

‘Found in the Dark’ The Impact of Drug Law Enforcement Practices in Myanmar

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KEY POINTS

- Myanmar² has serious drug use problems, largely related to unsafe practices such as needle sharing by injecting heroin users. The country’s current approach to addressing drug-related problems focuses on repression, mainly by arresting and incarcerating drug users. This paper analyses the impact of drug law enforcement practices on drug users in Myanmar. It shows the failure of the current drug law enforcement system, with drug users and their families as the principal victims.
- The criminalisation of drug use and possession for personal use is heavily impacting the lives of drug users and their families. It is cause for stigmatisation by the community they live in; it increases risky drug use behaviour, and is the basis for police harassment and corruption.
- The vast majority of arrests made as a result of drug laws concern drug users and small dealer/users. Prisons are overcrowded with drug users sentenced to excessively long jail terms. Prisons and labour camps lack appropriate health care and do not provide for the basic needs of inmates. Very few large-scale traffickers are targeted for arrest or have been put in prison.
- Female drug users, in particular, have received very little support to face their problems. Often abandoned by their families and communities, female drug users are in need of services targeting their specific needs.
- Instead of a repressive approach, voluntary and evidence-based treatment and public health services, including harm reduction, should be made available to people who use drugs. Harassment by enforcement officials and corruption in the justice system should be addressed. A harm reduction approach needs to become generally accepted by enforcement officials and by the community at large. Myanmar’s drug laws should be reformed to address these issues, and support drug users and other marginalised communities affected by drugs instead of punishing them.

Introduction

Situated in South East Asia's 'Golden Triangle'³, Myanmar is well known for poppy cultivation and opium production. International reports claim that the country is the world's second largest opium producer after Afghanistan⁴. Opium cultivated in Myanmar is locally consumed, especially in the mountainous ethnic regions where it also has traditional and medicinal uses. However, a large amount of opium is turned into a more dangerous form - heroin - for the local market as well as for export, mostly to countries in the region, especially China.⁵ Myanmar is also under international surveillance because of its production and export of amphetamine type stimulants (ATS).⁶ In Myanmar prevalence of problematic drug use is high, though there is no reliable data on the issue. According to official reports, the most commonly used illicit substances are heroin, opium, methamphetamines, and cannabis.⁷ Major health problems such as HIV, hepatitis B and C, drug overdoses and tuberculosis are related to risky injection practices and the sharing of smoking paraphernalia. Problematic drug use is especially related to unsafe practices by injecting heroin users.

Many drug users also face abuse and extortion from police officers and armed groups for possession of small amounts of drugs or needles and syringes.

Myanmar has very strict drug laws and policies, and its legal framework emphasises harsh sentences and the criminalisation of drug users rather than providing access to health and harm reduction services.⁸ As a result, Myanmar's jails are filled with drug-use-related petty offenders. Many drug users also face abuse and extortion from police officers and armed groups for possession of small amounts of drugs or needles and syringes. Local communities (including religious groups) stigmatise drug users as morally weak. Moreover, they are made scapegoats for drug-related problems in communities in the context of an unstable political situation and conflict between the government and armed groups in Myanmar's ethnic areas. Due to limited permission by the authorities and lack of technical support, very limited research has so far been carried out on the effects of the legal framework and its enforcement practices on the rights of drug users and their access to healthcare, including life-saving services.

This report highlights the impact of current drug law enforcement practices in Myanmar and illustrates why a change in drug legislation and policy is necessary. It is based on life experiences of drug users affected by Myanmar's repressive policies and laws and was drafted in collaboration with the National Drug User Network in Myanmar (NDNM), a network composed of current drug users, methadone clients and recovering drug users. NDNM members conducted a series of interviews with arrested drug users in seven regions of the country and participated in two focus group discussions on the impact of drug enforcement practices.⁹

Drug Use Patterns in Myanmar

For more than a century, different rural and ethnic communities living in remote mountainous areas of Myanmar have cultivated and used opium. Opium is offered to visitors at homes, weddings and funerals. It is used as a natural medicine to treat diarrhoea, fever, pain, fatigue etc.¹⁰ However, in the past three decades there has been a shift towards more dangerous patterns of drug use – first smoking and then injecting heroin. This trend was

partially caused by the decline in opium cultivation during 1995-2006, which caused opium prices, and consequently heroin prices, to rise. As a result, users started to inject heroin which was seen as more cost-effective, with a stronger effect from a smaller dose.¹¹

Recent estimates by the Myanmar government put the number of injecting drug users in the country at about 83,000¹²; however this may be an underestimate as surveys conducted by NGOs providing services to drug users, and by UN agencies, show that there could be as many as 300,000 drug users in the country.¹³ However, all numbers should be treated with caution. Large numbers of injecting heroin users are especially concentrated in the northern part of the country, mainly in Kachin and Shan States where various ethnic nationalities live. In addition, there are many injecting drug users in Sagaing and Mandalay Regions.

In 2000, HIV/AIDS prevalence among injecting drug users (IDUs) was estimated at 63%¹⁴- much higher than prevalence among other key populations such as sex workers and men who have sex with men. Sharing unclean needles and other injecting paraphernalia is the main cause of the high incidence of HIV/AIDS in this population. In 2003, in response to the alarming HIV epidemic, NGOs started to implement harm reduction services, including needle and syringe exchange programmes. Later, the Myanmar Government started to make methadone maintenance therapy available. These interventions led to a steady decrease in HIV infection rates among injecting drug users - data in 2014 showed that the rate was down to 23.1%. However according to the latest estimates, based on a different methodology, the infection rate was 28.3%¹⁵ in 2015, partly as a result of local and regional enforcement activities that hinder access to harm reduction services.

