotic task force	An officer from local anti-narcotic task force	Ward/Village tract Clerk		

‘... though the administrator of General Administration department is the chair of local drug control committee, he is also a chairperson of about 30 committees. As such many responsibilities, he has to think about hardly himself...’
 (A manager from a local NGO in Kachin State)

Among recommendations coming out from a forum named “People’s forum on prevention and reduction of harms related to Drugs” held on 17-18 December 2018 in Naypyitaw at Hotel Max included as ‘local drug control committees should be functioning and activities that may improve their roles and responsibilities should be implemented as well as to improve their capacities’. The recommendation also reflected the situation at grassroot levels with the structure laid down from above.

Chapter V

Medical Treatment and Rehabilitation of a Drug User

9. (a) A drug user shall take medical treatment at the place prescribed by the Ministry of Health and Sports or at a medical center recognized by the Government for this purpose;
- (b) The Ministry of Health and Sports shall make necessary arrangements to refer to relevant care and support center after completion of medical treatment for a drug user;
- (c) A drug user undergoing medical treatment shall abide by the directives issued by the Ministry of Health and Sports;
- (d) The police personnel shall refer a person who is suspected of using drugs for initial medical examination and if he is found using drugs, the police personnel shall refer immediately for medical treatment to a place prescribed by the Ministry of Health and Sports or to a nearest medical center recognized by the Government for this purpose;
- (e) After scrutinizing the person who failed to do initial medical examination and to receive medical treatment, the relevant police officer shall apply to the relevant court in order to execute a bond if necessary;
- (f) on the application made under the sub-Section (e), the court may issue a bond as stipulated in order to have medical examination and medical treatment;
- (g) if a drug user failed to make a bond as per sub-Section (f) or violates a discipline in the bond, the court shall lay down an order for medical treatment and rehabilitation services to a relevant care and support center opened for this purpose or a rehabilitation center for the period of six months;
- (h) The Ministry of Health and Sports shall take the responsibility for necessary medical care for drug users who are sent to a relevant care and support center or a rehabilitation center during the period of rehabilitation;
- (i) Anybody may inform to Myanmar Police Force in respect of a person on using drugs or suspected of using drugs.

Comments

According to Section 9(c), it indicates that every person who uses drugs must have medical treatment.

- As explained above in chapter 2, everybody who uses drugs does not need medical treatment.

“Every person who uses drug does not need treatment. Among one hundred persons who use drugs, about 10 -12 persons become addicted. About 90 of 100 persons who use drugs do not need to be treated and instead, they should be provided counselling, health education and ask for promise to stop using drugs. As such, drug use will be reduced and be able to stop using...”

(A Psychiatrist from Mawlamyine General Hospital:
Ref – ‘People’s voices document’ published by Human Rights Foundation of
Monland and Mon Youth Educator Organization)

- Provisions of chapter 5 shows that a person who use drugs has to undergo compulsory treatment and rehabilitation center. This is not consistent with descriptions in national drug control policy which mentions to ensure the right to choose treatment options and reducing legal implications, and the suggestions under the topic of ‘Treatment, Rehabilitation and Reintegration’ include to transform compulsory treatment systems to voluntary drug treatment systems.³⁹ In addition, UN organizations also urged to take voluntary treatment options.
Moreover, with regards to compulsory treatment and rehabilitation camps, it also needs to be mindful about issues in the past related to detention in the name of ‘treatment’ or ‘rehabilitation’. As there are human rights issues, transmission of communicable diseases such as TB, HIV, poor legal safeguards and judicial reviews. Therefore, UN agencies released a joint statement to close down those centers without delay in 2012.⁴⁰
- According to Section 9(d), the police can ask someone suspected of using drugs for initial medical examination. If someone is found using drugs, that person will be asked to take medical treatment. Regarding with the use of ‘suspicion of using drugs’, in fact, the police is trained for security and law enforcement while the drug use is a health

³⁹ Page 19, National Drug Control Policy, 2018.

⁴⁰ Joint Statement on Compulsory drug detention and rehabilitation center, March 2012.

phenomenon and it is questionable for such provision. The provisions of Section 9(a) reflect directing into compulsory treatment.

- In 1993 drug law, drug use was criminalized (Section 15 of 1993 law) but that Section 15 was removed in amendment. But, Section 9(i) of amended law included about informing to police if someone is using drugs or suspected of using drugs by anyone. Here, the usage of ‘suspicion’ included again. Though drug use is not criminalized in the amended law, that provision depicts a person may be informed to police with non-criminal behavior with mere suspicion. Such provision may affect personal privacy and individual rights.

Chapter VI

Rehabilitation

11. The Ministry of Social Welfare, Relief and Resettlement shall, in respect of the care and support and rehabilitation of drug users, carry out the following measures in accordance with the stipulation: -
 - (a) rendering assistance and protection as much as possible to persons undergoing medical treatment and to the families dependent on them;
 - (b) providing for rehabilitation, teaching of means of livelihood as may be necessary, resettlement and after-care to enable persons who have undergone medical treatment to resume their normal lives;
 - (c) conducting expertise training courses for the relevant persons in order to implement systematically and effectively work of rehabilitation of drug users.
- 11-A. While carrying out activities on prevention, treatment, care, rehabilitation and reintegration to society, the Ministry of Home Affairs, the Ministry of Health and Sports and the Ministry of Social Welfare, Relief and Resettlement that implements the provisions of this law shall take into account of existing laws and to be in conformity with aims and provisions of United Nations Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to which Myanmar has signed to agree.
12. The Ministry of Home Affairs and the Ministry of Social Welfare, Relief and Resettlement, if necessary, may refer the drug user being imposed to perform social work activities as per Section 15 to rehabilitation center again or teaching vocational training subjects as stipulated.

Comments

In the process of rehabilitation, there are various services needed such as after care, prevention of relapse, reintegration into society and vocational training etc. Those various activities may involve variety of organizations and stakeholders and may need also to involve NGOs as well as private sectors. The law should include availability and access to such organizations rather than limited to government institutions. As such, the continuum of care of people who use drugs can be achieved.

Chapter VIII

Offences and Penalties

16. Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -
- (a) cultivation of poppy plant, coca plant, cannabis plant of any kind of plant which the Ministry of Health & Sports has, by notification declared to be a narcotic drug;
 - (b) possession, transportation, distribution and sale without permission under this Law which the relevant Ministry has, by notification declared to be chemical or related materials used in the production of a narcotic drug or psychotropic substance;
 - (c) possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance;
 - (d) transfer of a narcotic drug or psychotropic substance by a person who possesses the same with permission in accordance with law to a person who is not permitted;
 - (e) inciting, inducing, deceiving, coercing, using undue influence of any other means to cause abuse of a narcotic drug of psychotropic substance;
 - (f) misappropriating, causing to disappear, destroying, removing or transferring any property which has been seized or attached under this Law.

Comments

Drug dependence is mentioned as a chronic, relapsing health disorder and as it is not a criminal problem, criminalization of drug use is moved to decriminalization in many parts of the world. In Myanmar, punishments related to using drugs of Section 15 in 1993 drug law are removed in amended law of 2018. In National Drug Control Policy, decriminalization of drug use is also mentioned.

Regarding with punishments, sentences under Section 16 should be considered in respect of severity. The provisions also limit the flexibility of the court as well. Those who may be punished under Section 16 may be people who use drugs with possession of drugs for personal use, small dealers with small amount drugs in possession for subsistence and as well as there may be females involved.

Proportionality of offences and penalties: According to Section 16(c) and 26, a person may be punished with possession of small amount of drugs and be punished from 5 years to ten years to imprisonment.

On the other hand, the prisons are not free of drugs though people who use drugs are put into prison. In addition, communicable diseases such as tuberculosis, HIV etc.... and the diseases may spread among general communities when they re-enter into society.

“Both heroin and opium are available within Insein prison⁴¹ easily. When we go to common toilets in prison, we can see people injecting drugs..... some use with smoking pipes and some inject drugs. Sometimes, heroin is injected by dissolving with available water nearby. Some experienced users cut their skin with blades and put heroin power into the incision. Some says that may get high more. So, there are a lot of people who contracted HIV...”

(Part 1, page 20. Gangsters of Insein Prison by Zaw Thet Htwe (in Burmese))

Poor flexibility for the court in sentencing: The provisions set the punishment with minimum and maximum years of sentencing leading to the lengthy period of imprisonment. If the law specified only maximum years without minimum years, the court may consider flexibility depending on situation and not to sentence lengthy periods for those with minor offences. On the other hand, the law would specify cut-off amounts below which the offence would be considered less grievous and ideally would be exempt from imposition of prison sentences as well as could consider alternatives to conviction and punishment foreseen by article 3 (4) of the 1988 Convention.⁴²

⁴¹ Insein prison is one of the largest prisons in Myanmar located in Yangon Region

⁴² Working document of UNAIDS: The Narcotic Drugs and Psychotropic Substances Law (1993)

UN Conventions: According to drug control conventions of UN, the provisions include special attention to take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and not about prison punishment.

Moreover, alternatives to imprisonment can be considered as per Tokyo Rules of UN which mentions about standard minimum rules for non-custodial measures (General Assembly resolution 45/110 of 14 December 1990)

Lack of provisions for women: The drug law should also take into account of females as there might be vulnerabilities and also needs for treatment of women who use drugs. Some women may have caring responsibilities and imprisonment of such women may arise consequences in their community. In this regard, minor nature of cases can be considered and can apply the Bangkok Rules which is United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.⁴³



“I know a lady who has three children. Children are also going to school. That mother was arrested with in possessions six yaba (slang for ATS) tablets.

The big tree is already there. If there is a tree, there will be leaves falling down under it. What’s happening now is crushing fallen leaves with feet without cutting the tree....”

(Comment from a member of Lashio branch of NDNM)

Under Section 16(a) is provision for growing of a plant notified as a drug. Regarding with this provision, those who grow for their subsistence and for their personal use (e.g. opium, marijuana, kratom) may be affected by this provision. In mountainous areas of Myanmar, opium is also used for medicinal purposes traditionally and if the area is remote from hospital or clinics, such practice is beneficial for local residents. According to national drug control

⁴³ Working document of UNAIDS: The Narcotic Drugs and Psychotropic Substances Law (1993)

policy document, those involved in poppy cultivation are mostly poor subsistence farmers and 72% villages involved in poppy cultivation to cover their basic living expenses such as food, education and housing.⁴⁴

Under Section 16(c), the provision indicates the risk for people who use drugs. In amended law of 2018, there are no amounts indicated for personal use and small of amount drugs may be taken action of 5-10 years imprisonment. Based on this Section, there is the risks for people who use drugs to experience observation, inspection and harassments as well as may affect access to health services. In case of drug law of India, for example, if a person with drug dependence is committed small offences or is found with small amount of drugs, the drug dependent person can get immunity if he gives consent voluntarily to take medical treatment.⁴⁵

Current situation related to arrests: After the announcement of the amendment of Narcotic Drugs and Psychotropic Substances Law was announced in February 2018, the president office set up a Drug Activity Special Complaint Department in June 2018. The department also issued regularly about arrests and seizures. On the other hand, there were increased arrests and crack down activities across the country. Among notifications issued from the President office, the reviewer analyzed the data of arrests and seizure from July – December 2018. The data was only from the cases in the tables of description and the reviewer focused about charges of Section 16(c) of amended drug law;

Total number arrested as per complaints – 698

Those who were charged with Section 16(c) – 320 (46%)

Gender distribution among those charged with Section 16(c) –

Male – 290 (91%) Female – 30 (9%)

According to above data, it could be found that 46% of cases were charged with Section 16(c). Among those cases, one of the cases of ‘Shwe Nyi Ko teashop’ was taken action for possession of marijuana and that person was charged with Section 16(c).⁴⁶ The person who was in that teashop together with the arrested person explained as below;

“...at that time, we sit together at that teashop. When police arrived and searched, he was found with a small amount of marijuana that were put inside the cheroot and he was arrested for that...”

(A member of NDNM in Yangon)

⁴⁴ Page 14, National Drug Control Policy document (2018)

⁴⁵ Section 64-A, Narcotic Drugs and Psychotropic Substances Act 1985, India.

⁴⁶ Press Release No. 18/2018, 1 October 2018, Additional statistical bulletin on drug seizures, acting on Information, the Office of President, Myanmar.

When the reviewer visited to Mandalay, similar situations were found along with increased crack down activities.



“...if they want to, just arrest drug users. Those taking methadone are also arrested. If someone is not positive in urine test and don’t find any drugs over the body, he may be charged with 35*. It is like charges coming out from their mouths...”

