

NO REAL CHOICE:

An Assessment of Burma's 2008 Referendum

First Edition 2009

IPAD

Institute for Political Analysis and Documentation

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ACRONYMS AND ABBREVIATIONS

IPAD	Institute for Political Analysis and Documentation
KDA	Kachin Defense Army
KIA	Kachin Independence Army
KIO	Kachin Independence Organization
KNCD	Kachin National Congress for Democracy
NDAK	National Democratic Army – Kachin
NLD	National League for Democracy
NRC	National Referendum Commission
SLORC	State Law and Order Restoration
SPDC	State Peace and Development Council
UNA	United Nationalities Alliance
USDA	Union Solidarity and Development Association

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Kachin State Map



<http://www.myanmar.net/myanmar/kachin-state.htm>

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EXECUTIVE SUMMARY

In May 2008, the State Peace and Development Council (SPDC) held a referendum in which citizens of Burma were asked to vote on a new national constitution for the country.

This report provides an overview of that process and offers a detailed assessment of the conduct of the referendum within Kachin State, and northern Shan State. Based on that assessment, this report concludes that the referendum was a sham – the Kachin State Referendum Commission clearly intended to ensure the approval of the draft constitution regardless of public sentiment. Officials engineered victory through the pervasive abuse of voters' basic rights and engaged in widespread fraud. In short, the May 2008 referendum is not a legitimate measure of citizens' consent to be governed, but rather a reflection of the government's determination to impose its rule regardless of public sentiment. As the fourth "step" in the "Road Map to Democracy", the conduct of the referendum is illustrative of "Disciplined Democracy" and bodes poorly for the promised elections in 2010.

The Institute for Political Analysis and Documentation (IPAD) has produced this report in order to raise the public's awareness about the illegitimate character of the referendum. IPAD is an independent policy research and training center devoted to Burma. Founded in January 2008, IPAD promotes democracy, human rights and accountable governance through a range of initiatives including political analysis, human rights documentation, and grassroots roots training initiatives.

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PURPOSE OF THE REPORT:

This document is intended to serve three purposes: to provide readers with a broad and objective overview of the referendum, to facilitate awareness raising, and to serve as a historical record.

Many voters experienced firsthand the injustice of the 2008 referendum. Less clear may be the systematic manner in which that process deprived voters of their basic rights, and the broad conspiracy which it entailed. In order to provide citizens with a comprehensive picture of the referendum, this report provides a detailed assessment of the 2008 constitutional referendum and the manner in which it was implemented in Kachin State and northern Shan State; these findings are consistent with assessments of the referendum in other parts of Burma.¹

This report is also intended as a tool by which citizens of Burma can educate themselves about their basic rights as voters, and assess the extent to which the government respected these rights. As the 2010 election approaches, citizens should bear in mind their rights as voters and the manner in which these rights were so flagrantly violated in 2008. Dictatorship thrives when citizens do not understand their rights and demand that they be respected.

Finally, this report is intended as a historical record of the 2008 Constitutional Referendum and the injustices that it perpetrated.

¹ See also, "Burmese Constitutional Referendum: Neither Free Nor Fair," The Public International Law & Policy Group, May 2008; "Burma (Myanmar): A Preliminary Report on the Referendum of May 10, 2008," The 88 Generation Students, Rangoon, May 20, 2008; "Referendum Watch: Monitoring the SPDC's Referendum in Burma," Issue No. 1, April 21, 2008 Issue No. 1, April 21, 2008, and Issue No. 2, May 12, 2008, The Burma Fund-UN Office; see also, David Brunnstrom, "U.N. rights expert calls Myanmar vote plan 'surreal'," Reuters, 14 April 2008.

INTRODUCTION

The SPDC regards it a secret that 722,564 Kachin State residents, equivalent to 98.58 percent of all registered voters, cast ballots in the 2008 Constitutional Referendum. They also kept secret that 87.03 percent of voters in Kachin State cast yes-ballots supporting the ratification of the draft constitution. These statistics, compiled by the Kachin State Referendum Sub-Commission and reported to the National Referendum Commission (NRC), were never made public.

Are these results credible? Did 628,830 Kachin State residents vote in support of the draft constitution based on an informed belief that it is the best alternative for the people of Burma? Or were they pressured to vote yes? Is it believable that this many people really even voted?

In order to assess the conduct of the referendum, IPAD deployed observers at polling stations throughout Kachin State and northern Shan State between March and July 2008. Among those interviewed were both opponents and supporters of the draft constitution, including polling station officials, government civil servants, armed forces personnel, Union Solidarity and Development Association (USDA) members, religious leaders, youth, and the elderly.

IPAD's research indicates that government officials from Naypyidaw down to the quarter level worked hand in hand with the USDA to ensure the passage of the draft constitution in Kachin State, in a manner that was neither "free", nor "fair", and that clearly violated the Referendum Law.²

This report proceeds with a summary of the referendum's political context. It then briefly elaborates the democratic ideal of consent which lies at the heart of a genuine referendum process, and minimum international standards for referendums formulated to ensure that they respect the ideal of consent. The report then assesses the conduct of the referendum in

² "The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008," The State Peace and Development Council Law No 1/2008, 26 February 2008, Chapter VII a, Chapter VIII.

Kachin State and northern Shan State in light of these standards. The appendices contain key documents related to the referendum and the constitutional drafting process.

Table 1: Kachin State 2008 Referendum Sub-Commission Voter Statistics

District/ Township	Poll Booths	Eligible Voters	Votes Cast			Voting Condition and Calculation					
			Regular Votes	Advance Votes	Total Votes	Yes-votes		No-votes		Invalid-votes	
						Number	%	Number	%	Number	%
Myitkyina district	251	209,917	170,631	35,890	206,521	176,769	85.59	24,360	11.80	5,392	2.61
Myitkyina	105	117,673	103,041	14,570	117,611	103,753	88.22	10,720	9.11	3,138	2.67
Wai maw	59	51,375	40,856	8,145	49,001	37,646	76.83	9,674	19.74	1,618	3.43
Danai	27	25,155	15,491	9,664	25,155	22,918	91.11	1,993	7.92	244	0.97
Chi hpwi	39	8,366	7,007	1,359	8,366	7,777	92.96	511	6.11	78	0.93
Saw Law	9	2,324	718	1,557	2,275	2,199	96.66	68	2.99	8	0.35
N'Jang Yang	12	5,024	3,518	595	4,113	2,476	60.20	1,394	33.89	243	5.91
Moenyin District	421	303,326	237,862	62,930	300,792	274,196	91.16	22,089	7.34	4,507	1.50
Moenyin	140	100,907	81,686	19,221	100,907	89,569	88.76	9,467	9.38	1,871	1.85
Mogaung	79	62,691	50,630	9,527	60,157	52,435	87.16	7,105	11.81	617	1.03
Hpakant	202	139,728	105,546	34,182	139,728	132,192	94.61	5,517	3.95	2,019	1.44
Bhamo District	256	173,139	141,227	29,084	170,311	141,174	82.89	24,488	14.38	4,649	2.73
Bhamo	76	61,658	52,081	8,550	60,631	50,630	83.51	7,816	12.89	2,185	3.60
Moe Mauk	72	35,417	26,453	8,859	35,312	27,885	78.97	6,717	19.02	710	2.01
Mansi	53	32,053	23,662	7,138	30,800	22,468	72.95	7,085	23.00	1,247	4.05
Shwegu	55	44,011	39,031	4,537	43,568	40,191	92.25	2,870	6.59	507	1.16
Putao District	141	46,555	30,021	14,919	44,940	36,691	81.64	7,362	16.38	887	1.97
Putao	52	26,275	18,403	7,872	26,275	20,334	77.39	5,289	20.13	652	2.48
Machang Baw	18	4,796	3,139	1,657	4,796	4,308	89.82	467	9.74	21	0.44
Nog Mung	22	3,832	1,460	2,372	3,832	3,762	98.17	36	0.94	34	0.89
Hkaung Lang Hpu	31	6,968	4,822	2,146	6,968	6,508	93.40	431	6.19	29	0.42
Sumpra bum	18	4,684	2,197	872	3,069	1,779	57.97	1,139	37.11	151	4.92
Total for Kachin State	1,069	732,937	579,741	142,823	722,564	628,830	87.03	78,299	10.83	15,435	2.14

Despite the NRC's severely limited disclosure of the referendum results, IPAD was able to obtain the confidential voting statistics compiled by the Kachin State Referendum Sub-Commission and reported to the NRC.

BACKGROUND

Burma has been ruled without a constitution since the State Law and Order Restoration (SLORC) assumed power on 18 September 1988. The 2008 constitutional referendum is the culmination of the military government's struggle to legitimize a constitution that will entrench military rule.

In 1990, nationwide elections were held. The National League for Democracy won 392 of 485 parliamentary seats, and the Shan Nationalities League for Democracy 23 seats. The military-backed party, the National Unity Party won just 10 seats. (The results of the 1990 elections are summarized in Appendix 1.)

Contrary to the 1989 Pyithu Hluttaw Election Law, the SLORC subsequently promulgated Declaration No. 1/90 on 27 July 1990 transforming the newly elected General Assembly from a legislative body into a body to draft a new constitution.³

In 1992, the SLORC announced the convening of a National Convention to draft a new constitution. The SLORC appointed 702 delegates. Most delegates were township-level officials selected by the SLORC. Only 99 delegates were members of the National Assembly elected in the 1990 election.

The SLORC subsequently elaborated the six objectives of the National Convention:⁴

1. Non-disintegration of the Union;
2. Non-disintegration of national unity;
3. Perpetuation of national sovereignty;
4. Promotion of a genuine multiparty democracy;
5. Promotion of the universal principles of justice, liberty and equality; and,
6. Participation by the Defense Services in a national political leadership role in the future state.

From its inception the National Convention has been contentious, forcing the military to repeatedly halt the process, expel representatives, and suppress all debate within the forum.

³ Declaration No. 1/90 states that "the desire of the majority of the political parties which contested the General Election is to draw up a new constitution... [c]onsequently, under the present circumstances the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State."

⁴ State Law and Order Restoration Order No. 13/92.

Just days after its inception in 1993, delegates protested against the convention's sixth principle.⁵ A recess followed.

Shortly after the process resumed, ethnic nationality delegates protested against the proposed centralized political structure. The SLORC again halted the meeting.

In September 1993 the process was halted a third time after ethnic nationality delegates demanded the creation of a federal system.

In November 1995, the government expelled the National League for Democracy (NLD) after it boycotted the process for two days in protest to the censorship of delegates; the expulsion of the NLD reduced the number of elected representatives in the National Convention to 3 percent of delegates. The National Convention adjourned on 31 March 1996 and did not again for the next eight years.

