

# AMNESTY INTERNATIONAL

## BRIEFING PAPER

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### **Myanmar: Constitutional referendum flouts human rights**

Despite the devastating consequences of Cyclone Nargis, which killed tens of thousands of people and displaced nearly a million more, Myanmar's government has announced that it will proceed with its plans for holding a national referendum regarding a new constitution on May 10. Even as hundreds of thousands of its citizens struggle for basic shelter, food and health care, Myanmar's government has prioritized acceptance of the new constitution, a document that Amnesty International views as an effort to undermine respect for human rights and to entrench military rule and impunity. The government has announced that it has rescheduled elections for May 24 in the areas most affected by the storm, including in Yangon (Rangoon), the former capital and the country's most populous city.

Amnesty International has called on Myanmar's government to cooperate with the international community in providing immediate relief to the neediest populations without regard for political considerations. In this context, Amnesty International urges the international community, and particularly Myanmar's neighbours, to keep their focus on assisting Myanmar's beleaguered population and view the constitutional referendum process as another sign of the government's disregard for the well-being of its own people.

Amnesty International urges the international community not to endorse in any way the draft constitution, which flouts international human rights standards. As such, it must be radically reformed or replaced, through a transparent, intimidation-free and truly inclusive process, with a draft constitution that fully protects international human rights. Unless and until this is done, the draft constitution and the process accompanying it will be instruments that perpetuate human rights violations and should not be recognised by the international community as a positive step.

Myanmar's government announced in February 2008 that it had completed the drafting of a new constitution, and has scheduled a referendum on 10 May 2008 for it to be accepted. Amnesty International is deeply concerned that, rather than attempting to introduce the rule of law and respect for human rights to Myanmar, this constitutional process seeks to perpetuate and legitimise the government's continuing human rights abuses and ensure impunity for both past and future violations. The organisation is further concerned that, notwithstanding the obvious flaws in the drafting process and the proposed constitution, it has nevertheless been described as a positive or meaningful process on several occasions, both regionally and within the wider international community.

Amnesty International is concerned that both the substantive content and procedural aspects have been deeply flawed and should not be accepted as satisfying international human rights law and standards.

Amnesty International is gravely concerned by the deeply inadequate or total absence of provisions for the protection of many human rights within the draft constitution and by numerous provisions which may facilitate impunity for violations of human rights. While Amnesty International does not take a view or comment on political systems and structures, in light of the fact that the army (or *tatmadaw*) have been responsible for widespread and systematic human rights violations spanning decades, some of which amount to crimes against humanity, Amnesty International is particularly concerned by the

powers granted to the *tatmadaw* in the draft constitution, which may prolong impunity for human rights violations.

Following is a partial list of elements within the draft constitution that are of a particular concern to Amnesty International, as they undermine international human rights standards and enable impunity for perpetrators of human rights violations:

- The draft constitution fails to respect and protect key human rights. There are no provisions for freedom from torture and other ill-treatment, and crucial fair trial safeguards are missing; for instance, there are no provisions for the rights of persons being arrested to be informed promptly of the nature and cause of the charge against them or to a fair and public hearing, and the right of those arrested to be brought before a court within 24 hours does not extend to “matters on precautionary measures” taken on security and similar grounds. Other provisions, for instance on freedom of expression, association, and assembly, are restricted by vague provisos relating to “community peace and tranquillity” (Chapter VIII). Some provisions are discriminatory, for example members of religious orders and “destitute” persons are not permitted to vote (Chapter IX);
- The *tatmadaw* are granted broad powers to suspend all “fundamental rights” “if necessary” during an emergency. The Supreme Court’s power to issue writs, including *habeas corpus*, is similarly suspended in times of emergency (Chapter VI). The President may declare a state of emergency during which the *tatmadaw* Commander-in-Chief, aided by the National Defence and Security Council (six of whose 11 members are *tatmadaw*, Chapter V), assumes “legislative, executive and judicial powers” (Chapter XI). Such emergency powers are extendable to at least a year;
- Soldiers, nominated by *tatmadaw* Commander-in-Chief, would comprise a mandatory 25% of members of both houses in the national parliament and one third of state and regional assemblies (Chapter IV);
- A *tatmadaw* member must be one of the three candidates for President, to be elected by parliament, and at the very least must be one of the two vice-presidents (Chapter III);
- Ministers for “defence, security/home affairs and border affairs” must be *tatmadaw* members in the national, state, and regional governments. Soldiers may also be appointed to other ministries (Chapter V);
- Parliament has no standing committee on security or defence. If necessary, an ad-hoc committee may be formed (for a limited period), but it must consist of *tatmadaw* members only, with civilians added only “if necessary” (Chapter IV);
- The *tatmadaw* is self-administered, independently of other state organs (Chapter VII). The Supreme Court has no powers over military courts (Chapter VI), and final decisions on matters of military justice rest with the Commander-in Chief (Chapter VII);
- The President is not answerable to any court or parliament in exercising his duties (Chapter V);
- No legal action may be taken against those “who officially carried out their duties according to their responsibilities” during the period of the military governments (Chapter XIV).