Other recent trends of problematic drug use are related to methamphetamines, which are popular among youths, students, club goers, sex workers, truck drivers and other people working long hours, and manual labourers.¹⁶ In the past, methamphetamine was only available in big cities like Yangon and Mandalay, but now it is also present in rural areas. In some instances drug traders pay opium farmers and field workers partly in methamphetamines and partly in cash.¹⁷ Methamphetamine tablets are easily available and usually cheap¹⁸, and in some areas crystal meth or "ice" can also be found. Methamphetamine pills (locally called *Yama* or *Ah-thee*) are usually smoked through a water pipe. Estimates of the number of methamphetamine users in the country are not available. There are also no harm reduction services and very limited treatment services (mainly limited psychiatric therapy) available for problematic methamphetamine use.

Many drug users in Myanmar are using a variety of drugs (poly drug use) and do not limit their use to one specific drug. Various drugs are used to get either a high or balanced effect, or because the preferred drugs are not available or too expensive.¹⁹ Examples of poly drug use are injecting heroin and diazepam together, swallowing opium mixed in cough syrup, or the alternating use of heroin and methamphetamine. Overdose is an important risk of heroin use and poly drug use further increases this. Vein damage is also a poly-drug-use-related harm, often appearing as a result of injecting non-soluble drugs.

Drug Policy Responses

Drug treatment

Drug treatment, mainly institutionalised detoxification for opiate users, is provided by the Ministry of Health. Drug users need to register and are hospitalised for about 5-6 weeks to receive treatment. The government also provides methadone maintenance treatment in health centres (currently 46 across the country). The Ministry of Social Welfare has been assigned to implement rehabilitation programmes for chronic drug users who have been through drug treatment programmes. Drug users need to participate in the programme for at least six weeks and receive services such as counselling, sports, arts, meditation, and vocational training such as printing techniques. However, these services are limited in terms of quality and coverage, and in some cases are not operational at all.²⁰

In fact, drug treatment and harm reduction coverage is generally very low. For instance, according to UNAIDS, HIV testing coverage among IDUs is only 22%, much lower than other high risk populations.²¹ Overall, the quality of services provided by the government is low, non-voluntary and not taking into account the specific needs of users.²² According to UNODC, only about 10% of drug users are experiencing problematic drug use.²³ Services for drug users should be prioritized for this population group. In Myanmar there are very limited specific health services for drug users in prisons or detention centres. There are also no targeted, government-provided services for female drug users.

Drug legislation mainly focuses on law enforcement and compulsory drug treatment. Existing laws stipulate very long sentences for relatively small drug-related offences.

Myanmar drug policy and legal framework

A collection of laws and acts determines the current legal framework for drug policy in Myanmar. Drug legislation mainly focuses on law enforcement and compulsory drug treatment. Existing laws stipulate very long sentences for relatively small drug-related offences.

Among the most outdated laws in Myanmar is the '1917 Burma Excise Act', which deals with alcohol and 'intoxicating drugs'. The latter includes cannabis – hemp plants, leaves, small stalks and flowering or fruiting tops (*Bhang, Sidhi and Ganja*), resin (*Charas*) and any drink containing these. At the end of 2015 the Myanmar Government abandoned Section 33 of this Excise Act which prohibited the use, making, possession, sale or distribution without a license of hypodermic needles or other syringes suitable for injection. On the basis of this section, many drug users were searched and arrested for possession of syringes, thereby also creating obstacles to accessing needle and syringe exchange programmes. The abandonment of Section 33 should have a positive impact on the accessibility of such services. However, first experiences from the field reveal that this change in the Act has not yet been implemented on the ground, as drug users are still arrested on the basis of Section 33. The possession of needles, although not illegal anymore, is still used as evidence of drug use and a basis to conduct further investigations, harass drug users, and eventually charge them for other offences (eg. Section 15).

The key drug law in the country is the 'Narcotic Drugs and Psychotropic Substances Law' adopted on 27 January 1993 by the State Law and Order Restoration Council (SLORC), the military government of Myanmar at the time.

This law brought Myanmar's legal system in line with the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Myanmar acceded on 11 June 1991. The 1995 Rules relating to Narcotic Drugs and Psychotropic Substances were issued by the Ministry of Home Affairs of the Government of the Union of Myanmar on 17 July 1995. These rules give more specific details on how the 1993 law should be implemented, especially in relation to arrest, search and seizure of drugs, as well as registration and treatment of drug users. The 1993 Law stipulates that drug users who fail to register for mandatory treatment - at a specified centre recognised by the government - will be sentenced to imprisonment from three to five years. On top of that, if a person is found in possession of a small quantity of drugs²⁴, he/she will be imprisoned for a period of five to ten years.

According to the Myanmar newspaper *Mizzima*,²⁵ the Yangon Police headquarters records indicate that in 2014 more than 1,300 people in the Yangon Region were arrested and sentenced under the 'anti-loitering law' of the 1899 Rangoon Police Act's Article 30d²⁶. Furthermore, in the first five months of 2015, some 400 people were charged with being "found in the dark" and sentenced to prison according to the Yangon police under the same act. The charge sets a maximum three-month prison term for "any person found between sunset and sunrise, within the precincts of any dwelling-house or other building whatsoever, or on board any vessel, without being able satisfactorily to account for his presence therein". Nationwide, the 1945 Police Act's Article 35b demands similar punishment for the same "offence". During our research "found in the dark" or "being notorious" was often cited by drug users interviewed for this report as a reason for arrest. This police act not only applies to drug users but also to sex workers, street children, homeless people, or even politically active persons. According to this act, a person can be imprisoned from 15 days to three months.