In August 2003, General Khin Nyunt, the head of the Military Intelligence who had recently been appointed prime minister, announced a "Seven Step Roadmap to Democracy."

1. Reconvening of the National Convention;
2. [I]mplement step-by step the process necessary for the emergence of a genuine and disciplined democratic system;
3. Drafting of a new constitution in accordance with basic principles and detailed basic principles laid down by the National Convention;
4. Adoption of the constitution through national referendum;
5. Holding of free and fair elections for Pyithu Hluttaws (legislative bodies) according to the new constitution;
6. Convening of Hluttaws attended by Hluttaw members in accordance with the new constitution; and,
7. Building a modern, developed, and democratic nation by the state leaders elected by the Hluttaw; and the government and other central organs formed by the Hluttaw.

For the first time, armed groups that had concluded surrender and ceasefire agreements with the military government were invited to send delegates to the National Convention. These included two groups from Kachin State, the Kachin Independence Organization (KIO),

⁵ See "Chronology of Burma's Constitutional Process," Human Rights Watch. Available at www.hrw.org/reports/2008/burma0508/burma0508chronology.pdf

which had concluded a ceasefire in 1994, and the National Democratic Army – Kachin (NDAK), which had surrendered in 1989. (The Kachin State delegates are listed in Appendix 2.)

In June 9, 2004, 13 ethnic ceasefire groups participating in the National Convention submitted proposals to make the process more inclusive and democratic. (See Appendix 3) These submissions were largely ignored.

During the fifth and final session of the National Convention in September 2007, the KIO submitted a letter to the chairman of the National Convention Commission, and the National Leaders of the Union urging amendments to the draft constitutional principles based on 19 points. (See Appendix 4).

Although the National Convention purported to be based on dialogue among a wide range of representatives from society, most of the delegates were appointed by the government, and the open exchange of ideas was strictly prohibited. Consequently, many citizens of Burma reject the constitutional principles endorsed by the National Convention as fundamentally unacceptable, as do most foreign governments and legal scholars.

The second step of the Road Map to Democracy, “the implementation of the process necessary for the emergence of a genuine and disciplined democratic system”, was never elaborated, and was apparently either skipped, or entailed the arrest of political dissidents who might disrupt subsequent steps. For instance, in late September 2007 the military violently suppressed peaceful demonstrations for political change and economic reform in Rangoon and other parts of Burma. According to the United Nations Special Rapporteur for Human Rights reported that at least people were killed in Rangoon alone.⁶ In addition, some 6000 people, including 1,400 monks, were arrested in the crackdown which followed. Although many were later released, there were at least 2164 political prisoners in December 2008, nearly double the amount prior to September 2007.⁷

⁶ “Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro,” 7 December 2007. See also, “Crackdown: Repression of the 2007 Popular Protests in Burma,” Human Rights Watch, 6 December 2007.

⁷ “Chronology of Political Prisoners in Burma for November 2008,” Assistance Association for Political Prisoners (Burma) 1 December 2008 available at http://www.aappb.org/chronology%20pps_in_november_2008.pdf

The third step, the drafting of the constitution in accordance with the principles set down by the National Convention, was completed quickly and secretly by SPDC appointed delegates.

The May 2008 referendum marked the fourth step in the Road Map to Democracy. Although Cyclone Nargis had struck lower Burma on 3 May killing more than 100,000 people and leaving more than one million others homeless, the referendum proceeded without delay in most of Burma. Two weeks later, despite the continuing humanitarian crisis, the referendum was completed in the 47 townships devastated by the cyclone. The government claims that 92.48 percent of voters reportedly approved the draft constitution among 98.12 percent of the eligible voting public.⁸ On the basis of these results, the SPDC declared the constitution to be ratified and promulgated.⁹

Following the completion of the referendum, the SPDC announced that parliamentary elections are to be held in 2010.

THE DEMOCRATIC IDEAL OF CONSENT

The purpose of a referendum is to measure public approval on a matter of law or policy. It reflects the democratic ideal of consent, the consent to be governed, which is a defining feature of democracy.

This right is stated clearly in Article 21 paragraph 3 of the Universal Declaration of Human Rights:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

⁸ The State Peace and Development Council, Announcement No. 7/2008, 29 May 2008, in *New Light of Myanmar*, 30 May 2008.

⁹ *Ibid.* The draft constitution specifies that it would be adopted by a majority vote among “more than half of the eligible voters”. Constitution of the Republic of the Union of Myanmar (2008), Chapter XIV, article 441.

Statements by senior SPDC officials publicly affirmed that the constitutional referendum would be conducted according to international standards, in particular that it would be “free” and “fair”.¹⁰ The “Law on Holding Referendum” also provided that the process would be conducted in a “free” and “fair” manner.¹¹

According to the United Nations

The ultimate indication of whether elections are ‘free’ is the extent to which they facilitate the full expression of the political will of the people concerned. It is, after all, this will which, according to the Universal Declaration (article 21, paragraph 3), is the very basis of legitimate governmental authority.¹²

The requirement that elections be fair is also an easily identifiable international norm. Any measures which could have the effect of circumscribing or frustrating the will of the people would, of course, violate the Universal Declaration of Human Rights (article 21, paragraph 3) and render elections unfair.¹³

MINIMUM INTERNATIONAL STANDARDS

A genuine referendum has two broad elements. The first element is procedural. A genuine referendum is one that is conducted in a manner both “free” and “fair”. The second element is outcome oriented. It must reflect the free expression of the will of the voters. Genuine referendums are therefore “those which reveal and give effect to the freely expressed will of the people.”¹⁴

Governments and international organizations have elaborated a set of minimum standards to govern referendums and elections. These minimum standards elaborate the conditions for a free and fair referendum, are recognized as international law, and as such, are binding upon all states. At the very heart of these standards is a commitment to ensure adherence to the ideal of consent.

¹⁰ “Voting will be conducted in line with the international systems,” The New Light of Myanmar, 9 March 2008; “Historic referendum next week,” Myanmar Times, April 28 - May 4, 2008.

¹¹ “The Referendum Law”, Chapter VII a, Chapter VIII.

¹² Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections, United Nations Centre for Human Rights, New York and Geneva, 1994, page 10. Available at www.unhchr.ch/pdf/hrelections.pdf

¹³ Ibid.

¹⁴ Human Rights and Elections, page 12.

According to these basic minimum standards, a referendum is considered free and fair, and thus legitimate, to the extent that the following conditions are met:

- Election officials are impartial. That is, the people who implement the referendum do not attempt to compel voters to vote in a particular manner.
- The referendum is conducted transparently. Toward this end, citizens, politicians and the media should be allowed to freely discuss the manner in which the referendum process is implemented, in order to ensure that the process is carried out in a free and fair manner.
- All eligible citizens are provided with the opportunity to register as voters.
- Voters are fully informed about their rights and obligations as voters, including their right to vote in favor of, or against, the referendum measure.
- Voters are able to make informed decisions. Adherence to several key human rights is central to this including the right to freedom of expression, the right to freedom of opinion, right to peaceful assembly, and the right to freedom of association.¹⁵
- Voters have the right and the opportunity to vote "yes" or "no" according to their conscience, free from intimidation or coercion.
- Ballots are secret. That is, voters are able to cast votes in private so that no one can determine how they voted. Secrecy ensures that people are able to vote their conscience, without fear of repercussion or punishment.
- Each eligible voter is only allowed to vote once, and only once. This idea is captured in the phrase "One person, one vote." It is forbidden to vote on behalf of another or to designate someone to vote on your behalf.
- Voting and ballot counting are free of fraud and manipulation.

¹⁵ As set forth in Training Manual on Human Rights Monitoring - Chapter XIV: Election Observation, Office of the High Commissioner for Human Rights, United Nations, 2001.

AN ASSESSMENT OF THE REFERENDUM IN KACHIN STATE

This section assesses the 2008 constitutional referendum in Kachin State. It proceeds with a point by point analysis of the conduct of the referendum in light of the minimum standards for a free and fair referendum. Based on that assessment, the report concludes that the referendum clearly failed as a mechanism for gauging the will of the people. Widespread fraud and the egregious violations of every minimum standard for a free and fair election, suggest that the referendum was a sham designed primarily to fool the people of Burma and the international community.

Administration of the Referendum

A referendum's administrative personnel and procedures bear directly on the quality of a referendum. Minimum standards for a free and fair referendum dictate that administrative personnel and procedures must be impartial, must operate transparently, and must be subject to independent review by outside observers and an independent judiciary.

In sharp contrast to these minimum standards, referendum officials in Burma worked to engineer the approval of the constitution, and operated in a secretive and opaque manner, free of any oversight or complaints mechanism.

Minimum Standards Regarding Administrative Impartiality

The United Nations and other international organizations have elaborated basic minimum standards for the administration of referendums and elections. The United Nations has prescribed that

provisions of the law should ensure that an objective, unbiased, independent and effective administrative structure is in place. This entails careful attention to provisions for appointment, remuneration, duties, powers, qualifications and reporting structure of electoral staff. At all levels, staff must be insulated from bias and political pressure.¹⁶

The "Code of Good Practice on Referendums" also elaborates at length the importance of a neutral administration, and includes the following prescriptions:

¹⁶ Human Rights and Elections, page 15.

- Administrative authorities must observe their duty of neutrality, which is one of the means of ensuring that voters can form an opinion freely
- Public authorities (national, regional and local) must not influence the outcome of the vote by excessive, one-sided campaigning.
- Sanctions must be imposed in the case of breaches of the duty of neutrality and of voters' freedom to form an opinion.¹⁷

The Referendum Was Conducted without Any Regard for the Principle of Impartiality

The government, the National Referendum Commission (NRC), and the USDA all collaborated to ensure that the referendum results would indicate overwhelm support for the draft constitution. They didn't even pretend to be impartial.

"The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008" established the legal basis for the referendum. The Referendum Law does not prescribe that the NRC be neutral or impartial. Indeed, the name of this law clearly indicates that its purpose was to ensure approval of the constitution.

The referendum was administered by the NRC.¹⁸ The NRC's 45 members were appointed by the SPDC and were of dubious qualification.¹⁹ (See Appendix 5.) Members were chosen without regard to impartiality as evidenced by the appointment of U Aung Toe as the NRC's chairman – U Aung Toe is the chief justice of the Supreme Court and had previously chaired the constitutional drafting commission and the National Convention.²⁰

Referendum sub-commissions implemented the referendum at each of the government's administrative levels (i.e. state/division, district, township, ward/village tract). Civil servants and leading USDA members served as chairmen and members of the referendum sub-commissions throughout Kachin State.

