

# THE ERADICATION OF THE NARCOTIC DRUGS AND THE PEACE SEEKING PROCESS IN BURMA/MYANMAR



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FEDERAL LAW ACADEMY

RESEARCH PAPER

# THE ERADICATION OF THE NARCOTIC DRUGS AND THE PEACE SEEKING PROCESS IN BURMA/MYANMAR

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31 AUGUST 2020



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▲ Myanmar Yaba pills routed Bangladesh through Indian border point  
Source: Narinjara/BNI

# PREAMBLE



Due to loosened oversight fueled by COVID-19 restrictions, the production and trafficking of narcotic drugs may have increased across the world. The confiscation of the largest synthetic opioid supply in Shan State, Burma, on record in Southeast Asia in May 2020,<sup>1</sup> for instance, has triggered concern for the international community. The production of methamphetamines, which have been gaining market share for years, is not dependent on the opium poppy crops, but rather only on laboratories, which can be made mobile and moved if necessary.<sup>2</sup> Fentanyl, a synthetic opioid, is highly lethal with a strength 50 times that of heroin and up to 100 times more potent than morphine.<sup>3</sup> Such potency worsens an already large drug problem. And the drug problem will only increase if any civilian part of the government, now the National League for Democracy (NLD) under the 2008 Constitution, keeps only carrying out tasks in accordance with the drug control policies and the laws amended in 2018.

Narcotic drugs are commonly perceived as a hazard to all of humanity, and the use of narcotics is normally prohibited by governments. However, narcotic drug users are increasing by the millions every year. This situation indicates that policies, laws and enforcements conducted by various governments, the successive Myanmar military governments at the top, are not effectively moving toward the drug-free world agreed upon in the United Nations (UN) Conference on narcotic drugs.<sup>4</sup>

After 1961, the UN adopted three international illicit drug control treaties that established the international narcotic drugs control system and mechanisms to take action aimed toward restricting the distribution and use of illicit drugs.<sup>5</sup> These treaties forbid the use, distribution,

1 BBC, 'Myanmar Police Seize Largest Haul of Synthetic Drugs' (BBC News 19 May 2020) <<https://www.bbc.com/news/world-asia-52712014>> accessed 9 July 2020.

2 Rodion Ebbighausen, 'Is Southeast Asia's Drug Trade Too Big to Control?' (Deutsche Welle 19 May 2020) <<https://www.dw.com/en/is-southeast-asias-drug-trade-too-big-to-control/a-53500062>> accessed 6 July 2020.

3 *ibid.*

4 The Final Act of the United Nations Conference was the 1961 Convention; Single Convention on Narcotic Drugs (adopted 30 March 1961, entered into force 13 December 1964) 520 UNTS 151; Protocol amending the Single Convention on Narcotic Drugs, 1961 (adopted 25 March 1972, entered into force 8 August 1975) 976 UNTS 3. Available at [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf) accessed 30 June 2020.

5 *ibid.*; Convention on Psychotropic Substances (adopted 21 February 1971, entered into force 16 August 1976) 1019 UNTS 175; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95; see also UNODC, 'Legal Framework for Drug Trafficking' <<https://www.unodc.org/unodc/en/drug-trafficking/legal-framework.html>> accessed 30 June 2020.

production, planting, importing and exporting of narcotic drugs and psychotropic substances, except for medical and scientific purposes.

Moreover, the international drug control program was started in 1991. Then, the UN Office on Drugs and Crime (UNODC) was established in 1997 and opened UNODC offices in every Member State, assigning representatives region by region.<sup>6</sup> These representatives cooperate with the States in preventing and combating drug-related crimes in the region defined as international transnational crimes. In addition, UNODC cooperates with respective States in preventing and combating other related crimes, such as illicit timber trade, human trafficking, corruption and money laundering.<sup>7</sup>

According to narcotic surveys of the UNODC and other international organizations, such measures were not effective. Individuals who use narcotic drugs for relaxation without committing any violence and keep them in possession for use were taken into legal actions and provided harsh penalties. A number of users were forced to get rid of drugs. Yet such problems persist even in developed countries without non-international armed conflict.

At the United Nations Conference on Narcotic Issues in 2016, countries agreed upon international narcotic policies that will emphasize healthcare and human rights aspects rather than punishment and criminalization. In line with such policies, some governments have adapted policies and amended the laws in their own countries. Similarly, Burma has revised its Drugs Control Policy and the Narcotic Drugs and Psychotropic Substances Act in 2018 with the support of UNODC, nongovernmental organizations (NGOs) and some civil society organizations. Such development is valuable. However, it may not be sufficient as Burma's narcotic problem is directly related to, and influenced by, the domestic peace-seeking process.

This paper therefore attempts to address the interconnection between narcotic drug eradication and peace seeking process by invoking the minimum standards of the Rule of Law while analyzing respective laws and legal frameworks on narcotic drugs with a special focus on the status of the United Wa State Party (UWSP).

6 Prior to 1 October 2002, the office was named 'Office for Drug Control and Crime Prevention', which was established by the Secretary-General in accordance with his reform program described in part two, section V of document A/51/950, dated 14 July 1997; see UN Secretariat, 'Secretary-General's bulletin: Organization of the United Nations Office on Drugs and Crime' (15 March 2004) UN Doc ST/SGB/2004/6.

7 See UNODC 'United Nations, Office on Drugs and Crimes, Topics' <<https://www.unodc.org/unodc/en/topics.html>> accessed 15 July 2020.

# PART I.

## LEGAL AND LAW ENFORCEMENT BACKGROUND

After the First Anglo-Burmese War, opium chambers were opened and taxed in nearly every town in the regions of Arakan/Rakhine and Tenasserim, occupied by the British; later, cannabis was allowed to be imported, and opium addicts were registered with the government.<sup>8</sup> During the colonial period, prevention from the danger of narcotic drugs was undertaken through various acts and laws<sup>9</sup> prohibiting the possession, consumption, transpiration, selling, importing and exporting of opium, cannabis, cocaine and other dangerous drugs.

During the parliamentary period after independence, the cultivation, production, possession, selling, exporting and importing of opium, cannabis and cocaine were prohibited, and violators were prosecuted according to Section 36 of the Chin Act 1948. The Opium Chamber Act 1950 and the Opium Consumers Act 1955 were also enacted in order to suppress the use of opium. And the drug addicts were registered and treated in the government rehabilitation center until they quit using opium.

Then, the Narcotic Drugs and Endangered Substances Law, Rules and Regulations were enacted in 1974 in the era of the Revolutionary Council in light of the 1961 Single Convention on Narcotic Drugs, ratified by Burma at that time, and the previous drug laws were abolished. The said law was also superseded by the 1993 Narcotic Drugs and Psychotropic

8 Ashley Wright, *Opium and Empire in Southeast Asia: Regulating Consumption in British Burma* (Palgrave Macmillan, London 2014) 19-31.

9 The acts and laws such as: the Opium Act of 1878; India Act No. 1 of 1878; Burma Act No. 7 of 1909, The Shan State Opium Order of 1923; Article 31 of the 1925 Kachin Hill-Tribes Regulation of 1895; The Burma Excise Act, Act No. 5 of 1917; The Shan State Excise Order of 1925; and The Dangerous Drugs Act, Act No. 2 of 1930.

Substances Law in the era of the State Law and Order Restoration Council (SLORC). Then, the country adopted a 15-year plan (1999–2014) that claimed to combat the narcotic drug use with the aim of Burma becoming a narcotic-free state in 2014.

Measurements of opium cultivation have been carried out annually since 2002 with the support of China and the UNODC.<sup>10</sup> The government media mentioned that the team of opium-cultivation-measuring experts from the China National Narcotics Control Commission is examining and verifying the opium poppy fields in Burma every year by utilizing satellite images and map indexes. The findings are then presented to the respective region/state police forces through the Central Body of the Narcotic Drugs and Psychotropic Substances and Forest Department. Then, the respective Regional Command of the Myanmar Army and the state government also receive the findings. Afterward, the local army and the police forces, in collaboration with the local population, destroy the opium plantations; a total of 15,188.49 hectares of opium poppy were destroyed during the 2013–2014 harvest.<sup>11</sup> However, the international drug reports mentioned that the danger of other high-graded narcotic drugs other than opium is increasing more than ever.

Although the 1993 Narcotic Drugs and Psychotropic Substances Law, Rules and Regulations are ratified in line with the provisions of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which Burma ratified in 1991, the narcotic drug problem has escalated.

President Win Myint issued a statement in June 2018 about carrying out a five-point plan, including a prioritized crackdown on major smugglers. Accordingly, anyone can secretly inform the President's Office about related narcotic drug crimes, and those drug informants would be awarded. In the President's Office, the "Drug Abuse Reporting Department" was formed to receive the related information and to issue update statements on drug cases. An analysis of these statements, however, revealed that only small-scale drug traffickers could be arrested and prosecuted. According to the remarks of the Members of Parliaments from Shan and Mon States and the local people, the President's Office program has been ineffective.<sup>12</sup>

In addition, the Myanmar Police Force has targeted only small-scale cultivation, trafficking and individual users under the 1917 Narcotics Act and the 1993 Narcotic Drugs and Psychotropic Substances Law. This approach ultimately is just a matter of showcasing action without any real effort to address the key root causes of the drug problem. As a consequence, the victims end up experiencing socioeconomic deterioration and long-term imprisonments, and socially, they have become persona non grata in the community.

For instance, about two-thirds of those in Myitkyina prison are incarcerated for small-scale drug offenses. Drug enforcement organizations are highly unlikely to crack down on major drug dealers given that small

10 Ministry of Information, 'The opium cultivation in Northern Myanmar measured' (MOI, Naypyitaw 12 August 2014) <<https://www.moi.gov.mm/npe:zg/?q=news/13/08/2014/id-12243>> accessed 30 June 2020.

11 *ibid.*

12 Shan Herald, 'Why Narcotic Drug Issue in Shan State Cannot Be Ended' (BNI Multimedia Group 30 June 2019) <<https://www.bnionline.net/mm/news-66292>> accessed 30 June 2020; Hinthar Media, 'A Warning Bell for the Government Who Claimed More Crackdowns on Drugs' (BNI Multimedia Group 31 January 2019) <<https://www.bnionline.net/mm/news-63936>> accessed 30 June 2020.

drug dealers are vulnerable to apprehension. Thus, both small drug dealers and major distributors receive analogous penalties.<sup>13</sup> As such, despite the ongoing widespread crackdowns on narcotic drugs in Burma with increasing numbers of inmates in prisons, the drug trafficking problem has continued to increase at large.