A 2013 UNODC publication reports 5,740 drug-related arrests in Myanmar in 2012,²⁷ but it is unclear what kind of offences are included in this number. For the total number of ATS related arrests, for example, the UNODC report notes that some countries include methamphetamine users as well as traffickers and manufacturers. Because current drug policies and laws in Myanmar focus on punishment and repression, jails in the country house a large number of prisoners sentenced for petty drug-related offences. According to non-official 2012 data, there are 60,000 prisoners in Myanmar's jails. Out of this total, some 16,500 prisoners are incarcerated for drug-related offences, amounting some 20-25% of the total prison population. The rest of the prison population consists of 'mostly petty crimes'.²⁸ However, the real figure of drug-related prisoners may be higher. For instance, some government officials have estimated the number of incarcerated drug users in Myitkyina jail in Kachin State at over 70%.²⁹ Another government official estimated the total proportion of the Myanmar prison population incarcerated for drug-related offences to be 70%.³⁰ The lack of reliable data in Myanmar makes it difficult to provide accurate figures. The respondents of the survey carried out by the NDNM for this report estimated that 60 and 100% of the population of individual prisons has been convicted of drug-related offences.

Besides the harsh laws enacted by the government, some ethnic armed groups and local militias also punish drug use and related minor offences with detention in a "treatment" camp. These camps rarely offer medically-proven treatment programmes - rather, problematic drug users have to break their habit 'cold turkey' without any medication or medical oversight. When they overcome their withdrawal symptoms, they are sometimes forced to work in the military camps or plantations owned by the armed groups.

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Likewise, the Myanmar army arrests drug users and forces them to carry materials and run errands in frontier areas.³¹ Clearly these practices are in violation of human rights.

Recently community groups led by the church leaders in the northern part of Myanmar (Kachin State) decided to take law enforcement into their own hands, as they feel the government is not doing enough to stop the flow of harmful drugs into their communities. Known as Pat Jasan ('Prohibit Clear'), this self-appointed committee took drastic action by arresting and beating up drug users, and driving them into compulsory rehabilitation camps. This anti-drug campaign has been going on for about two years. It not only metes out violence on Kachin drug users but also threatens members of other ethnic groups like the Shan people in Kachin State, worsening existing tensions between the Shan and the Kachin. The Pat Jasan has been praised by some Kachin activists for finally addressing drug problems, but criticized by others for violating human rights and not providing any services to marginalized communities, including drug users and poppy farmers. Most recently, their poppy eradication efforts led to open conflict with opium farmers and local militia groups. However, campaign leaders are determined to move forward to a 'drug free Kachin State'.³²

Current enforcement practices

Suspects of drug-related crimes cannot be released on bail, and according to the research, the pre-trial period in police custody can take up to two years.

Information gathered via the survey and focus group discussions on drug law enforcement practices tells of the injustice and negative consequences that drug users and their families face. Most of the interviewees testified that they have been harassed and/or physically abused by the police, local authorities or militia groups.

Police, either the narcotics task force or the local police, frequently search drug users for drugs or equipment such as syringes. The police use informers to lead them to places such as shooting galleries (areas where injecting drug users gather to use drugs) or drug selling points. Often these informers are drug users or petty dealers who have been arrested before. The majority of the arrests are made with the help of these informants. Once arrested a drug user is taken to the police station where an employee from the Ministry of Health will take a urine sample and test for heroin, ATS, cannabis and alcohol. Those tested negative and not found in possession of drugs, needles or empty penicillin bottles³³ will be released. Those with a positive urine test or found in possession of drugs or paraphernalia will be held in custody and charged. Suspects of drug-related crimes cannot be released on bail, and according to the research, the pre-trial period in police custody can take up to two years.³⁴ Only about half of survey respondents had a lawyer to assist them in the trial, because of lack of financial resources among other reasons.

The research revealed that, generally, there is little police harassment near drop-in-centres and methadone hospitals, though at the same time there have been cases where the possession of a methadone registration card was reason for harassment by the police. However, law enforcement officers have recently arrested drug users near drop-in-centres and a methadone hospital in Yangon. One of the interviewees reported that the police in parts of Mandalay at the time of the research no longer arrested drug users. A similar situation was reported in Tachilek in Eastern Shan State near the Thai border: "In my area there is a government administration and different armed groups, including those with a cease-fire with the government and Myanmar army-backed militia groups. Their policies on drug users include

arrest and forced detoxification, harm reduction and other support. Because the police are working together with NGOs, they did not harass us. They only give warnings and good suggestions to us” said a 43-year-old male from a village in Tachilek Township.

Harassment and Informants

Apart from the government administration there are many armed groups in my area, including groups with a cease-fire with the government and militia groups. There are also community groups who target drug users. They arrest drug users if they want to, and no arrest if they don't want to. Community groups also capture drug users at a dealer's place. If users are captured they are released after shaving their heads. 35 year old male from Man Bain village, Kutkai Township

The police in my area mainly arrest drug users. I have been harassed and asked for money by the police. I was asked to sit down and they hit me with handcuffs. They treated me like an animal. 48 year old male from Moe Gaung Township, Kachin State

The police arrest drug users and ask for money. They have also harassed me. I had to do whatever they asked me, forced labour and being hit. I have been arrested and had to pay them a bribe. 32 year old male from Moe Gaung Township, Kachin State