¹⁷ See Chapter II, Article 3.1, "Code of Good Practice on Referendums," adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), available at [http://www.venice.coe.int/docs/2007/CDLAD\(2007\)008-e.pdf](http://www.venice.coe.int/docs/2007/CDLAD(2007)008-e.pdf)

¹⁸ As established by State Peace and Development Council Declaration 3/2008, 26 February 2008.

¹⁹ Although the SPDC made public the composition of the NRC, no information was provided concerning the criteria by which they were selected or their qualifications.

²⁰ As the United Nations Centre for Human Rights has elaborated, an independent judiciary can act as a "safety mechanism ensuring that the rule of law, rather than any politician or external body, controls the conduct of elections." Human Rights and Elections, page 8.

Major-General Thein Zaw, the head of the USDA in Kachin State and minister of communication, frequently visited Kachin State to oversee the referendum. During these trips he directed USDA members and government employees to ensure that the referendum indicated the public's overwhelming support for the constitution. Major-General Thein Zaw publicly promised to reward officials who successfully engineered public support with promotions or gifts. Key USDA activists were also awarded with gifts as an inducement. For example, on 26 April, Thein Zaw gave telephones to U Hpung Ri Min, secretary of the Putao District USDA, and U Yin Htang Di from the Putao Township USDA; landline phones are very expensive (in Myitkyina, for example, the cost is 3,500,000 kyat) and very difficult to obtain in Putao. After the referendum, an additional forty phones were granted to USDA officers for their homes and offices.

On 20 April 2008, the Kachin State USDA informed its members that they would serve as inspectors at polling stations throughout Kachin State in order to ensure that 95 percent of voters approved the constitution. USDA members were ordered to work with firemen, township authorities, and other local authorities to accomplish this goal.

Members of the referendum sub-commissions and polling stations generally acted without any pretense of impartiality, assuming a leading role in campaigning for the approval of the constitution, exhorting voters to vote yes, and in many instances threatening citizens that they would be punished if they voted no. In the weeks leading up to the referendum, and on the day of the referendum, polling station officials wore T-shirts emblazoned with partisan messages written in English such as "Let's cast yes-vote with tick mark" and "Let's approve Union of Burma State Constitution."

Many polling stations officials interviewed by IPAD expressed fear that they would be punished if voting results at their polling station did not indicate overwhelming support for the constitution. Other referendum officials appeared to derive pleasure in mistreating and bullying voters and tricking them into voting yes. In a few polling stations, officials defiantly organized voters to vote no. Officials who sought to maintain a neutral voting atmosphere in their polling stations were the rare exception.

Minimum Standards Regarding Transparency

Transparency is integral to the integrity of a referendum. According to the United Nations, “all electoral activities, including the decision-making process, the legal process and the organization of events, should be conducted in a wholly transparent manner.”²¹

Transparent methods for counting ballots are essential in order to ensure a fair count. The Council for Democratic Elections stresses that “counting must be transparent. Observers, representatives of the proposal’s supporters and opponents and the media must be allowed to be present. These persons must also have access to the records . . . results must be transmitted to the higher level in an open manner”.²² Similarly, the UN Centre for Human Rights prescribes that

[c]ounting should be open to official observation by concerned parties. All issued, unissued and damaged ballot papers must be systematically accounted for. The processes for counting votes, verification, reporting of results and retention of official materials must be secure and fair. Re-count procedures should be available in case of questionable results.²³

The National Referendum Commission’s Operations Were Opaque

In contrast to these minimum international standards the 2008 referendum was conducted in a secretive and opaque manner.

The NRC provided the barest minimum of information about the referendum’s results, reporting only the total number of voters in Burma, and the total numbers of yes, no, and cancelled votes.²⁴ The NRC did not make public any statistical information about voting within Burma’s states and divisions, let alone specific districts, townships, or polling stations. By restricting information in this manner, the NRC made it extremely difficult to assess the validity of the referendum results. As illustrated below, disaggregated statistics are important for identifying discrepancies, suspicious practices, and fraud.

²¹ *Human Rights and Elections*, page 15.

²² Chapter II, Article 3.2, xiii.

²³ *Human Rights and Elections*, page 16

²⁴ Due to the delays caused by Cyclone Nargis this was reported on two dates. See Commission for Holding Referendum, Announcement No 10/2008, 15 May 2008, reported in the New Light of Myanmar, 16 May 2008, and, The State Peace and Development Council, Announcement No. 7/2008, 29 May 2008, in New Light of Myanmar, 30 May 2008.

The Referendum Law made minimal provisions for transparency simply stating that ballot counting at each polling station shall be conducted “in the presence of not less than ten persons eligible to vote.”²⁵ In some cases, interested parties were allowed to watch the vote count. However, many officials cleared the polling station before tallying the results. No provision was made for the independent monitoring or verification of vote counts.

Minimum Standards Regarding Monitoring and Oversight

Independent monitoring is crucial to the integrity of a referendum as it helps to increase public confidence, and to reduce cheating. The “Code of Good Practice on Referendums” notes

Both national and international observers should be given the widest possible opportunity to participate in a referendum observation exercise. . . . It must make it possible to determine whether irregularities occurred before, during or after the vote. It must always be possible during vote counting. . . . Observation should cover respect by the authorities of their duty of neutrality.²⁶

Minimum international standards also prescribe that a referendum should be subject to a complaints mechanism:

The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the powers of the independent judicial body charged with such review. Multiple levels of review, where appropriate, should be described as well.

The effect of irregularities on the outcome of elections must be established by law. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress.²⁷

²⁵ “Referendum Law,” Chapter 8 a.1.

²⁶ “Code of Good Practice on Referendums,” Article 3.2

²⁷ Human Rights and Elections, page 16.

The National Referendum Commission Operated Without Independent Oversight

In contrast to the safeguards dictated by international minimum standards, the SPDC barred foreign observers, and foreign and domestic journalists from monitoring the process.²⁸ In many instances, security forces at the polling stations prevented citizens from observing the conduct of the referendum.

The Referendum Law made no provision for a complaints procedure. The SPDC disregarded widespread allegations that the Referendum Law was violated,²⁹ announced the results shortly after the conclusion of the referendum, and promulgated the constitution on this basis of these widely disputed results.³⁰

Table 2: Kachin State Sub-Referendum Commission Members

1. U Maung Maung Win, chairperson, general administrator of the Kachin State.
2. U Than Win, director of Kachin State Immigration department.
3. Daw Mary Mi Nan, deputy of Kachin State Attorney.
4. Captain Win They, Northern Division military officer
5. Mr. Kum Htan Gam, Liaison Office in charge (KIO, Myitkyina)
6. Mr. Di Ram, Liaison Officer (KIO, Myitkyina)
7. Mr. Zahkung Chang Bawm, Liaison office in charge (NDAK, Myitkyina)
8. Mr. Ma Hkaw, Liaison office in charge (La Seng Awng Wa Group)
9. U Kyaw Soe, officer, State Administration Office
10. U Kyaw Htwee, officer, State Administration Office
11. U Than Nyein, officer, State Immigration Department
12. U Myint Soe, head of office, State National Referendum Sub-Commission
13. U Than Soe, officer member, State National Referendum Sub-Commission

²⁸ A small numbers of foreign diplomats were escorted to select polling stations “Burma refuses observers for referendum,” Australian Broadcasting Corporation, 9 March 2008. Available at <http://www.abc.net.au/ra/news/stories/200803/s2184342.htm>.

²⁹ See “Burmese Constitutional Referendum: Neither Free Nor Fair,” The Public International Law & Policy Group, May 2008; “Burma (Myanmar): A Preliminary Report on the Referendum of May 10, 2008,” The 88 Generation Students, Rangoon, May 20, 2008; “Referendum Watch: Monitoring the SPDC’s Referendum in Burma,” Issue No. 1, April 21, 2008 Issue No. 1, April 21, 2008, and Issue No. 2, May 12, 2008, The Burma Fund-UN Office; see also, David Brunnstrom, “U.N. rights expert calls Myanmar vote plan ‘surreal’,” Reuters, 14 April 2008.

³⁰ The State Peace and Development Council, Announcement No. 7/2008, 29 May 2008, in New Light of Myanmar, 30 May 2008.

Voter Registration

Minimum Standards

In order to be fair, a referendum must allow all adult citizens to vote without discrimination. Minimum standards allow for the deprivation of voting rights only on the basis of “mental incapacity or a criminal conviction for a serious offence”.³¹ Governments are obligated to take reasonable measures to ensure that eligible citizens can register to vote and to appeal their exclusion.

Minimum standards dictate that “registration must be possible over a relatively long period,” include an appeal procedure if a voter is excluded, and allow a voter sufficient time to make such an appeal.³²

Voters were Wrongfully Denied Their Right to Vote

According to the Referendum Law all citizens over 18 years of age are eligible to vote excepting religious officials, the mentally disabled, convicted criminals and those who have gone abroad illegally.³³ This legal requirement is problematic in principle, and was seriously breached in practice.

The referendum law wrongfully denied religious officials the right to vote. In past elections the Burmese government justified this exclusion on the basis that religious officials should not engage in partisan politics. Such logic does not apply to the ratification of a constitution which is a non-partisan event. Religious officials were wrongfully excluded.

In Kachin State, government officials flagrantly violated the referendum law’s criteria for voter registration. Tens of thousands of eligible voters were wrongfully denied the right to vote, while thousands of minors and non-citizens were wrongfully allowed to vote.

³¹ “Code of Good Practice on Referendums,” Article 1.1 d

³² “Code of Good Practice on Referendums,” Article 1.2.

³³ The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, Chapter 5

The USDA compiled a list of eligible voters which was finalized on 7 May. However, these statistics varied dramatically from the Immigration Department's census data. For this reason, the immigration department re-conducted the entire registration process in Kachin State. This revised voter list had 30,000 fewer voters than the original list.

Due to the re-registration process, many eligible voters were notified of their right to vote only one week before the referendum. Although persons who were excluded from the new list were allowed to lodge an appeal, they only had a few days in which to do so. Consequently, tens of thousands of people may have been arbitrarily deprived of their right to vote. Despite the revision of the voter registration list for the Kachin State, advance votes collected several weeks prior were neither nullified nor re-cast. In Putao township officers and referendum commission members excluded from the vote register people whom they suspected might not vote yes.

Government officials also wrongfully registered tens of thousands of non-eligible voters. In Myitkyina Township, 33,000 USDA members under the age of 18 were included in the voters' roll.³⁴ Government officials also registered thousands of Chinese who are guest workers in Burma, even though they clearly were not citizens of Burma, probably because officials believed that they would dutifully vote yes. This practice was particularly common in Namhkam, Muse, and Pangsai townships in northern Shan State.