(A member from Mandalay branch of NDNM)

*(35 means Police Act 35, 1945; Apprehension and punishment of reputed thieves and others)

Harm reduction activities: Increased law enforcement activities with crackdowns also affected HIV prevention services among PWIDs. During visits to Myitkyina (Kachin State), Lashio (northern Shan) and Mandalay, the managers from NGO/INGOs explained about situation that service uptake was reduced as crackdown activities increased.

“It is also found during our outreach activities. The police may arrest users with very little amount of drugs. If they don’t find any drugs, they ask users squatting exercise like hopping frogs. Some ask users to clean their area and release after that.

At the times of crackdowns, overdose cases also increased. If we can experience about 5-6 cases during ordinary situation, there are about 20 cases of overdose per month. Distribution of new needles/syringes also reduced from over 100,000 per month to over 30,000 per months during crack downs.

(Dr. Maung (not real name) from an NGO in Myitkyina)

“...though the drug law is amended, by seeing increasing arrests and seizures, what appears in my mind is that awareness raising of purpose of amending the law to police should be done. I think...though Section 15 of 1993 drug law is removed, its related Sections should also be amended...like possession cases...”

(A Supreme Court Advocate working for legal aid in Mandalay)

19. Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of unlimited period: -
- (a) possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale;
 - (b) offering for sale, agreeing thereto or communicating to market a narcotic drug or psychotropic substance;
 - (c) concealing and causing to disappear money, property and benefits derived from the commission of any offence contained in this Law, so that action may be taken;
 - (d) transferring and converting money, property and benefits involved in an offence, so that it may appear to have been acquired from a legitimate source.
20. Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 15 years to a maximum of an unlimited period or with death: -
- (a) production, distribution and sale of a narcotic drug or psychotropic substance;
 - (b) importing and exporting a narcotic drug or psychotropic substance: communication to effect such import and export.

Comments

- Regarding with Section 19 and 20, the provisions need to be considered for small dealers making money for subsistence and couriers (drug mules). There may be the situations that a drug dependent person selling drugs to make money for drug use or those who bought and carried drugs for friends. Severe punishments for such and similar cases should be re-considered.
- Punishments of Section 19 and 20: Regarding with punishments, the term ‘unlimited’ and ‘death sentence’ should be reviewed. The term ‘unlimited’ is not a definite term and should be more exact rather. In addition, those accused of distributing, sale, especially of small amounts, are on the lower end of the drug trafficking chain and unconnected with the profits made by big players. Also, there may be people who use drugs to engaged in sale for peers to settle their drug use or as a means of survival and 15 years sentence of imprisonment for such cases is too harsh.⁴⁷
Under the International Covenant on Civil and Political Rights, death penalty should be only for the most serious crime such as a crime that involves intentional killing.

⁴⁷ Working document of UNAIDS: The Narcotic Drugs and Psychotropic Substances Law (1993)

During 27th Human Rights Council meeting of General Assembly, the Secretary-General answered the question on death penalty. At paragraph 31 of the report, it can be found that INCB also encourage to member states to abolish death penalty for drug offences.⁴⁸

21. Whoever attempts, conspires, organizes, administers or provides financial assistance to commit any offence contained in this Law or abets the commission of any such offence shall be liable to the punishment provided in this Law for such offence.

Comments

Though punishment for drug use is removed from 1993 drug law, a lot of people who use drugs are arrested with Section 16(c) of amended law. Another problem is those charged with Section 16(c) is added with Section 21 if there are any companions and experiencing harsh punishments. When a person who use drugs is charged with Section 16(c), if there is a friend who came together or ride motorbike together, that accompanying person may also be charged with Section 21.

“In the case of two male university students and two female students, they hanged out with two motorbikes. At a corner of a street, the boys told the girls to wait there and they went into the street to use drugs. As the girls had to wait long, the girls followed the boys along the road. When the girls arrived into the hotspot area, the girls were also arrested related to their boyfriends. All of them were charged and the two girls also lost their face and also had to get out of university....”

(A representative from Kachin branch of NDNM in Myitkyina)

“...if someone is charged with Section 21, the period to solve the case at township level court may take about six months to one year. If it is not solved, they have to go up to district court which may take further four to five months. Then, if they have to go up to State Court from district court, it may take further three to six months. If it is not solved at the State level court and appeal up to Supreme Court in Naypyitaw, it may take further six months to a year.

⁴⁸ UN General Assembly, Report of the Secretary – General on the Question of the death penalty, A_HRC/27/23

Even if they can get released and set free, there are periods of detention about one to two years. Those days are just their sacrifice and only has to be aggrieved...”

(A Supreme Court Advocate: Ref – ‘People’s voices document’ published by Human Rights Foundation of Monland and Mon Youth Educator Organization)

“If there were two persons when police arrested, both of them may be charged even if one person confessed for possession of drugs to use and the other might be innocent and not using drugs...”

(A member from Kachin branch of NDNM)

An advocate also explained regarding with such cases of adding section 21 to Section 16(c) and this was also related to prosecution procedures and legal officers were also involved in the process.

“After first information report of police, the police have to submit the case to legal office to get legal advice. If the legal officer provided comments to arrest others, the police may have to arrest remainders whom the police did not arrest as they appeared to be innocent/irrelevant.”

(An advocate from a legal aid group in Lashio)

If the police received with such comments, the police had to arrest remainders of the case again. Based on such experiences, arresting all suspects at the crime scene and putting charges might also be increased.

In a qualitative study at Bhamo of Kachin State in October 2017, it was found out that ‘43% of the participants had a history of being arrested by possession of personal usage’.⁴⁹

25. The Court shall: -

- (a) in respect of a person who habitually commits or is notorious of committing any offence contained in this Law except Section 15 pass an order for execution of a bond for good behavior during a period not exceeding 3 years, in accordance with the rules;
- (b) if there is violation of the condition of the bond passed under subsection (a) or if there is failure to execute the bond in accordance with the order passed for execution of a bond, punish such person with imprisonment for a term which may extend from a minimum of 1 year to a maximum of 3 years.

⁴⁹ Social marketing strategy, on amending the Section 16 C in Myanmar Narcotic Drugs and Psychotropic Substances Law of 1993 for treatment options; Lin Aung Thu, Master of Development Management 2018, Asian Institute of Management.

Comments

Provisions in Section 25 should be reviewed in terms of principles of legality regarding with the phrases of ‘habitually commits or is notorious for committing’. If a person committed a crime, that person was punished with a respective law already and the provision indicated to make a bond based the past history. Rather, it should be well defined (for example, it can refer instead to “someone who had been convicted more than x times in serious offences and had violated terms of parole”).⁵⁰

In case of people who use drugs, who are repeatedly found in possession of small quantities have the risk of being taken action by this Section, in which they may be placed on a bond and breach of the bond risking one to three years imprisonment.

Chapter IX

Miscellaneous

26. Whoever possesses or transports, transmits or transfers any of the following narcotic drug or psychotropic substance of the weight, volume or quantity of in excess of the weight, volume or quantity shown against each shall be deemed to possess for the purpose of sale and to transport, transmit or transfer for the purpose of sale: -
- (a) in the case of heroin (three grammes)
 - (b) in the case of morphine (three grammes)
 - (c) in the case of monodactyl morphine ((three grammes) (removed)
 - (d) total of the narcotic drugs contained in subsection (a), (b) and (c) (three grammes) or total of two types out of the said three (three grammes)
 - (e) in the case of crude opium or processed opium or total of the two (one hundred grammes)
 - (f) in the case of cannabis or essence of cannabis or total of the two (one hundred grammes)
 - (g) in the case of (coca) leaf (one hundred grammes)
 - (h) in the case of cocaine (three grammes)
 - (h-i) in the case of amphetamine type stimulants (three grammes)
 - (h-ii) in the case of methamphetamine hydrochloride (Ice) (three grammes)
 - (h-iii) in the case of ephedrine or pseudoephedrine (three grammes)
 - (i) the weight, volume or quantity which the Ministry of Health and Sports has, by notification from time to time prescribed for any narcotic drug or psychotropic substance.

⁵⁰ Working document of UNAIDS: The Narcotic Drugs and Psychotropic Substances Law (1993)

Comments

It can be found that amount of drugs are set by the Section 26 and punishments are given as per chapter VIII. The point to be considered here is punishments are based on the amount of drugs rather than considering background situations and supportive evidences of a crime.

In this Law, the amounts are set only for 'intended for sale' and no amounts set for personal use. Implications can be considered as below;

- **The risks of punishment for people who use drugs:** Sometimes, the friends may gather and use drugs recreationally. In such conditions, the amount of drugs may be matched with the amounts set for 'intended for sale'. In addition, buying drugs from the dealer is also a dealing with criminals and also there are risks for buyers to be arrested. Therefore, people who use drugs may buy as many as he could depending on financial status in order to reduce the risks of buying drugs. In such situations, the amounts bought and kept will be matched with the amounts 'intended for sale' and may suffer harsh punishments.

If there are lack of proportionality of an offence and the punishment, the affected persons may suffer and affect one's dignity as well. According 2008 Constitution of the Republic of the Union of Myanmar, the Article 44 says as," No penalty shall be prescribed that violates human dignity."

- **Risk of diverting the attention of law enforcement teams:** As provisions of the law, law enforcement staff may pay attention more on amount of drugs rather than focusing on situations and to differentiate between those with smaller guilt and larger guilt, and behavior that does not affect others against the behavior affecting society.
- **Standardized sentencing:** The provisions may lead to making decisions on the culpability of an offender based on amount of drugs rather than based on the role of a person in a crime and surrounding conditions. A person in possession of at his/her home must be treated differently from a person in possession of drugs in the vicinity of a school, even though the quantity of drugs involved is the same in both cases.⁵¹ The punishments should be based on the situation and intent to commit.

27. The office work of the Central Committee shall be carried out by the Ministry of Home Affairs.

⁵¹ Working document of UNAIDS: The Narcotic Drugs and Psychotropic Substances Law (1993)

This provision also relates to the structural issues. The functions and duties of the Central Committee involves various ministries as well international, regional and local organizations. As the Ministry of Home Affairs has to take such responsibility and may have to issue instructions and orders as necessary to other ministries. If view form structural aspect, union ministries are parallel ministries and according to the drug law, a ministry may be leading to other ministries or issuing instructions or orders which may lead to coordination constraints with resultant inefficiency in performing the duties of the Central Committee.

28. The provisions of this Law shall not apply to the following cases: -

- (a) production of narcotic drug or psychotropic substance and carrying out works of research thereof, with the consent of the relevant Ministry;
- (b) use, possession, transportation, transmission, transfer, sale, import, export and external dealing in respect of narcotic drug or psychotropic substance in the manner prescribed for the purpose of production, work of research of medical treatment, with the consent of the relevant Ministry;
- (c) use, possession, transportation of a narcotic drug or psychotropic substance permitted by the Ministry of Health and Sports under the direction of any registered medical practitioners in accordance with stipulations.

Comments

Provisions of Section 28 intended to be able to use controlled drugs for medical and scientific purposes. In such provisions, opioid substitution therapy (methadone or similar drugs) should also be included as OST program was implemented widely across the country.

Moreover, there should also be immunity for trace amount of drug contained in a syringe or other related material as possession or submission of such material as evidence in court.

In 2017 report of INCB, the report mentioned that INCB also reviewed the situations in member states and regarding with Myanmar, the report said that “as in many countries in the region, the availability of narcotic drugs and psychotropic substances for licit purposes in Myanmar is very low and likely insufficient to meet medical needs. The Board has therefore continued to encourage the Government to review its methodology for evaluating its needs regarding narcotic drugs and psychotropic substances, identifying obstacles to availability and taking corrective action to ensure that actual medical needs are met.”⁵²

⁵² Chapter 2, INCB Report 2017.

Reviewing discrepancies between the amended drug law and the national drug control policy

After discussion of amended drug law, possible implications of amended law upon national drug policy will be discussed. Recommendations mentioned in the National Drug Control Policy document are extracted and shown in summary tables.

Supply reduction and Alternative development

Usage of the term ‘supply reduction’ involves growing narcotic plants such as opium, coca, marijuana, production and distribution of narcotics and psychotropic substances, illicit trafficking, export/import of precursor chemicals, transporting across countries etc.

Alternative development

In national drug policy document, ‘alternative development’ is explained as “a process to prevent and eliminate the illicit cultivation of plants (largely for poverty) used in drug production and contributes to economic development (especially in rural areas) to target the underlying factors and root causes of illicit drug economies”.