The draft constitution is the product of a flawed drafting process that lasted no less than 16 years and was reflective of the severe restrictions on human rights which the people of Myanmar have been subjected to for decades. Consultations leading to the draft constitution were limited to parties and groups supporting the government and were largely symbolic, as the current draft is substantively identical to drafts presented in the mid-1990s. Opposition parties, including the National League for Democracy (NLD), led by Daw Aung San Suu Kyi, and parties representing ethnic minorities, were effectively sidelined during the drafting process. In 1996 the government passed Law 5/96, allowing for up to 20 years imprisonment for actions deemed to “undermine, belittle, or make people misunderstand the functions being carried out by the National Convention” established to draft the constitution. Many of the approximately 1,850 political prisoners in Myanmar today were sentenced under that law. The announcement on 9 February 2008 that the constitution would soon be finalised (as it was ten days later) and voted upon, was widely believed to be in response to international concern at the government’s violent crackdown in September 2007 on the largest mass peaceful political demonstrations in nearly two decades.

Since then, the Government of Myanmar has continued to suppress the rights to freedom of expression, association, and assembly in order to ensure that the draft constitution is passed. On 26 February, it proclaimed the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, which provides for a prison term of up to three years and/or a substantial fine for anyone caught “lecturing, distributing papers, using posters or disturbing voting in any other manner at the polling booth or near the premises of the polling booth or at a public or private place to destroy the referendum” (Art. 25). This law has been used as grounds for the arrest or threat thereof of many activists peacefully campaigning for a “No” vote—including by wearing t-shirts with “No” printed on them—on the draft constitution. Over 70 such persons were arrested in late April for trying to stage a peaceful “Vote No” demonstration.

The Referendum Law may have been the basis for other forms of harassment or intimidating tactics as well. Reports have been received that NLD members and other activists have been harassed by the authorities, as well as by the government-backed Union Solidarity and Development Association (USDA, headed by a *tatmadaw* Major-General) and Swan-Ar-Shin (“People Power”) groups, and several have been physically attacked. Civil servants have been threatened with dismissal, students with non-admission, failure, or expulsion, farmers with the confiscation of their land, and businesses with closure if they vote “No”. Some civil servants have been compelled to sign a pledge to vote “Yes”. Village headmen in ethnic areas have reportedly been threatened with “consequences” if their constituents vote “No”.

The Printers and Publishers Act of 1962, which prohibits the publication and distribution of print material without a licence and without an agreement from the censorship board, has also been employed by the government to silence dissenting voices, while existing censorship restrictions were increased further on 4 April. The NLD and other campaigners have had their offices raided and printed materials seized by government authorities, while the media has been prohibited from broadcasting or publishing any information from or relating to the “No” campaigns. Conversely, on 11 April the government began a concerted state-funded “Vote Yes” effort, despite the fact that it has continued its discriminatory practices against the country’s ethnic minorities by only publishing the draft constitution in the majority Burmese language.

Advance voting began in late April both in Myanmar and abroad, and has been marked by acts of harassment. A civil servant in Magwe Division’s Salin township told human rights groups that when she went to vote in advance as directed, she was told that “Yes” votes had already been cast on her behalf and that of her family members. On 30 April, about 700 employees at the Ministry of Electric Power in Yangon voted under the watchful eyes of officials. At the Embassy of Myanmar in Singapore on 26 April, Myanmar citizens wearing “No” t-shirts were denied entry to cast their vote.

The Government of Myanmar has refused the UN’s recommendation and offer, made by UN Special Advisor Ibrahim Gambari during his last visit to Myanmar in mid-March, of international monitors. Many civil servants are expected to have to vote in the presence of military officials, while workers in factories employing more than 500 people will be required to vote at work. It remains unknown whether Myanmar’s 500,000 internally displaced persons will be able and allowed to vote at all.

It is already clear that the Myanmar government is conducting the referendum in a manner that denies individuals the right to freely express their opinions and to take part in the conduct of public affairs in accordance with international law and standards.

Myanmar's draft constitution and the process leading to it reflect and are products of the continuing human rights violations in Myanmar. The draft constitution not only fails to protect human rights and address human rights violations, it may also perpetuate impunity for such violations.

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