The Opportunity to Make an Informed Decision

Minimum Standards

The ability to make an informed decision is an important element of consent, and a central aspect of the right to vote. Informed consent exists when a person agrees to do something based on a clear appreciation and understanding of the facts, implications and future consequences of an action. This logic is reflected in the legal requirement that a contract be written in a language that the signatories can read.

A referendum is "free" only to the extent that voters understand why they are voting,

³⁴ Kachin News Group, "Junta includes underage people in voters' list", 14 April 2008.

and have sufficient opportunity to consider the significance and implications of their vote. To meet this requirement the government or an independent body must educate all eligible citizens about their rights and obligations as voters, including their right to vote in favor of, or against, the referendum measure.

Article 3.1 of the Code of Good Practice on Referendums elaborates this obligation further:

- d. The authorities must provide objective information. This implies that **the text submitted to a referendum** and an explanatory report or balanced campaign material from the proposal's supporters and opponents **should be made available to electors sufficiently in advance**, as follows:
 - a. they must be published in the official gazette sufficiently far in advance of the vote;
 - ii. they must be sent directly to citizens and be received sufficiently far in advance of the vote;
 - iii. **the explanatory report must give a balanced presentation not only of the viewpoint of the executive** and legislative authorities or persons sharing their viewpoint **but also of the opposing one.**
- e. The above information **must be available** in all the official languages and **in the languages of the national minorities.**
- f. Sanctions must be imposed in the case of breaches of the duty of neutrality and of voters' freedom to form an opinion. [Emphasis added]³⁵

To be "free" the government must also ensure that that several key human rights are protected. This requirement is elaborated by the United Nations High Commissioner for Human Rights:

To be free, participation in elections must be conducted in an atmosphere characterized by the absence of intimidation and the presence of a wide range of fundamental human rights. To that end, obstacles to full participation must be removed and the citizenry must be confident that no personal harm will befall them as a result of their participation. . . .

Political propaganda, voter education activities, political meetings and rallies, and partisan organizations are all common elements of the electoral process, and **each must operate without unreasonable interference for the conduct of elections to be free.** [Emphasis added.]

A referendum can not be "free" in the absence of several basic human rights:

³⁵ "Code of Good Practice on Referendums," Article 3,

The right to freedom of expression - The electoral process is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during electoral periods.

The right to freedom of opinion - The unconditional freedom to hold a political opinion is imperative in the context of elections, since the authentic assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way.

The right to peaceful assembly - The right of assembly must be respected, since public demonstrations and political rallies are an integral part of the election process and provide an effective mechanism for the public dissemination of political information.

The right to freedom of association - This right clearly include the right to form and participate in political organizations. Respect for this right is vital during the electoral process, as the ability to form and join political parties is one of the most important means by which people can participate in the democratic process.³⁶

Citizens Were Not Provided with an Opportunity to Make an Informed Decision

The SPDC failed to meet the minimum standards that would allow citizens to make an informed decision, and deliberately obstructed efforts to express opposing viewpoints.

The Draft Constitution was Not Accessible to the Public

The constitution was published only in Burmese. The government did not provide translations in any of the ethnic nationalities' languages, or in English. Consequently, significant numbers of citizens in Kachin State who are ethnic nationalities could not understand the document in order to make an informed decision about its acceptability.

Most residents of Kachin State were never provided with an opportunity to read the draft constitution. Indeed, most had never even seen it. Copies of the draft constitution were released on 9 April just one month before the referendum. Circulation was delayed because copies were made available the day before the ten-day long holiday of Thingyan. Only 465,000 copies of the constitution were printed for a voting public of over 30 million. Distribution and circulation of the constitution within Kachin State was limited. Copies of the constitution were briefly available in Myitkyina bookstores but quickly sold out. Referendum

³⁶ As set forth in Training Manual on Human Rights Monitoring - Chapter XIV, Office of the High Commissioner for Human Rights, United Nations, 2001.

officials in Kachin State were provided with limited numbers of copies for the office, and did not have funds to make copies for interested parties. Consequently, few people were able to read the 194-page document, which contains 457 articles.

State-Controlled Media were Biased

Burmese media provided a one-sided and shallow presentation of the referendum process and its significance. The only two television stations in Burma continually broadcast music videos in support of the process and skits showing the basic steps to vote “Yes” in the referendum. State-run media and other forms of propaganda presented the constitution as the only logical choice for dutiful citizens. Newspapers exclusively carried slogans, editorials, cartoons and poems advocating “Yes” votes. A “No” vote was associated with colonialism, insurgency, and separatism.

This is evidenced in the slogans printed in state-run media and signboards that were posted throughout Kachin State:

- Emergence of the State Constitution is the duty of all citizens of Myanmar Naing-Ngan.
- Democracy cannot be achieved by anarchism or violence, but by Constitution.
- Let’s approve constitution to shape our future by ourselves.
- Let us all who are equipped with ardent patriotism, who cherish genuine independence, who aspire perpetuation of sovereignty, who loathe foreign interference and manipulation, and who oppose puppet government with strings of colonialist, vote “Yes” for ratification of the Constitution.
- To approve the State Constitution is a national duty of the entire people today; Let’s cast “Yes” vote in the interest of the nation.
- Democratic transition will be swift only if the state constitution is approved.

Private media were required to run series of articles exclusively in support of the process. Severe restrictions on media freedom prevented the airing of dissenting viewpoints and an objective elaboration of issues. In this manner the government not only failed to fully inform the public about the content of the constitution and its significance, it severely restricted citizens’ ability to educate themselves.

The Government Prohibited Public Debate and Restricted Opposing Viewpoints

The referendum law imposes a penalty of up to three years imprisonment for “lecturing, distributing papers, using posters or disturbing the voting in any other manner in the polling booth or on the premises of polling booth or at the public or private place to destroy the referendum.”³⁷ Government officials and the public widely interpreted this provision to prohibit all expressions of opposition to the draft constitution in any manner, place, or time. Many believed that the law also prohibited complaints about the unfair manner in which the referendum was conducted.

Referendum officials in Kachin State actively sought to oppose the expression of dissenting views. On the morning of 15 March 2008 at the City Hall in Myitkyina, U Tin Aung Aye, the NRC member who oversee the referendum in Kachin State, provided an overview of the referendum process. The meeting was attended by chairmen and administration members from every quarter and village, as well as governmental department heads and staff persons. At this meeting, U Tin Aung Aye told participants that they were to organize the populace in a polite manner and to use legitimate means in order to successfully implement the referendum, but that if necessary they could also resort to coercion or violence in order to suppress any group that actively organized against the approval of the constitution.

In April the All Kachin Students and Youth Union (AKSYU) started a vote-no poster and letter campaign in Bhamo and Myitkyina. In response, local authorities launched investigations to identify the activists and made a concerted effort to remove posters as soon as they were posted.

In **Du Kahtawng Quarter, Myitkyina**, U Dai Hu the head of the Du Kahtawng USDA, ordered the detention of two Kachin youth after they openly stated that they had read the constitution at a USDA organized briefing on the referendum; they were reportedly suspected of being organizers for a vote-no campaign.

The Right to Vote One’s Conscience

³⁷ “The Referendum Law,” Chapter 10.

Minimum Standards

At the very core of a free and fair referendum is respect for citizen's right to vote their conscience free of fear and intimidation. The UN Centre for Human Rights is clear in this regard -- **"Citizenry must be confident that no personal harm will befall them as a result of their participation."**³⁸

Secret ballots are crucial to protect the voting process from intimidation. Article 21 of the Universal Declaration of Human Rights provides that elections "shall be held by secret vote or by equivalent free voting procedures." The International Covenant on Civil and Political Rights goes further by requiring, conclusively, that elections shall be held "by secret ballot".³⁹ As noted by the UN Centre for Human Rights, "this standard derives from the international community's conviction that, to be truly free, procedures must guarantee that the content of one's vote be absolutely privileged."⁴⁰ The UN Centre for Human Rights further states that "The secrecy of the ballot should also be the focus of voter-education efforts, so that the public will be confident in these protections."⁴¹

Citizens were Systematically Denied the Right to Vote Their Conscience

Members of the NRC conspired with the police, government civil servants, and the USDA to systematically deny voters their rights to vote according to their will. These violations occurred in a number of forms including orders to vote yes, the denial of secrecy when casting votes, and multiple forms of intimidation and coercion. These abuses were so widespread that they fundamentally undermined the integrity of the referendum process.

³⁸ [Human Rights and Elections](#), page 6.

³⁹ Article 25 b.

⁴⁰ [Human Rights and Elections](#), page 10

⁴¹ [Human Rights and Elections](#), page 10

Orders to Vote Yes

Senior government officials summarily violated government employees' right to vote by ordering them to vote yes, and prohibiting them from voting no. Orders to vote in a particular manner are a blatant perversion of the democratic ideal of consent that lies at the very heart of the voting process. The purpose of referendum is to measure public consent. Ordering voters to vote in a particular manner thus betrays the very ideal that motivates a referendum. The pervasiveness of this abuse during the 2008 referendum is clear testament to its very non-democratic manner.

Such orders were issued at the highest levels of government throughout Kachin State. The Kachin News Group reported that Northern Commander Major General Ohn Myint threatened government employees that if they voted no they would be put in jail for seven years and fined 500,000 kyat.⁴² Similarly, Mizzima News Service reported that Bhamo district and township authorities ordered the head of the education ministry in Bhamo District, U Ohn Ngwe, and all education department employees including teachers, to cast yes-votes. Officials were told that they did not have to go to the polling stations, but under no circumstances should they vote no.⁴³ These reports are corroborated by the testimony of civil servants in the ministries of home affairs, defense, health, education, electric power, and the department of immigration, who all stated that their supervisors had threatened and intimidated subordinate civil servants to vote yes.

To ensure that military personnel voted in support of the constitution they were required to cast their ballots at polling stations in their unit headquarters. Spouses and adult children of military officials residing in cantonment areas were also required to cast yes-votes. Some commanding officers simply voted for soldiers under their command. Voter projection lists compiled for Kachin State in April anticipated that 21,475 voters in military units and cantonment areas in Kachin State would vote yes.

Police officers throughout Kachin State were also ordered to vote yes. Several police

⁴² "KIO receives junta's vote commission training," Kachin News Group, 29 April 2008, available at http://www.kachinnews.com/index.php?option=com_content&task=view&id=63&Itemid=11

⁴³ Myo Gyi, "Bamaw police ordered to cast 'Yes' votes in advance," Mizzima, 2 May 2008.

officers stated that they were required to fill out their ballots in front of their commanding officer and to write their name, rank, and serial number on the back of the ballot. Several police officers stated to IPAD researchers that they were unhappy with the manner in which the government conducted the referendum in clear violation of the referendum law which specified that voting was to be secret.⁴⁴ One officer stated, *"We are like offspring of the State, therefore, whether we like it or not we have to obey orders, otherwise we will lose our jobs."*

As elaborated below, ceasefire groups, surrender groups, and militia forces also ordered persons under their control to vote yes.

