

**Executive summary of the report on recommendations for the amendments of the
Myanmar 1993 Narcotic Drugs and Psychotropic Substances Law of Myanmar
December 2014**

Background

As part of the greater legal framework, illicit drug laws have strong implications for the health, livelihoods and human rights of people who use drugs (PWUD). In many countries, highly punitive illicit drug laws contribute to negative health outcomes, including increased vulnerability to HIV infection and decreased access to HIV prevention and treatment services for people who use drugs. International commitments and frameworks call for a rights-based approach to drug use and HIV. People who inject drugs (PWID) face barriers in accessing HIV prevention, testing and treatment services. There is overwhelming evidence that rights-based policy responses constitute best practices in terms of achieving effective and measurable outcomes for at-risk populations such as PWID.

Global consensus dictates that drug laws and policies be evidence-informed and include a comprehensive package of harm reduction services. Scientific evidence supports a comprehensive package of structural, biomedical and behavioural interventions as the optimal HIV prevention strategy for reducing HIV transmission among PWID. These interventions are to be delivered in a manner consistent with human rights obligations. These interventions should include: needle and syringe programmes, opioid substitution therapy, Naloxone (at Health and Community Centres), other drug dependence treatment and other HIV prevention, treatment and care services. When delivered through fixed point service centres or through community-based outreach, they have been shown to be effective in reducing risk behaviours, preventing HIV infections and accessing essential care and treatment services for PWID.

Various international reports, declarations, guidelines and other supportive documents provide clear guidance on the principles that should underpin HIV policies and programmes, if they are to conform to international accepted human rights standards. In the context of injecting drug use, the **minimum key elements** of a rights-based approach are to:

- ensure no compulsory registration, detention or treatment for people who use drugs;
- make available voluntary community-based drug and rehabilitation services;

- provide legal protection for the availability of clean needles and syringes and other HIV prevention, treatment and care services and OST;
- ensure access to voluntary and confidential HIV counselling and testing, linked to available HIV treatment services;
- repeal punitive laws that impose criminal sanctions on drug use;
- strengthen efforts to overcome the stigmatization and marginalization of PWUD.

Legal frameworks that include these key elements and a comprehensive package of harm reduction services, reduce stigma and discrimination, and encourage drug users to present to services and thus contribute to public health and the HIV response. UNAIDS has set an ambitious goal to end the AIDS epidemic by 2030. In order to achieve this goal in Myanmar, the Drug Law must contribute to an enabling environment that protects human rights, reduces stigma and discrimination, and promotes access to HIV prevention, testing and treatment services for people living with HIV (PLHIV) and key affected populations, including PWID. The historic purpose of Myanmar's 1993 Narcotic Drugs and Psychotropic Substances Law (hereafter referred to as 'the Drug Law') has been to control the production, possession, trafficking and use of illicit narcotic drugs and psychotropic substances. The Government of Myanmar is currently in the process of reviewing and subsequently amending various provisions of the Drug Law, which is a critical opportunity to align laws and policies on drug use in Myanmar with public health objectives and in line with human rights based standards. The Ministry of Home Affairs is leading the process with support from the Ministry of Health and Ministry of Social Welfare, Relief and Resettlement.

Call for partner input

The Ministry of Home Affairs, through the Central Committee for Drug Abuse Control (CCDAC), invited UNODC, UNAIDS and all relevant partners, to review the current law and provide inputs to Government and Parliament on various provisions of the current Drug Law before the January 2015 Parliament session.

This report compiles the inputs from the following contributing partners with expertise and experience in the areas of narcotic drug law, HIV and harm reduction:

- Drug Policy Advocacy Group¹
- WHO
- Open Society Foundations (OSF)
- Law Enforcement and HIV Network (LEAHN)
- TNI
- UNAIDS
- UNODC

The report summarises comments and suggested amendments to various existing provisions. It also includes proposed rephrasing of specific provisions or new sections/provisions where relevant. Note that where recommendations are calling for specific changes earlier on in the report e.g. ‘drug user’ in the definitions section is redefined as ‘people with drug dependence, the assumption is that all references to the ‘drug user’ will be replaced accordingly in the final redrafting of the Drug Law. This should apply to all recommendations.