Supply reduction and Alternative development		
Reduced supply and availability of drugs	Law enforcement	Strengthening of joint operations for combined counter-narcotics task forces, Enhancing specialized law enforcement units for transnational organized crimes, Manage the supply and licit importation of narcotic substances and precursors chemicals to prevent the diversion into illicit channels.
	Cooperation	Promote the role of community in combating drug supply and production Strengthen cooperation mechanisms on drug control and rule of law with ethnic armed groups
Alternative development	Programmatic	Introduce rural development programs in drug producing areas, Promote businesses and cooperatives by providing subsidies, Simplify business registration and administration, Educate and provide information to discourage drug production.

	People’s rights and participation	Promote the role and active participation of CSOs in the implementation of alternative development Ensure farmer’s right to land and right to access alternative development, strengthen people’s right to access basic services
Legal response mechanisms	Law/procedures	Review and revise existing laws, update mechanisms related to money laundering and corruption, Establish the Confiscated Asset Trust Fund
Reduced corruption and money laundering	Programmatic	Promote education programmes (corruption) Improve financial transaction mechanisms to monitor money laundering,
	Legal/procedural	Strengthen legal, regulatory, institutional, operational frameworks to combat money laundering, Increase legal response to combat corruption

- The farmers like opium growers are illegal according to the drug law and under such situation, there will be limitations for law enforcement and the government authorities to work together with those people. When alternative development activities are implemented, the development activities have to be started on one hand and opium cultivation has to be reduced gradually on the other hand. During such transition period, there will be constraints and limitations for opium farmers due to illegal status of their lives.
- During the meeting of CND held in 2018, there was a video presentation named “Myanmar Opium Farmers Forum” and an opium farmer from Myanmar told that the farmers has to pay money to many armed groups as soon as they started growing poppies.⁵³ As most of the poppy growing areas located in mountainous ethnic areas and armed conflict areas, the activities of alternative development is also related to peace process as well. In such situations, as CCDAC is under the responsibility of the Ministry of Home Affairs according to the drug law, CCDAC may also need to communicate and coordinate with the Union Government and the army regarding with alternative development activities. Instead, if the responsibility of Central Committee is under direct authority of the Union Government, such matters may be handled directly by the Union Government and the process may be implemented in shorter time frame by reducing structural steps.
- According to national drug control policy, it can be found that participation of communities and CSOs but which is not mentioned clearly in the law. Under the Aims of the law, the Section 3(e) describes about cooperation and collaboration where ‘local non-government

⁵³ <https://www.tni.org/en/article/myanmar-opium-farmers-forum-at-the-commission-on-narcotic-drugs-in-october-2018>

organizations and community people’ can be found and in Chapter 3, Section 6(a) mentioned about coordination with others included ‘non-government organizations’. In other areas of the law, there are no specified areas about participation of communities, non-government organizations and CSOs.

Demand reduction

The usage of the term demand reduction generally covers prevention of using drugs, delaying the age of the first use of drugs, drug treatments and rehabilitation activities. In the table below, suggested areas under the topic of demand and harm reduction are summarized from the policy document;

Demand and Harm reduction		
Prevention	Evidence based prevention measures targeting vulnerable groups	
	Educational	Educate about illicit drugs at schools and community (including social media activities)
	Health related	Mental health services for youth
	Enabling environment	Changing perceptions of drug use (schools, workplace, community), developing and promoting social alternatives to drug use (schools/family/community) Favorable legal environment to implement activities
Harm reduction	<ul style="list-style-type: none"> • Decriminalize drug use • Promote and expand a comprehensive package of harm reduction including overdose prevention and treatment according to WHO, UNODC and UNAIDS technical guidelines • Capacity building for frontline providers including law enforcement officers and health care providers on harm reduction • Promoting enabling environment: favorable legal environment for implementation of activities 	
Treatment, Rehabilitation and Reintegration	Treatment	Transform compulsory treatment systems to voluntary drug treatment, ensure adequate access to treatment, rehabilitation and reintegration services
	Programmatic	Screening, assessment and referral to various treatment options, community-based service delivery programmes
	Participation of communities	Peer involvement in drug treatment and rehabilitation services
Coordination and response mechanisms	Coordination	Define clear role and responsibilities, strengthen coordination mechanism, establish coordination structure with meaningful involvement of other stakeholders such as CSOs

	Programmatic	Prison reform (prison management, access to health services including drug treatment services) Training and legislative support to law enforcement and judges to promote alternatives to imprisonment
Access to controlled drugs	Suggestions	Ensure adequate availability and access to controlled drugs and substances for medical and scientific use, Develop notifications, orders and regulations (availability and accessibility, to prevent diversion) Provide education and capacity building relevant personnel

Myanmar youth policy is also endorsed in November 2017 and it is found that youths with drug dependence and youths who stopped using drugs are included under ‘youths with special needs. Under main topics, drug problem among youths was mentioned as ‘drugs and other harms.’⁵⁴

- **Prevention:** In drug law, there were no specific indications about prevention activities as well as for youths except under the aims of the law. According to the amended drug law, it is also explained in above that people who use drugs are punished with Section 16(c)/21. Under Section 3(c), one the aims can be found as ‘imparting knowledge and education on the danger of narcotic drugs and psychotropic substances...’. The use of ‘imparting knowledge’ is also found under Section 6(e) but it is not sure whether it is meant for prevention or harm reduction.

The intention of prevention behind the law reflects the approach that imparting knowledge on dangers of drug use. Regarding with this approach, IDPC told about prevention approaches in drug policy guide as “...the belief that people will not use drugs if they are told about the negative effects of use and the harsh penalties, they risk by using them. However, despite a consistent allocation of substantial government resources towards these interventions, available evidence indicates that the rates of drug use among young people remain high, and are largely unaffected by the prevention approaches tried so far.”⁵⁵

In drug policy document of Myanmar, it is recommended as ‘evidence-based prevention measures’ and the approach in the law does not reflected such approach. In the world drug report 2018 of UNODC, it is mentioned with the approach from the perspectives of protective factors and risk factors for substance use.

⁵⁴ Myanmar Youth Policy, November 2017.

⁵⁵ IDPC Drug Policy Guide, 3rd edition.

Legal: Though the drug policy mentioned as ‘enabling environment through a favorable legal environment’, current situations reflects harsh punishments, impaired social and economic consequences due to the amended law. It is obvious that it is not consistent with the descriptions in policy document to support reaching sustainable development goals by situations such as university students are being charged with severe punishments.

- **Treatment:** Though the national drug policy aimed for voluntary drug treatment, it is noticeable that the amended drug law directs to compulsory treatment and rehabilitation. Though the punishment for drug use in 1993 law is removed, anyone may inform to police about a person using drugs or suspected of using drug in the amended law. Then, the police will send to a hospital for initial assessment or to take drug treatment and if failed to perform such measures, the accused will be referred to the court. Therefore, it is obvious that inconsistencies of drug law and the amended drug law.
- **Access to services:** Though the drug policy suggested to ensure adequate access to services (treatment, rehabilitation and reintegration), falling service uptakes during outreach activities of health services can be found as explained in the review session of law. This also reflects discrepancy of the drug policy and the drug law.
- **Variety of treatment options:** Suggestions of policy document under drug treatment includes about various treatment options. According the principles of treatment, a variety of treatment options are also necessary for various types of people. There may be hospital treatments or institution-based models, outpatient treatments, community-based treatments (e.g. harm reduction services of NGOs) and may be more. However, the law stipulated to take treatments at centers prescribed by the government or government recognized centers only. For wider accessibility, the law should indicate various service options including services of NGOs.
- **Involvement of peers:** The drug policy encourages involvement of peers in drug treatment and rehabilitation services. The amended drug law does not include involvement of peers at all. As per situations on ground, some peers working with NGOs for harm reduction services are experiencing inspections and harassments by local authorities, local police and other armed personnel in the area. Therefore, it is obvious that positive approach suggested in the drug policy document are not consistent with the amend law.
- **Coordination of response mechanisms:** The policy document describes that it is necessary to coordinate between stakeholders to deliver a social, economic and health-based response for demand and harm reduction approaches. The main body related to coordination can be referred as the Central Committee to which the main authority lies according to the drug

law. Though the measures involve health, social, economic, prison etc. and it seems to be inappropriate for the Ministry of Home Affairs having main responsibility for such diverse matters.

The suggestions of policy document also include about prison reform and management; and to promote alternatives to imprisonment of drug users. However, people who use drugs are sent to prisons with lengthy years unproportionately according the drug law and lack of alternatives to imprisonment. It is also manifested in the comments of Myanmar Human Rights Commission. The Commission visited to the prisons and labor camps across the country during 2018 and told that there were double of prisoners more than they could accommodate and regarding with drug related cases, there were many prisoners convicted for mere possession of one to two tablets of drugs and only a few prisoners sentenced for large amount of drugs.⁵⁶ Such prison situation and drug cases reflect the unproportionality of sentencing according to the drug law. In addition, there is no specific indications related to prison services in the amended law. There are also problems of treatment interruptions due to increased crackdown activities in 2018. Interrupted treatments of HIV, tuberculosis, OST and other communicable diseases may give rise to drug resistant cases and transmission of such diseases to others in prison as well as to general community when they re-enter into society.

Harm reduction

The drug policy document explained it as policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of illicit drugs, and focuses on reducing the harm to people who use drugs, their families and the community, which is the same as defined by Harm Reduction International.

In other words for easier understanding, demand reduction directed to create a distance between the people and drugs (not to use drug who has not and to delay the first time use of drugs while drug treatment tries so cut off exposure with drugs). In case of harm reduction, as the drug use phenomena is chronic and relapsing nature, the approach is pragmatic and tries to reduce harms related to health, social and economic etc. rather than trying to stop using drugs as primary resort.

- **Decriminalization of drug use:** As drug use is a health problem and not criminal issue, many countries across the world changes policies towards decriminalization of drug use and Myanmar national drug policy also mentioned health oriented and evidence-based approach.

⁵⁶ <https://www.myanmar-now.org/mm/news/770> (In Burmese)

IDPC also mentioned that “the overarching objective of decriminalization is to end the punishment and stigmatization of people who use drugs”. Regarding with decriminalization of drug use, the following activities would no longer constitute a criminal offence or be subject to criminal penalties:

- Drug use
- Possession of drugs for personal use
- Cultivation and purchase of controlled plants for personal use
- Possession of drug use paraphernalia.⁵⁷

In the amended drug law (2018), the Section 15 of 1993 drug law which punishes people who use drugs for using drugs is removed. As explained earlier, only the punishment for drug use is removed for the amended law and possession for personal use is not allowed as well as possession of paraphernalia of drug use, and people who use drugs are still being punished by harsh sentences. Therefore, inconsistencies of law and policy can be seen with regards to decriminalization of drug use as well.

- **Promote and expand comprehensive package of services:** Comprehensive package of services means nine activities of harm reduction services including overdose management services. Those services are recommended by UNODC, UNAIDS & WHO and same package of services are recommended in Myanmar by National AIDS Program of Myanmar in 2014.⁵⁸ Such comprehensive package of services are mainly implemented by NGO/INGOs in the country while the department of health under the Ministry of Health & Sports mainly provides methadone maintenance therapy and detoxification treatment as well as ART. Related to the problem of HIV transmission among people who inject drugs (PWIDs), harm reduction activities were piloted in Myanmar by 2003 with initiatives of NGO/INGOs and the role of NGO/INGOs and civil society groups was essential in the response of HIV problem among PWID/PWUs. Under Section 6(e) of the amended law, it is mentioned as “.... reducing harms caused by using narcotics and psychotropic substances” and in later chapters, there are no specific indications for services of NGO/INGOs and only mentioned the services of government authorized centers. Currently, falling service uptakes of NGO/INGO services due to increased law enforcement activities and this also reflects contradictory situation between the law and the policy.

⁵⁷ IDPC Drug Policy Guide, 3rd edition.

⁵⁸ National Guidelines: A Core Package for HIV Prevention Amongst Key Populations in Myanmar, National AIDS Control Programme; October, 2014.

- **Capacity building:** Among the suggested activities under the topic of harm reduction, the national drug policy document includes about capacity building of frontline providers including law enforcement officers and health care providers. This suggestion has implications related to the authority of the Central Committee as the committee is under the authority of the Ministry of Home Affairs. As there might be a lot of technical matters to implement this activity, there might be misunderstanding and inability to implement in timely manner as the decision making will be done by the Ministry of Home Affairs. The authority of the Central Committee should be with the Union Government which is more appropriate and suitable to implement such activities.
- **Access to controlled drugs:** As mentioned under comments of Section 28, INCB pointed out the situation in Myanmar and this area also needed to be improved by easing procedures and regulations. Regarding the drug law related to this issue, it also leads to the structural issue regarding with the Central Committee meaning the Ministry busy with the activities to maintain peace and stability of communities and security of people is added with the duties of the Central Committee. While the issue relates mainly to the Ministry of Health and Sports, the decision-making authority lies with the Ministry of Home Affairs. This could be seen as the constraints created by the drug law to implement recommendations of the drug policy.