Officials Violated Provisions for Secrecy

Officials frequently violated provisions of the Referendum Law requiring secrecy. Generally, officials who collected advance votes made no provision for the secrecy of the ballot. Officials at polling stations also frequently violated secrecy provisions by filling out ballots for voters, or accompanying them to voting booths. In other cases, voters' names and addresses were included on ballots. Many voters believed that authorities had devised secret methods to determine how they voted.

Threats and Intimidation

Officials coerced, and cajoled citizens into voting yes in nearly every polling station that IPAD monitors surveyed. Although some voters refused to be intimidated, many others stated that they were afraid so they voted yes to avoid future problems with local authorities. Representative examples of such abuses are elaborated below.

Myitkyina Township: In *Kyarapati Village, Tatgone Tract*, polling station official Agu Hkin confronted voters saying "ah-de-awa-u-le", which in the Rawang language means "thick tick like this" indicating that they should vote yes. Some residents became angry and replied, "if you want us to do so, why did you call us today here, we can't"; they then voted no. However, many voters voted yes in order to avoid future problems with authorities. Other

⁴⁴ *Ibid.*

witnesses stated that polling station officials intimidated voters by staring at them with a blank face.

In *Sitapru Quarter*, local authorities threatened people that they should vote yes. In *Tayatit Quarter (Naga Yatkwet)*, policemen in charge of security at the polling station held sticks in their hands and commanded voters to vote yes.

Several weeks before the referendum the *Namti* Immigration Department, the Survey Department, and other local authorities inspected the house census and land titles of households. Residents who lacked proper land surveys feared that they would be evicted from the area if they didn't vote yes.

Waimaw Township: Local authorities threatened villagers in *Aung Mye-2 Village* and *Jamga Village* that they would be punished if they voted no in the referendum. On 31 March 2008, in *Wa Shawng Village* the village-head Sin Wa Naw convened a village wide meeting during which he warned all registered voters that they would be given a ballot three days in advance of the referendum, and that if they lost the ballot, or voted no, they would be imprisoned for three years and fined 100,000 kyat.

Northern Shan State: Voters in *Kawng Wing Tract No.2 Polling Station* stated that they were afraid something bad would happen to them if they voted no. Many of the registered voters were Chinese migrants with temporary ID cards. Although there were 4000 registered voters, only 506 people voted yes, 60 voted no, and 4 votes were declared invalid.

In *Namtau Village*, relations between officials and residents became tense at a referendum rehearsal on 6 May after authorities realized that many people had voted no. Many of the participants became upset because they felt that they were being intimidated. Officials threatened to punish the participants if details about the rehearsal were leaked to the media. Muse Township authorities subsequently warned the polling station officials that they would be punished if many people voted no on the day of the referendum. On 10 May, armed security forces stationed at the polling station contributed to an air of intimidation. A fifty year old woman stated that local authorities threatened she would be fined 100,000 kyat

in accordance with the referendum law if she voted no. Some citizens expressed concerns that the ballots might be secretly marked in order to determine who voted no. Residents were not properly informed about the referendum and were simply instructed to vote yes; few if any had seen the draft constitution. Despite official intimidation many people still voted no. The final results at the polling station were 843 yes-votes, 443 no-votes, 165 invalid votes, and 4 absences.

In *Munggu Village*, officials told residents that voting was compulsory and warned them that they would be arrested if they failed to vote – in fact, there was no such legal provision. Many voters felt intimidated by the presence of armed security forces at the voting station on the day of the referendum. Some polling station officials marked ballots as yes-votes on behalf of voters before handing them to voters to deposit in the ballot box. In other cases, officials warned voters that if they voted no, their names would be deleted from the family census.

During a referendum rehearsal in *Mung Baw Village* on 8 May, officials told participants that if they voted no it would “bring bull shit words from higher authorities”. They instructed voters that they must not vote no, and that they should only vote yes. On the day of the referendum, armed security forces were present in civilian clothing.

In *Mai H pang Tract*, polling station officers waited in voting booths and cast vote yes for voters as they arrived. In one case, a 35 year old male refused to allow the official to vote for him, and grabbed the pen from the hand of polling station officer. A loud argument ensued. In another case, a 50 year old woman stated that she was getting old so she could spend the rest of her life in prison; she then cast a no-vote. There were a total of 700 yes-votes, 3 no-votes, 9 votes were deemed invalid

Mung Baw Myoma: Officials violated secrecy provisions in the Referendum Law by denying voters privacy while they were voting. Consequently, people felt intimidated and were afraid to vote no. A 50 year-old woman became upset about this and scolded the polling station officers, “if you could not accept the will of citizens, you should not invite and call the people to vote, you should do it yourselves without involving the citizens.” In total

there were 994 yes-votes, and 6 no-votes.

Hu Na Tract: Voters stated that they were afraid and felt intimidated by the presence of armed security forces at the polling station. In one instance, a polling station officer stretched out the hand of an 80 year-old man and forced him to vote yes. Local authorities promised villagers that if they voted yes then the village would receive development assistance for the building of necessary infrastructure. Among 300 voters only one person voted no.

Kutkai 2-Ward: Local government officials threatened voters that they would be denied essential governmental services in the future if they voted no.

Mohik Village, Kutkai: Polling station officials marked ballots as yes-votes on behalf of voters and then instructed them to place their vote it in the ballot box.

Prior to the referendum the State Education Ministry threatened school teachers in *Hauwa Manpyi Tract* that they would be punished if they did not successfully organize residents to vote yes. Residents feared that school teachers would be arrested and their children would be unable to attend school so they felt compelled to vote yes. Over 700 yes-votes were cast, versus 125 no-votes.

In April, authorities in **Nogmung Township, Putao Division** diligently recorded a referendum rehearsal with video and still cameras expecting that all participants would vote yes. To their dismay, 70 percent of the participants voted no. Authorities immediately ordered the destruction of all records of the event.

Officials then conspired to ensure that voters would support the referendum. Five individuals reportedly led this effort: Ma Hpalansandi (No.4 Ward organizer), U Chan Di Ram (Yukbawq Block organizer), Chinglai Dawi (Nogmung Township volunteer), U Hkaw Du Hkin Na (Kathtu tract organizer), and U Chan Tan Hpung Sir (Township volunteer).

The government also mobilized members of the Myanmar Women's Affairs

Federation, and other Government Organized Non-Government Organizations, to mobilize in order to ensure that the referendum was a success.

Residents were threatened that if they were discovered to vote no, then they would be imprisoned under the State Revolutionary Act. Nogmung Township authorities also threatened voters that the referendum ballots had been coded so that they would be able to identify people who voted no.

One Person, One Vote

Inherent to the idea of fairness is the concept of equal suffrage. This idea is traditionally expressed as “one person, one vote.” Limiting everyone to one vote ensures that everyone’s vote counts equally. Similarly, delegate voting is prohibited because it undermines the ability of citizens to freely express their conscience without fear of retribution.

Article IV of the Code of Good Practice on Referendums prescribes that “Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.”

This basic norm is reflected in Burma’s Referendum Law which prohibits multiple voting two places. Chapter VI declares “A person who is entitled to vote shall have the right to vote only once at the referendum.” Similarly, Chapter X proscribes “no one shall do any of the following: (a) voting more than once”.

Referendum Officials Encouraged Voters to Cast Multiple Ballots

Despite this clear prohibition, polling officials throughout Kachin State variously allowed, requested, and required voters to cast multiple votes. In some cases voters cast ballots for absent family members. In other instances, they cast ballots of behalf of unknown voters whom officials assumed would not vote. This practice occurred in most polling stations. Some illustrative examples are listed below.

In **Hpakant**, jade mining did not halt on the day of the referendum and most workers had no opportunity to leave work in order to vote. Officials required mining companies that had not cast advance votes to send five employees to vote for all company employees.

In *Kyarapati Village, Njang Dung Tract, **Mytkyina District***, an eyewitness said that the official in charge of the polling station urged voters to each vote three times on behalf of absent voters. Authorities also encouraged voters to cast ballots on behalf of absent family members.

In **Bhamo District**, *Lan Gwa Nyaung Tit Quarter*, voters were asked to vote on behalf of other registered voters in their household. In *Pauk Kone Quarter*, voter turnout was so low that polling station officials at the No. 2 High School feared they might be punished so they gave voters multiple ballots; in some cases voters were given five ballots while in other cases voters received a large handful.

In **Northern Shan State**, *Muse Southern Quarter*, the husband of a school teacher was required to vote with his wife at an assigned polling station even though he had already voted elsewhere. In the second instance, polling station officers voted for him and the other eight members of his family, seven of whom were not present. In *Kutkai* and *Namtau Village*, voters were allowed to vote for absent family members.

Referendum Officials Engaged in Widespread Fraud

The NRC not only violated every minimum standard for a free and fair referendum, its officials blatantly cheated. Three fraudulent practices appear to be particularly widespread: ballot stuffing, the falsification and corruption of advance ballot voting, and the systematic cancellation of no-votes. IPAD received testimonies of such abuses throughout Kachin State and northern Shan State indicating the systemic nature of these abuses. The full extent of these practices is fully revealed in the Kachin State Referendum Commissions' voting statistics.

Ballot Box Stuffing

The Kachin State Referendum Commission reported that 98.58 percent of registered voters in Kachin State cast ballots. More astoundingly eight out of eighteen townships in Kachin State reported 100 percent turnout, including remote areas like Danai and the four most northern and isolated townships in Burma.

These statistics defy rational belief. Kachin State is one of the largest and most sparsely populated parts of Burma. The transportation infrastructure in Kachin State is among the worst in Burma such that many villagers in remote areas lived several hours from the nearest polling stations, accessible only by foot, bicycle, oxen cart. However, the eight townships that reported perfect voter attendance are among the most remote and least densely populated areas in Burma. Among these, Hpakant and Danai Townships had the lowest per capita concentration of polling stations. (See Table 3.)

High levels of participation were also complicated by the poor communications infrastructure. Many citizens of Kachin State lack access to electricity, let alone televisions, and therefore were not exposed to the government's referendum awareness campaigns. Even the state run daily newspapers are difficult to obtain in the capital Myitkyina and often impossible to obtain in rural areas of Kachin State. Widespread apathy also resulted in low levels of participation.

In stark contrast to these statistics, IPAD's statewide surveys of polling stations, polling station officials, indicate that voter turnout was generally less than 50 percent, and was significantly lower in remote areas. As elaborated below, polling station officials allowed or required people to vote on behalf of family members. In other instances, officials simply cast ballots on behalf of absent voters, and even villages.