Although the Drug Enforcement Forces and Task Forces can investigate and prosecute small-scale drug traffickers and individual users, they cannot investigate and bring legal proceedings against any large-scale drug lords and groups underpinned by the Myanmar Army.<sup>14</sup> If the forces enter any area controlled by the militias, the heavyweight drug dealers, it is required to report and ask permission to operate from the respective Military Regional Command and the local, divisional and battalion army units. After any approved operation is completed, only the narcotic drugs, related items and equipment are seized; no perpetrators are arrested and convicted.<sup>15</sup>

If seeking to investigate heavyweight drug businesses, the state and regional-level Commander of the Police Forces or Special Drug Enforcement Commander shall submit the operation plan and the budget in detail to the Central Body and shall then only continue when and if authorization is permitted.<sup>16</sup> The local authorities and the police forces thus ignored the stockpiling, transporting, transferring, distributing, trading and transforming of the narcotic drugs that are publicly conducted by the militia groups and border guard forces under the command of the Myanmar Army. The responsible authority did not dare to investigate and deliberately failed to take actions against offenses reported by informants.

*Youths using drugs in Kachin State*  
Photo by Ram Hkye Tang ▾



- 13 Drug Policy Advocacy Group, *Addressing Drug Problems in Myanmar: 5 key interventions that can make a difference* (DPAG Myanmar, February 2017) 6-9. Available at <https://www.tni.org/en/publication/addressing-drug-problems-in-myanmar> accessed 16 July 2020.
- 14 The law itself authorized a strict centralized control regarding to who is allowed to operate within the designated areas.
- 15 International Crisis Group, 'Fire and Ice: Conflict and Drugs in Myanmar's Shan State' (ICG Report n° 299, Brussels 8 January 2019) 7-8, 10-11 <<https://www.crisisgroup.org/asia/south-east-asia/myanmar/299-fire-and-ice-conflict-and-drugs-myanmars-shan-state>> accessed on 6 July 2020.
- 16 Rules Relating to Narcotic Drugs and Psychotropic Substances 1995, Ministry of Home Affairs, Notification n° 1/95, Chapter V Procedure for the Exposure and Arrest of Undercover Main Offenders, Members of Local and Foreign Gangs and Groups, art 34. Available at <https://www.burmalibrary.org/en/rules-relating-to-narcotic-drugs-and-psychotropic-substances-notification-no-195> accessed 16 July 2020.

The anti-narcotic drug organizations, whether governmental or nongovernmental, simply attempt to destroy the opium cultivation by force without preparing to implement programs aimed toward the survival and livelihood of the poor local people.<sup>17</sup> This conduct effectively traps the local people, who depend on opium cultivation, in debt cycles and causes them to suffer both physical and mental hardships due to deepening poverty. As a result, it causes many socioeconomic problems, including pushing many minors to become victims of narcotic drugs and the related health concerns that drug use brings. In 2014, for instance, the HIV prevalence rate was 28.3% among people who injected drugs.<sup>18</sup> According to surveys by NGOs and UN agencies that assist addicts, Burma has an estimated 300,000 drug users in the country; and, the number of heroin users was the highest, especially in the northern parts of the country, Kachin and Shan States, and many drug injectors were found in the Sagaing and Mandalay Regions.<sup>19</sup>

In practice, the way the police approach the drug problem is simply to search for the drugs or kits, such as syringes, from the individual users in the designated areas where they serve. In most cases of such arrests, the informants bring the police to the locations where addicts gather to use drugs together and to the sellers; most informants are former addicts or ex-retailers who have previously been arrested, and most arrests are made with their support; and, the suspects detained are subjected to physical and urine test examinations by the Health Department.<sup>20</sup> Even this type of procedure triggers corruption among the Health Department agents, the police and law enforcement organizations.

The UNODC's opium and narcotics survey in Myanmar in 2018 and 2019 showed a decline in opium cultivation and narcotic trades. But that reduction is due to the decline in cultivation because of bad weather and lower demand in the opium market.<sup>21</sup> Opium cultivation is typically much higher. An analysis paper from the Research Department of Union Assembly in 2017, for example, concluded that opium cultivation becomes widespread for the following reasons: the areas of cultivation are geographically difficult to reach via travel; other crops cannot be grown on that type of soil; growers must accept high costs for the crops to reach the market; the lower incomes of the local people make cultivation attractive since opium earns more income than other crops; no stability in the area; and a lack of the Rule of Law.<sup>22</sup>

17 Pien Metaal, 'The Global Forum of Producers of Prohibited Plants' (Transnational Institute TNI, Amsterdam 2016). Available at <https://www.tni.org/en/publication/the-global-forum-of-producers-of-prohibited-plants-gfppp> accessed 16 July 2020.

18 National AIDS Program, 'Myanmar: Integrated Biological and Behavioral Surveillance Survey and Population Size Estimates among People Who Inject Drugs' (Ministry of Health and Sports, Naypyitaw 2014). Available at [https://pr-myanmar.org/sites/pr-myanmar.org/files/publication\\_docs/myanmar\\_pwid\\_ibbs\\_pse\\_report\\_300516.pdf](https://pr-myanmar.org/sites/pr-myanmar.org/files/publication_docs/myanmar_pwid_ibbs_pse_report_300516.pdf) accessed 16 July 2020.

19 Stephen Otter, 'Counter Narcotics in Myanmar: Background Paper' (The Asia Foundation, Urban Safety Project, October 2017). Available at <https://asiafoundation.org/publication/myanmar-urban-safety-brief-series/> accessed 5 August 2020.

20 *ibid.*

21 Statement by U Khun Sai, head of the Shan State Drug Monitoring Group based on the Thai-Burmese border; see BBC 'Just because a branch is strong does not cure the drug' (BBC News Burmese, 26 June 2018) <<https://www.bbc.com/burmese/burma-44611672>> accessed 30 June 2020.

22 'Analysis Paper on the Anti-Narcotic Drug Campaigns and Arrests' (Office of the Pyithu Hluttaw, The Research Department 17 August 2017).



Since Burma's independence, the successive governments have always blamed geography and other unfavorable situations in the areas where opium poppies are more heavily cultivated. The governments do not appear to have focused on any new issues or suggested strategies for eradication, based on changing situations vis-à-vis civil war and other regional and international circumstances. And now, how to effectively deal with the production and trafficking of synthetic opioids is a new legal, institutional and societal challenge in Burma. Unfortunately, historically, no effort has so far attempted to tackle all narcotics-related issues from the aspect of the minimum standards of the Rule of Law in connection with the root causes of civil war.

Photo by Ram Hkye Tang ▼





# PART II.

## ANALYSIS OF THE LAWS ON NARCOTIC DRUGS

In adopting and enacting various policies and laws in order to tackle the narcotic drug issue, most countries are executing from the perspective of combating drug trafficking and imposing severe penalties under strong policies and laws

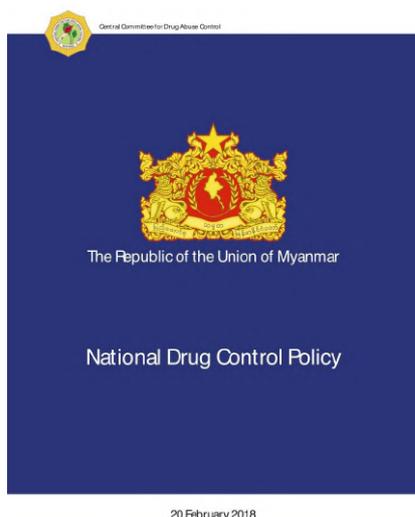
The UN General Assembly Special Session (UNGASS) on the World Drug Problem was originally planned to be held in 2019. But three years before the target period, a High-Level Segment in Vienna was held in April 2016 because the presidents of three Member States (Colombia, Mexico and Guatemala) called upon the world community to urgently discuss all possible scenarios since the current drug-control strategies had failed to address the increasing violence related to drug markets in their countries. These leaders argued that alternative policies should be discussed openly, with a focus on health, human rights and replacing the current repressive focus of international drug policy. UNGASS 2016 was therefore committed to addressing pressing tensions in the international drug control system and considering all policy options available.<sup>23</sup>

In Burma, a new National Drug Control Policy was adopted in 2018 to amend/replace the 1993 Narcotic Drugs and Psychotropic Substances Law. However, the draft law was found to be compiled based on the 1995 Narcotic Drugs and Psychotropic Substance Rules, and it has been submitted to the Union Attorney General's Office for approval.<sup>24</sup>

No policy or legal provisions addressing the deep-rooted, large-scale drug production and trafficking connected with the non-international armed conflict in Burma are currently found in the new National Drug Control Policy adopted in 2008 or the revised Narcotic Drugs and Psychotropic Substances

<sup>23</sup> Metaal (n 17) 4-5.

<sup>24</sup> Question asked by Khin Maung Myint, Wapsauk Constituency, answered by Deputy Minister Aung Thu, Ministry of Home Affairs (Second Pyithu Hluttaw 13th Regular Session, fifth day, Naypyitaw 29 July 2019). Available at <https://www.pyithuhluttaw.gov.mm/question-3919> accessed 16 July 2020.



Act. The new policy is a five-year plan that includes the following priority areas: (1) Supply Reduction and Alternative Development, (2) Demand and Harm Reduction, (3) International Cooperation and (5) Compliance with Human Rights.

Priority area (1), Supply Reduction and Alternative Development, includes “increasing cooperation with ethnic armed groups in drug control and rule of law issues.” In terms of Ethnic Armed Organizations, there are three types of groups: those who have signed the Nationwide Ceasefire Agreement (NCA), those who have not and those who signed the ceasefire agreements at the state level. A precise and clear-cut policy is needed to address the deep-rooted and growing drug problem in connection with the civil war.

Therefore, enacting such a policy is not just a matter of cooperation with ethnic armed organizations since the government designates the non-signatory ethnic armed organizations as illegal associations. When articulating the Rule of Law, then, which types of practices and laws are referenced? All laws, including the 2008 Constitution and all drug-related laws,<sup>25</sup> are not just laws that can effectively address the underlying drug problem on the basis of the Rule of Law itself.