International Cooperation and Research

Recommended activities of the national drug policy can be found in the table below;

International Cooperation	
• Increase effectiveness of border management, effectiveness of cross-border and transnational criminal justice,	
• Seek and share information and best practices from/with international partners,	
• Seek support international partners including the contribution of financial, technical, diplomatic and knowledge resources	
Research and Analysis	
Understanding situation	National drug use and impacts, supply and production of illicit substances, needs for alternative development, drug related crimes, legislative reviews (repealing death penalty), success stories of PWUD/PWIDs and their potential to contribute to society, traditional medicine and alternative treatment options
Measuring results	Setting up monitoring and evaluation system for drug control activities

Regarding with international cooperation and research, the point to discuss from the aspect of the amended law will be the Central Committee again. If activities under international cooperation are reviewed, they involve various sectors and departments or ministries. Under border management,

there are also immigration matters and custom issues in addition to law enforcement as well as related to criminal justice and rule of law issues. There are also various areas regarding with international and regional partners. Therefore, taking various responsibilities by the Union Government would be more appropriate than by the Ministry of Home Affairs.

With regards to research activities, INCB urged the governments to gather data on prevalence of drug use data and the accessibility and utilization of treatment under the recommendations in 2017 report.⁵⁹ To perform such activities efficiently and effectively also depends on the Central Committee as discussed previously while Myanmar lacked such data and studies. The policy also mentioned about legislative review with regards to repealing death penalty which was already discussed under punishments of the law.

Human rights as cross-cutting issue

Proposed areas related to human rights can be seen in the table below;

Human rights as a cross-cutting issue	
Awareness raising	Promote human right based approach
Programmatic	<ul style="list-style-type: none"> • Promote non-discriminatory access to justice, health care and social service: treat drug users as patients • Promote human right based approach through awareness raising and education • Promote policies and criminal justice sector responses to drug use that respect hum rights, including proportionate legal response mechanisms • Consider repealing the death sentence for drug related offences • Gender sensitive programmes and interventions in line with CEDAW • Ensure tailoring of drug control interventions to vulnerable populations including disabled persons, children, youth and women

Health oriented approach: The policy mentions about ‘non-discriminatory access’ and discrimination can be worsened by stigma. According to the amended drug law, PWUDs are still being punished with severe sentences though the punishment of drug use in the law is removed. As far as such punishments continues, there will be stigma issues with consequent discrimination of PWUDs. This also appears inconsistency of the law and the policy.

The policy also describes to treat PWUDs as patients. In addition, the principle of the national policy also explains to shift to health focused approach. As explained in the comments of the law in earlier chapters, PWUD/PWIDs are experiencing punishments and unproportionate sentences. This also reflects that PWUDs are still treated as criminals rather than health focused approach.

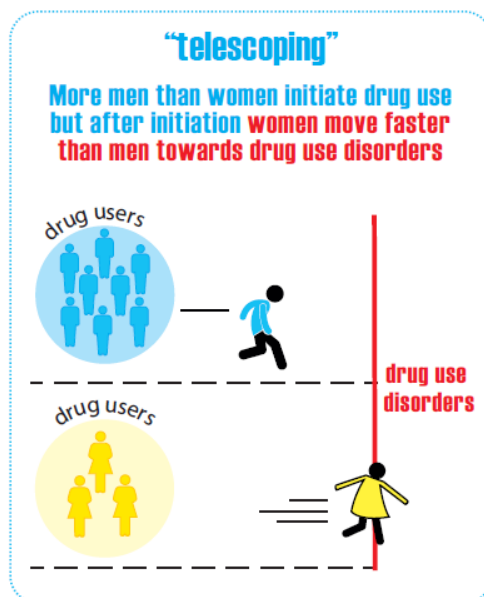
⁵⁹ Recommendation 1, Chapter 4, INCB 2017 Report.

Proportionate legal response mechanisms: Under comments of review session of the drug law, it is already discussed about lacking proportionality of punishments. Setting punishments based on amount/number of drugs rather than based on evidence, background conditions and intent to commit leads to unproportionate sentencing. Some cases are sentenced over five years imprisonment with a small number of stimulant tablets and, if Section 21 of the law added, the sentences may be ten years or more and those reflects disproportionate sentencing. This also contradicts with the law and the policy.

Drug related offences: Regarding with this, the term should be clearly defined in the law. For example, China mentioned clearly about drug related offences as there were 12 types.⁶⁰ In national drug policy of Myanmar, it suggested to review punishments for drug related crimes. It is already discussed about proportionality of sentencing of the law. In fact, there were no data on committing violence, assaults, sexual assaults and robbery etc. under influences of drugs in Myanmar. Though the policy mentioned to review to repeal death sentence, death penalty was still included in the amended law and earlier discussions already included about death sentence. This issue was also an inconsistent one with the law and the policy.

Particular groups: In national drug control policy, it is mentioned to tailor interventions to vulnerable populations including disabled persons, children, youth and women. With regards to such groups, there are no specific provisions in the drug law and this is also a discrepancy between the law and the policy.

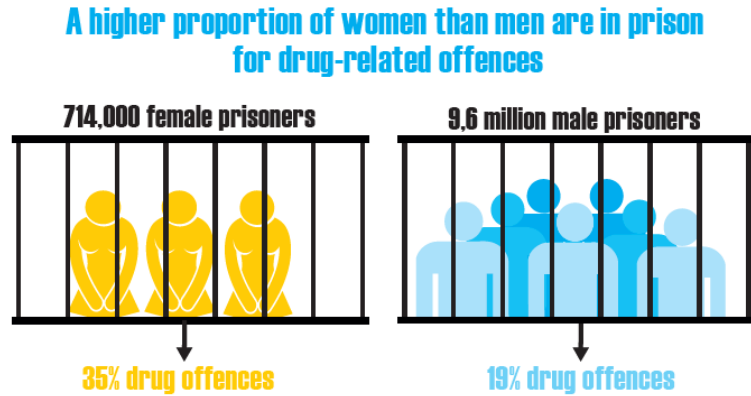
Though more males started using drugs at the onset, females move faster to drug use disorders than males as in below;



⁶⁰ <http://www.china-embassy.org/eng/zt/mzpkz/t36387.htm>

(Source: World Drug Report 2018, UNODC)

Regarding with prisoners, the proportion of females convicted for drug related crimes is higher than the proportion of males in prison across the world which can found as below;



Source: Based on Roy Walmsley, "World prison population list", 11th ed. (Institute for Criminal Policy Research, 2016) and Roy Walmsley, "World female imprisonment list", 4th ed. (Institute for Criminal Policy Research, 2017). Share of prisoners for drug offences based on 50 Member States (UNODC, Special data collections on persons held in prisons (2010-2014), United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS).

(Source: World Drug Report 2018, UNODC)

Regarding with violation of human rights during drug control interventions, IDPC compiled about such situations in Drug Policy Guide and some of the common encounters can be seen as below;

Violations in the name of drug control	Human right	International human rights convention
Use of the death penalty for drug offences Extra-judicial killings by law enforcement agencies	Right to life	Article 4 of the Universal Declaration of Human Rights, 1948 Article 6 of the International Covenant on Civil and Political Rights, 1966
<ul style="list-style-type: none"> Restricted access to essential medicines, including those for pain relief Restricted access to humane and evidence-based drug dependence treatment, including opioid substitution therapy Restricted access to harm reduction services that would prevent overdoses and the transmission of blood-borne infections such as HIV and hepatitis C 	Right to the highest attainable standard of physical and mental health	Constitution of the World Health Organisation, 1946 Article 25 of the Universal Declaration of Human Rights, 1948 Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966

Violations in the name of drug control	Human right	International human rights convention
<ul style="list-style-type: none"> • Targeting of people who use drugs by law enforcement officers to meet arrest quotas • Arbitrary detention of people who use drugs • Police harassment and sexual abuse of people who use drugs 	Right not to be subjected to arbitrary arrest and detention	Article 9 of the Universal Declaration of Human Rights, 1948 Article 9 of the International Covenant on Civil and Political Rights, 1966
<ul style="list-style-type: none"> • Denial of parole, pardon, amnesty or alternatives to incarceration for people convicted of a drug crime • Use of pre-trial detention, mandatory sentencing and disproportionate penalties against people involved in minor drug offences • Referral to compulsory centres for drug users without due process or trial 	Right to a fair trial	Article 10 of the Universal Declaration of Human Rights, 1948 Article 6 of the European Convention of Human Rights, 1950
<ul style="list-style-type: none"> • Abuses in compulsory centres for drug users • Use of corporal punishment for drug offenders, including caning, flogging, lashing and whipping 	Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment	Article 5 of the Universal Declaration of Human Rights, 1948 Article 7 of the International Covenant on Civil and Political Rights, 1966 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
Use of forced labour in the name of drug treatment	Right not to be held in slavery	Article 4 of the Universal Declaration of Human Rights, 1948 Article 8 of the International Covenant on Civil and Political Rights, 1966
Implementation of forced crop eradication campaigns, leaving many farmers with no means of subsistence	Social and economic rights	Article 22 (and next) of the Universal Declaration of Human Rights, 1948 Articles 6 and 7 (and next) of the International Covenant on Economic, Social and Cultural Rights, 1966

Violations in the name of drug control	Human right	International human rights convention
<ul style="list-style-type: none"> • Practice of stopping and inspecting people, including school children, suspected of carrying drugs • Forced urine testing • Practice of including people who use drugs in official government registries • Sharing of confidential medical information of a person caught for drug use or undergoing drug dependence treatment with the police 	Right to privacy	Article 12 of the Universal Declaration on Human Rights, 1948

Perception of people and the problem of drugs

While meeting with various people during this review, there are some issues noticed and some of them are discussed below;

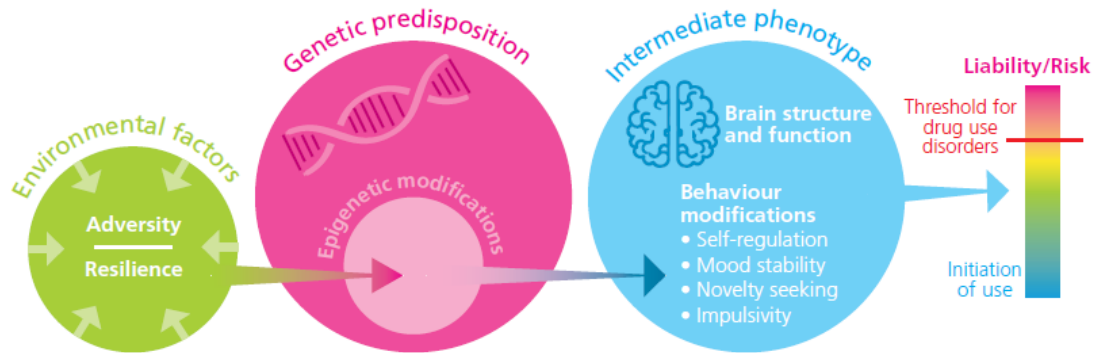
- **Mindsets of criminalization:** Many people assume using drugs is criminalized behavior and should punish with imprisonments. This is related to the criminalized drug laws with many years of experience. In Myanmar, the 1974 Narcotics and Dangerous Drugs Law punish people who use drugs and same as with the 1993 Narcotic Drugs and Psychotropic Substances Law. As the practice of punishment passed decades of periods and the families of PWUDs, law enforcement staffs, law enforcement staffs, staffs from criminal justice systems and law makers views the drug use problem should be punished and incarcerated.

In fact, people should look back their views and think critically. In pragmatic point of view, it should be evaluated whether such punishment approaches work or not. If such approach is good, most of PWUDs will stop using drugs without relapse and the number of PWUDs will also be decreased. In reality, it is obvious that whether the number of PWUDs reduced or not, and whether the lives of PWUDs improved or not by the growing problem of drugs.

International community also approached similarly in the past but along with pragmatic approaches, scientific studies and finding evidences changed the understanding of the drug use problem. Therefore, it is mentioned that drug dependence is a health problem and it is chronic in nature which needs continuum of cares such as after care, rehabilitation and reintegration services.