In summary, the key recommendations are highlighted below:

1. Legal Framework for Harm Reduction and Effective HIV Response:

Currently, no legal framework for harm reduction services exists in Myanmar and the possession of needles and syringes is considered unlawful². The amended Law should include harm reduction services in the aims of the Law and require delivery of these services by the Ministry of Health. Further, it should define a comprehensive package of harm reduction services, including: needle-syringe programmes; opioid substitution therapy, availability of emergency management of suspected opioid overdose and outreach education as a legal and necessary intervention. The amended Law should ensure legal protection for harm reduction workers, including peer outreach workers, to distribute and collect injecting paraphernalia, and to educate people who use drugs about HIV, hepatitis and overdose. It should also clarify that it is lawful to provide and carry syringes and other safe injecting equipment and information.

¹ A newly formed policy platform in Myanmar, comprised of a wide range of stakeholders (local and international NGOs and UN agencies) having an interest in drug related policies and practices. The Group main objective is to advocate for the adoption of drugs policies and practices based on public health and development, following international human rights standards and best practices.

² Burma Excise Act 1917, Sections 13 & 33.

2. Removal of compulsory registration and treatment requirements:

The current Drug Law in Myanmar requires that drug users register with the Ministry of Health and undergo Ministry of Health-approved drug treatment and rehabilitation. Drug users who fail to register or follow Ministry of Health directives face the possibility of imprisonment for 3 to 5 years. These compulsory registration requirements for drug users, should be removed as it is a deterrent for people to access services. In addition, treatment and rehabilitation is most successful when voluntary and provided at the community level. If the registration system must remain in place, the Law should include a provision guaranteeing that access to health care, rehabilitation services and harm reduction services shall not be denied merely on the basis that a drug user is not registered.

3. Decriminalization of possession of small quantities of drugs for personal use:

The current Drug Law in Myanmar penalizes persons convicted with drug possession to a term of a minimum of 5 years to a maximum of 10 years imprisonment and a fine, regardless of the quantity of drugs. Prison penalties should be removed for people who possess small quantities of drugs for personal use. The possession of trace amounts of drugs should be decriminalized so that users carrying used syringes with trace amounts are not subject to prosecution and imprisonment. The Drug Law should instead; clearly state that the primary focus for punishment is on drug traffickers rather than drug users. By doing so, more discretionary policing can be implemented. Drug dependency is a health issue. Public health concerns for the whole Myanmar population outweigh the need to imprison an individual who is unable to change drug using behaviour. Additionally, the amended Drug Law should remove the minimum 5 year sentence for other drug offences, such that only a maximum sentence is stipulated.

4. Alternative Sentencing and Judicial Authority

Under the current Drug Law, drug users often enter a cycle of arrest - treatment - re-arrest, and many drug users are being imprisoned for substantial periods. Prosecutors and courts should be empowered through defined mechanisms in the amended Drug Law to aid in rehabilitation and divert drug users to treatment services as an alternative to imprisonment or criminal prosecution. Courts should be allowed to suspend prison sentences on conditions that the person is of good behavior and/or commits to attend a treatment service such that the

convicted drug user would not go to prison unless he or she committed further offences or failed to attend treatment during the period of the suspended sentence. Importantly, the minimum sentence of 5 years and the option of death penalty must be repealed without condition.

The report contains two parts. Part 1 is the Drug Law and Part 2 are the Rules for the Drug Law. Within each part are detailed recommendations for revisions, which is highlighted under the relevant Chapters, Sections or Sub-sections. The report includes a list of references that the contributing experts used to guide the recommendations.