In addition, the amended Narcotic Drugs and Psychotropic Substances Law is just as tightly centralized as the old one. The Central Body for the Prevention of the Danger of Narcotic Drugs and Psychotropic Substances was formed by the Union Government, and the Union Minister of Home Affairs, who is a top Myanmar military official, is appointed as its chair. The work of the Central Body, albeit implementing tasks for more than 20 years, has been unsuccessful, and in those years, it has reached the highest level of production and trade not only for opium but also for upgraded versions of various drugs. Under the amended law, although the functions and duties of the Central Body include six additional duties, they are not provisions that can address the narcotic drug issues connected with the civil war in the country.<sup>26</sup>

It is regulated that the Central Body shall form the State and Regional bodies, the Union Territories, Self-Administered Zones or Self-Administered Divisions, Districts, Townships, and Ward and Village Tract Bodies, and shall determine the functions and duties thereof respectively.<sup>27</sup> The current peril of narcotic drugs cannot be eradicated by simply carrying out the duties dictated by the Central Body for the nonidentical drug issues that variously impact dissimilar communities in different geographical areas.

25 Narcotic Drugs Law 1993; Anti-Corruption Law 2013, available at <http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2013/pyidaungsu-hluttaw-law-no-23-2013-anti-corruption-law-english.html> (unofficial translation) accessed 5 August 2020; The Money Laundering Eradication Law 2014, available at <https://www.mlis.gov.mm/mLsView.do;jsessionid=01A33480229B18DAFA77B8F74220FC6F?lawordSn=9581> accessed 5 August 2020; and land laws.

26 Narcotic Drugs Law 1993; Articles 5 and 6.

27 *ibid* Article 7.

Burma has become the second worst country globally regarding the narcotic drugs issue with the underpinning issue of failing to find a solution to terminate civil war. In attempting to eradicate the narcotic drugs issue, rather than the “top down” process that has been a failure for several decades, a “bottom-up” process should be conducted. In some ethnic states, where at least two or three of the Ethnic Resistance Organizations (EROs) operate, adequate authority should be sought by jointly producing provincial or state anti-narcotic drug laws in consultation with local ethnic nationalities or indigenous peoples who would be affected by narcotic drugs eradication program, while seeking their consent.

To this end, minimum standards of the Rule of Law must be upheld, and any perpetrators, including government and military authorities, who commit narcotic drug crimes shall have legal actions taken against them. In terms of seeking accountability and transparency, a law enforcement team can be jointly formed by the (EROs), and an independent court could be established in each respective ethnic state/province; the access of international and domestic media should also be allowed. Of course, such measures present a daunting task. However, operating only one ERO in a large ethnic state/province may not be effective given that traffickers normally move from one area to another and from one state to another. If the Myanmar Army sincerely wishes to eradicate the narcotics issue once and for all, it should support such joint efforts with the EROs as such joint activities have already been outlined in the government policy.<sup>28</sup>

In recent years, though the alternative crop substitution schemes have been undertaken in the ethnic states to eradicate poppy cultivation, these schemes were merely symbolic given the strict central government policy control. The schemes were also exacerbated by lack of knowledge regarding the socio-economic status of the local ethnic nationalities and the particularity of terrain.<sup>29</sup>

Today, some countries around the world are approaching the drug problem with the perspective of how it should be legally regulated rather than illegally prohibited.<sup>30</sup> However, in Burma, under the new Narcotic Drug Policy and Law, the Central Body for the Prevention of the Danger of Narcotic Drugs and Psychotropic Substances is under the rigid control of the Union Government. As stated above, the Chairperson is the Union Minister for Home Affairs, a military general. Further, the police forces are under the command of, and follow the instructions of, the Myanmar Army.<sup>31</sup> Due to the above-mentioned situations, it is highly unlikely for the police forces to take effective actions against the large-scale drug productions and traffickers.

The new Narcotic Drug Law per se is an unjust law that criminalizes the victims of the evil system—the small-scale individual growers, the growers for

28 Central Committee for Drug Abuse Control, National Drug Control Policy (Ministry of Home Affairs, Naypyitaw, 20 February 2018) 14: ‘Strengthen cooperation mechanisms on drug control and rule of law with ethnic armed groups.’ Available at <https://www.unodc.org/southeastasiaandpacific/en/myanmar/2018/02/new-national-drug-control-policy/story.html> accessed 16 July 2020.

29 Metaal (n 17) 18-19.

30 Global Commission on Drug Policy, ‘Advancing Drug Policy Reform: A New Approach to Decriminalization: 2016 Report’ (Global Commission on Drug Policy 2016) 9: ‘In November 2016, California and a number of other US states vote on whether or not to create a legally regulated market for cannabis. In 2017, Canada becomes the first G7 country to regulate an illicit drug (cannabis) at the national level.’ Available at <https://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform> accessed 16 July 2020.

31 Constitution of the Republic of the Union of Myanmar 2008, Articles 232(b), 232(j)(ii) and 338.

personal use, the resellers, and the personal users—with disproportionate sentences.<sup>32</sup> In the purpose and duties of both the newly amended policy and law, there are provisions to cooperate with other countries, the members of the UN Conventions on Drugs, UN agencies, international organizations and regional countries. Burma ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988, the 1961 Convention and the 1971 Convention, which was amended in 1972 with some exceptions, respectively.

While these provisions seem positive, compliance is not explicitly found. Despite cooperation with the stated international communities being somewhat in place, achieving the objective of eradicating narcotic drugs is highly unlikely. This low probability exists, on the one hand, because the root causes of civil war, including the denial of the right to self-determination of ethnic nationalities, have not yet been resolved. On the other hand, all power is primarily concentrated at the central level, which also contributes to the likelihood of failing to eradicate narcotic drugs.

While power is granted to the Central Body, no authority is conferred on the state and local bodies concerning financial allocation. The law states that the Central Body shall establish the fund derived from the Union Budget and donations from the UN agencies, international organizations, regional organizations and individual donors.<sup>33</sup>

The law does not specify who shall make the budget allocations, the Union Government or the Hluttaw (the Parliament). This authority should be clearly stated in the law. Not only the Union Government and the Central Body but also the ethnic states/provinces should be allowed to receive direct donations from the UN agencies and international organizations.

In dealing with narcotic drug problems, money-laundering and anti-corruption issues must be undertaken simultaneously. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 prohibits the cultivation, production, possession, transportation, import, export and trade of illicit narcotic drugs and psychotropic substances.<sup>34</sup> In addition, the Convention includes provisions for acquisition, possession, transfer or laundering of proceeds derived from or used in the illicit traffic; the involvement of organized criminal groups; the fact that the offender holds a public office; the methods of monitoring and investigating the perpetrators of major offenses; and cooperation and providing legal support among other Member countries.

With regard to “Controlled Delivery,” Article 11 of this Agreement sets out what the parties (Member countries) shall undertake without affecting their sovereignty. The 1995 Narcotic Drugs and Psychotropic Substances Rules have been enacted in light of this provision in Burma. However, the main culprits behind drug trafficking were not caught, though a large amount of unclaimed narcotic drug cartons were seized.<sup>35</sup>

32 Narcotic Drugs Law 1993; Chapter 8 Offenses and Penalties, Articles 16-25.

33 *ibid*, Chapter 8(A) Setting Up the Funds and Management, Article 25.

34 UN Convention 1988 (n 5) Article 2. Also available at <[https://www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Commentaries-OfficialRecords/1988Convention/1988\\_OFFICIAL\\_RECORDS\\_Volume\\_I\\_en.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Commentaries-OfficialRecords/1988Convention/1988_OFFICIAL_RECORDS_Volume_I_en.pdf)>

35 Naethit, ‘Narcotic Drugs Worth 42,000 Myanmar Kyats Were Seized on Abandoned Vehicle’ (NaeThitMyanmar 12 February 2020) <<https://naethitmyanmar.com/blogs/archives/14891>> accessed 30 June 2020.

Drug cartels or primary manufacturers remain at large. Identifying and arresting the key criminals and hoodlums of foreign and domestic drug cartels are likely only with the approval of the government.<sup>36</sup> Under this provision, the Myanmar generals who constitute a major part of the government would never agree to an investigation and the disclosure of the narcotic drug enterprises being undertaken by the militias operating under generals' own oversight.

Ultimately, no provision exists in the policies, rules and regulations, and laws to effectively take action against money-laundering and corruption offenses related to the narcotic drugs problem. No effective action is taken against the militias or the BGFs in accordance with the anti-money-laundering and anti-corruption laws, though some government authorities have taken action on corruption crimes not related to the narcotic drug issue.<sup>37</sup> Military officials, their subordinates in the armed forces and their cronies have never been investigated or convicted for the crimes of money laundering or corruption related to narcotic drugs and other cases.

In upholding the Rule of Law, one of the basic principles is that no one is above the law, and any person who violates the law must face the legal consequences. Yet in Burma, even though laws exist, perpetrators enjoy impunity as selectivity is practiced, and no enforcement occurs for selected suspects. With this underpinning, the eradication of narcotic drugs remains an unachievable objective.

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36 The Rules relating to narcotic drugs and psychotropic substances, Chapter (5), art 33-35; The methods to identify and arrest the key criminals behind and the members and foreign and domestic drug gangs.

37 San Yamin Aung, 'Ex-Regional Chief Minister Jailed for 30 Years in Landmark Myanmar Corruption Case' (The Irrawaddy 22 May 2020) <<https://www.irrawaddy.com/news/burma/ex-regional-chief-minister-jailed-30-years-landmark-myanmar-corruption-case.html>> accessed 16 July 2020. Daw Lei Maw is the highest-ranked person against whom legal action has been taken under the National League for Democracy (NLD) Administration.



# PART III.

## THE NEXUS BETWEEN THE CIVIL WAR AND THE NARCOTIC DRUG ISSUE

Burma is the world's second-largest producer of narcotic drugs<sup>38</sup> such as heroin, amphetamines, and crystal methamphetamine or ice. The most narcotic-producing areas are designated by the local militias and border guard forces, operating under the control of the Myanmar Army. This dynamic transpires especially in the Kachin and Shan States, according to the surveys by the UN and independent international organizations.<sup>39</sup>

Opium poppy has been growing in the northern and eastern parts of Burma since around 1900 during the British colonial era before independence. At that time, black opium was exported to the licensed opium chambers in areas such as Rangoon, Mawlamyine (Moulmein), Bangkok, Singapore, Malaysia and so on. The price of opium has been increasing, and the entire regions of Kachin and Shan States have seen a dramatic increase in opium poppy cultivation.<sup>40</sup>

In 1949, just after Burma's Independence, the Kuomintang (KMT), which was defeated by the Red Army of the Communist Party of China (CPC), entered Burma, established the base camps in eastern Shan State along the Thai-Burma border and generated opium businesses. Heroin (also known as white opium powder) production and manufacturing methods came into existence alongside those businesses.<sup>41</sup> During those decades, the opium cultivation and heroin trade were dominated by the KMT (aka White Chinese Forces); Lo Hsing Han (Luó Xīnghàn), the leader of the Kokang Ka Kwe Ye (Kokang Defence Force); and the Sino-Shan rebel leader Khun Sa, the local

38 The world's largest producer is Afghanistan.

39 The aforementioned information is collected from the two yearly reports, 2017 and 2018, by UNODC, 'Myanmar Opium Survey', and others issued by Transnational Institute and Asia Foundation.