Various patterns of drug use can occur based on genetic predispositions, environmental situations and reactions and it can be seen in UNODC report as in the picture below;

FIG. 8 | Factors that determine different pathways to substance use and substances use disorders

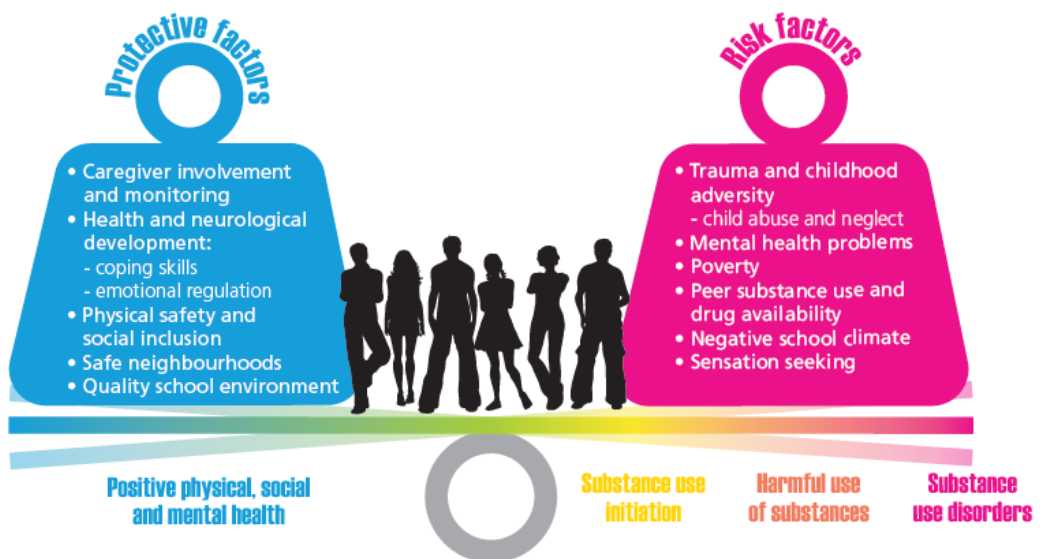


(Source: World Drug Report 2018, UNODC)

- Understanding of the nature of the problem:** In the past, the worst problem related to drugs was heroin and later, widespread availability of stimulant tablets compounded the situation in recent years in Myanmar. In addition, there were also uses of marijuana, tranquilizers and glue sniffing among some groups. During this situation, the drug law was amended and removed the punishment for using drugs which could be punished from three to five years. Some people did not satisfy such amendment and they thought this would fuel drug use as drugs were available easily.

In such situation, people should think about why people are using drugs. To summarize, if the risk factors more exceeds protective factors, the people will use drugs. Regarding with this, UNODC explained about it in its world drug report as below;

Protective factors and risk factors for substance use



(Source: World Drug Report 2018, UNODC)

In above picture, the situations forming protective factors and those forming risk factors of drug use can be seen. There involve physical and mental situations as well as external conditions related to family, peers, neighborhoods, school environments and availability of drugs. In other words, every person relevant to such situations are involved and responsible for drug use. However, the focus of attention of most the people fall upon the people who use drugs and consider punishment as the main response. Such incorrect approaches, in fact, may invariably worsen the situation.

The need to differentiate between decriminalization and legalization: As the 1993 drug law is amended, the punishments for imprisonment for using drugs is no longer included in the amended law. Many people raise concerns that people can use drug as much as they like without fear of being arrested and the number of PWUDs will be increased. In fact, such assumptions are based on not being able to distinguish between decriminalization and legalization of drug use. As decriminalization is not legalization, it does not mean that people are allowed to use drugs legally. Instead of criminal sanctions, administrative sanctions combined harm reduction services, treatments and rehabilitation services can be provided.

“When you change the way you look at things, the things you look at change.”

(Dr. Wayne Dyer)

Recommendations

1. The new drug law should be rewritten appropriately with current situations and in accordance with the National Drug Control Policy –
 - the amended drug law (2018) is merely based on the 1993 drug law and there are total of 32 areas (removals/additions/revisions). In general, a new law should be drafted instead of amending the existing old one if such amendments exceed the one third of the existing law as per legal drafting practices.⁶¹
 - Though the national drug policy aims to approach with health oriented, evidence-based manner and in line with human rights standards, the amended law is still punitive and not in conformity with human rights. Moreover, such a restrictive law may impede reaching to sustainable development goals of the country.
 - According to the Rules of the Union Attorney General, Section 21 mentioned about the basic principles on scrutinizing bills. Under Section 21(d), it provides as “to scrutinize whether the bill is consistent with policies and aims laid down by the Government”. Therefore, drafting a bill which is consistent with national policy is in conformity with stipulations and more necessary if there are inconsistencies between the law and the policy.⁶²
 - Under Section 3(a) of the amended drug law, there includes the usage with regards to danger of drugs such as ‘degeneration of mankind’. Such assumptive usages should not be included as such expressions might give rise to stigma and discrimination. For example, there was an educational message at early periods of HIV/AIDS interventions in Myanmar as “*ku yar nathti say ma shi* (means ‘there is no cure for AIDS’ in English)”. In its sense, it sounded like those with HIV infections were people with no curable disease but communicable to others and such message might worsen the stigma and discrimination of affected persons. Therefore, health staffs tried to avoid using such educational messages later. Similarly, if the drugs are referred as degenerating mankind, people who use drugs might be viewed as those involving in the matters that would degenerate mankind resulting compounded stigma and discrimination.
2. The new law should be drafted based on the principle of ‘balanced approach’ which was mentioned in the report of high-level segment meeting of CND held in 2009.⁶³ That meeting released a political declaration and also included to cooperate among member states to solve

⁶¹ Page 143. The art of Drafting Law, U San Lwin, Supreme Court Advocate, 2012.

⁶² Rules of the Union Attorney General, Notification 8/2016 (7 January 2016)

⁶³ Political Declaration and Plan of Action on International cooperation towards an Integrated and Balanced Strategy to Counter World Drug Problem, Commission on Narcotic Drugs, 11-12 March 2009

the world drug problem. The declaration mentioned to work with integrated and balanced approach with regards to interventions of supply reduction and demand reduction measures under the principle of shared responsibility. Therefore, the law should also reflect this principle and the provisions should reflect it. On one hand, the provisions of the law should focus to deter illicit drugs and to be able to take action effectively for those who should be punished while on the other hand, demand reduction and harm reduction measures should be health oriented, evidence based and supportive from the provisions of the law.

3. In the new drug law, the responsibility of the Central Committee or main body of drug control should be lies with the Union Government rather than putting it over a Ministry –
 - Since the enactment of the 1993 Narcotic Drugs and Psychotropic Substances Law, the Ministry of Home Affairs took the main responsibility of the Central Committee and the same responsibility continues with the amend drug law (2018). In fact, the Ministry of Home Affairs (MoHA) is mandated for security of the State, prevalence of law and order, community peace and tranquility and to carry out social rendering services and burdened in itself. Adding the responsibilities of drug control upon the MoHA also means putting extra burden for the ministry and rather, it should involve mainly for the law enforcement operations. Similar hierarchic structure existed at wards/village tract levels and the findings on ward/village tract level drug control committees by a project implemented by JAG also reflected situations at grassroot level that there were limitations to perform their roles and responsibilities effectively. The recommendations of JAG also included that local drug control committees should be formed separately in order to perform effectively.
 - Drug control measures for the country involves various ministries of the Government. If main duties and responsibilities lies with a single ministry, there may be constraints to coordinate among parallel ministries as the leading role lies with a ministry among same structural levels. Therefore, taking the main responsibility by the Union Government will be more appropriate for the workflow which will be distributed among respective ministries.
 - As discussed during the session of review of the law, forming the Central Committee with a separate structure/department similar to examples in some countries would be more appropriate with the growing drug problem. Similar local example could also be found in the national natural disaster management committee and the law provided a Vice President to chair the committee.⁶⁴
4. As mentioned in the national drug control policy, the transition of the law to decriminalization should also directed to reduce stigma and discrimination upon PWUD/PWIDs including reintegration to the society. Application of administrative sanctions instead of criminal penalties,

⁶⁴ Natural Disaster Management Law (31 July 2013)

possession for personal use, not allowing to submit drug use paraphernalia as evidence along with necessary medical treatments, harm reduction services, rehabilitation, after care and reintegration services could be provided.

5. When the new drug law is drafted, proportionality of offences and punishments should be paid attention. Punishments should be based on background situation, evidences and intent of committing crimes rather than focusing mainly on amount/quantity of drugs. Punishments for offences of minor nature could be considered to apply as per non-custodial measures (Tokyo Rules).⁶⁵
6. The provisions of the law with regards to supply reduction should take into account of alternative development to prevent consequences of law enforcement actions upon development attempts. The national drug control policy also describes to promote alternative development activities.
7. The provisions of the law should be supportive for prevention, voluntary treatment, rehabilitation and reintegration which should be in conformity with description in the drug policy.

Regarding with rehabilitation, this area is also in need to expand services and strengthening. Compared to availability of drug treatment sector, resources and activities are insufficient with regards to rehabilitation sector and still needs to be strengthened.

Therefore, there should be provisions for rehabilitation sector to implement measures extensively. There should be various models of rehabilitation services such as center-based services as well as community-based services. In addition, there are also services for aftercare and social reintegration and therefore, it also needs to take into account of not to have limitations in the provisions of the new drug law in order to implement such measures. As there may be various requirements for people who use drugs such as occupational opportunities, educational needs and homeless people etc. depending on developmental status of country, there should not be limitations in the law to work with a variety of organizations.

As the drug use problem in the country is huge, the arrangements for response should accommodate such situation. The provisions of the law should allow to provide various service options, participation of various organizations such NGOs, CSOs, private sectors and communities. This would also be in conformity with 'a whole-of-society approach' mentioned in the basic principles of national drug control policy.

8. Harm reduction is pragmatic, humane and cost - effective approach and there are thousands evidences on its effectiveness. Myanmar national drug control policy also mentioned harm reduction and there are also harm reduction programmes across the country, mainly in upper Myanmar areas. The new law should also include provisions supportive for harm reduction as the

⁶⁵ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

main players of harm reduction are NGO/INGOs. In the existing drug law, the provisions focused to centers of government services or government authored centers only. The new law should be directed to allow participation of various service provides in addition to the government services so that it would be in conformity with actual situation on ground as well as be aligned with national drug policy which encouraged comprehensive and holistic approaches.

9. The provisions of the law should allow to be able to access controlled drugs easily and adequately as well as during emergency situations. In addition, it is of vital importance to prevent treatment interruptions for incarcerated people or those in closed settings. Common encounters related to this was experiencing treatment interruptions of HIV, TB, OST and those with needing continuation of treatment when they were arrested for some reason. On the other hand, such treatment gaps may lead to drug resistant problems giving rise to public health threats and the provisions in the new law should aim to prevent such situations.
10. Particular groups such as students, females and those with disabilities should also be taken into account when new drug law has to be drafted. National drug policy document also mentioned about such particular groups and described to consider alternatives to imprisonment as well.
11. Some people were accused of the provisions in the law and after attempts of appeal or decisions at the court, some were released as they were found to be innocent or irrelevant to the offence but those people suffered and there were losses for them. Regarding with such cases, the provisions of the law should include to lessen or prevent such situations.
12. The provisions of the new drug law should also pay attention to be in accord with the principles of legality. This recommendation is meant for accurate and to be in accordance with fair trial standards.⁶⁶ Under Section 25 of the current drug law, it includes an order relating to someone 'who habitually commits or is notorious for committing' and it may lead to be on a bond or imprisonment of 1-3 years which PWUDs are also in potential.
13. The new drug law should also pay attention to be in accordance with human rights provisions which might also be in conformity with UN Conventions.

In current drug law, collecting the list of PWUDs by local authorities, informing to police about drug use, channeling to compulsory treatment and taking action with notoriousness of committing are affecting fundamental rights of the people.

14. In the provisions of the new law, awareness raising about drug issues and improved understanding on law and policy should be included as old perceptions and criminalizing mindsets may impede effective implementation of the law and policy.

