

The Lie After the Storm

by Jared Genser and Jeremy Sarkin

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While the cyclone that killed possibly 100,000 people in Burma is on everyone's mind, it must not be forgotten that on May 10, the Burmese people will go to the polls for the first time in almost 20 years, to vote "yes" or "no" on the adoption of the military junta's proposed constitution. Apparently, it doesn't matter much to the junta that tens of thousands of Burma's people were killed by Cyclone Nargis, and millions made homeless. They have put off polling in cyclone-affected areas, but are proceeding with the national referendum.



Reuters photo
A survivor sits in front of what's left of her house in Bogalay, Burma, May 7, 2008.

As a result, voting will proceed on a constitution which few have seen and has not even been translated into any of Burma's ethnic-minority languages. Perhaps the most poignant assessment of the forthcoming referendum has been offered by United Nations Special Rapporteur on Human Rights in Myanmar Paulo Pinheiro: "If you believe in gnomes, trolls and elves, you can believe in this democratic process in Myanmar [Burma]."

To describe both the process of arriving at the draft constitution as well as its substance as merely flawed or democratically-deficient would be a profound understatement. And this vote could not be any more inconsistent with the demands of the U.N. Security Council made in midst of last fall's Saffron Revolution for the Burmese junta to "create the necessary conditions for a genuine dialogue with Daw Aung San Suu Kyi and all concerned parties and ethnic groups, in order to achieve an inclusive national reconciliation."

The referendum offers the Burmese people a Hobson's choice. If they vote yes, they can look forward to a life under permanent military control. If they vote no, they put their own

lives at risk and they can look forward to a continuation of the repressive military rule they live under now. The proposed constitution was written by the military's handpicked delegates in a National Convention process lasting more than 14 years. And it was written without the elected representatives of the people, in secret, and with no meaningful debate.

Even more disconcerting, the Burmese junta has learned its lesson from the 1990 parliamentary elections when the National League for Democracy (NLD) and its allies won more than 80% of the vote. This time, nothing is being left to chance with the vote. There is a "yes" campaign in state-controlled media describing an affirmative vote as the "national duty" of all Burmese citizens. Criticism of the constitution has been banned and is punishable by five years in prison.

Voters are being harassed. Outside election monitors are not be permitted. In early voting, some voters have even reported that the "yes" box was helpfully already marked on their ballots. But beyond this deeply flawed referendum process, the substance of the proposed constitution is even more disturbing and antidemocratic.

First, the military will retain absolute control over the government. All actions of the executive, legislative, and judicial branches are subject to a veto by the military. But none of these three branches may exercise any powers over the military.

Second, the constitution can only be amended after prior approval of more than 75% of the 440-seat national legislature. As 25% of the legislature's seats are reserved for military appointees, however, no amendment will ever be approved without the military's support.

Third, virtually all the pro-democracy forces will be disqualified from legislative or executive office under the new constitution. This is because of provisions requiring candidates to have lived consecutively in Burma for 10 years or more prior to the 2010 election and disqualifying anyone from office who has ever served a prison term for any offence. Almost every credible pro-democracy leader either lives in exile currently or has remained in Burma and is serving or has served a term of imprisonment for their political activities.

There are countless other antidemocratic provisions embedded in the lengthy constitution such as a provision that effectively disqualifies NLD leader Aung San Suu Kyi running for president because her sons are British and another provision that make the appointment of regional or state governors, which covers ethnic minority areas, subject to colonial-style appointment by the Burma's majority-controlled military.

So the question must be asked, what happens after this sham referendum? We expect that many of Burma's allies, and especially China, will attempt to place the cloak of democratic legitimacy over the Burmese junta should its election ploy prevail. But no one should be fooled.

The Burmese junta is facing a real test given its devastating failure to warn its citizenry of the impending cyclone, its inept response since then, and its insistence on proceeding with the referendum in these circumstances. It remains to be seen how effectively these issues will be linked to the lack of democratic accountability for the current regime.

Failing meaningful attempts by the regime to solve Burma's difficulties in a true democratic manner, efforts to impose a global arms embargo on the Burmese junta should continue; financial and banking sanctions against key junta leaders and their allies should be

expanded; and both U.N. Secretary-General Ban Ki-moon and the Security Council should reinvigorate their efforts to press for the early release of political prisoners and national reconciliation in Burma.

While there are no easy answers, the international community cannot turn a blind eye and a deaf ear to the countless Burmese people who courageously continue to demand a restoration of democracy and human rights to their beleaguered country.

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