40 Palaung State Liberation Front, 'The militia, Narcotic Drugs and Gambling' (PSLF 1 June 2018) <<http://www.pslftnla.org/ပြည်သူ့စစ်အဖွဲ့-မှူးယစ်/>> accessed 17 July 2020.

41 *ibid.*

militia commander. Afterward, Khun Sa became the leader of the Shan United Revolutionary Army (SURA) and subsequently the Mong Tai Army.<sup>42</sup>

In northern Shan State, the domestic armed conflicts and the narcotic drug trade have been intertwined since the 1950s. With the support of China, the Communist Party of Burma (CPB) launched successful military operations in northern Shan State and took control of armed forces along the border, including in the Wa and Mong La areas in 1970s. Although no evidence was found that the CPB had policy for making finance by producing and trafficking narcotic drugs, Burma was the world's largest exporter of heroin in the 1970s and 1980s, and Shan State has been the major territory where narcotics are primarily produced.

In 1981, there was a peace talk between the CPB led by Thakhin Pe Tint and the then-ruling military regime led by Ne Win, a military dictator with civilian camouflage, under the 1974 Constitution. The CPB, in addition to a multiparty democratic system,<sup>43</sup> put forth three demands:<sup>44</sup>

1. recognition of the CPB as a legal political party;
2. recognition of the CPB's base area as an "autonomous entity"; and,
3. recognition of the CPB army.

*Myanmar Military Soldiers*

Photo by BosNewsLife Asia Service | [www.thestateless.com](http://www.thestateless.com) ▼



42 ICG (n 15) 3

43 Win Tint Tun, *Burma in the Darkness* (Democratic Party for New Society and Light House Colleagues, Japan 2007) 437.

44 Bertil Lintner, *The Rise and Fall of the Communist Party of Burma (CPB)* (Cornell Southeast Asia Program 1990).

All of the demands were rejected, and the peace talk was terminated by the regime.

1989, the local ethnic nationalities who served as fighters under the CPB defected from it and formed their own organizations—the United Wa State Party (UWSP), the Myanmar National Democratic Alliance Army (MNDAA) and the National Democratic Alliance Army (NDAA). Taking advantage of the fall of the CPB, under the initiative of General Khin Nyunt—Military Intelligent Chief and Secretary of the State Law and Order Restoration Council (SLORC)—the Myanmar Army made separate ceasefire agreements with the said organizations and granted the aforementioned three demands, notwithstanding rejection of the CPB, to the three organizations. Since then, the political landscape has changed insofar as expectation for a genuine peace may never be achieved, nor may the eradication of narcotics drug production and trade be attained. This concern needs to be elaborated.

Given the above, three unavoidable consequences and political and legal complications exist: First, aiming to terminate the CPB, the prerogatives that are impossible for all other EROs were conferred on the CPB defector organizations, and as a result, equality among the ethnic units can never be sought, thereby leading to perpetual denial of the Rule of Law. Second, extreme nationalism has arisen, and as a result, momentum for seeking common interests, which is a requirement for federalism, for the entire Federal Union is rarely promoted, but rather the interests of their own organizations or, at most, the respective ethnic state/province has become a top priority for a large majority of EROs at almost all times.

And finally, instead of practicing political pluralism, which lays the foundation for societal development, both communism and the formal existence of a communist party were struck down, and as a result, the so-called multiparty democratic system being implemented under the 2008 Constitution has been in limbo because almost all parties lack a clear political ideology except for nationalism.

In seeking peace in Burma, apart from other aspects, the Rule of Law, federalism dynamics and pluralism all play a vital role. To this end, a wider perspective may be applied for in-depth observation. To uphold the Rule of Law, the role of the European Court of Justice—operating in a context of constitutional pluralism that distinguishes between internal and external sources of pluralism in the European legal order—is valuable from the perspective of dynamic federalism. In terms of international pluralism, Maduro<sup>45</sup> identifies four main sources: constitutional sources (both European and national) which have fed the European Union (EU) constitutional framework and its general principles of law; the acceptance of the supremacy of EU rules over national constitutional rules; an emergence of new forms of power; and domination of a formal political pluralism. All four sources are valuable for federalism dynamics.

During the 70-year civil war in Burma, narcotic drug production and trade has reached its second-highest peak globally, whereas the country's development index ranks among the world's poorest. Myanmar military leaders

45 Miguel Poiares Maduro, 'Interpreting European Law- Judicial Adjudication in a Context of Constitutional Pluralism' (3 June 2008) Working Paper Instituto de Empresa IE Law School WPLS 08-02 <<https://dx.doi.org/10.2139/ssrn.1134503>> accessed 17 July 2020.

and their allies, nevertheless, are among the world's richest.<sup>46</sup> Based on these situations, the beneficiaries of the non-international armed conflicts in Burma are clear. Unless the narcotic drug issue is dealt with by applying the minimum standards of the Rule of Law, the potential to end the civil war is quite slim.

For the opium farmers, one reason to depend on opium cultivation and narcotics production is that the local people lack access to land that can be used for their livelihoods, and their lands are confiscated in various ways under the concept that all lands are owned by the State.<sup>47</sup>

In Kachin State, the largest opium cultivation and narcotic drug production areas are found in the areas based and controlled by the Tangutan Militia, the Lihsu Militia, the Tailian (Red Shan) Militia, the Tarlao Militia and the Myanmar Army's Border Guard Force Battalions 1002 and 1003. In northern Shan State, the largest cultivation and production are found in the areas where the Panse Militia, the Lunghtang Militia, the Shauhaw Militia, the Tarmunye Militia, the Namjaung Militia, the Mongji Militia, the Targone Militia, the Tangyan Militia and the Kawngkha Militia are stationed.<sup>48</sup>

Those militia groups are allowed to operate illegally and buttressed by the Myanmar Army. The groups are also fully armed. If their interests in the narcotic drugs production and trade are impeded, they are likely to commit any type of crimes at any time. The existence of the groups is thus detrimental to the Rule of Law. According to the UNODC survey in 2018 and 2019, Shan State is the largest opium cultivation and narcotic drugs production region in Burma.

Yet it remains a daunting task to pinpoint the exact locations of the opium and methamphetamine (Yaba) manufacturing plants. However, according to the surveys and the information collected from those who previously worked in those plants, the traders and the consumers, opium and methamphetamine are being produced in the areas controlled by the Militias in northern Shan State.<sup>49</sup> Based on the observed trade routes of the narcotic drugs, the major opium-growing areas are believed to be Kunlong, northern Shan State, Tarmunye, Kawng Hka and Panse, and the products are transported to Kutkai, Muse Nam Kham and Mandalay.<sup>50</sup> In Kachin State, the narcotic products are transported to Chipwi, Waingmaw and Myitkyina via Pangwa, Kampaiti and Sadung where the Border Guard Force No. 1001, 1002 and 1003, operating under the command of the Myanmar Army, and the militia groups are stationed.<sup>51</sup> Wholesalers, retailers and brokers are involved in the narcotics trade, and all operate under the tacit protection of the local authorities—such as the Myanmar Army, the police forces, border guard forces, militias and General Administration Department of the government—by paying bribes at different levels.<sup>52</sup>

46 Global Witness, *Jade: Myanmar's "Big State Secret"* (Global Witness, London 2015) 40-61. Available at [https://www.globalwitness.org/documents/18343/Jade\\_full\\_report\\_second\\_run\\_online\\_hi\\_res\\_q7urZlk.pdf](https://www.globalwitness.org/documents/18343/Jade_full_report_second_run_online_hi_res_q7urZlk.pdf) accessed 17 July 2020.

47 Metaal (n 17) 17-18.

48 Drug Issues Fact-Finding Commission, *Drug Issue Report 2018-2019* (Drug Eradication Committee, Kachin Independence Organisation KIO 26 June 2019). Available at [http://nidoffice.org/wp-content/uploads/2019/06/Drug-Issue-Report\\_English-Version.pdf](http://nidoffice.org/wp-content/uploads/2019/06/Drug-Issue-Report_English-Version.pdf) accessed 17 July 2020.

49 *ibid.*

50 *ibid.*

51 *ibid.*

52 *ibid.*

The UNODC erroneously portrayed the ethnic armed organizations as the key actors for the poppy cultivation and opium production in the Kachin and the Shan State (South and North) in its “Myanmar Opium Survey 2018” report. The Transnational Institute (TNI) confuted the incorrect description and asserted that the largest poppy-cultivating and opium-producing areas are those controlled by the Myanmar Army, its subordinate militias and the border guard forces.<sup>53</sup>

A large majority of opium cultivators are just poor farmers who severely suffer from the ongoing civil war. The poppy-growing regions, where armed conflicts commonly occur, are also remote areas with poor access to transportation and lack any opportunity for development. Given those circumstances, the Myanmar Army utilizes the strategy of a people’s militia under the 2008 Constitution.<sup>54</sup> That this strategy remains possible is a serious issue created only by the 2008 Constitution as an analogous provision was not included in the 1947 and the 1974 Constitutions. In spite of the constitutional provision, there is no existing law that specifies the formation of people’s militias; greenlights equipping such militias with weapons and ammunitions, salaries and/or other supplies; prohibits crimes against civilians and their properties during armed conflicts; discriminates between military and civilian targets; obeys the chain of command; and adopts the doctrine of superior/command responsibility. Another existing law, the People’s Military Service Law,<sup>55</sup> is irrelevant to people’s militias as the law applies only to the conscription of soldiers serving in the Myanmar Army.

In cooperation with the Myanmar Army, the militia and border guard forces take advantage of this situation and expand illicit narcotics trafficking. The Myanmar Army is the major beneficiary of this lucrative business. C-in-C Min Aung Hlaing rhetorically claimed that internal peace would be achieved by 2020.<sup>56</sup> To date, however, no root causes of civil war, including the narcotic drugs issue, have been addressed.

Empirically, police forces and the Myanmar armed forces have been confiscating narcotic drugs through actions where one force or another gets involved, respectively. The rank and files from the Myanmar Army, for instance, have often been caught in northern Rakhine State with millions of dollars’ worth of amphetamine and methamphetamine pills, originally manufactured in Wa regions.<sup>57</sup> Thus, different levels of officers from the Myanmar Army have clearly been involved in the production and trade of narcotic drugs.<sup>58</sup>

A large amount of narcotic drugs—including amphetamines, methamphetamines, crystal meth, various kinds of stimulant pills and heroin—

53 Transnational Institute, ‘A Distortion of Reality: Drugs, Conflict and the UNODC’s 2018 Myanmar Opium Survey’ (TNI 5 March 2019) <[https://www.tni.org/my/article/A-Distortion-of-Reality-in-Burmese?content\\_language=en](https://www.tni.org/my/article/A-Distortion-of-Reality-in-Burmese?content_language=en)> accessed 30 June 2020.