Table 3: Reported Voter Turnout

Township	Total Voters	Reported Turn out Rate	Voters Reportedly Absent	Voters per station
Danai	25,155	100.00%	0	932
Chihpwi	8,366	100.00%	0	215
Moenyin	100,907	100.00%	0	721
Hpakant	139,728	100.00%	0	692
Putao	26,275	100.00%	0	505
Machang Baw	4,796	100.00%	0	266
Nog Mung	3,832	100.00%	0	174
Hkaunglang Hpu	6,968	100.00%	0	225
Myitkyina	117,673	99.95%	62	1,121
Moe Mauk	35,417	99.70%	105	492
Shwe Gu	44,011	98.99%	443	800
Bhamo	61,658	98.33%	1027	811
Saw Law	2,324	97.89%	49	258
Man Si	32,053	96.09%	1253	605
Moe Gaung	62,691	95.96%	2534	794
Waimaw	51,375	95.38%	2374	871
N'Jang Yang	5,024	81.87%	911	419
Sumprabum	4,684	65.52%	1615	260

In **Hpakant Township**, the Kachin State Referendum Commission reported that all 138,728 registered voters cast ballots, with approximately 25 percent of these cast as advance ballots. (See Table 4.) In contrast, only a small fraction of voters entered the polling stations that IPAD surveyed. Poor turnout was due in large part to voter apathy, and the difficulty of travelling to the polling stations. As in other parts of Burma, officials inflated turnout results by casting yes-votes on behalf of absent voters.

Table 4: Voter Turnout in Selected Polling Stations in Hpakant Township

Village	Registered Voters	Approx. Voter Turnout	Turnout Rate
Lung Hkin Village	24,747	3000	12%
Mashi Kahtawng Quarter	3033	600	20%
Nget Pyaw Taw Quarter	1754	450	26%
Seng Tawng (aka Seik Mu) Village	44,988	4000	9%

In **Mogaung Township** official statistics record voter turnout rates of nearly 96 percent, with advance votes comprising 15 percent of the total. However, only about 40 percent of registered voters actually cast ballots at the polling stations IPAD surveyed. IPAD received numerous reports that commission members, USDA members, and local authorities

cast yes-votes on behalf of voters who did not go to the polling stations.

In **Waimaw Township** authorities cast yes-votes on behalf of absent voters in many polling stations. For example, in *Lahpai Village*, the vote count revealed that no-votes were in the majority. Referendum officials ordered the official in charge of the station to add 150 additional yes-votes. In *Wa Shawng Village*, the village-head Sin Wa Naw removed all of the no-votes immediately after the ballots were counted. Although he blatantly did so in front of others, no one dared to confront him.

Danai Township authorities reported perfect turnout by all 25,155 registered voters.⁴⁵ However, IPAD's surveys of polling stations revealed low voter turnout and widespread allegations of fraud. These abuses were systemic, extending from the Township Referendum Sub-Commission down to neighborhood officials in charge of ten houses.

Well informed sources reported that the original count from the 27 poll stations in Danai Township indicated that only 73 percent of ballots were yes-votes. To comply with district-level directives requiring a minimum of 90 percent yes-votes, Chairperson U Nay Tun Aung and other township authorities added additional ballots during the night of 10 May raising the percentage of yes-votes to 91 percent.

Some of these abuses are summarized in Table 5 compiled on the basis of voter registration lists for Kachin State, and information collected by IPAD's referendum monitors on the day of the referendum. Block level authorities and polling station officials cast multiple ballots, in some cases inflating the total number of ballots beyond the numbers of voters registered to vote at that station. In Mungding Block Poll Station only 14 percent of voters cast ballots at the station and via advance ballots.

⁴⁵ Senior officials included the Chairperson of Danai U Nay Tun Aung, the Secretary of Danai, Health Department Official Dr. Tsaing Tun, and the heads of the Ministry of Agriculture, the municipality office, the immigration office, and the police department.

Table 5: Initial Results from 6 of 27 Polling Stations in Danai Township Inclusive of Fraudulent Ballots.

Polling Station	Registered Voters	Yes-votes	No-votes	Invalid Votes	Advance Votes	Absent	Total Votes Cast	Ballots Cast as Percentage of Registered Voters*	Notes
<i>Kinsara Block</i>	1425	440	348	22	351	225	1386	97%	Polling Station In-Charge U Maung Maung and Joint Secretary U Myint Aung coerced voters to vote yes, and cast 225 yes-votes on behalf of absent voters.
<i>Hugawng Block</i>	1049	536	200	8	570	6	1320	126%	W.R. Tu, a lance corporal in the fire brigade cast over 70 yes-votes.
<i>Mungding Block</i>	1986	22	165	19	70	1710	276	14%	Relatively free of abuses.
<i>Simsa Block</i>	1290	765	122	3	430	n/a	1320	102%	
<i>Pung Hkung Block</i>	1447	896	63	8	570	n/a	1537	106%	Advance votes were collected coercively.
<i>Du Kawng Block</i>	602	312	40	3	295	31	681	113%	The head of ten houses intimidated residents to vote yes, and cast 100+ yes-votes himself.
<i>Total</i>	7799	3038	1109	67	2286	332	6832	88%	

In *Namti* only about 800 of 9000 registered voters went to polling stations. Referendum commission members, USDA township authorities, and local authorities cast yes-votes on behalf of absent voters.

In **Bhamo District**, *Lan Gwa Nyaung Tit Quarter*, only about 35 percent of registered voters went to the polling stations. Poll station officials cast yes-votes on behalf of many of the absent voters. In *Min Gone Village*, a citizen outside of the polling station observed that only a handful of people came to vote between the time the station opened and 2:00 PM. Another witness saw polling official U Aung Din, the head of Mante Village Tract, cast over 100 yes-votes.

In **Northern Shan State**, *Muse Southern Quarter*, authorities added an additional 400 yes-votes. In *Mai H pang Tract*, militia forces cast two votes, once with advance votes and then again on the day of the referendum. Four hours after the polling station opened eight polling station officials cast yes-votes for the remaining voters. In *Mung Baw Village*, authorities cast yes-votes for absent voters. The head of the polling station told a 48 year old man who arrived at the polling station shortly before it was scheduled to close that officials had already voted for him; when the man asked if the official had voted no for him, the official stated that he had voted yes. In *Munggu Tract-4*, village heads voted on behalf of villagers each casting approximately 50 votes. Polling station results were 480 yes-votes, 6 no-votes, 6, and 4 invalid votes. In *Namtau Village*, polling officials voted yes on behalf of absent voters and encouraged voters to vote on behalf of their absent family members.

Although **Putao Township** reported perfect voter turnout, only 20% of registered voters voted in *Hpet Ma Yang*, *Lung Sha Yang*, *Sum Pyi Yang*, and *Makat Mung*.

Advance Votes

The Kachin State Referendum Commission's statistics indicate that 142,823 votes were cast as advance ballots, comprising nearly 20 percent of total votes. As elaborated below, advance voting was among the most coercive and fraudulent. The manner in which officials collected advance votes violated a number of basic voters' rights including the right to vote one's conscience, and the right to vote secretly. In many instances, advance votes were cast on behalf of government staff and business employees without their knowledge. Advance votes were also collected and counted in a less transparent manner than normal votes. In several known instances, ballots cast as advance votes were destroyed or replaced with yes-votes. The pervasiveness of these violations undermined the integrity of all advance votes. Representative examples of abuses are elaborated below.

Table 6: Advance Voting in Kachin State

District and Township	Advance Votes	Total Votes	Advance votes as percentage of total votes cast
Putao District	14,919	44,940	33.20%
<i>Nog Mung</i>	2,372	3,832	61.90%
<i>Machang Baw</i>	1,657	4,796	34.55%
<i>Hkaunglang Hpu</i>	2,146	6,968	30.80%
<i>Putao</i>	7,872	26,275	29.96%
<i>Sumpra Bum</i>	872	3,069	28.41%
Moenyin District	62,930	300,792	20.92%
<i>Hpakant</i>	34,182	139,728	24.46%
<i>Moenyin</i>	19,221	100,907	19.05%
<i>Mogaung</i>	9,527	60,157	15.84%
Myitkyina district	35,890	206,521	17.38%
<i>Saw Law</i>	1,557	2,275	68.44%
<i>Danai</i>	9,664	25,155	38.42%
<i>Waimaw</i>	8,145	49,001	16.62%
<i>Chihpwi</i>	1,359	8,366	16.24%
<i>N'Jang Yang</i>	595	4,113	14.47%
<i>Myitkyina</i>	14,570	117,611	12.39%
Bhamo District	29,084	170,311	17.08%
<i>Moe Mauk</i>	8,859	35,312	25.09%
<i>Man Si</i>	7,138	30,800	23.18%
<i>Bhamo</i>	8,550	60,631	14.10%
<i>Shwe Gu</i>	4,537	43,568	10.41%
Totals for Kachin State	142,823	722,564	19.77%

In **Putao District**, perfect voter turnout was reported for four of Putao's five townships. Advance votes comprised between 30 and 62 percent of total votes in these areas. In *Pannandin Township* polling station officials filled out advance vote ballots on behalf of most residents without even visiting these areas. All advance votes were cast as yes-votes. In **Nogmung Township**, *Dabu Dam Block*, and *Awi Wam Block*, advance votes were cast by officials without visiting these areas. G-Da Gung, the chairman of the Nogmung Township USDA and Secretary of the Rawang Cultural Affairs Association, were subsequently awarded a Jeep for achieving the highest percentage of yes-votes in Kachin State.

In **Moenyin District** USDA Secretary U Myint Tun oversaw advance voting for all district level civil servants; all were ordered to vote yes. In *Mogaung Town*, Township Chairperson U Myint Sein, and USDA Secretary U Tun Aung told government employees that they need not vote as their superior officers had already cast advance votes on their behalf. Brigadier General Thein Zaw subsequently awarded the Moenyin District USDA office a jeep for their success in carrying out the referendum.

In **Hpakant Township** mining companies were required to submit advance votes for all employees along with their biographical information and two photos. Company heads understood clearly that they were required to submit yes-votes.

In **Bhamo District**, *Mye Nu Quarter*, authorities ordered all eligible voters over the age of 50 to cast advance-votes on 27 April. Voters handed ballots directly to authorities. Among the 20 advance voters, one old woman cast a no-vote. In response an official asked her "*Will you take accountability for your no-vote?*," to which she responded "*Yes I do.*" After witnessing this, all remaining voters voted yes. In *Tar Zi Quarter*, in April U Maung Maung Tar, the head of 10 houses, surveyed the households in Tar Zi Quarter to identify people that didn't have a national identification card. He subsequently notified people to come and collect their identification at the local council office. When residents came he handed them an advance ballot and informed that there was a "give and take" – they would get an ID card after they voted yes. However, after residents voted U Maung Maung Tar only gave them temporary white ID cards, issued solely so that people without legal identification could vote in the referendum.