⁶⁶ Fair Trial Guidebook for Law Officers, Union General Attorney's Office, February 2018. (Page 22. Protection from Arbitrary Detention; ('no crime nor punishment without law')

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Annex: Comparison of the 1993 Drug law and the amended drug law of 2018

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
Enactment	The State Law and Order Restoration Council Law No.1/93 Narcotic Drugs and Psychotropic Substances Law (27 th January, 1993)	Law amending the Narcotic Drugs and Psychotropic Substances Law (Pyidaungsu Hluttaw Law No.6/2018) (2018 February 14)
Chapter I	Title and Definition	No changes
1.	This law shall be called the Narcotic Drugs and Psychotropic Substances Law	This law shall be called the Law amending the Narcotic Drugs and Psychotropic Substances Law.
2.	The following expressions contained in this Law shall have the meanings given hereunder: - (a) Narcotic Drug means any of the following: - (i) Poppy plant, coca plant, cannabis plant or any kind of plant which the Ministry of Health has, by notification declared to be a narcotic drug, substances and drugs derived or extracted from any such plant; (ii) Drugs which the Ministry of Health has, by notification declared to be a narcotic drug, and substances containing any type of drug; (b) Psychotropic Substance means drugs which the Ministry of Health has, by notification declared to be a psychotropic substance; (c) Production means production designed to transform poppy plant, coca plant, cannabis plant and any kind of plant which the Ministry of Health has, by notification declared to be a narcotic drug, into a narcotic drug or psychotropic substance; processing, preparation and manufacture by a mixture of the substance so produced with chemicals or with any other type of substance;	The following expressions contained in this Law shall have the meanings given hereunder: - (a) Narcotic Drug means any of the following: - (i) Poppy plant, coca plant, cannabis plant or any kind of plant which the Ministry of Health and Sports has, by notification declared to be a narcotic drug, substances and drugs derived or extracted from any such plant; (ii) Drugs which the Ministry of Health and Sports has, by notification declared to be a narcotic drug, and substances containing any type of drug; (b) Psychotropic Substance means drugs which the Ministry of Health and Sports has, by notification declared to be a psychotropic substance; (c) Production means production into a narcotic drug or psychotropic substance via processing, preparation and manufacture by a mixture of the substance, so produced with chemicals or with any other type of substance;

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>(d) Possession means the holding of a narcotic drug or psychotropic substance by anyone on his person, in his residence, premises, vehicle/ vessel and property. This expression also includes holding or causing to be held under the arrangement of such person;</p> <p>(e) Drug User means a person who uses narcotic drug or psychotropic substance without permission in accordance with the law;</p> <p>(f) Central Committee means the Central Committee for Drug Abuse Control formed by the Government under this Law.</p>	<p>(d) Possession means the holding of a narcotic drug or psychotropic substance by anyone on his person, in his residence, premises, vehicle/ vessel and property. This expression also includes holding or causing to be held under the arrangement of such person;</p> <p>(e) Drug User means a person who uses narcotic drug or psychotropic substance without permission in accordance with the law;</p> <p>(f) Central Committee means the Central Committee for Drug Abuse Control formed by the Government under this Law.</p> <p>(g) The Government means the Republic of the Union of Myanmar.</p> <p>(h) Imposing social work means performing unpaid volunteer work wearing specified uniform and in front of a supervisor, and doing activities such as growing trees and flowers, cleaning, maintenance of roads and bridges, benevolent activities together with social organizations and activities of similar nature at public places in order to benefit people as per the sentence imposed by the court.</p>
Chapter II	Aims	Aims
3.	<p>The aims of this Law are as follows: -</p> <p>(a) to prevent the danger of narcotic drugs and psychotropic substances, which can cause degeneration of mankind, as a national responsibility;</p> <p>(b) to implement the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;</p> <p>(c) to carry out more effectively measures for imparting knowledge and education on the danger of narcotic drugs and psychotropic substances and for medical treatment and rehabilitation of drug users;</p> <p>(d) to impose more effective penalties on offenders in respect of offences relating to narcotic drugs and psychotropic substances;</p>	<p>The aims of this Law are as follows: -</p> <p>(a) to prevent the danger of narcotic drugs and psychotropic substances, which can cause degeneration of mankind, as a national responsibility;</p> <p>(b) to implement the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which Myanmar signed agreement;</p> <p>(c) to carry out more effectively measures for imparting knowledge and education on the danger of narcotic drugs and psychotropic substances and for medical treatment and rehabilitation of drug users;</p> <p>(d) to impose more effective penalties on offenders in respect of offences relating to narcotic drugs and psychotropic substances;</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	(e) to cooperate with the States Parties to the United Nations Conventions, international and regional organizations in respect of the prevention of the danger of narcotic drugs and psychotropic substances.	(e) to lay down local framework in accordance with United Nations narcotics and psychotropic substance control conventions and to collaborate with other countries, member States of United Nations, international organizations, regional organizations, local non-government organizations and community people in order to prevent the use of narcotics and psychotropic substances, illicit trafficking, transportations and production; (f) to increase the momentum of prevention, protection and fight against narcotic and psychotropic substances by utilizing regional and international cooperation processes; (g) to solve related socioeconomic problems occurred due to illicit production and trafficking of narcotic drugs and psychotropic substances by growing opium substitution crops, laying down drug control policies, formulate and implement sustainable development processes, short term and long-term plans and goals.
Chapter III	Formation of the Central Committee and the Functions and Duties of the Central Committee	Formation of the Central Committee and the Functions and Duties of the Central Committee
4.	The Government shall form the Central Committee for Drug Abuse Control (CCDAC).	The Government shall form the Central Committee for Drug Abuse Control (CCDAC).
5.	In forming the Central Committee: - (a) it shall consist of the Minister of the Ministry of Home Affairs as Chairman and persons from the relevant Ministries, Government departments and organizations as members; (b) the Vice – Chairman, Secretary and Joint Secretary of the Central Committee shall be determined.	In forming the Central Committee: - (a) it shall consist of the Union Minister of the Ministry of Home Affairs as Chairman and persons from the relevant Ministries, Government departments and organizations, experts from respective subjects as members; (b) the Vice – Chairman, Secretary and Joint Secretary of the Central Committee shall be determined.
6.	The functions and duties of the Central Committee are as follows: - (a) laying down the policies in respect of the prevention of the danger of narcotic drugs and psychotropic substances and coordinating with the relevant boards of authority, Ministries and non-Governmental organizations;	The functions and duties of the Central Committee are as follows: - (a) laying down the policies in respect of the prevention of the danger of narcotic drugs and psychotropic substances, coordinating and implementing with the relevant Union Ministries and organizations at Union level, Region or State Governments, the Nay Pyi Taw Council, Leading Bodies of the Self-Administered Divisions and the Self-Administered Zones and non-governmental organizations;

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>(b) being able to cooperate with States Parties to the United Nations Convention, International and regional organizations in respect of the prevention of the danger of narcotic drugs and psychotropic substances;</p> <p>(c) determining and coordinating as may be necessary the functions and duties of the working committees, Sectors and regional committees in order to carry out successfully the functions and duties of the Central Committee;</p> <p>(d) laying down and carrying out programmes in respect of reclamation of land, allotment of land, contribution of materials and aids and rendering of assistance as may be necessary, in order to carry out substitute crops cultivation and livestock breeding;</p> <p>(e) laying down and carrying out programmes in respect of medical treatment of drug users, imparting knowledge and educative incitement;</p> <p>(f) organizing by laying down plans and rendering suitable assistance in respect of rehabilitation of drug users and persons serving sentences; causing to be taught means of livelihood to enable them to resume their normal lives;</p> <p>(g) scrutinizing, supervising and guiding in order to ascertain whether or not the programmes laid down by the Central Committee are systematic and successful;</p> <p>(h) destroying or causing to be destroyed narcotic drugs and psychotropic substances in accordance with the stipulation;</p> <p>(i) directing as may be necessary to seize as exhibits immovable property involved in an offence under this Law, money, property and benefits derived from the transfer and conversion of property involved in the offence;</p> <p>(j) directing the attachment and sealing of immovable property involved in the offence, which have been seized as exhibits under this Law; directing the removal of the attachment;</p>	<p>(b) being able to cooperate with States Parties to the United Nations Convention, International and regional organizations in respect of the prevention of the danger of narcotic drugs and psychotropic substances;</p> <p>(c) determining and coordinating as may be necessary the functions and duties of the working committees, Sectors and regional committees in order to carry out successfully the functions and duties of the Central Committee;</p> <p>(d) laying down and carrying out programmes in respect of reclamation of land, allotment of land, contribution of materials and aids and rendering of assistance as may be necessary, in order to carry out substitute crops cultivation and livestock breeding;</p> <p>(e) Collecting the list of drug users and formulating programmes in respect of providing medical treatment, imparting knowledge and educative incitement and reducing harms caused by using narcotics and psychotropic substances;</p> <p>(f) laying down plans in respect of rehabilitation of drug users, mobilizing, counselling, rendering appropriate supports, rebuilding physically and mentally to be able to resume well-being social life and teaching of means of livelihood;</p> <p>(g) scrutinizing, supervising and guiding in order to ascertain whether or not the programmes laid down by the Central Committee are systematic and successful;</p> <p>(h) destroying or causing to be destroyed narcotic drugs and psychotropic substances in accordance with the stipulation;</p> <p>(i) removed;</p> <p>(j) removed;</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>disposing of as may be necessary in accordance with the final order of the relevant Court in the offence prosecuted;</p> <p>(k) directing by passing an order responsible persons of the relevant bank and financial institutions to allow relevant persons authorized to search and seize to inspect financial records relating to an offence under this Law, to make copies thereof and to seize the same as exhibits;</p> <p>(l) disposing of as may be necessary ownerless narcotic drugs and psychotropic substances which have been seized as exhibits;</p> <p>(m) taking such measures as may be necessary for giving reward in respect of an offence against which action has been taken under this Law, with the approval of the Government;</p> <p>(n) reporting from time to time to the Government on the progress of the work of prevention of the danger of narcotic drugs and psychotropic substances;</p> <p>(o) carrying out the functions and duties as are assigned by the Government from time to time.</p>	<p>(k) directing by passing an order responsible persons of the relevant bank and financial institutions to allow relevant persons authorized to search and seize to inspect financial records relating to an offence under this Law, to make copies thereof and to seize the same as exhibits;</p> <p>(l) disposing of as may be necessary ownerless narcotic drugs and psychotropic substances which have been seized as exhibits;</p> <p>(m) taking such measures as may be necessary for giving reward in respect of an offence against which action has been taken under this Law, with the approval of the Government;</p> <p>(n) reporting from time to time to the Government on the progress of the work of prevention of the danger of narcotic drugs and psychotropic substances;</p> <p>(o) carrying out the functions and duties as are assigned by the Government from time to time;</p> <p>(p) taking measures in accordance with the Extradition Law if any matters arise between Myanmar and foreign countries regarding with extradition in respect of offenders of production, possession, transportation, distribution and sale of narcotic drugs and psychotropic substances;</p> <p>(q) Supervising and providing guidance in respect of imparting knowledge effectively in order to achieve public awareness on ill consequences of using of narcotics and psychotropic substances;</p> <p>(r) supervising and providing guidance on the work of prevention of the danger of narcotic drugs and psychotropic substances by providing vocational training classes, improving capacity in order to achieve healthy and wealthy social lives, and encouraging collaboration and participation of social organizations;</p> <p>(s) supervising and providing guidance to organize awareness raising activities widely at schools, outside of schools and at workplaces on ill</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
		<p>consequences of using narcotic drugs and psychotropic substances through social medias and other news medias;</p> <p>(t) supervising and providing guidance to have effective cooperation and collaboration among those responsible for public health, Education and those responsible to implement the law in respect of activities of prevention of the danger of narcotic drugs and psychotropic substances;</p> <p>(u) explaining to the public on the work of prevention and control of the danger of narcotic drugs and psychotropic substances at least once in a year;</p>
Chapter IV	Formation of Working Committees, Sectors and Regional Committees	Formation of Working Committees, Sectors and Regional Committees
7.	<p>The Central Committee shall form the following Working Committees and Sectors and shall determine the functions and duties thereof respectively: -</p> <p>(a) Law Enforcement Supervisory Committee;</p> <p>(b) Law Enforcement Sector;</p> <p>(c) Crop Substitution Sector;</p> <p>(d) Livestock Breeding Sector;</p> <p>(e) Medical Treatment Sector;</p> <p>(f) Rehabilitation Sector;</p> <p>(g) Sector for Education the students and youth;</p> <p>(h) Mass Media Information Sector;</p> <p>(i) Administrative Committee for Disposal of Narcotic Drugs and psychotropic substances seized;</p> <p>(j) International Relation Sector;</p> <p>(k) Other Working committees and Sectors as may be required.</p>	<p>The Central Committee shall form the following Working Committees and Sectors and shall determine the functions and duties thereof respectively: -</p> <p>(a) Law Enforcement and management Committee;</p> <p>(b) Alternative development implementation management committee</p> <p>(c) Crop Substitution Sector;</p> <p>(d) Livestock Breeding Sector;</p> <p>(e) Medical Treatment Sector;</p> <p>(f) Rehabilitation Sector;</p> <p>(g) Sector for Education the students and youth;</p> <p>(h) Mass Media Information Sector;</p> <p>(i) Controlled Chemicals Supervisory Committee;</p> <p>(j) International Relation Sector;</p> <p>(k) Social Work Supervisory Committee</p>
8.	<p>The Central Committee shall form the following Regional Committees and shall determine the functions and duties thereof respectively; -</p> <p>(a) State/Division, District, Township, Ward and Village Tract Committees for Drug Abuse Control;</p> <p>(b) Anti-narcotic Task Forces.</p>	<p>The Central Committee shall form the following Regional Committees and shall determine the functions and duties thereof respectively; -</p> <p>(a) Region/State, Union Territory, the Self-Administered Division or the Self-Administered Zone, District, Township, Ward and Village Tract Committees for Drug Abuse Control;</p> <p>(b) Anti-narcotic Task Forces.</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
Chapter V	Registration Medical Treatment and Deregistration of a Drug User	Medical Treatment and Rehabilitation of a Drug User
9.	<p>(a) A drug user shall register at the place prescribed by the Ministry of Health or at a medical center recognized by the Government for this purpose, to take medical treatment;</p> <p>(b) The Ministry of Health shall lay down and carry out programmes as may be necessary in respect of medical treatment for a registered drug user;</p> <p>(c) A registered drug user undergoing medical treatment shall abide by the directives issued by the Ministry of Health.</p>	<p>(a) A drug user shall take medical treatment at the place prescribed by the Ministry of Health and Sports or at a medical center recognized by the Government for this purpose;</p> <p>(b) The Ministry of Health and Sports shall make necessary arrangements to refer to relevant care and support center after completion of medical treatment for a drug user.</p> <p>(c) A drug user undergoing medical treatment shall abide by the directives issued by the Ministry of Health and Sports;</p> <p>(d) The police personnel shall refer a person who is suspected of using drugs for initial medical examination and if he is found using drugs, the police personnel shall refer immediately for medical treatment to a place prescribed by the Ministry of Health and Sports or to a nearest medical center recognized by the Government for this purpose;</p> <p>(e) After scrutinizing the person who failed to do initial medical examination and to receive medical treatment, the relevant police officer shall apply to the relevant court in order to execute a bond if necessary;</p> <p>(f) on the application made under the sub-section (e), the court may issue a bond as stipulated in order to have medical examination and medical treatment;</p> <p>(g) if a drug user failed to make a bond as per sub-section (f) or violates a discipline in the bond, the court shall lay down an order for medical treatment and rehabilitation services to a relevant care and support center opened for this purpose or a rehabilitation center for the period of six months;</p> <p>(h) The Ministry of Health and Sports shall take the responsibility for necessary medical care for drug users who are sent to a relevant care and support center or a rehabilitation center during the period of rehabilitation;</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
		(i) Anybody may inform to Myanmar Police Force in respect of a person on using drugs or suspected of using drugs.
10.	Deregistration of a drug user shall be carried out in accordance with the stipulations.	Section - 10 is removed.
Chapter VI	Rehabilitation	Rehabilitation
11.	The Ministry of Social Welfare, Relief and Resettlement shall, in respect of the rehabilitation and after-care of drug users carry out the following measures in accordance with the stipulation: - (a) rendering assistance and protection as may be necessary to persons undergoing medical treatment and to the families dependent on them, (b) providing for rehabilitation, teaching of means of livelihood as may be necessary, resettlement and after-care to enable persons who have undergone medical treatment to resume their normal lives; (c) conducting expertise training courses for the relevant persons in order to implement systematically and effectively work of rehabilitation of drug users.	The Ministry of Social Welfare, Relief and Resettlement shall, in respect of the care and support and rehabilitation of drug users, carry out the following measures in accordance with the stipulation: - (a) rendering assistance and protection as much as possible to persons undergoing medical treatment and to the families dependent on them, (b) providing for rehabilitation, teaching of means of livelihood as may be necessary, resettlement and after-care to enable persons who have undergone medical treatment to resume their normal lives; (c) conducting expertise training courses for the relevant persons in order to implement systematically and effectively work of rehabilitation of drug users.
11-A	-	While carrying out activities on prevention, treatment, care, rehabilitation and re-integration to society, the Ministry of Home Affairs, the Ministry of Health and Sports and the Ministry of Social Welfare, Relief and Resettlement that implements the provisions of this law shall take into account of existing laws and to be in conformity with aims and provisions of United Nations Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to which Myanmar has signed to agree.
12.	The Ministry of Home Affairs shall provide for the teaching of means of livelihood as may be necessary to persons serving sentences under section 15, in accordance with the stipulations.	The Ministry of Home Affairs and the Ministry of Social Welfare, Relief and Resettlement, if necessary, may refer the drug user being imposed to perform social work activities as per section 15 to rehabilitation center again or teaching vocational training subjects as stipulated.
Chapter VII	Search, Arrest and Seizure of Exhibits	Search, Arrest and Seizure of Exhibits
13.	Action taken under this Law in respect of the following matters shall be done in accordance with the rules: -	Action taken under this Law in respect of the following matters shall be done in accordance with the rules: -