54 Constitution of the Republic of the Union of Myanmar 2008, Article 340, Chapter 7.

55 People’s Military Service Law 2010 (State Peace and Development Council Law No. 27/ 2010).

56 Wai Mar Htun, ‘Will Myanmar’s peace process be accomplished by 2020?’ (RFA Burmese 22 June 2020) <[https://www.rfa.org/burmese/program\\_2/2020-peace-process-06222020052039.html](https://www.rfa.org/burmese/program_2/2020-peace-process-06222020052039.html)> accessed 14 Jul 2020.

57 ICG (n 15) 7; The statement by Mr Jeremy Douglas, regional representative of the UN Office on Drugs and Crime, in Clare Hammond, ‘Mekong Rethinks Drug Policy as Syndicates Pump Meth from Myanmar’ *Frontier Myanmar* (online edn 21 May 2018) <<https://frontiermyanmar.net/en/mekong-rethinks-drug-policy-as-syndicates-pump-meth-from-myanmar>> accessed 30 June 2020

58 *ibid*; BBC ‘Drugs Seized from Police in Kachin’ (BBC News Burmese 15 July 2018) <<https://www.bbc.com/burmese/amp/burma-44840823>> accessed 30 June 2020.

*Burmese refugees from Bhamo city at a rescue camp in the Chinese southwestern border city of Ruili, Yunnan province, February 9, 2012.  
Photo by AP ▼*





has been seized from February to April 2020 in the area controlled under the Kawngkha Militia in Kutkhai Township, northern Shan State.<sup>59</sup> The UNODC stated that the seizure was not only the largest in history of Southeast Asia and the Pacific region but also the most successful drug crackdown.<sup>60</sup>

The time of crackdowns on narcotic drugs by the Myanmar Army and police forces coincides with the time to submit a full four-month report for the protection of the Rohingya, according to the International Court of Justice's provisional measures.<sup>61</sup> Simultaneously, both civilian and military parts of government are under the highest pressure imposed by the international community for spreading "Made-in-Burma" narcotic drugs not only in the region but also across the globe. That pressure is why the Myanmar Army has taken action against the entire Kawngkha Militia Forces, which are subordinate to the Army and operating with its backing for the sake of dignity and political benefit. On the other hand, some ethnic resistance organizations have openly stated their policies on narcotic drugs, and in practice, they seem to be carrying out tasks to combat narcotic drugs in their designated territories.<sup>62</sup>

However, the presumption may not be correct that all ethnic resistance organizations are absolutely clean from the narcotics business. Even if they may not get directly involved, the organizations have been accused of involvement in drug trafficking by implication, such as selling their seized drugs to the market, taxing the drug dealers, trafficking the drugs and drug-producing raw materials for crossing their controlled areas, and so on.<sup>63</sup>

59 Office of the Commander-in-Chief of Defence Service, 'More narcotic drugs, related materials used in drug production seized in Lwekham Village, Kutkai Township' (Office of the Commander-in-Chief of Defence Service, Naypyitaw 11 March 2020) <<http://www.cin cds.gov.mm/node/6773>> accessed 14 Jul 2020

60 Frontier Myanmar (Agence France-Presse AFP), 'Off-the-charts' Myanmar Drug Busts Reveal Fentanyl First' Frontier Myanmar (online edn 19 May 2020) <<https://frontiermyanmar.net/en/off-the-charts-myanmar-drug-busts-reveal-fentanyl-first>> accessed 30 June 2020.

61 International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar): The Court indicates provisional measures in order to preserve certain rights claimed by The Gambia for the protection of the Rohingya in Myanmar' (Unofficial Press release n° 2020/3, The Hague 23 January 2020). Available at <https://www.icj-cij.org/files/case-related/178/178-20200123-PRE-01-00-EN.pdf> accessed 30 June 2020.

62 The Kachin Independence Organization (KIO) formed the Drugs Eradication Committee in 1993 to carry out the following tasks: combat drug smuggling in their area, punish distributors, and rehabilitate former addicts. Alumni from the relevant organization were interviewed; see Drug Commission (n 46); the United Wa State Army (UWSA) announced the ban on opium in the Wa regions in 1999 and, in June 2005, declared the entire Wa region a drug-free zone; see ICG (n 15); according to a statement released by the Restoration Council of Shan State (RCSS) on 26 June 2018, it is mentioned that the government, the Burmese Army, and the RCSS agreed to jointly eradicate narcotic drugs in a bilateral cease-fire agreement in 2012, but the ceasefire was not implemented until 2017; see BBC (n 20).

63 ICG (n 15) 14-15.

Further, a number of armed leaders, who signed ceasefires with the Myanmar military government after 1989, were among the 20 drug lords mentioned in the book of Merchants of Madness by Bertil Lintner and Michael Black published in 2009.<sup>64</sup>

The actions by the consecutive Myanmar governments to crack down on narcotic drugs have made no impact, and Burma still stands as the second largest producer of narcotic drugs globally. The Myanmar military leaders never treat the internal peace issue as both a political and a legal problem based on the Panglong Agreement. Rather, the Myanmar chauvinism is protracted and the military dictatorship embedded under the 2008 Constitution. This reality has been a catalyst for the EROs to prioritize establishing armed forces based on their political beliefs. As stated above, many EROs might somewhat resort to narcotic drugs as a source of finances in order to expand their own resistance in the midst of the Myanmar military's oppressions. However, notably, the major beneficiaries from narcotic drug production and trafficking, in addition to individual drug cartels, are the Myanmar Army leaders themselves and the militias and the BGF created and underpinned by those leaders.

*Interestingly, the recent 2018 Myanmar Opium Survey released by the UN Office on Drugs and Crime (UNODC) has rightly faced harsh criticism from ethnic armed opposition organizations, as it made countless errors that mistook government-backed militias for other ethnic armed groups such as the Kachin Independence Organization (KIO) and Shan State Army South (SSA-S).<sup>65</sup>*

A total of 5,023 civilian militias have been formed during the civil war in Burma.<sup>66</sup> The resumption of fighting against the KIO since 2011 has led to the reorganization of the Lisu and Shanni (Red Shan) militias.<sup>67</sup> Many militia groups and border guard forces are stationed in Kachin and Shan States, the heaviest drug-producing areas in the country. According to opium cultivation data in 2018–2019, the amount of cultivation has increased in the areas of Tanai, Sumprabum and Putao. Those areas have been re-occupied by the Myanmar military after the resumption of fighting in 2011.<sup>68</sup> Thus, the civil war has clearly and straightforwardly influenced the drug problem, mostly negatively, but there has also been a particular positive effort.

In northern Shan State, after the Palaung/Ta'ang State Liberation Front (PSLF)<sup>69</sup> was forcefully disarmed by the then-ruling military regime in 2005.

64 Bertil Lintner and Michael Black, Merchants of Madness: The Methamphetamine Explosion in the Golden Triangle (Silkworm Books, Chiang Mai 2009).

65 Dominique Dillabough-Lefebvre, 'The Wa Art of Not Being Governed: The Wa Are Keen to Shed Their Image as Myanmar's Drug Lords or China's Proxies' The Diplomat (online edn 28 May 2019) <<https://thediplomat.com/2019/05/the-wa-art-of-not-being-governed/>> accessed 6 July 2020.

66 John Buchanan, "Militia in Myanmar" (The Asia Foundation; July 2016) P-29. <[https://asiafoundation.org/wp-content/uploads/2017/01/Militia-in-Myanmar\\_Burmese-version\\_Jan17update.pdf](https://asiafoundation.org/wp-content/uploads/2017/01/Militia-in-Myanmar_Burmese-version_Jan17update.pdf)>. accessed 29 July 2020.

67 The Era of Shanni News Journal, 'The Ethnic Lisu Were Brought to Enroll into the Local Militia' (The Era of Shanni News Journal, Facebook 8 August 2014) <<https://m.facebook.com/535238073252003/photos/a.556024661173344.1073741828.535238073252003/572462176196259/>> accessed 30 June 2020.

68 Drug Commission (n 48) 18.

69 Palaung is one of the ethnic nationalities inhabiting the northern part of Shan State. Later, the term "Palaung" was altered to "Ta'ang" by the people themselves.

Afterwards, a dramatic rise in drug production and consumption was found, particularly in Ta'ang areas such as Kutkai, Namkhan and Manton.<sup>70</sup> However, with the new youth leadership in combination with former combatants from the PSLF, the Taang National Liberation Army (TNLA) emerged in 2009. It declared that, apart from fighting against the Myanmar Army, the scourge of illegal drugs would also be combatted.<sup>71</sup> Implementation and enforcement of its declaration was also found in many areas.

*This stance, and the group's high-profile destruction of opium poppy fields, immediately put it on a collision course with militias involved in the heroin business that were protecting those fields, in particular the Pansay militia. Sporadic clashes have occurred between the two groups. At times, the Pansay militia has called on the Tatmadaw (Myanmar Army) for support, including heavy artillery and air power, in its battles with the TNLA.<sup>72</sup>*

Combat against narcotic drug has become a national cause for all ethnic nationalities in the entire country. Any EROs, like Kachin Independence Organization (KIO) and Ta ang National Liberation Army (TNLA), which have clear policy and practice to eradicate narcotic drug production and trafficking, should be supported and facilitated by the international community, both civilian and military parts of the government, and all peoples. Afterwards, such good deeds should be expanded to all other ethnic states/provinces.

70 ICG (n 15) 13.

71 TNLA has been contacted and asked information about it.

72 *ibid.*



# PART IV.

## THE UNITED WA STATE PARTY, THE NARCOTIC DRUG ISSUE AND THE PEACE SEEKING PROCESS

The UWSP rules the Wa region with an estimated population of 425,000:<sup>73</sup> about 72% is Wa, followed by other ethnic groups such as Shan, Lahu, Akha, Kachin, Lisu, Akheu, Miao, Palaung/Ta'ang and ethnic Chinese.<sup>74</sup> With the pressure primarily imposed by China, Thailand and the U.S. opium ban, which officially went into effect on June 26, 2005, was conducted by the UWSP which has been aiming to achieve political recognition, humanitarian aid and international support for development.<sup>75</sup>

*Ethnic Wa, Palaung and Shan watching a religious ceremony by the ethnic Shan militia group in Mangpan in Myanmar's northeastern Shan State, May 24, 2013*

Photo: AFP News ▼



73 According to the UWSP chairperson, the population of Wa is about 600,000.

74 Sai Lone, 'The Political Economy of Opium Reduction in Burma (Wa Region)' (Master's thesis, Chulalongkorn University 2008) 34. Available at <https://cuir.car.chula.ac.th/handle/123456789/14335> accessed 6 August 2020.