In **northern Shan State**, *Kutkai #2 Ward*, all hospital employees were required to cast advance votes. Votes were not cast secretly. All employees were informed that they must vote yes.

In **Danai Township**, USDA members collected advance votes in the gold mining area of Shingbwi Yang including Tarung village, Shinglung Village, Makaw Village, Maing Hkum Village, and the Nam Byu gold-mining area, and the Tung Mani and Nam Kum gold-mining areas. Several USDA members involved in this effort stated that the majority of votes collected were no-votes. However, officials falsified the results so that yes-votes were in the majority. In other instances officials in charge of collecting advance votes threatened voters in order to compel them to vote yes. U Maung Maung threatened villagers to vote yes in Kinsara Quarter. Similarly, U Aung Zin Tun, a local government official who collected advance votes, told voters that they must vote yes and threatened them that if they voted no they could be imprisoned for three years. Consequently, many villagers stated that they felt they had no choice but to vote yes.

Invalid Votes

Another fraudulent practice was the cancellation of ballots on the basis that they were incorrectly filled out. More than 2 percent of all votes in Kachin State were cancelled (i.e., 14,865 ballots). The high prevalence of illegible votes can be interpreted as a failure of the government to provide the most basic level of voter education to the public – that is, how to vote. Although this was clearly the case in some instances, numerous witnesses reported that officials deliberately classified no-votes as illegible-votes in order to improve polling station results. It is probably not a coincidence that the three townships with the highest percentage of no-votes, Njang Yang, Sumpra Bum, and Man Si, also had the highest percentage of invalid votes.

Table 7: Invalid Votes in Kachin State

District/Township	Total "No" Votes	"No" Votes as a Percentage of Total Votes	Total Invalid Votes	Invalid Votes as a Percentage of Total Votes
Myitkyina District	24,360	11.80%	5,329	2.61%
N'Jang Yang	1,394	33.89%	243	5.91%
Waimaw	9,674	19.74%	1,618	3.43%
Myitkyina	10,720	9.11%	3,138	2.67%
Danai	1,993	7.92%	244	0.97%
Chihpwi	511	6.11%	78	0.93%
Saw Law	68	2.99%	8	0.35%
Moenyin District	22,089	7.34%	4,507	1.50%
Moenyin	9,467	9.38%	1,871	1.85%
Hpakant	5,517	3.95%	2,019	1.44%
Mogaung	7,105	11.81%	617	1.03%
Bhamo District	24,488	14.38%	4,142	2.73%
Man Si	7,085	23.00%	1,247	4.05%
Bhamo	7,816	12.89%	2,185	3.60%
Moe Mauk	6,717	19.02%	710	2.01%
Shwe Gu	2,870	6.59%	507	1.16%
Putao District	7,362	16.38%	887	1.97%
Sumpra Bum	1,139	37.11%	151	4.92%
Putao	5,289	20.13%	652	2.48%
Nog Mung	36	0.94%	34	0.89%
Machang Baw	467	9.74%	21	0.44%
Hkaunglang Hpu	431	6.19%	29	0.42%
Kachin State Average	78,299	10.83%	14,865	2.14%

The same trends can be observed in individual polling stations:

- *Ywa Thit Primary School Polling Station, Sitapru quarter, Myitkyina*: 819 yes-votes, 800 no-votes, and 70 invalid votes.
- *Tatkone Quarter, Myitkyina*: 1300 yes-votes, 600+ no-votes, 300 invalid votes.
- *Namtau Village, northern Shan State*: 843 yes-votes, 443 no-votes, 165 invalid votes.
- *Muse Southern Quarter, Northern Shan State*, 2000 yes-votes, 800 no-votes, 270 invalid votes.

THE CONDUCT OF THE REFERENDUM IN CEASEFIRE AREAS

The SPDC jointly administered polling stations with ceasefire and surrender groups in their respective areas of control. These included the KIO, the NDAK and the Kachin Defense Army (KDA). All three groups issued orders to their staff members to vote yes in the referendum, apparently under pressure from senior military commanders in the Burma Army.

The NDAK administered four polling stations with 3694 voters in **Chibway Township**. NDAK authorities ordered all soldiers to vote yes but reportedly did not force civilians to vote yes. Poll station results are not available.

The commander of the KDA, Mr. Mahtu Naw served on the Northern Shan State Referendum Sub-Commission. He personally guaranteed that soldiers and residents in KDA controlled areas in northern Shan State would vote unanimously in support of the constitution.

KIO Administrative Areas:

The KIO jointly administered 63 polling stations in its administrative areas. The KIO's policy regarding the referendum fluctuated dramatically between April and May, reflecting internal divisions within the body and building pressure from the SPDC.⁴⁶ Initially the KIO adopted a negative stance toward the referendum announcing that KIO members and their families would be asked to boycott or abstain from the process.⁴⁷ A senior spokesman in the KIO called for the process to be "free and fair."⁴⁸ The KIO's stance was subsequently moderated when statements indicated that the KIO would assume a neutral stance but that

⁴⁶ Shyamal Sarkar, "Kachin groups on crossroads over referendum," Mizzima News, 30 March 2008.

⁴⁷ "KIO Likely To Boycott Referendum," Mizzima News, 24 March 2008; "KIO to abstain from referendum," Mizzima News, 9 April 2008.

⁴⁸ "Opposition In Burma Calls For Free Referendum," Mizzima News, 21 February 2008.

its members would be allowed to participate as private citizens.⁴⁹ On 8 May, the KIO ordered its personnel to vote yes.⁵⁰

The extent to which KIO officials complied with this order is unclear. In any event, the KIO's order to vote yes is clearly inconsistent with democratic process and compromises the integrity of results in the polling stations it jointly operated. The integrity of the counting process is also questionable in light of the high numbers of invalid votes, which were particularly prevalent in polling stations with high percentages of no-votes. In Wa Shawng Village, for example, 50 percent of all ballots were declared invalid.

KIO members and other Kachin State residents expressed dismay, anger and disappointment that the KIO openly supported a referendum process that was so clearly unfair. Only 66 percent of voters in KIO polling areas supported the draft constitution, a result well below state wide results. In some areas, everyone unanimously voted no. (These figures include both KIO members and private citizens.)⁵¹

In line with the KIO's order to vote yes, the wife of a senior KIO officer said that "people who cast no-votes on the referendum day were stupid and acted like brainless people".

In contrast, Duwa Bawm Lang Chairman of the Kachin State National Congress for Democracy (KNCD) told youth and locals, "Our future depends on the referendum so we have a responsibility to cast a "No" vote without fear." He added, "If we support the draft constitution, it will be like gripping our own throat."⁵² The KNCD won three seats in Kachin State in the 1990 general elections and is a member of the United Nationalities Alliance comprising 12 ethnic political parties. The UNA refused to recognize the draft constitution.⁵³

⁴⁹ "Walk the line: Myanmar opposition group backs constitution," Jane's Intelligence Review 13 June 2008.

⁵⁰ "KIO no longer neutral on stand over referendum," Kachin News Group, 09 May 2008.

⁵¹ This figure excludes 3580 advance-votes comprising about 6% of total votes, the results of which are unknown.

⁵² "UNA urge people to reveal their desire in referendum," Kachin News Group, 30 April 2008

⁵³ "Shan party urges "No" vote for genuine democracy," Democratic Voice of Burma, 21 April 2008.

CONCLUSION

This report established that the 2008 constitutional referendum was a sham. Clearly, officials did not attempt to impartially determine the consent of the populace to be ruled under the draft constitution. Rather, senior military officials from Naypyidaw oversaw government officials from the state-level down to quarter-level, who worked hand in hand with the USDA to ensure the passage of the draft constitution in Kachin State. The entire process was marred by widespread fraud and the egregious violation of every minimum standard for a free and fair referendum. It also clearly violated the SPDC's own rules for that process as enacted in the Referendum Law.

The widespread and systematic nature of these abuses clearly reveals the government's contempt for the will of the people. The May 2008 is not a legitimate measure of citizens' consent to be governed, but rather a reflection of the government's determination to impose its rule regardless of public sentiment. As the fourth "step" in the "Road Map to Democracy", the conduct of the referendum is illustrative of the nature of "Disciplined Democracy". In short, these phrases offer only the sound of the word democracy, and none of its substance. They are missteps to democracy. Given the path taken thus far, it is clear that the 2010 elections will only further entrench authoritarian rule.

All of the rights for a free and fair election elaborated herein apply equally to the 2010 election. Most of the abuses documented in this report can be expected in 2010. The Road Map to Democracy is a roadmap to authoritarian government. By undertaking the following acts, citizens will be stepping in the direction of democracy:

- 1) Be aware of one's basic human rights
- 2) Inform others of these rights
- 3) Demand respect for these rights
- 4) Organize in order to collectively demand respect for these rights
- 5) Hold community leaders accountable according to these rights
- 6) Hold political leaders accountable to these rights
- 7) Hold government officials accountable according to these rights

Authoritarian governments do not bestow democracy upon their people as a gift. If the people of Burma wish to be governed by an accountable and representative government they must hold that aspiration firmly in their hearts and minds and take matters into their own hands.