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>(a) search and seizure of narcotic drug, psychotropic substance, money, property and implements involved in an offence and arrest of the offender;</p> <p>(b) search and seizure of money, property and benefits derived from transfer, conversion and transformation of property involved in an offence;</p> <p>(c) inspection and making copies of financial records kept at the bank and financial institutions;</p> <p>(d) laboratory analysis in respect of narcotic drugs and psychotropic substances.</p>	<p>(a) search and seizure of narcotic drug, psychotropic substance, money, property and implements involved in an offence and arrest of the offender;</p> <p>(b) search and seizure of money, property and benefits derived from transfer, conversion and transformation of property involved in an offence;</p> <p>(c) inspection and making copies of financial records kept at the bank and financial institutions;</p> <p>(d) laboratory analysis in respect of narcotic drugs and psychotropic substances;</p> <p>(e) Inspection and copying relevant records of an offence from telecommunication services.</p>
14.	<p>Notwithstanding anything contained in any existing law, responsible person from the bank and financial institutions shall, on receipt of an order issued by the Central Committee in respect of money and property involved in an offence under this Law: -</p> <p>(a) permit the inspection of financial records and making copies thereof and seizure of the exhibits;</p> <p>(b) pending the conclusion of a case in which action is being taken, take custody of the financial records, money and property involved in the offence, in accordance with the stipulations, without returning of transferring the same to anyone.</p>	<p>Notwithstanding anything contained in any existing law, responsible person from the bank and financial institutions shall, on receipt of an order issued by the Central Committee in respect of money and property involved in an offence under this Law: -</p> <p>(a) permit the inspection of financial records and making copies thereof and seizure of the exhibits;</p> <p>(b) pending the conclusion of a case in which action is being taken, take custody of the financial records, money and property involved in the offence, in accordance with the stipulations, without returning of transferring the same to anyone.</p>
14-A	-	<p>Notwithstanding anything contained in any existing laws, the responsible person of telecommunication services must allow inspection and creating copies in respect of data records related to an offence if the person receives the order issued by Central Committee.</p>
Chapter VII-A	-	Imposing social work
15	-	<p>As per section 9, sub-section (g), if a drug user is found to be guilty of violating instructions and rules of the care and support center opened for this purpose or a rehabilitation center, the drug user shall perform social work such as growing trees and flowers, cleaning, maintenance of roads and bridges, performing social work in collaboration with social groups under a supervisor, wearing uniform which is not discriminatory, and shall work as unpaid volunteer for 2 hours per day with total hours at the minimum of 240 hours to the maximum of 360 hours.</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
Chapter VIII	Offences and Penalties	Offences and Penalties
15.	A drug user who fails to register at the place prescribed by the Ministry of Health of at a medical center recognized by the Government for this purpose or who fails to abide by the directives issued by the Ministry of Health for medical treatment shall be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 5 years.	This was removed.
16.	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) cultivation of poppy plant, coca plant, cannabis plant of any kind of plant which the Ministry of Health has, by notification declared to be a narcotic drug;</p> <p>(b) possession, transportation, distribution and sale without permission under this Law of materials, implements and chemicals which the relevant Ministry has, by notification declared to be materials used in the production of a narcotic drug or psychotropic substance;</p> <p>(c) possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance;</p> <p>(d) transfer of a narcotic drug or psychotropic substance by a person who possesses the same with permission in accordance with law to a person who is not permitted;</p> <p>(e) inciting, inducing, deceiving, coercing, using undue influence of any other means to cause abuse of a narcotic drug of psychotropic substance;</p> <p>(f) misappropriating, causing to disappear, destroying, removing or transferring any property which has been seized or attached under this Law.</p>	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) cultivation of poppy plant, coca plant, cannabis plant of any kind of plant which the Ministry of Health has, by notification declared to be a narcotic drug;</p> <p>(b) possession, transportation, distribution and sale without permission under this Law which the relevant Ministry has, by notification declared to be chemical or related materials used in the production of a narcotic drug or psychotropic substance;</p> <p>(c) possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance;</p> <p>(d) transfer of a narcotic drug or psychotropic substance by a person who possesses the same with permission in accordance with law to a person who is not permitted;</p> <p>(e) inciting, inducing, deceiving, coercing, using undue influence of any other means to cause abuse of a narcotic drug of psychotropic substance;</p> <p>(f) misappropriating, causing to disappear, destroying, removing or transferring any property which has been seized or attached under this Law.</p>
17.	A responsible person from the bank or financial institutions, who is guilty of any of the following acts in respect of money, property and befits involved in an offence under this Law shall, on conviction be punished with imprisonment for a term which may	A responsible person from the bank or financial institutions, who is guilty of any of the following acts in respect of money, property and befits involved in an offence under this Law shall, on conviction be punished with imprisonment for a term which may

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) transferring of accounts, causing to disappear, altering and amending relevant financial records so that action may not be taken against the offender;</p> <p>(b) refusing to allow a person authorized to search and seize in accordance with an order passed by the Central Committee under section 6 subsection (k) to inspect the relevant financial records, make copies thereof and seize the exhibits;</p> <p>(c) returning and transferring without the permission of the Central Committee of the relevant Court financial records relating to the offence and money, property and benefits seized as exhibits.</p>	<p>extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) transferring of accounts, causing to disappear, altering and amending relevant financial records so that action may not be taken against the offender;</p> <p>(b) refusing to allow a person authorized to search and seize in accordance with an order passed by the Central Committee under section 6 subsection (k) to inspect the relevant financial records, make copies thereof and seize the exhibits;</p> <p>(c) returning and transferring without the permission of the Central Committee of the relevant Court financial records relating to the offence and money, property and benefits seized as exhibits.</p>
17-A		<p>A responsible person from telecommunication services is found to be guilty of refusing inspection and copying of records related to an offence after receiving an order issued by Central Committee, and causing to disappear, altering and amending, issuing, transferring without permission from Central Committee, shall on conviction be punished with imprisonment for a term which may extend from a minimum of three years to a maximum of five years and may also be liable to a fine.</p>
18.	<p>A person authorized to search, arrest, seize exhibits and investigate in respect of any offence under this Law, who is guilty of any of the following act shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) asking and accepting any money and property as gratification either for himself or for another person;</p> <p>(b) accepting a narcotic drug or psychotropic substances unlawfully;</p> <p>(c) replacing another person for the offender; concealing the offender without taking any action;</p> <p>(d) causing to disappear, altering by wrongful means, substituting, mixing the material involved in the offence; stating incorrectly the weight, volume or quantity of the material.</p>	<p>A person authorized to search, arrest, seize exhibits and investigate in respect of any offence under this Law, who is guilty of any of the following act shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine: -</p> <p>(a) asking and accepting any money and property as gratification either for himself or for another person;</p> <p>(b) accepting a narcotic drug or psychotropic substances unlawfully;</p> <p>(c) replacing another person for the offender; concealing the offender without taking any action;</p> <p>(d) causing to disappear, altering by wrongful means, substituting, mixing the material involved in the offence; stating incorrectly the weight, volume or quantity of the material.</p>