75 *ibid.*

*It has been more than 120 years since the poppy cultivation ... became the main source of income for the local population of the Wa region ... This greatly affected the productivity of the people and has been existing as a major hindrance to the development of the region. After the establishment of Wa Authority in 1989, the people decided to cooperate with the international community in order to eradicate drug source[s] and reclaim the Wa region as a clean piece of land ... How are the farmers going to survive after the poppy ban? This is the biggest question that every level of local authorities encounters.<sup>76</sup>*

Wa authorities sought to create new alternatives with the help of the UN and the Chinese government—including to incentivize Chinese investments in rubber, tea and sugar cultivation—although these measures were insufficient for Wa opium farmers as a sustainable alternative.<sup>77</sup>

Under a 15-year drug control plan, the resettlement of opium poppy farmers from the highland down to the more fertile lowland valley was undertaken as one of the main strategies to opium reduction.<sup>78</sup> Thus, tens of thousands of Wa and other ethnic national villagers were relocated from their mountainous homelands in the northern Wa region into the fertile valley of eastern Shan State, which is close to the Thai-Burmese border.<sup>79</sup> The settlers who could not endure the humid climate of the low valley, especially those of old age and children, contracted tropical diseases—such as malaria, diarrheal and dysentery—and as many as 10,000 Wa died.<sup>80</sup>

#### *Children in Wa region*

Photo by Evangelos Petratos EU/ECHO ▶

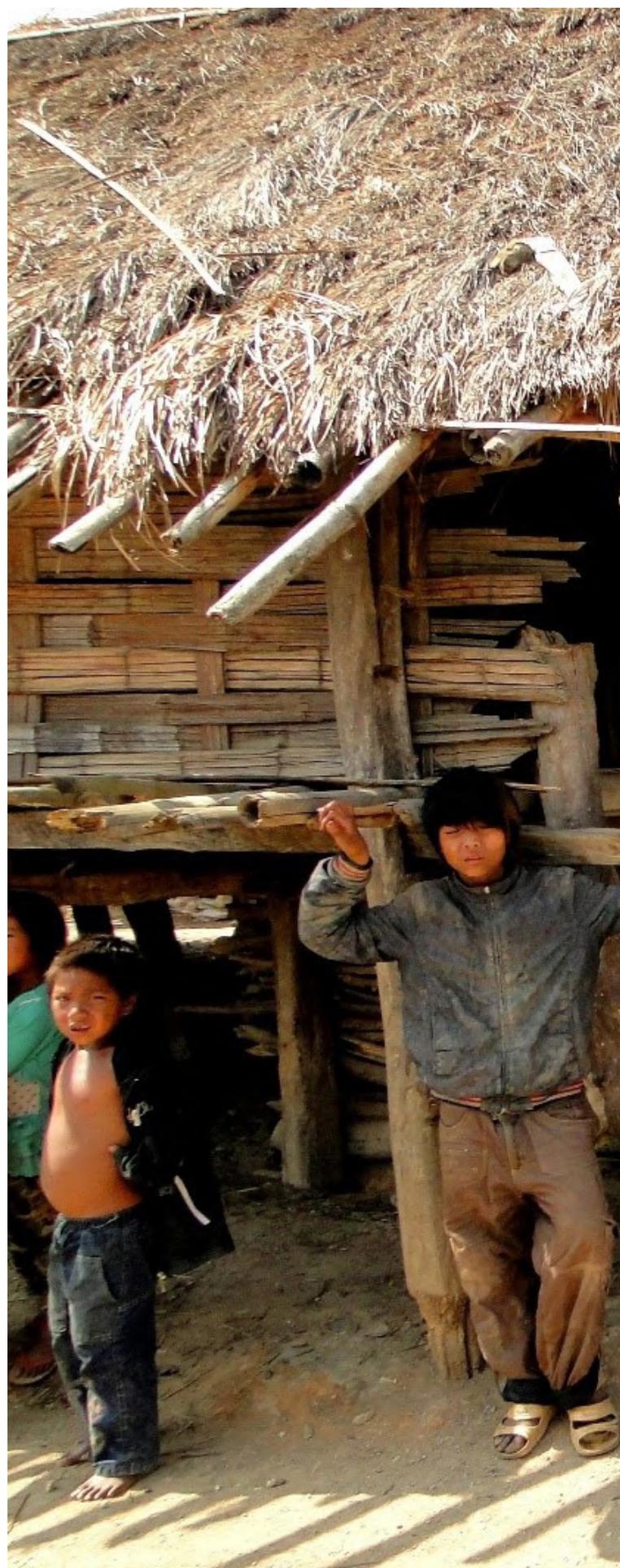
76 *ibid* 37; Speech by Bao You Xiang, UWSP chairman and the supreme leader of UWSA in the ceremony of 'Drug Source Free Zone' announcement, Pang Kham (26 June 2005).

77 Alexander Zimmermann, 'Bao Youxiang (born 1949)' (Biographien Projekt, Myanmar-Institut e.V. Berlin 19 March 2020) <<http://bios.myanmar-institut.org/2020/03/19/bao-youxiang-born-1949/>> accessed 6 July 2020.

78 *ibid*; Lone (n 74) 42.

79 Zimmermann (n 77); Lone (n 74) 42-44.

80 Zimmermann (n 77); Lone (n 74) 45.





*A United Wa State Army soldier looks back as she waits to participate in a military parade to commemorate 30 years of a bilateral cease-fire signed with the Myanmar military in the town of Pangsang in Myanmar's Wa self-administered region, April 17, 2019.*  
Photo by AFP ▼



# What Are “Peace” and “Democracy”?

On the 30th anniversary of autonomy in the Wa region in April 2019, with the attendance of China’s Special Envoy Sun Guoxiang, Bao Youxiang, the supreme leader of the UWSP, avowed the following:

*What we need is ethnic equality, ethnic dignity, ethnic autonomy, and we ask the government to give the Wa an autonomous ethnic state; then we will fight for our lives. Until our political demands are realized, we will hold high the banner of peace and democracy on one hand, and armed self-defence on the other, and maintain the status quo.<sup>81</sup>*

The term “democracy” referred to by the UWSP chairperson is, though appreciable, controversial in the context of Burma: the ruling NLD party never elaborates explicitly on what democracy means; rather, the NLD simply adopts the disciplined democracy, which is totally incorrect, set out in the 2008 Constitution.<sup>82</sup> Democracy may become meaningful only when it is practiced based on the Rule of Law, but not necessarily with discipline. Although discipline is undoubtedly important for administration within smaller entities—such as families, schools, factories, working cities, offices, restaurants, companies, plantations and so on—it embodies top-down control.

Rather than discipline, the Rule of Law is compatible with democracy, which is required to heed the will of the people in local, provincial or nationwide constituencies, in terms of bottom-up submission, on an equal footing. The equality of all individual subjects before and in the law is one of the minimum standards of the Rule of Law. Referring to the term “democracy” by the UWSP chairperson was fantastic. Nevertheless, he needs to practice democracy with the Rule of Law, heeding to the will of people. Unfortunately, this has not yet been the case during UWSP’s three decades of rule over the Wa and other nationals. The UWSP is seemingly practicing democracy, but it may be an undeclared disciplined democracy, which focuses on “top-down control” and normally ignores the will of its own people.

The UWSP’s commitment to an opium ban is also highly appreciable, but it lacks a well-prepared plan, which should be drawn up and prepared taking time at least a three-year period, prior to actualization. Implementing the opium ban is also not democratic. The settlers encountered insufficient supplies to meet their basic needs for survival—such as food, housing materials, medication and medical centers; equipment for cultivation; seeds, an irrigation system, and access to the market and the required transportation, seeking social harmony with other local ethnic nationalities and so on—during the resettlement period. These factors have caused the plights of not only Wa but also other ethnic

81 The Irrawaddy, ‘UWSA Leader Repeats Demands for Autonomous Wa State on 30th Anniversary’ (The Irrawaddy 17 April 2019) <<https://www.irrawaddy.com/news/burma/uwsa-leader-repeats-demands-autonomous-wa-state-30th-anniversary.html>> accessed 17 July 2020.

82 Constitution of the Republic of the Union of Myanmar 2008, Article 405(a).

nationals forced to resettle. The overall impact of these conditions results in a death toll of about 10,000 people.<sup>83</sup>

In addition to other reasons, under the above circumstances, it is highly misleading to rhetorically claim that Wa and other nationals are enjoying peace. The confiscation of land owned by other ethnic nationals—Shan, Lahu and Akha—after they were expelled by the Wa authorities<sup>84</sup> is both detrimental to peace for the people and unfair, as the passage from the 2017 report below shows.

*The large influx of new settlers caused severe disruption for existing villages – mainly Shan, Lahu and Akha – in southern Shan State. Houses, land, crops and livestock were seized without compensation, and in some areas UWSA [United Wa State Army] started taxing and conscripting local villagers. Thousands of local villagers could not bear this oppression and fled to other areas of Shan State or to Thailand.<sup>85</sup>*

Even if the objective behind the opium ban is valuable, so long as other ethnic nationals, in addition to the Wa people, are deprived of their individual and collective rights, the term “peace” is still irrelevant. People should be empowered rather than “belittled” in every peace-seeking process, including any efforts aimed at the eradication of narcotic drugs. The right to self-determination is primarily the right of people and should be respected and protected by all EROs claiming for analogous rights.

Although the pretext for the resettlement is drug eradication, the real reason may be political: the UWSP, consciously or unconsciously, might have been played by the then-ruling Myanmar military regime. The latter wanted to pit the UWSP against the RCSS/SSA and weaken Shan resistance in the southern Shan State using ongoing divide-and-rule tactics.<sup>86</sup> The UWSP also might have had the objective to expand its territory along the Shan-Thai border to the southern part of Shan State.

On the anniversary stated above, Bao Youxiang further proclaimed during his speech that “the Wa people are masters of their own destiny” and that his 600,000 “war-tested” people would never accept a role as pawns in a proxy war.<sup>87</sup> His statement is partly correct as he was delivering a speech on behalf of the Wa people, but it is also incorrect as the UWSP is turning the Wa people into pawns. In every noble cause, people must be at the center, but not as pawns. Under any circumstance, basic individual freedoms and collective rights of people, including collective ownership and right of land use for indigenous people, must never be denied. The UWSP needs to scrutinize whether it has already infringed upon such rights.

