On May 10, 2008, seven days after Cyclone Nargis devastated parts of lower Burma, the Burmese government held a constitutional referendum in townships not severely affected by the cyclone. The referendum was delayed in 47 townships, including the former capital Rangoon, due to the infrastructure damage sustained by the cyclone. These townships will vote on the referendum on May 24, according to the government. On May 15, state radio announced that 99.7 percent of the 22.5 million eligible voters had participated in the May 10 referendum, and that 92.4% had accepted the constitution.

Since the Burmese government refused international monitors and UN assistance in conducting the voting,\(^1\) the 88 Generation Students in collaboration with four nongovernmental organizations joined together to monitor the May 10 referendum. Using a standard form\(^2\) based on monitoring guidelines developed by the National Democratic Institute\(^3\) and the United Nations,\(^4\) as well as the regulations established by the Burmese government in “The Referendum Law,”\(^5\) our organizations dispatched 70 monitors and hundreds of volunteers to three States (Kachin, Chin, and Rakhine) and four Divisions (Bago, Mandalay, Magway, and Sagaing). Monitors recorded written, audio, and video statements.

The objective of the monitoring process was to assess the degree to which the Burmese government had:

1. Informed voters about the purpose of the referendum and their rights and obligations, including the dates and procedures for the vote and their options to vote in favor or against the referendum.
2. Allowed all views – whether for or against the referendum – to be expressed in a free and public manner without intimidation, coercion, or threat of punishment.
3. Conducted a voter registration program that was non-discriminatory and ensured that all those who were eligible to register could do so in a secure and confidential manner.
4. Allowed citizens to cast their votes in a fair and free manner, devoid of intimidation, coercion, or threat of punishment.
5. Counted votes and reported results in a transparent, consistent, and accurate manner.

This preliminary report provides observations from our monitoring exercise of the referendum of May 10. Our organizations will issue a full report after the referendum is held in the cyclone-affected areas on May 24.

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\(^1\) It should be noted that several diplomatic missions in Burma sent staff to monitor the May 10 referendum in the presence of government personnel. It is unclear if these monitors will issue a joint report.

\(^2\) See Annex 1.


Observations

Voter Education

In the days and weeks leading up to the referendum, the Burmese government conducted a widespread media campaign encouraging citizens to cast their votes in favor of the draft constitution. This campaign included announcements and musical programs on the radio, television, and the print press, as well as leaflets, billboards, and banners, declaring that it was the patriotic duty of citizens to vote “Yes.” At the same time, the Burmese government barred individual citizens and organizations from running public announcements encouraging voters to reject the draft constitution by casting a “No” vote.

In addition, there were several reports of government officials convening community meetings where they threatened citizens with arrest and other sanctions, such as losing their jobs, if they voted against the constitution.

Two laws promulgated by the Burmese government severely restrict opposition to the draft constitution. The “State Law and Order Restoration Council Law No. 5/96 of June 7, 1996, imposes sentences of up to 20 years for anyone “disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution.”6 Under the “Referendum Law for the Approval of the Draft Constitution,” anybody who publicly criticizes the constitutional referendum faces a fine and a three-year prison sentence.7 On April 13, for example, police in Sittwe, the capital of Rakhine State, police detained approximately 40 students for wearing “NO” T-shirts in the center of the city. Twenty of the students were later released.

Finally, our monitors reported that the text of the constitution was not available in cities and towns where they were monitoring the referendum. It appears that copies of the draft constitution were only available for purchase in Rangoon. As a result, the vast majority of voters in the May 10 referendum did not have access to the actual content of the draft constitution.

Registration

In the weeks leading up to the elections, township quarters and village administrators compiled lists of all adults 18 years of age or older by visiting each household within their jurisdiction and listing family members. These lists were made publicly available and citizens were able to correct any errors.

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7 See note 5. Chapter X of the “Referendum Law for the Approval of the Draft Constitution” states that “lecturing, distributing papers, using posters or disturbing the voting in an other manner in the polling booth or on the premises of the polling booth or at the public or private place to destroy the referendum...shall, on conviction, be punished with imprisonment not exceeding 3 years or with a fine not exceeding one hundred thousand kyats or, with both [emphasis added].”
Monitors reported that some Muslim² citizens and possibly Chinese and other migrants were issued temporary National Registration Cards that allowed them to participate in the referendum on the condition that they voted “Yes.” Monitors further reported instances in which families of state employees were not registered at their current place of residence and were forced or will be forced to vote at government offices, including the Yangon municipal office. Many state employees were allegedly threatened with sanctions, including dismissal from their jobs, if they or their family members voted against the proposed constitution.