Drug users have been harassed by the police. The police always force drug users to work at the station. If you don't do what they ask for, they will arrest us with section 5-1 F/G³⁵ (temporary arrest) [and keep us] for one month at the station. After that they will let us go but we need to go back to the station every week to sign and apply our labour and energy to whatever they ask for. Informers are usually not imprisoned. They search for cases if necessary. Usually they are drug dealers. They put drug users in prison but they keep doing their business. I was imprisoned for six months at the Kyaing Tone prison. The prison does not treat all prisoners the same. It depends on money and authority. People who don't have money will have to clean toilets. The first time I was arrested, was when I was looking for money to buy drugs at nighttime. I was arrested with “found in the dark” by the investigating police on duty. Informers note down the numbers of money provided from the police. Then he buys drugs with the money, the police follows the money numbers and arrests the person who sold the drugs. 19 year old male from Tachileik Township, Pone Htone Ward, Eastern Shan State

Physical harassment by the police is seldom prosecuted. According to the Asian Human Rights Commission the police are rarely held to account for the abuses committed on detainees in their custody.³⁶ UNAIDS has reported a similar situation in relation to misconduct towards injecting drug users.³⁷

Some respondents reported that many arrests were taking place during “project periods”, special crack down periods, such as, for example, the “international day against drug abuse and trafficking” (June 26) or end of the year. The police operate with a quota system, which leads to arrests with the sole purpose of filling the arrest quota.³⁸ Once known to the authorities, users are always the first to be suspected by police if they are spotted in the vicinity of a crime. As this report shows, not much evidence is necessary for the enforcement officers to arrest people under the police act's definition of “found in the dark”. However, the majority of the arrested drug users were convicted as a result of Section 15 (failure to register) and Section 16 (possession, transportation or distribution of drugs). Some of the interviewees claimed that the authorities planted drugs on them to make sure that they have grounds for arrest. Sentences for drug offences are very

harsh. All 32 respondents were incarcerated at some point in their life for drug related offences, many of them for a long period of time varying from 9 to 35 years.

Women drug users often find themselves in a particular dire situation: while male drug users mostly receive support from their families and parents, female drug users are often excluded from such support and stigmatized by their own relatives and community members. They have no one to turn to and have to fend for themselves.

The story of a 33 year old woman from Taunggyi

I moved from Mandalay to Taunggyi when I was in 6th grade in 1996. In 2000, when I was in 10th grade, I started to use Formula.³⁹ In 2002, I [went to] university and in 2004 I got married. My husband also used Formula, since we both were using it, my husband gradually became user and dealer. In 2005-2006 I dropped out of university and did some business. From my business I supported my family while my husband tried to earn money to support our drug use. In 2006 we shared drugs with an informer and got arrested. My husband was sentenced according to Articles 15, 19 and 20,⁴⁰ I was sentenced according to Sections 15 and 16. I was imprisoned for little over three years. The prison was crowded; about 65% of the prisoners were there for drug-related cases. It is easy to continue using drugs in prison.

After my arrest I did pay money to lawyers. It is not easy to bribe the magistrate's office. It is easy to bribe prison staff. I paid 300,000 kyats (300 euro)⁴¹ to reduce the imprisonment period. It is possible to be released before the full jail term; I was released 11 months before my term. This incident ruined our marriage. In 2010, while I was about to be released from the prison, I got news that my husband passed away at the police camp. After the release, I decided to stay away from drugs. However the society discriminated me and I had limited job opportunities, I relapsed .

In my area there is a government administration, cease-fire group and militia. Pa-O⁴² groups punish the drug users. The Myanmar government arrests drug users and asks about accomplices and then sends them to detoxification. I have been investigated frequently by the police since they thought I am a regular drug user. I have been arrested several times and refused to pay a bribe. When both my husband and I were arrested, the police officer took our money. But he did not submit it to the office as he said he would and kept more than 10 lakhs (1 million kyats –about 1,000 euro) to himself. And while facing the court in 2006, a broker cheated on us by telling that we had to bribe the judge then the broker took the money instead of giving it to the judge. Later a court clerk introduced me to a person who was familiar with the court. We paid 300,000 kyats (300 euro) to bribe the judge. I was sentenced for four years. I was imprisoned at the State prison and then at the border area project.⁴³ In prison they do not treat all prisoners the same. It depends on background, money and type of sentence.

Prisons and labour camps

There are 43 prisons and 46 labour camps in Myanmar. As mentioned above, data on the prison population in Myanmar is not readily available but officials estimate the total prison population to be 60,000 people, large numbers of whom have been sentenced to long jail terms for relatively small drug-related offences.⁴⁴

Myanmar prison conditions are harsh, hygiene is poor, some prisons lack access to clean drinking water, and overcrowding is a serious problem. In February 2015 the Myanmar National Human Rights Commission reported

that Insein Prison (the largest in Yangon) was detaining over 7,876 prisoners while the capacity is 5,000.⁴⁵ According to World Prison Brief the occupancy level was 144.4% in 2002 not taking into account the labour camps.⁴⁶ In recent years several reports have drawn attention to the inhumane prison conditions in Myanmar.⁴⁷

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There are no fixed rules on transferring prisoners to labour camps. Prisoners can be sent to labour camps because their labour is needed; to relieve overcrowding inside a prison; or by request of the prisoner. To be eligible to go to labour camp, inmates must be aged between 18 and 55, have less than 15 years to serve and be in good health. The large majority of survey respondents served time in a labour camp, mostly doing agricultural work or mining. While labour camps demand hard physical labour, the interviewees indicated that they preferred to spend time in a camp over time in prison. At the camps the inmates have a bit more freedom, can more easily receive visitors and in some cases (if a sufficient bribe is paid), are even allowed to spend the night elsewhere. Additionally, prisoners who serve in labour camps can have up to a full third of their prison terms reduced. In prison this may also happen but it is dependent on good conduct and other factors. About two-thirds of the respondents said their sentence had been reduced by one and a half to two years. One person had his sentence reduced by six years because of a government pardon.