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
19.	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of unlimited period: -</p> <p>(a) possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale;</p> <p>(b) offering for sale, agreeing thereto of communicating to market a narcotic drug or psychotropic substance;</p> <p>(c) concealing and causing to disappear money, property and benefits derived from the commission of any offence contained in this Law, so that action may be taken;</p> <p>(d) transferring and converting money, property and benefits involved in an offence, so that it may appear to have been acquired from a legitimate source.</p>	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of unlimited period: -</p> <p>(a) possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale;</p> <p>(b) offering for sale, agreeing thereto of communicating to market a narcotic drug or psychotropic substance;</p> <p>(c) concealing and causing to disappear money, property and benefits derived from the commission of any offence contained in this Law, so that action may be taken;</p> <p>(d) transferring and converting money, property and benefits involved in an offence, so that it may appear to have been acquired from a legitimate source.</p>
20.	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 15 years to a maximum of an unlimited period or with death: -</p> <p>(a) production, distribution and sale of a narcotic drug or psychotropic substance;</p> <p>(b) importing and exporting a narcotic drug or psychotropic substance: communication to effect such import and export.</p>	<p>Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 15 years to a maximum of an unlimited period or with death: -</p> <p>(a) production, distribution and sale of a narcotic drug or psychotropic substance;</p> <p>(b) importing and exporting a narcotic drug or psychotropic substance: communication to effect such import and export.</p>
21.	<p>Whoever attempts, conspires, organizes, administers or provides financial assistance to commit any offence contained in this Law or abets the commission of any such offence shall be liable to the punishment provided in this Law for such offence.</p>	<p>Whoever attempts, conspires, organizes, administers or provides financial assistance to commit any offence contained in this Law or abets the commission of any such offence shall be liable to the punishment provided in this Law for such offence.</p>
22.	<p>If any of the acts provided in sections 16 to 21 have been committed under any of the following circumstances, the offender shall be liable to the maximum punishment provided for such offence:-</p> <p>(a) being a member of a local or foreign organization or group which commit crimes involving narcotic drugs or psychotropic substances or communicating with and participating in such organizations or group;</p>	<p>If any of the acts provided in sections 16 to 21 have been committed under any of the following circumstances, the offender shall be liable to the maximum punishment provided for such offence:-</p> <p>(a) being a member of a local or foreign organization or group which commit crimes involving narcotic drugs or psychotropic substances or communicating with and participating in such organizations or group;</p>

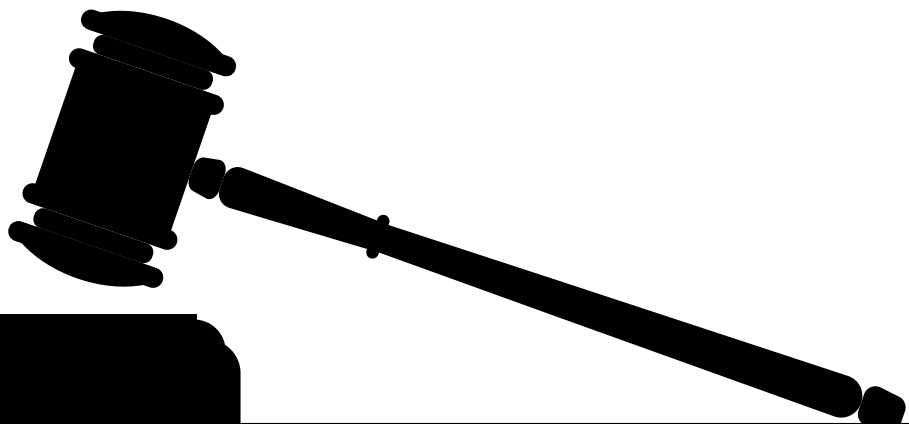
Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>(b) handling and using arms or explosives in the commission of the offence;</p> <p>(c) making use of children who have not completed the age of 16 years in the commission of the offence;</p> <p>(d) committing of causing to commit an offence by making use of the influence or power of a public servant.</p>	<p>(b) handling and using arms or explosives in the commission of the offence;</p> <p>(c) making use of children who have not completed the age of 16 years in the commission of the offence;</p> <p>(d) committing of causing to commit an offence by making use of the influence or power of a public servant.</p>
23.	Whoever is guilty of any of the acts provided in sections 16 to 21 shall, after a prior conviction for the same offence be liable to the maximum punishment provided for such subsequent offence.	Whoever is guilty of any of the acts provided in sections 16 to 21 shall, after a prior conviction for any of the offences provided in sections 16 to 21, be liable to the maximum punishment provided for such subsequent offence.
24.	<p>The Court shall:-</p> <p>(a) in passing a sentence for any offence provided in sections 16 to 21 pass an order for the confiscation or destruction or disposal in accordance with the stipulations of the narcotic drug, psychotropic substance, money, implements, moveable property, vehicles/vessels and animals involved in the offence;</p> <p>(b) in passing a sentence under section 19 or section 20 pass an order for confiscation of the immovable property involved in the offence, which have been seized as exhibits.</p>	<p>The Court shall:-</p> <p>(a) in passing a sentence for any offence provided in sections 16 to 21 pass an order for the confiscation or destruction or disposal in accordance with the stipulations of the narcotic drug, psychotropic substance, money, implements, moveable property, vehicles/vessels and animals involved in the offence;</p> <p>(b) in passing a sentence under section 19 or section 20 pass an order for confiscation of the immovable property involved in the offence, which have been seized as exhibits.</p>
25.	<p>The Court shall:-</p> <p>(a) in respect of a person who habitually commits or is notorious of committing any offence contained in this Law pass an order for execution of a bond for good behavior during a period not exceeding 3 years, in accordance with the rules;</p> <p>(b) if there is violation of the condition of the bond passed under subsection (a) or if there is failure to execute the bond in accordance with the order passed for execution of a bond, punish such person with imprisonment for a term which may extend from a minimum of 1 year to a maximum of 3 years.</p>	<p>The Court shall:-</p> <p>(a) in respect of a person who habitually commits or is notorious of committing any offence contained in this Law except section 15 pass an order for execution of a bond for good behavior during a period not exceeding 3 years, in accordance with the rules;</p> <p>(b) if there is violation of the condition of the bond passed under subsection (a) or if there is failure to execute the bond in accordance with the order passed for execution of a bond, punish such person with imprisonment for a term which may extend from a minimum of 1 year to a maximum of 3 years.</p>
Chapter VIII-A	-	Raising, Maintenance and Management of Funds

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
25-A	-	<p>In order to perform prevention of the danger of narcotic drugs and psychotropic substances, the Central Committee can: -</p> <p>(a) set up funds received from allocation of the Union fund and donations from United Nations organizations, international organizations, regional organizations, the donations from the abroad and the locals;</p> <p>(b) accept materials supported by the Union and those donated by United Nations organizations, international organizations, regional organizations, donors from the abroad and the locals, and can manage in accordance with procedures.</p>
25-B	-	<p>The Central Committee shall: -</p> <p>(a) set procedures regarding with the maintenance of funds except permitted Union Fund and management of materials provided by donors in coordination with the Auditor-General of the Union;</p> <p>(b) compile budget statement for funds from sub-section (a) in accordance with financial procedures and allow auditing by the office the Auditor-General of the Union;</p>
25-C	-	<p>(a) Confiscated materials, money, moveable or unmovable materials related to the offence seized as per section 24, subsection (a) and (b) must be submitted to Union Fund;</p> <p>(b) The Central Committee may spend a certain percentage of funds submitted as per subsection (a) for the work of prevention of narcotic drugs and psychotropic substances with the agreement of the Union Government.</p>
Chapter IX	Miscellaneous	Miscellaneous
26.	Whoever possesses or transports, transmits or transfers any of the following narcotic drug or psychotropic substance of the weight, volume or quantity of in excess of the weight, volume or quantity shown against each shall be deemed to possess for the purpose of sale and to transport, transmit or transfer for the purpose of sale:-	Whoever possesses or transports, transmits or transfers any of the following narcotic drug or psychotropic substance of the weight, volume or quantity of in excess of the weight, volume or quantity shown against each shall be deemed to possess for the purpose of sale and to transport, transmit or transfer for the purpose of sale:-

Chapter/ Section	1993 (Official translation)	2018 (Un-official translation)
	<p>(a) in the case of heroin (three grammes)</p> <p>(b) in the case of morphine (three grammes)</p> <p>(c) in the case of monoacetyl morphine ((three grammes)</p> <p>(d) total of the narcotic drugs contained in subsection (a), (b) and (c) (three grammes) or total of two types out of the said three (three grammes)</p> <p>(e) in the case of crude opium or processed opium or total of the two (one hundred grammes)</p> <p>(f) in the case of cannabis or essence of cannabis or total of the two (twenty - five grammes)</p> <p>(g) in the case of (coca) leaf (one hundred grammes)</p> <p>(h) in the case of cocaine (three grammes)</p> <p>(i) the weight, volume or quantity which the Ministry of Health has, by notification from time to time prescribed for any narcotic drug or psychotropic substance.</p>	<p>(a) in the case of heroin (three grammes)</p> <p>(b) in the case of morphine (three grammes)</p> <p>(c) in the case of monacetyl morphine ((three grammes) (removed)</p> <p>(d) total of the narcotic drugs contained in subsection (a), (b) and (c) (three grammes) or total of two types out of the said three (three grammes)</p> <p>(e) in the case of crude opium or processed opium or total of the two (one hundred grammes)</p> <p>(f) in the case of cannabis or essence of cannabis or total of the two (one hundred grammes)</p> <p>(g) in the case of (coca) leaf (one hundred grammes)</p> <p>(h) in the case of cocaine (three grammes)</p> <p>(h-i) in the case of amphetamine type stimulants (three grammes)</p> <p>(h-ii) in the case of methamphetamine hydrochloride (Ice) (three grammes)</p> <p>(h-iii) in the case of ephedrine or pseudoephedrine (three grammes)</p> <p>(i) the weight, volume or quantity which the Ministry of Health and Sports has, by notification from time to time prescribed for any narcotic drug or psychotropic substance.</p>
27.	<p>If an exhibit involved in any offence prosecuted under this Law is not easily produceable before the Court, such exhibit need not be produced before the court. However, a report or other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court shall pass an order for disposal of the same in accordance with law.</p>	<p>Office work of the Central Committee will be performed by the Ministry of Home Affairs.</p>
28.	<p>The provisions of this Law shall not apply to the following cases:-</p> <p>(a) production of narcotic drug or psychotropic substance and carrying out works of research thereof, with the consent of the relevant Ministry;</p> <p>(b) use, possession, transportation, transmission, transfer, sale, import, export and external dealing in respect of narcotic drug or psychotropic substance in the manner prescribed for the</p>	<p>The provisions of this Law shall not apply to the following cases:-</p> <p>(a) production of narcotic drug or psychotropic substance and carrying out works of research thereof, with the consent of the relevant Ministry;</p> <p>(b) use, possession, transportation, transmission, transfer, sale, import, export and external dealing in respect of narcotic drug or psychotropic substance in the manner prescribed for the</p>

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	<p>purpose of production, work of research of medical treatment, with the consent of the relevant Ministry;</p> <p>(c) use, possession, transportation of a narcotic drug or psychotropic substance permitted by the Ministry of Health under the direction of any registered medical practitioners in accordance with stipulations.</p>	<p>purpose of production, work of research of medical treatment, with the consent of the relevant Ministry;</p> <p>(c) use, possession, transportation of a narcotic drug or psychotropic substance permitted by the Ministry of Health and Sports under the direction of any registered medical practitioners in accordance with stipulations.</p>
29.	<p>Rules, notifications, order and directives issued under the Narcotics and Dangerous Drugs Law, 1974 which is repealed by this law may continue to be applicable in so far as they are not inconsistent with this Law.</p>	<p>Rules, notifications, order and directives issued under the Narcotics and Dangerous Drugs Law, 1974 which is repealed by this law may continue to be applicable in so far as they are not inconsistent with this Law.</p>
30.	<p>For the purpose of carrying out the provisions of this Law:-</p> <p>(a) the relevant Ministry may issue rules and procedures with the approvals of the Government;</p> <p>(b) the relevant Ministries and the Central Committee may issue notifications, orders and directives as may be necessary.</p>	<p>For the purpose of carrying out the provisions of this Law:-</p> <p>(a) the Ministry of Home Affairs may issue rules, regulation and by-laws with the approvals of the Union Government;</p> <p>(b) the relevant Ministries and the Central Committee may issue notifications, orders, directives and procedures.</p>
31.	<p>The Narcotics and Dangerous Drugs Law, 1974 is hereby repealed.</p>	<p>The Narcotics and Dangerous Drugs Law, 1974 is hereby repealed.</p>
	<p>(Sd) Than Shwe General Chairman The State Law and Order Restoration Council</p>	<p>(Sd) Htin Kyaw President The Republic of the Union of Myanmar</p>





(စီမံချက် ကန့်သတ်)