**Voting**

Monitors reported many problems during the advance voting phase, in which citizens who would be travelling on the date of the referendum could cast early ballots. First, the advance voting process in many townships did not respect the secrecy requirement established by the government’s own guidelines. For example, many early voters reported that (a) they had to vote in the presence of a government official; (b) they had to write identifying information, including their names and addresses, on the ballot card; and (c) that no measures were taken to seal ballots. Second, local officials and state-owned companies frequently forced voters and employees to cast early ballots against their will. This was done to gather votes in favor of the proposed constitution. Finally, early reports from monitors suggest that during community training sessions designed to inform citizens about the voting process, some local officials, especially in Rakhine State, gave participants ballots and instructed them to vote “Yes.” These ballots were then counted as early votes.

Polling stations were located inside official buildings, especially schools. Early reports from our monitors suggest that voting may have also taken place inside government buildings for state employees and inside military compounds for soldiers. The most commonly reported form of pressure outside of the voting station was the presence of numerous signs and music repeating the government message that “it is patriotic duty of citizens to vote Yes.” At the same time, any attempt to demonstrate support for the “No” vote was suppressed. In at least one case police dispersed supporters of the no vote.

On referendum day, voters presented themselves at polling stations with a slip they had received after registering to vote. The slip contained the voter’s name and registration list number. Once voters identified themselves at the polling station and signed a registration list, they received a ballot. They then cast their vote in a private booth and put their ballot in a sealed box. However, the process was plagued by numerous violations that have affected the results. First, monitors reported instances in which officials (a) made voters sign the registration list and then cast the ballots on their behalf; (b) accompanied voters into the voting booth; (c) asked voters to cast their vote in front of them; (d) provided false or incomplete information to voters in order to make them cast a “yes” vote; or (e) prevented citizens who clearly identified their intention to vote “No” from casting ballots. These violations usually involved – but were not limited to – voters who were unsure of the procedure and asked officials for assistance.

Monitors also documented intimidations caused by the disproportionate presence of members of the government-backed Union Solidarity and Development Association (USDA), village or township authorities, and members of the fire brigade inside the polling stations. In some areas, voters were threatened with imprisonment and a fine of 300,000 KS (USD 300) if they did not support the constitution. Local officials in some areas asked those who voted no to justify their vote. Monitors also reported cases in which voters were said to have already voted when in fact they had not. Presumably false votes were cast in their names. Finally, monitors reported that in some polling stations pre-marked ballots supporting the constitution had been handed to the voters. Although the voting stations had to remain open until 4 PM, monitors reported many stations closed early.

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² Burmese-born Muslims seldom receive a National Registration Cards (NRC) in Burma. They are in effect treated as foreigners.
Counting

According to the government’s referendum guidelines, the counting of votes was supposed to take place at the polling station in front of the 10 last voters. Most reports indicate that the counting did not take place according to those guidelines. Frequently (a) no witnesses were allowed to attend the counting, or witnesses were not selected according to the guidelines, but rather were selected among USDA members or other government affiliates; (b) the counting did not take place at the voting station, but rather the ballot box was brought to the office of the township authorities or police station where the counting took place; and (c) the counting was flawed by the lack of specific criteria to determine what constituted a valid vote. Monitors witnessed local officials making arbitrary decisions, mostly in favor of “Yes” votes, when counting marks that did not resemble either a “Yes” check (✓) or a “No” cross (X). More generally, the results of the May 10 referendum were announced without disaggregating the results by state, townships, quarter or villages.

Conclusion

The May 10 referendum was by no means a “fair and free” process. Moreover, we are concerned that by announcing the results of the May 10 vote the Burmese government has further prejudiced voting in the May 24 referendum. The Burmese government should have postponed the constitutional referendum and focused instead on relieving the horrendous human suffering from Cyclone Nargis by lifting restrictions on international aid agencies so they can respond to help survivors. We will continue to monitor the referendum process and a comprehensive report will be published after the announcement of the final results of the May 24 referendum.
ANNEX 1
BURMA (MYANMAR): INDEPENDENT REFERENDUM MONITORING GUIDELINES

GENERAL COMMENT
The minimum conditions to satisfy the principles of a free, fair and genuine referendum are that:
1. No unreasonable restrictions can be imposed on parties or voters
2. No discrimination can be made in voter registration
3. Due process must be granted to protect against arbitrary or biased rulings and procedures
4. Individuals must enjoy free expression, free association, free assembly
5. Secret vote, free from intimidation must be guaranteed
6. The process of voting and counting the vote must be transparent

It is unlikely that the referendum will meet those standards. What follows is a quick guideline on what should be monitored and reported during and after the referendum. The referendum process can be divided in three stages: (1) before the referendum: voter education and registration, (2) the voting on the day of the referendum and local counting of the results and (3) the post-referendum situation leading to the publications of the result.

BEFORE THE REFERENDUM
Voter Education
For a legitimate referendum, pertinent information must be reasonably available to all eligible voters in a form that they can comprehend and in a timely fashion. Voters must be informed about:
- Their rights and obligations
- The dates and procedures of the election
- The range of options from which voters can choose
- The significance of these choices

You can monitor media campaigns:
1. What information is available to the public?
2. Are there voter education programs?
3. How often?
4. What time?
5. Are they understandable by the people?
6. Were voters informed about all possible choices?
7. Were voter education activities fair and balanced?