83 *ibid*, Sai Lone (n 74).

84 *ibid*; Zimmermann (n 77).

85 Shan Human Rights Foundation, ‘As Conflict Escalates in Shan State, Aid Must Not Be Cut Off to Shan-Thai Border Refugees’ (Shan Human Rights Foundation 30 August 2017) <<https://www.shanhumanrights.org/eng/index.php/333-as-conflict-escalates-in-shan-state-aid-must-not-be-cut-off-to-shan-thai-border-refugees>> accessed 7 July 2020. PDF file available at [https://www.shanhumanrights.org/eng/images/2017/PDF/08-30-2017-Shan-refugee-update\\_-English.pdf](https://www.shanhumanrights.org/eng/images/2017/PDF/08-30-2017-Shan-refugee-update_-English.pdf).

86 *ibid*.

87 Mratt Kyaw Thu, “‘Armed Self-Defence’ Needed Till Demands Are Met, Says Wa Leader” *Frontier Myanmar* (online edn 17 April 2019) <<https://frontiermyanmar.net/en/armed-self-defence-needed-till-demands-are-met-says-wa-leader>> accessed 29 February 2020.

# The UWSP and Synthetic Opioids

Despite the UWSP being committed to the opium ban, it is still controversial for another type of narcotic drug production and trafficking—particularly synthetic opioids, which can be produced chemically without relying on opium.

In the aftermath of the 1989 ceasefire, with the persuasion and offer dangled by the then- ruling military regime, particularly Khin Nyunt, the United Wa State Army (UWSA) attacked the Mong Tai Army led by Khun Sa, a notorious opium king. In 1996, Khun Sa surrendered to the military junta, and the remnants of the Mong Tai Army were later transformed into the Restoration Council of Shan State-Shan State Army (RCSS-SSA).<sup>88</sup>

The regime had allowed the UWSA to inhabit Mong Yong, a former Mong Tai Army (MTA) controlled area, in return for its military support in the crackdown of Khun Sa's MTA. The Mong Yong region has become the production epicenter of methamphetamines, including the new narcotic drug called Yaba in the Golden Triangle region.<sup>89</sup> Indeed, when the source of methamphetamines (Yaba) seized in faraway places such as Australia, New Zealand and Japan was tracked down, it was found that the Wa and Mongla areas in eastern Shan State, which are adjacent to China, were the major source of drug trafficking.<sup>90</sup>

*Mekong rethinks drug policy as syndicates pump meth from Myanmar*  
May 21, 2018 | Photo by Clare Hammond | FRONTIER ▼



88 Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Silkworm Books, Chiang Mai 1999) Chapter 8 'Guns, Drugs and Ethnic Resistance (1976-87)' 377-418.

89 ICG (n 15).

90 Hammond (n 57).

*The Wa are eager to shed their reputation as drug warlords, to lift the veil of secrecy that these hills have harbored and outsiders have fostered over the last few hundred years. While economic growth precipitated by the drug trade is undoubtably central to the successes of Wa state, the Wa are keen to stress alternative forms of development moving forwards. Without this, the Wa are aware that everything they have built may indeed be temporary. Bao Youxiang has aligned himself with an anti-drug agenda, with an opium eradication program largely eliminating the crop by 2005. Still, Western governments remain suspicious of the Wa, who have been pegged by analysts in the past as the largest drug producers in Asia. Experts claim opium has simply been replaced by more profitable and centralized methamphetamine production.<sup>91</sup>*

As far as the narcotics drug eradication issue is concerned, the implementation of the opium ban alone may not be sufficient for UWSP to earn the confidence of the international community and the people in the country. To overcome this, eradication of synthetic opioid must also be done. This task may be feasible only when societal change occurs, at least, in the entire country, Burma. The UWSP may effectively participate, even if it is not interested in playing for an initiative role, in exerting efforts for radical changes of the entire society in Burma. The emergence of a transparent, accountable and democratic federal Union that practices good governance with the underpinning of the Rule of Law alone could resolve the underlying issues, including eradicating narcotic drugs.

To this end, the UWSP may shift its attention to the common interest of the entire country without necessarily ignoring the interests of Wa nationals. This shift may only be possible if the UWSP scrutinizes, realizes and evaluates that the statuses it started achieving in 1989—the recognition of the UWSP, recognition of the Wa territory and recognition of the UWSA by the then-ruling Myanmar military regime—were not created merely by the UWSP per se.

These achievements, stated above, transpired due to three underlying factors: First, until the Wa leaders staged a coup against the CPB, the CPB was the most powerful political force threatening the central power controlled by the Myanmar military regime, and to annihilate the CPB was the main objective of the latter. Second, even though the CPB had collapsed, a more powerful ethnic and democratic alliance called the Democratic Alliance of Burma (DAB)—in which about 15 EROs, including the KIO—the All Burma Students' Democratic Front (ABSDF) with over 10,000 fighters, and other democratic organizations both inside and outside the country firmly remained and persisted in threatening the centralized power. Finally, third, despite the violent crackdown of the popular democratic uprising by the junta, the situation in big cities, including in Rangoon and many other towns, was not calm and continued posing a threat to the regime.

Given the above, the UWSP was granted the three stated concessions, as prerogatives, by the military junta. As such, the UWSP is obliged to settle this gratitude to the entire country for a genuine political change, rather than rhetorically claiming to solely protect the interests of Wa nationals. If not, the formation of the Federal Political Negotiation and Consultative Committee (FPNCC), initiated by the UWSP, would be meaningless; and, this alliance seems to be merely to protect the interests of the UWSP.

<sup>91</sup> Dillabough-Lefebvre (n 65).

# The UWSP's Submission for Political Dialogue

A paper entitled "The Specific Demands and General Policy of 'Wa' State regarding the Political Dialogue of the Union Peace Conference" was submitted by the UWSP on 31 August, 2016. Many valuable submissions were found therein. For instance, under the subtitle of seat allocation for members of the legislative assembly, the UWSP's bold suggestion is worth observing from a normative aspect as it explicitly rejects a 25% occupation of seats by the Myanmar military officials in the legislative assemblies. Although a detailed consideration and relevant debates are required, the UWSP presented its wonderful submission as shown below.<sup>92</sup>

The 25% permanent reserved seats for the military in the legislative assembly should be transformed into seats that will be guaranteed for the ethnic nationalities, who are fragile. Out of those seats, the following allocation should be observed:

- A. 12.5% of the seats in the legislative assembly shall be allocated to the ethnic states, the autonomous divisions and regions wherein the ethnic minorities have a population of less than one million; the lower the population the ethnic unit has, the greater the number of seats it receives.
- B. 12.5% of the seats of the legislative assembly shall be allocated to the ethnic states, the autonomous divisions and regions wherein the ethnic minorities who lag behind the rest in education and culture account for a population of less than one million; the lower their culture and status, the higher the number of seats they would be allocated in terms of ratio.

12.5% of the seats of the legislative assembly shall be allocated to the ethnic states, the autonomous divisions and regions wherein the ethnic minorities who lag behind the rest in education and culture account for a population of less than one million; the lower their culture and status, the higher the number of seats they would be allocated in terms of ratio.

Other valuable submissions addressed other items: seeking a dialogue to establish a new Union;<sup>93</sup> the prohibition of the Union Army against getting involved in Union politics;<sup>94</sup> the establishment of a separate government department to tackle the cases of army officers, soldiers and military officials seeking to transfer to civil service after retiring from the military;<sup>95</sup> the right of the ethnic states/provinces to invite and bring investments from inside and outside the Union;<sup>96</sup> revenue and financial affairs;<sup>97</sup> regarding natural resources, the right of the ethnic states to draw up ownership policies for their own states by

92 United Wa State Party, 'The general policy of the Wa state on political dialogue: Detailed Requests' (UWSP, document submitted to the First Union Peace Conference 31 August 2016) pt 3 Seat Allocations for Members of the Legislative Assembly. Available at <https://drive.google.com/file/d/1bMDbw2m0kP06fFBcv2mgnjyDcEvDyniv/view> accessed 5 August 2020.

93 The UWSP's submission, second portion: "Wa" State's policy for practice and implementation of the Pang Long Spirit.

94 The UWSP's submission part 4.

95 The UWSP's submission part 4 (d).

96 The UWSP's submission part 8 (a) (b).

97 The UWSP's submission part 9.

themselves;<sup>98</sup> the right of a respective ethnic state/province to establish cordial relations with the adjacent states or regions of the neighboring country, in the sectors of economics, trade, finance, transportation, communications, travel, culture, technology, education, health and sports;<sup>99</sup> the simultaneous existence of the Union Army and the ethnic state armed forces;<sup>100</sup> and social affairs, including culture, education, information and transportation.<sup>101</sup>

In the UWSP paper, certain aspects and omissions suggesting incompetence are also found: rather than adopting the “Pang Long Accord” as the sole and legitimate Union agreement for the entire country, just the “spirit” of the accord and a random subjective interpretation are the focus; liberty and the basic freedoms of individual citizens—the right to life, the right to own property, and the right to freedom of expression, association and assembly—are not included; absolute equality between all ethnic nationalities are demanded;<sup>102</sup> neither the division or separation of state powers is addressed; although the right of ethnic states to independently exercise judicial power is asked, specific judicial powers, which the ethnic states want to assume, are not enumerated; the separation of the judiciary from the other two branches of government is not a focus; and how democratic governance should be implemented in an ethnic state/province is not addressed. Further, the designation for the status of an autonomous state/province per se would of 300,000 in a unit, it can apply for the status of an autonomous state/province.

*30th anniversary of autonomy in the Wa region in April 2019*

Photo by Myo Min Soe | IRRAWADDY ▾

THE  
IRRAWADDY  
COVERING BURMA AND SOUTHEAST ASIA



98 The UWSP's submission part 10 (a).

99 The UWSP's submission part 11 (a).

100 The UWSP's submission part 14 (a) (b) (c).

101 The UWSP's submission part 15.

102 The UWSP's submission part 1.

A proposal for achievement of the status of an autonomous state/province should be connected with historical, racial and particular societal background - for instance, commitment and struggle of the respective ethnic nationality, rather than focusing solely on a certain number of population.