A prison sentence has many negative consequences for the detainee, and it can become a major life-course determinant. Often a prisoner loses his/her job or drops out of school, family loses income and has to support the family member in jail with food and other basic necessities, pay for bribes to prison staff and look after the children of the convicted person. The poor hygiene

25 year old single male from Pekhon, Kayah State

In 2012 I was arrested when I was walking on a road at night with two friends. We were searched because of "found in the dark". The police had a special project and they were working together with the narcotics police, the village ward committee and the fire brigade. My friends were searched and did not carry any drugs, then I was searched. I had five ATS tablets, a Swiss pocket knife and an electric gun. I was then arrested for Section 19 C (carrying arms) and Sections 15, 16D and 21.⁴⁸ Then Section 19C was dropped because the police liked my electric gun and wanted to keep it. I spent one month in pretrial in Taungoo prison. I had a lawyer, a former friend. In addition to the gun, I paid 800,000 kyats (800 euro) to the police because the police changed the story of my arrest but despite the money paid still they didn't change it back to the original story. My brother paid 1,500,000 kyats (1500 euro) to the lab to have the urine test changed.

Taungoo jail is not really a prison, you don't need to wear prison clothes but you are [under] lock and key and not allowed to go to work or go outside. I was sentenced to six years by the township judge - for possession of drugs people can get five to ten years. I could have appealed at State level but I didn't. After three months in Taungoo prison I asked to be transferred to a labour camp, and I started working in a mine. You can get a maximum of six days reduction of each month of your sentence if you work daily at a labour camp for the benefit of the prison. It is also easier to receive visitors at a labour camp. Some people even sleep with their wife at the camp. In the end I was released early because of a government pardon after 3.5 years.

Before my arrest I had a full time job with a local religious NGO, I have lost my job because of prison. I also had to sell my rubber plantation to be able to pay for the bribes.

and sanitation in the prisons and camps can lead to chronic and possibly fatal diseases. Conditions in the labour camps have especially been reported to be potentially life threatening. Between April 2011 and August 2014, 120 persons died in 46 of the centres, reportedly from “weather, diet, lifestyle, and accidents.”⁴⁹ Additionally, upon return home the ex-prisoner is faced with stigmatisation and unemployment.

There are no drug treatment programmes or harm reduction services provided in any prisons or labour camps.

Though the International Committee of the Red Cross (ICRC) reported in their annual report on 2014 that they eased the living conditions of 35,000 detainees with the help of hygiene kits, educational and recreational items,⁵⁰ clearly a lot still needs to improve. Reports on poor nutrition and lack of drinking water in prisons continue to appear. Also the available health facilities are reportedly very poor.⁵¹

Health care in prisons and labour camps is very limited but has improved slightly over the past three years. NGOs are offering anti-retroviral therapy and tuberculosis treatment in most prisons. Lashio prison seems to be an exception, with little or no health services at all. Yet there are no drug treatment programmes or harm reduction services provided in any prisons or labour camps. Almost half of the respondents claimed they continued using drugs in prison.

Corruption

Bribes are collected by different actors in the chain of procedures and seem to be an integral part of the criminal justice system. In Yangon and Lashio particular, bribes are so common that they can be considered part of the procedure. Bribes paid to the police can prevent an arrest, bribes paid to a lab worker can buy a negative urine drug test, bribes can induce magistrates to reduce a sentence and the prison personnel can arrange a more comfortable cell, better food or a better job/task in prison. Some respondents claimed that the informants cooperating with the police were also receiving part of the money paid as a bribe. Family background is also an important determinant in the length of the sentence and treatment in prison. On several occasions it was mentioned that the sons and daughters of high ranking officials were treated better.

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The price of bribes depends on the location. In Yangon, suspects of drug-related crimes pay between 600,000 kyats (600 euro) and 1.5 million kyats (1,500 euro) to the police to avoid arrest, in Tachilek similar bribes cost 500 Thai Baht or 15,000 kyats (15 euro); in Lashio the price is around 100,000 kyats (100 euro). Judges demand particularly large bribes in order to reduce a sentence: 1.5 million kyats (1,500 euro) is not uncommon. In return the magistrate will drop some of the charges which will lower the sentence. Other popular reasons to pay bribes were to obtain a better job in prison or to be transferred to labour camp, which would offer the possibility to receive more visitors or even spend the night away. Only a small minority of interviewees did not pay a bribe at some point during the procedures of arrest, sentencing or during their time in prison.

As shown above, corruption negatively impacts drug users and their families, but is also affecting society at large. The current legal framework and the criminalisation of drug use are fuelling corruption and contribute to the weakening of State institutions and the rule of law.

Corruption

It is difficult to differentiate between dealer-informants and peer drug users. I bought drugs from a dealer informant; together with the police they took a bribe from me. I had to give my golden necklace, bracelet and 200,000 kyats (200 euro) cash to be released. 25 year old male drug user from Taunggyi, Yay Aye Kwin Ward.