Registration
1. There can be NO unreasonable criteria restricting registration (e.g. based on race, religion, political affiliation, social characteristics, or literacy)
2. Document procedures that make it unreasonably difficult to register, especially for certain sector of the population (e.g. fees are imposed, location is inaccessible, request for many administrative documents)
3. Document cases were individuals were intimidated or coerced to register when they did not want to
4. Document cases were individuals were intimidated or forced NOT to register when they wanted to.
5. Registration officials must conduct appropriately: they cannot reject legitimate demands to register, they cannot accept ineligible registration, they cannot intimidate registrants, and they cannot alter the voter registration list.
6. The registration lists must be accurate and it should be possible to verify them to see how many voters registered.
7. Voters must be educated about their eligibility and how to register - is that information available?

Campaign
1. All views should be allowed to be expressed and voters should be informed about all options.
2. The most common problem will be intimidation and coercion to prevent people talking about the various options. Document such cases.

Common forms of intimidation and coercion
1. Physical violence
2. Threat of physical violence
3. Cultural and social pressure
4. Threat of financial hardship, loss of job,
5. Other abuses of power such as cutting access to services (health, education, social services)
6. Deliberate failure to protect those supporting the “no” vote

Reporting Cases
When reporting specific events, remember to use “primary sources”: the direct victim or witness, do not report hearsay, unconfirmed rumors. A few well documented cases are better than many unconfirmed cases.

Make sure you collect the following information:
1. Who was targeted – How many people?
2. Who caused the violation?
3. What happened?
4. Where?
5. When?
6. How did it happen?
7. How was it resolved?
8. What was the consequence? Measure the degree of seriousness:
   - minor,
   - significant but unlikely to have affect the outcome,
   - serious, importantly affecting the results.

Tips for monitoring:
1. You can choose to have fixed or mobile observers.
   - Fixed observers will stay all day at the same station: The advantage is that all events at one station will be monitored. The disadvantage is that some stations may not be monitored.
   - Mobile observers will visit several stations over the course of the day. The advantage is that information is collected about more stations, but not all events are monitored because the observer is not always present.
2. It may be useful to contact voters that appear to be upset, unhappy when exiting the voting station. Find out why are they unhappy, what happened?
**DURING THE REFERENDUM**

**Voting**
You must ask yourself: (1) is the voting taking places according to the electoral laws and international standards (outlined here), and (2) did violations occur and to what degree did it affect the results. Remember that all eligible voters must have the possibility to vote, the process must respect freedom of expression and assembly and that voters must understand the procedures and significance of their choices. You can monitor several elements:

**Process Monitoring:**
1. What time did the voting station open?
2. What time did they close,
3. What did the voters have to do to cast their ballots?
4. How long did it take for them to cast their ballots?
5. Did any incident occur during the voting process?

**Monitor environment inside the voting station:**
1. Is the lay-out / flow of people appropriate to avoid crowd formation, intimidation
2. Is there order
3. Staffing:
   - Is all the necessary staff present (how many? Who is there?),
   - Is the staff appropriate to avoid intimidation and coercion (e.g. are there military uniforms present)
4. Is the equipment appropriate:
   - Are the ballots present?
   - Are they neutral (e.g. no code, number that would make it impossible to vote secretly),
   - Is the ballot box sealed,
   - Is it in an appropriate location so that voters are not intimidated to cast their vote,
   - Does the voting booth provide sufficient isolation for privacy and secret voting.
5. How are the officials behaving?
   - Are they intimidating voters, acting unfairly,
   - Are they properly using the list of registered voters,
   - Are they impartial when providing assistance to voters who do not know how to vote?

**Monitor environment outside of the voting station:**
1. Is it in an appropriate location that will not intimidate voters, (not at a police or military station)
2. Is it well identified so that voters can find it
3. Did any event take place to intimidate voters: are military or police present in unusual and threatening manner?

**Counting:**
Document the process:
1. When did they start,
2. How long did it take,
3. Was it done in front of enough witnesses?
4. Who was present?
5. Have the ballot box been tempered with, are the seals or locks broken?
6. Is the counting is appropriate: are “no” votes are arbitrarily discounted or categorized as invalid
7. Were counting officials victims of intimidation, coercion, threat?

Observers should try to do their own count: it is important to know overall:
1. The number of voting stations
2. At stations that are monitored:
   - How many registered voters were on the list: if possible, check the list, does it reflect the reality?
   - If possible, count how many of those registered came to vote?
3. Count the total number of votes. It should be the same as the number of people that came and were marked on the voter registration list.
4. Among all the votes: how many voted yes, how many voted no, how many votes were invalid?

**AFTER THE REFERENDUM:**
Most of what will happen after the referendum is difficult to monitor, but the following must be monitored focusing on the gravest crimes:
1. Are there reprisal, threats, punishments put on some voters based on their vote
2. Are election officials threatened and pressure into changing results?
3. Do the media fairly present the results.