Although the UWSP presented the above-detailed paper with many valuable submissions incorporated, the submissions were followed by a total lack of follow-up in terms of asking for formal responses from the government authorities and the Myanmar military leaders. No process was obviously created for debates within and without the Federal Political Negotiation and Consultative Committee (FPNCC), a political alliance led by the UWSP. The UWSP leaders also failed to make any sort of presentation to raise public awareness across the country. In this regard, media interviews were extremely rare. The UWSP did not lead the FPNCC to produce a comprehensive paper, at minimum, based on these UWSP submissions, to be adopted by all other member organizations, by which the emergence of a new Federal Union might be facilitated.

These factors all lead to the conclusion that the UWSP issued such a policy paper only for show, rather than for radical policy change across society. It has now been four years since the USWP paper, stated above, was presented, but no progress has been made. The UWSP has remained silent even though the events taking place on the ground contradict aspects within its paper. For instance, of 51 agreements enumerated in the Union Agreement that emerged after the Union Peace Conferences, no single agreement reflects the UWSP's submission.

An evaluation that considers the 30-year administrative experience of the UWSP should be made properly, justly and reasonably by heeding the following factors: First, the UWSA has become the second most powerful army in Burma, except for the Myanmar Army; however, the economic, educational and social security statuses of people residing in de facto Wa State have not yet been promoted. Second, a certain type of dictatorial rule is still in place, and a democratic foundation based on the Rule of Law has not yet been laid. Third, the opium ban, albeit controversial, might have been implemented sincerely; however, the international community's suspicion over the UWSP's possible replacement with synthetic opioids has not yet dissipated. Fourth, aiming to develop for de facto Wa State, the UWSP attempted to appease the successive ruling military regimes at the expense of sacrificing other ethnic nationalities; now, it is evident that the relationship is unstable, unreliable and unethical as it involves engaging in corrupt practices. Fifth, taking advantage of its favorable relationship with the successive ruling military regimes, the UWSP has been able to exploit economic benefits from various parts of the country, including Hpakant jade mining; however, the said organization has not yet noticeably contributed to the wellbeing of the people in Burma, beyond the Wa territory.

The above pathways did not facilitate a genuine peace-seeking process that would lead to the emergence of a new federal democratic Union. Military service by Wa and other nationals in the UWSA alone should not be the ultimate objective of youths in the de facto Wa State. Rather, such youths, in addition to enjoying freedom from forced conscription as child soldiers, should be nurtured to become qualified persons so that they can participate in, compete within and take advantage of the positive aspects of globalization. To this end, they should

be equipped with higher education. Unfortunately, although de facto Wa State stands almost independently over the past three decades, no single university is found therein.

Thus, to bring dignity and development for new generations of Wa and other ethnic youths inhabiting the de facto Wa State, there is only one alternative: to transform the de facto Wa State into one in which transparent, accountable and democratic governance, based on the Rule of Law, is in place in order to protect and promote human rights. This task should be done in parallel with efforts that promote the emergence of a new federal democratic Union.

# CONCLUSION

To effectively tackle the peril of narcotic drugs, especially synthetic opioids, societal change related to improving peace and security must be taken into account. As highlighted earlier, absence of violence is essential in the definition of peace, but it is not the only element. The peace seeking process is inextricably intertwined with the eradication of narcotic drugs.

Societal change, in search of peace, may take place if the following underlying issues are effectively, legally, and constitutionally addressed, not only for poor opium farmers, but also all residents, regardless of ethnicity or nationality: non-compliance with the Rule of Law, socio-economic inequality, lack of guarantee for livelihood, social insecurity, flaws in public healthcare systems, environmental degradation, corrupt political systems, socially or politically divided communities, insufficient social welfare systems, unfair income distribution both among individuals and between central governments and state governments, hegemony of one social strata or state institution over all others, local people's lack of power to fuel community development, information and communication technology management issues, and so on.

This societal change is relevant not only to Burma but also, at minimum, to Thailand and Laos, neighboring countries of Burma, in combating against the narcotic drugs.

In addition to exploring other norms and facts on the ground, societal change that might rectify the fragmentation of international law may be sought by applying relevant concepts, including, inter alia, cooperation between nation states through a set of rules or through institutions that are established outside of state policy, to determine the course of action to be taken;<sup>103</sup> and equal distribution of or access to unappropriated natural resources.<sup>104</sup>

To seek peace/security and global economic justice, to reduce oppression, and to enjoy a clean environment, government authorities should be widely dispersed in the vertical dimension, optimum centralizations should be sought and practiced, local autonomy should be granted, and multi-layered institutional schemes should be implemented. In terms of alternative decision-making procedures, decision-making should be decentralized and democratized.<sup>105</sup>

The three types of communities elaborated by communitarians<sup>106</sup> (1) communities of place, or communities based on geographical locations; (2) communities of

103 Martti Koskenniemi, 'The Future of Statehood' (1991) 32 *Harvard International Law Journal* 397. Available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hilj32&div=22&id=&page=> accessed 18 July 2020

104 Bas Van Der Vossen, 'Libertarianism' *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition) <<https://plato.stanford.edu/archives/spr2019/entries/libertarianism/>> accessed 18 July 2020.

105 Thomas W Pogge, 'Cosmopolitanism and Sovereignty' (1992) 103 *Ethics* 48. Available at <https://www.journals.uchicago.edu/doi/abs/10.1086/293470?mobileUi=0&> accessed 10 July 2020.

106 Daniel Bell, 'Communitarianism' *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition) <<https://plato.stanford.edu/archives/sum2020/entries/communitarianism/>> accessed 18 July 2020.

memory, or groups of strangers who share a morally significant history; and (3) psychological communities, or communities of face-to-face personal interaction governed by sentiments of trust, co-operation, and altruism—are valuable, both nationally and internationally, in support of societal change which might facilitate local and communal efforts toward global solidarity. With these underpinnings, narcotic drug eradication may be feasible.

With the underpinning of media freedom, investigative journalism needs to be expanded across the world insofar as the business of narcotic drug and human trafficking are investigated, corruption scandals are uncovered, and commission of grave crimes – war crimes, crimes against humanity, genocide and violation of convention against torture – by the state and non-state actors are exposed.

Regarding the eradication of narcotic drugs, in addition to the factors stated above, the particular situation in Burma must be primarily addressed from the constitutional and legal aspects. In accordance with Article 343 (b) of the 2008 Constitution, the Commander-in-Chief of the Armed Forces exercises appellate jurisdiction over Burma's military. In line with that provision, the military amended section 211 of the 1959 Defense Services Act on 4 November 2010. The civilian judicial oversight of the military justice system, practiced under the 1947 Constitution, no longer existed as a result. Hence, in modern Burma, no existing laws empower any state institution to take legal action against the C-in-C Min Aung Hlaing and his high-ranking military officials for any crimes. This situation is one of many creating impunity.

Currently, the Myanmar military leaders, with the approval of the Union Legislative Assembly, have already amended subsection (1), section 125 of the 1959 Defense Services Act on 26 August 2020. Accordingly, Min Aung Hlaing assumes indefinite power over the entire military institution given that he can prosecute subordinate officers, including his Deputy C-in-C, and other ranks for alleged criminal offenses or civil wrongdoings without time limitations. Such a situation connotes that, insofar as the latter obeys the orders of the C-in-C or pays corrupt money to him, the latter also secure protections against accountability. Such a hidden unethical and illicit action would persist in the military institution hierarchically and endlessly. This situation also helps create impunity.

Looking to the future, Burma can never move forward so long as the 2008 Constitution and the amended sections in the 1959 Defense Services Act—alongside the lack of an independent, impartial, efficient, and resource-rich civilian judiciary under the said Constitution—continue to exist. Under such conditions, impunity for the Myanmar Army can never be annihilated, and the eradication of narcotic drugs in Burma will never be feasible. Only when these circumstances are reversed, will the peace seeking process be meaningful.



# INTRODUCTION TO FEDERAL LAW ACADEMY





Aiming to establish a free, fair, peaceful, and developed Federal Democratic Union, the Federal Law Academy was founded in Mai Ja Yang, Kachin State, in 2014. With academic support of some international legal academicians - alongside the contribution made by the Kachin Independent Organization (KIO) for administrative, residential and material requirements, and financial support from the Open Society Foundation in later periods - the Federal Law Academy has come into existence.

The Academy is the only institution in the entire country that offers a variety of subjects covering 'Federalism towards Human Rights' by especially accentuating the right to self-determination of the ethnic nationalities and their states/provinces with the underpinning of the Rule of Law.

**The Academy aims to nurture the ethnic youths who want to earn their livings as independent legal practitioners. Evidently, the various ethnic nationalities and their territories/states existed as independent entities in history. The Academy welcomes the ethnic youths who would like to be trained as leaders to lead a Federal Democratic Union - constituted by the states which exercise full autonomy, equality and self-determination - in future. Prospective students must, at minimum, pass the second year examination of any university/college for admission in the FLA.**

History has proven that, without the existence of powerful independent civil society organizations - that would observe, criticize, specify, oversee and facilitate the actions of the governments at local, provincial and union levels, the emergence of a genuine Federal Union will never be feasible. Besides, those organizations play a vital role in seeking a genuine peace. The Federal Law Academy, therefore, serves as a stepping-stone for those ethnic youths who would like to form, operate, and activate such civil society organizations.

Only when a Federal Union, based on the Rule of Law, is established, will the emergence of successful ethnic entrepreneurs become a reality. Otherwise, it is highly unlikely for the ethnic youths to get opportunity to occupy high-ranking positions in the government institutions. Similarly, the ethnic youths lack business opportunities since they are unable to compete with the cronies who have a close relationship with the government officials. As a result, they will end up heading to nowhere. Thus, the Academy is facilitating the ethnic youths to overcome such barriers and to be suited to the globalization era.

Moreover, the Academy is training the ethnic youths to become qualified legal practitioners in order to facilitate people in their struggles to eliminate military dictatorship, chauvinism and extreme nationalism that harm peace, while upholding the Rule of Law.



Federal Law Academy

ဖက်ဒရယ်ဥပဒေအကယ်ဒမီ

Mai Ja Yang



**Academic Board Members (Federal Law Academy)**  
(Left to Right) Dr. Venkat Iyer, Mr. Aung Htoo, Dr. David Fisher



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The Various Ethnic Youths Who Received Diploma in Law on November 30th 2019



Karenni National Ku Reh Saung Oo



Karen National Nan Mary



Kachin National Nu Nu Htoi (valedictorian making speech)



Kuki National Mung Za Neng



Kachin National Ja Seng Bu



Ta-ang National Mai Htun Myint



Shan National Sai Hein Htet Soe

Federal Law Academy is recruiting new students on a yearly basis. Detail information is available at:

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FLA students performing group song ▶











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