I was sniffing drugs with an inhalant bottle. When the police came I hid it, but he kept searching on my body. Then he found a small amount of opium, which I saved to relieve withdrawal symptoms. The police said he could arrest me and put me in prison. I begged him and negotiated. I gave him 50,000 kyats (50 euro) and my family came to retrieve me from the police station. 38 year old male from Kalay, Tut Oo Thida Ward

It is possible to be released before the full jail term. I was released 1.6 years before my term. After arrest I did pay money to the lawyers. It is not easy to bribe magistrate office but it is easy to bribe prison staff. I tried to bribe the judge to combine the sentences⁵² but I was cheated the first time. Only the second time, someone who was related to the court helped me to bribe the judge. 29 year old male from Taunggyi, Sao San Htun Ward

I have been harassed by the police; I stay away from them. If they see me with someone known to them, they call me and ask me where we get the drugs. If I don't tell, they told me that they would arrest me. They hit me. I have been arrested and I did pay a bribe. I gave all the drugs, my money and my motorbike. Even then they went to ask money at home, from my family. 33 year old male from Homon Ward, Muse

I have been harassed by the police. They beat me and forced to sign the search form. I have been arrested. I bribed the police since they called my home. We negotiated the price at a beer station. I have been sentenced by Sections 15&23.⁵³ The prison did not treat all the prisoners the same. It depends upon how much money you can give or what your family or social background is. I was sentenced for 5 years at Insein prison, and spent time in a mining camp and in a rehabilitation centre. I spent 3.8 years in prison. I think the prison is overcrowded. It is possible to be released before the full jail term and I was released 1.4 years earlier. After arrest I needed to pay money to the lawyers. It is easy to bribe prison staff. In 2007, I bribed 150,000 kyats (150 euro). 29 year old Male from Kyauktada township, Yangon

In this town, when you are reckless you go to jail. If you work together with the police, no need to go to jail. If you are arrested during the project period⁵⁴ you go to jail together with the other drug users. I was sentenced for seven years. I was sent to Lashio prison. We need to bribe to the prison wardens; it is easy to bribe officials like the Magistrate's office and the prison staff in order to have an earlier release from prison. In 1997, I bribed the head of the prison with 10,000 kyats (10 euro) and a prison warden with 3,000 kyats (3 euro). For sentencing of section 15, 16, 21 and 33D⁵⁵, I paid 1.5 million kyats (1,500 euro) to reduce years. 35 year old male from Man Bain village, Kutkai Township

Legal review process

Since the 1993 drug laws were enacted, several important changes in the drug situation have taken place inside and outside of Myanmar. In 2011, the previous quasi-civilian Thein Sein government initiated a reform process in Myanmar. This on-going process includes the review of many of the country's laws to bring these up to date with existing realities on the ground in Myanmar as well as with international obligations, standards and best practices. One of the laws currently under review is the 1993 Narcotic

Drugs and Psychotropic Substances Law. Several workshops on these issues have been organized in the capital Nay Pyi Taw by different organisations. In February 2015, the Central Committee for Drug Abuse Control, in cooperation with UNODC and UNAIDS, organised a legal review workshop of the drug laws.⁵⁶ Government officials, parliamentarians, local and international experts, drug user organisations, NGOs and INGOs took part in this workshop. The final version of the draft law presented at the end of the consultation included the removal of compulsory registration of people who use drugs; a recommendation to develop programmes to transfer people who use drugs from prisons to drug treatment centres; a reduction of penalties for petty offenders; and the inclusion of the harm reduction approach in programming.

It is expected that the new draft law will be discussed in Parliament this year. The text of the draft has not been published yet. The drug law review is an important opportunity to ensure that key affected populations such as drug users and subsistence poppy farmers have access to health care and development resources, taking into account both national conditions and international developments and best practices.

Conclusion and Recommendations

Myanmar has serious drug use problems, mainly related to unsafe practices such as needle sharing by injecting heroin users. The country's current approach to drug-related problems focuses on repression. At the moment, large numbers of people are in prison for drug use or petty drug-related offences. Large drug traffickers and dealers are left unbothered. This trend should be reversed: drug users should not be discouraged from accessing health and other relevant services and large traffickers and dealers should be targeted for arrest. The enforcement of repressive drug legislation is worsening the harms related to drug use.

The government should take measures to prevent corruption in the criminal justice system and address police harassment of drug users. The police should not be bound to arrest quotas on targets set by the authorities. Quotas are not a good indicator of the functioning of the police, and they encourage unfounded arrests in order to meet the quota.

Current treatment facilities for drug users are inadequate and insufficient, they should be improved and expanded, and deliver services tailored to the needs of different drug users. In particular, the government should implement policies that allow for only voluntary treatment services, and abstain from any kind of compulsory drug detention and rehabilitation centres. It has to be taken into account that only a small minority of drug users develops problematic drug use. Among those who need treatment only very few need residential care as most can be better treated at home, with the support of their families and communities. Compulsory treatment is a breach of human rights and has proven to be very ineffective.

The mandatory registration (Sections 9a, and 15 of the Narcotic Drugs and Psychotropic Substances Law) and the criminalisation of drug users have prevented users from accessing services provided by the government and other local and international organisations. Obligatory registration needs to be abandoned.

The law should enable drug users to have access to necessary health services, including life-saving treatment such as ARV and overdose prevention. Myanmar's amended drug legislation should support key harm reduction interventions to fight the spread of HIV/AIDS and hepatitis C, and to prevent the harms associated with drug use as much as possible. These interventions should include needle and syringe programmes, methadone maintenance therapy, peer education and overdose prevention (including the availability of Naloxone). Experiences have shown that much can be gained through a harm reduction approach, and this approach should be embedded in Myanmar's legal framework. The removal of section 33 of the 1917 Excise Act, which hampered access to clean needles, is a good first step in this direction, but more needs to be done. The coverage of health and other services - including harm reduction - needs to increase. Special services for female drug users are necessary. Female drug users are particularly hard to reach and are in need of women-only services.

Health care in prisons and labour camps needs to be improved and expanded. Drug users should be able to receive a continuum of care for chronic diseases such as HIV, tuberculosis and hepatitis. Harm reduction services and substitution treatment should also be offered inside camps and prisons.

The government should consider decriminalising drug use and possession for personal use. The UN conventions do not oblige any penalty (penal or administrative) to be imposed for consumption *per se*, as is clearly stated in the official Commentary to the 1988 Convention. Decriminalisation will have a positive effect on the drug users, the overburdened penal system and prison overcrowding. The Police Acts and the Habitual Offenders Act need to be amended to ensure sentences proportional to the crime. Experiences elsewhere in the world have proven drug use does not increase with the decriminalisation of use or even of possession for personal use.⁵⁷

It is important to improve coordination between different government agencies and local and international organisations. This should include connecting law enforcement with interventions to support drug users, such as treatment, health services and harm reduction programmes. It is also important to build awareness amongst law enforcement officers at all levels about such programmes and to make sure they are aware of amendments in legislation.

The stigmatisation associated with problematic drug use and criminalisation of drug use is very harmful. Often it divides communities and prevents a pragmatic and humane response to drug related problems. It will also be necessary to develop awareness raising campaigns and create public support for harm reduction services. In the absence of sufficient services for problematic drug users, militias, community groups and religious groups have developed their own, often very harmful "treatment" methods for drug users. These methods often include physical and psychological violence and unlawful incarceration, and they should be halted.

The new government should work towards an evidence based response to drug-related problems in Myanmar. A systematic collection of data on drug use in the country should help to differentiate between problematic and non-problematic use. This will help to develop appropriate responses, including drug law reform.

Endnotes

1. During the survey which is at the base of this briefing, drug users often indicated “Found in the dark” was given as a reason for arrest. It is also symbolic of the stigmatisation and difficulties drug users are facing.

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2. In 1989 the then military government changed the official name from Burma to Myanmar. There are alternative forms in the Burmese language, but their use has become a politicised issue. Myanmar is mostly used within the country and in international diplomacy, but it is not always used in the English language abroad. For consistency, Myanmar will be used in this report.

3. This term refers to the main opium growing region in Southeast Asia comprising the northern areas of Myanmar, Laos and Thailand.

4. UNODC, Southeast Asia Opium Survey 2015, Lao PDR, Myanmar, 2015.

5. Scott Green, “‘Happy Hour’ for Heroin in China,” China Digital Times, September 26, 2013, <http://chinadigitaltimes.net/2013/09/china-demand-heroin-outpacing-golden-triangle-supply/>.

6. Country Report: Burma, Bureau of International Narcotics and Law Enforcement Affairs, 2015 International Narcotics Control Strategy Report, US Department of State. Link: <http://www.state.gov/j/inl/rls/nrcrpt/2015/vol1/238952.htm>.

7. Ministry of Health, National Drug Abuse Prevention and Control Programme, Department of Medical Services, Myanmar, 2015.

8. TNI, Towards a Healthier Legal Environment, A Review of Myanmar’s Drug Laws, February 2015.

9. *Methodology*: Data on prison population and sentencing is hard to find in Myanmar, and often non-existent. This briefing paper is based on qualitative research which took place between the end of 2013 and April 2015. The data were collected among arrested drug users in seven regions of the country: Yangon, Myitkyina, Sagaing (Kalay, Tamu), Lashio (Muse), Taunggyi, Mandalay, Tanitharyi. The respondents (29 men and 3 women) were aged 18-50 years. Only few women were interviewed as prevalence of drug use among women is much lower than among men. The cultural taboo on drug use among women often forces women to be very secretive about their drug use, which makes them hard to reach. The results of the research were discussed in focus group discussions in Yangon in June 2014 and in March 2015. These meetings provided the opportunity to give feedback on the outcomes and have further discussion about some of the data gathered. The focus group discussions were attended by drug users from Yangon, Mandalay, Lashio and Myitkyina. Desk research completed the policy analysis in the course of 2016.

10. Report from Third Myanmar Opium Farmers’

Forum, Pyin Oo Lwin, 11–12 September 2015.

11. Withdrawal Symptoms in the Golden Triangle, a Drugs Market in Disarray, TNI, 2009, p.49. Link: <https://www.tni.org/files/download/withdrawal.pdf>

12. Global AIDS Response Progress Report Myanmar, National AIDS Program, 2015.

13. Country Report: Burma, Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, US Department of State, 2015. <http://www.state.gov/j/inl/rls/nrcrpt/2015/vol1/238952.htm>

14. Revisiting ‘The Hidden Epidemic’: A Situation Assessment of Drug Use in Asia in the context of HIV/AIDS, Center for Harm Reduction, Burnet Institute, 2002.

15. Global AIDS Response Progress Report Myanmar, National AIDS Program, 2015.

16. Amphetamine Type Stimulants and Harm Reduction: Experiences from Myanmar, Thailand and Southern China, Drug Policy Briefing nr37, TNI, 2011. Link: <https://www.tni.org/files/article-downloads/brief37.pdf>

17. Report of the Third Myanmar Opium Farmers’ Forum, Pyin Oo Lwin, 11-12 September 2015. Link: <https://www.tni.org/en/publication/third-myanmar-opium-farmers-forum>

18. Bouncing Back: Relapse in the Golden Triangle, TNI, 2014

19. Ibid. P. 38.

20. UNAIDS (2014). National HIV Legal Review Report. Review of Myanmar’s legal framework and its effect on access to health and HIV services for people living with HIV and key affected populations. Link: http://www.mm.undp.org/content/dam/myanmar/docs/Publications/DemoGov/UNDP_MM_National_HIV_Review_report_web_2MB.pdf

21. Country profiles, Myanmar, Key Facts on HIV. Link: <http://aidsdatahub.org/Country-Profiles/Myanmar>

22. Injecting heroin users, for instance, require other services than injecting methamphetamine users.

23. World Drug Report, UNODC 2015, <https://www.unodc.org/wdr2015/en/drug-use.html>

24. If a person is found in possession of a minimum of 3 grams of heroin, 3 grams of opium or 25 grams of cannabis he or she should be sentenced to 10 years imprisonment or longer, considering that the possession is for the purpose of sale.

25. Htoon, Kyaw Lin (31 August 2015), Among Myanmar’s antiquated laws, colonial-era ‘loitering’ charge lands hundreds in jail, *Mizzima*. Link: <http://www.mizzima.com/news-features/among-myanmar%E2%80%99s-antiquated-laws-colonial-era-%E2%80%98loitering%E2%80%99-charge-lands-hundreds-jail>

26. Rangoon Police Act 1899, Provisions against Thieves and Vagabonds.

27. Patterns and Trends of Amphetamine-Type Stimulants and Other Drugs: Global SMART Programme

2013 Challenges for Asia and the Pacific, UNODC, 2013. Link:https://www.unodc.org/documents/southeastasiaandpacific/Publications/2013/ats-2013/2013_Regional_ATS_Report_web.pdf

28. Information provided to TNI by former high-ranking official of the Myanmar Prison Department in January 2015.

29. Communication with official from Central Committee for Drug Abuse Control (CCDAC), January 2015.

30. September 2014, estimate by an official of the Central Committee for Drug Abuse Control (CCDAC).

31. Burma war crimes against convict porters- Rampant abuse of prison labor shows need for UN inquiry, Human Rights Watch, July 2011.: Link: <https://www.hrw.org/news/2011/07/12/burma-war-crimes-against-convict-porters>

32. See: <http://www.globalpost.com/article/6685625/2015/11/11/how-myanmars-state-backed-militias-flood-asia-meth> and: People's War on Drugs in Kachin State: Indication of Failed Policies 21 March 2016, Article <https://www.tni.org/en/article/peoples-war-on-drugs-in-kachin-state-indication-of-failed-policies>

33. Penicillin bottles are used by sellers to transport heroin and also serve as a measurement.

34. Information gathered at the drug user round table meeting, Burnet Institute, Yangon, June 9 2014

35. From the *1919 Habitual Offenders Restriction Act*. "The Habitual Offenders Restriction Act, better known as HORA, which is intended for habitual criminals and thieves, vagabonds, and those who do not have an ostensible means of livelihood." U Tin Oo, Chairman of the Central Legal Committee of the National League for Democracy, "Rule of Law in Burma under SLORC", in: Human Rights Yearbook 1997-98: Burma, Human Rights Documentation Unit (HRDU), 1998.

36. Burma/Myanmar: Police and village leaders torture a villager without apparent reason, Asian Human Rights Commission Urgent Appeals Programme, October 26, 2014. Link: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-142-2014>

37. National HIV legal review report, UNAIDS, 2014, p. 49. Link: www.3mdg.org/library/item/download/269_cdea5bb209a49c0f260692a0c8a8f50b

38. National HIV legal review report, UNAIDS, 2014. Link: www.3mdg.org/library/item/download/269_cdea5bb209a49c0f260692a0c8a8f50b

39. Usually opium mixed with cough syrup.

40. Section 15-Failure to register, section; 16-possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance, section; 19 -possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale, section; 20- production, distribution and sale of a narcotic drug or psychotropic substance

41. 1000 kyats is approximately 1 euro, over the years the rate has fluctuated, this is an approximation.

42. The Pa-O people are one of the ethnic group in Shan State. They also live in Kayin State, Kayah State, Mon State, and the Bago Division.

43. E.g. road construction, border area development program, rubber plantation etc.

44. Bureau of Democracy and Labor, US Department of State, Country reports for human rights practices 2014 -Burma Link: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236428#wrapper> accessed 8/12/2015

45. <http://www.mnhrc.org.mm/en/unofficial-translation-the-press-statement-regarding-the-visit-to-insein-central-prison-by-the-myanmar-national-human-rights-commission-statement-no-3-2015/>

46. <http://www.prisonstudies.org/country/myanmar-formerly-burma>, accessed 7/12 '15

47. An overview can be found in Country information and guidance: Burma Prison Conditions, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480894/burma_prison_conditions.pdf, accessed 7/12 '15

48. Section 15-failing to register as a drug user, section 16d-possession, section 21-abetments, instigating

49. Bureau of Democracy and Labor, US Department of State, Country reports for human rights practices 2014 -Burma Link: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236428#wrapper> Accessed 8/12/2015

50. ICRC Annual report 2014, https://app.icrc.org/...report/.../2014_ar_myanmar.pdf... accessed 4/12 '15

51. Country Information and Guidance Burma: Prison conditions, UK Home Office, November 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480894/burma_prison_conditions.pdf

52. Instead of charging with multiple sentences for several years, the case is charged under the longest sentence.

53. Section 15- failure to register, section 23- recidive

54. Special crack-down period.

55. Section 15- failure to register, section 16 -possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance, section 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; section 33D of the 1917 excise act for needles and syringes. In December 2015 the latter has been amended repealing sections related to the illegal possession of needles and syringes.

56. A report of the workshop can be found on the UNODC website: <https://www.unodc.org/southeastasiaandpacific/en/myanmar/2015/03/drug-law/story.html>

57. See for example <https://www.opensocietyfoundations.org/reports/drug-policy-portugal-benefits-decriminalizing-drug-use>

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National Drug User Network Myanmar (NDNM) is a network composed of current and former drug users, and people on methadone maintenance treatment. NDNM's aim is to advocate for reducing stigma and discrimination towards drug users and to have equal access to health and other social services for drug users.

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