APPENDICES

Appendix 1: Results of the 1990 Elections

Party	Votes	Percentage of votes	Seats
National League for Democracy	7,943,622	58.7%	392
Shan Nationalities League for Democracy	222,821	1.7%	23
Arakan League for Democracy	160,783	1.2%	11
National Unity Party	2,805,559	21.2%	10
Mon National Democratic Front	138,572	1.0%	5
National Democratic Party for Human Rights	128,129	1.0%	4
Chin National League for Democracy	51,187	0.4%	3
Kachin State National Congress for Democracy	13,994	0.1%	3
Party for National Democracy	72,672	0.5%	3
Union Poah National Organisation	35,389	0.3%	3
Democratic Organisation for Kayan National Unity	16,553	0.1%	2
Kayah State Nationalities League for Democracy	11,664	0.1%	2
Naga Hills Regional Progressive Party	10,612	0.1%	2
Ta-ang (Palaung) National League for Democracy	16,553	0.1%	2
Zomi National Congress	18,638	0.1%	2
Minor parties and independents	1,606,858	12.1%	12
Total	13,253,606	100.0%	492

Appendix 2: Kachin State Representatives to the National Convention in 2004:

1. Mr. K. Sam Awng	Danai township
2. U. Kyaw Win	Moe Mauk township
3. U. Khin Maung Lha	Myitkyina
4. Ms. Hkawng Nan	Myitkyina
5. U. Chaw Hpa Pu	Putao
6. Mr. G. Hkaw Ying	Chihpwe township
7. Mr. G. Hpung Sir	Nog Mung township
8. Mr. Jum	Myitkyina
9. U Saw Nweq Tun	Moe Kaung
10. U Saw Nweq Taik Shwe	Putao
11. U Soe Naing	Danai township
12. U Soe Nwe	Moe Kaung
13. U Soe Thein	Myitkyina
14. U Saing Myint Kyaw	Hpakant township
15. U Saing Yi Kyann	Myitkyina
16. Ms. Seng Hkon	Ka Maing, Hpakant township
17. U Zaw Win	Moe Nyin
18. U Nyi Lay	Hopin, Moe Nyin township
19. U Nyo Min Tun	Shwe Gu
20. U Tin Nwe	Bhamo
21. U Tint Swe	Myitkyina
22. U Tun Tun	Myitkyina
23. U Tun Hpe	Myitkyina
24. U Hpe Tan	Bhamo
25. Mr. Hpung Ri Min	Putao
26. Mr. B. Htaw Zawng	Chihpwe township
27. U Min Kyi	Waimaw
28. Mr. Mung Pawn Naw	Sumpra Bum
29. Mr. Yaw Han	Moe Mauk
30. Dr. Yi Yi Thann	Moe Kaung
31. Ms. Shadau Hkon Tawng	Myitkyina
32. Mr. Lazat Lum Hkawng	Myitkyina
33. U Li Ye Ja	Putao
34. Mr. Wadam Hkung Di Zi	Myitkyina
35. U Wa Ye Ja	Putao
36. U Thein Aung	Hopin
37. Mr. Nhpum Tu Ja	Machang Baw
38. Mr. Nhpum Tang	Putao
39. Ms. Nbrang Doi Bu	Myitkyina
40. Mr. Nnaw Naw	Man Si township
41. Mr. San Daung Di	Putao, Peasant representative.
42. U. Yi Mun	Bhamo,
43. Mr. Shauwa Dau Lum	Waimaw
44. Mr. Maran Tang Gun	Waimaw, Labor representative

Representatives for Kachin Ceasefire Groups

1. Mr. Chang Lang	Special region-1 (NDAK)
2. Mr. Nabuk Htaw Hkawng	Special region-1
3. Mr. Mangshang Ting Sau	Special region-1
4. Mr. Rahkrwi Hpung	Special region-1
5. Mr. Layawkw Ze Lum	Special region-1
6. Mr. Sumlut Gun Maw	Special region-2 (KIO)
7. Dr. Manam Tu Ja	Special region-2
8. Mr. Lahpai Zau Raw	Special region-2
9. Mr. Lahpai La	Special region-2
10. Mr. Wawhkyung Sin Wa	Special region-2
11. U Gu Ra	Special region-5 (KDA)
12. Mr. Zau Tawng	Special region-5
13. Mr. Tu Nan	Special region-5
14. Mr. Dabang Nuk Le	Special region-5
15. Mr. Mahtu Naw	Special region-5

Appendix 3: Outline of the 13 Ethnic Ceasefire Groups' Proposal to the National Convention Requesting a Clear Distribution of Power to Large Ethnic Regions and States , submitted on 9 June 2004.

1. To include a list of concurrent legislative powers for these areas;
2. To give residual powers to these areas;
3. To add a separate section on ethnic affairs in the union legislative list;
4. To include a defense and security planning section in each legislature;
5. To include a literature/language section in each legislature;
6. To include a section for ethnic minority tradition in each legislature;
7. To let the large ethnic regions and states draft their own constitutions;
8. To let the large ethnic regions and states formulate specific foreign policies on matters such as border trade and the issuance of border passes;
9. To allow these areas to collect local taxes and finance.

Submitted by

Kachin Independence Organization,
Palaung State Liberation Organization,
New Mon State Party,
Shan State Nationalities People's Liberation Organization,
Karenni Nationalities People's Liberation Front,
Kachin Defense Army,
National Defense Army – Kachin,
Kayan National Guard,
Karenni National Progressive Party (Hoya),
Mon Armed Peace Group (Chaunghi).

Appendix 4: The KIO Proposal for Constitutional Provisions and Clauses :

From: The Central Committee, Kachin Independence Organization (KIO), Special Region 2.

To: The Chairman, National Convention Commission, and National leaders of the Union

Subject: The KIO strongly urges the adoption of the following amendments in the Constitution.

1. Concerning the foundational system for the organization of the Union

(1) As currently intended, the Union will be composed of constituent states; we believe that specifying these additional goals clearly and concretely will be necessary. One, that the constituent state union system of state be technically and genuinely a system of federation of states, and two, that this system of state organization be fully transparent in its implementation. We are mindful of the fact that, whereas, the Constitution of 1947 specified a Union that is a federation of states, what actually transpired was a system where all political power was centralized, as in a unitary system, instead of a federation, and one constituent state alone held that power.

Therefore, to effectively preclude a recurrence of this fate, and the calamitous results, we urge in the strongest sense possible, that a specific constitutional mandate be included for a federal system of union and for its judicious implementation.

(2) According to the current provisions the country is to be divided into seven major divisions, and seven constituent states; further, that the major divisions and constituent states shall have exactly the same rights and authority.

We most strongly suggest that this idea be completely reconsidered, and the reason for this is clear. The constituent states are intended to be for ethnic nationality communities, and since political self-determination is already inherent in the very concept of the ethnic nationalities as constituents, we strongly urge that this right be made explicit in the constitution itself.

2. Concerning the division of authority of government

In the system of division of governing authority as currently planned the three major branches of authority are, the legislative, administrative and justice departments. These three branches of government are to apply uniformly in all levels of government, namely, the Union, the major divisions, the constituent states and in specially created self-governing units.

We strongly urge that when this proposed system is actually implemented, the authority situated in the major divisions and the constituent states be fairly and appropriately divided to separate the empowerment of each entity. In other words, major divisions and constituent states should not be identical copies of each other. We believe that much more legislative power should be granted to the major divisions and constituent states than currently envisaged. We especially want to point to the situation in constituent states where the legislatures must have the capability to function as self-governing bodies.

We propose that the legislative functions of the major division and constituent state level must be given more authority than currently conceived. We cite as example the situation where constituent state legislative bodies must make laws affecting the nationality groups in their states, but that authority clearly is not applicable in a major division.

Examples-

- (1) The right of an ethnic nationality community to offer language and literature programs to promote and preserve cultural heritage, to offer instruction programs in schools, and to recognize the primary ethnic national language of the state as the second official language.
- (2) In matters related to the preservation and promotion of ethnic cultures.
- (3) To enable ethnic national communities to use their customary laws and practices legally and appropriately.
- (4) To protect ethnic national affairs according to law.

3. In matters concerning administrative domains-

- (1) If the president of the Union desires to assert direct control on constituent state affairs it will be tantamount to the Union government placing direct control on state affairs. This will have the same effect as the centralized power of a unitary system.
- (2) We believe that since the head of the government of a constituent state represents the people of the state, he or she should be a member of that particular national community. During the years of AFPFL parliamentary system of government, the minister of a state represented the national community of that state, and was chosen from among their elected members of parliament. And in the era of BSPP system of government the head of the state council was selected from the national community of the state.

There is therefore, an established tradition that is consistent with the history of the founding of the Union concerning the recognition of the basic rights of constituent communities as national policy. We believe therefore, that the Union constitution now in the process of being written should adhere to that tradition.

- (3) In the matter of forming constituent state government:
 - (a) The head of constituent state government shall be elected by members of the state legislature by secret ballot, and the person elected by majority shall be appointed the head of the state by them, and he or she shall then be appointed minister of the state by the president of the Union.
 - (b) The head of a constituent state shall, in collaboration with the state legislature, create the office of the head of state, specify the number of state ministries, and carry out the functions of governance of the state. The Union president will accept this procedure and recognize the system of the constituent state.
 - (c) The chief justice and chief accounting officer of the state shall be appointed by the head of state in collaboration with the legislature.

(d) The chairmen of self-governing areas in a state shall be appointed by the head of the state.

(e) In the event that a state minister resigns from office the head of state shall accept the letter of resignation, and he or she shall, in collaboration with legislative leaders, make necessary arrangements to continue the functions of that office. If the head of a state is to resign the president of the Union must accept the resignation letter.

(f) If there is security concern in a state the head of state shall, after consulting with legislative leaders, report to the president of the Union. Upon receiving the report the president will consult with the head of the state to assess the problem before the security situation is informed to the public.

(g) In the selection of personnel by authorized persons for state government employment candidates from the home state shall be given preference.

(h) The head of state has full rights to supervise directly the police force of the state.

(i) Subsequent to electoral approval and acceptance of the constitution, all members of ceasefire armed organizations, and any citizen of the state, shall have the right to serve in their state as defense force units of the national armed forces command, but under the control of the head of state.

4. In matters concerning territorial boundaries, whether of the Union or a constituent state, or changing an existing name of a state, no change shall be made without prior consent of the majority of the citizens of the state concerned.

5. In the laws concerning religion and the practice of belief systems we want full constitutional guarantees for nondiscrimination, and noninterference from the state.

6. The National House of Representatives is concerned with the affairs of national communities, as such, we want to see a clause in the constitution that stipulates that each constituent state shall send to the House of Representatives only elected representatives of the national community of that state.

7. We do not agree that a specific Union government ministry for the border areas or regions is necessary. Any security matter in a border area can be managed by national defense department officials and the government of the state concerned. We raise this objection because a separate ministry for the border areas will have the same effect as direct centralized control of constituent state affairs.

8. We believe that those constituent states with international boundaries should have the legal authority to issue permits for short-term cross-border travel and trading. If state and federal authorities can work together in such a framework there will be better overall fairness and less illegal activities.

9. The legislature of a constituent state should have the authority to make laws requiring

equitable sharing of benefits between the state and the federal government, from commercial developments of natural resources in the state. For instance, in the matter of precious (gem) stones, in addition to allowing constituent states the right to carve and polish stones, they should be permitted to also explore for such resources, develop mining industries and to sell the products. Additionally, the authority to develop accommodation facilities and transportation media should belong to the state legislature.

10. Regarding agriculture we want to see the following matters to be also included among the responsibilities of state legislatures; the classification of land for cultivation and reserved wilderness areas, boundary and site inventories, mechanized farming and agricultural research, classification of water resource and watershed priorities, the management of production and use of chemical fertilizers and pesticides, and setting aside grazing and furloughed lands.

11. Concerning taxes levied on timber production, the current system states that except for teak and specified hardwood varieties, a state may collect tax on all other forest products. We ask that this stipulation be amended to say, with the exception of teakwood, a state can levy tax on all the remaining forest products.

12. Concerning transportation and communication, we want to see appropriate authority vested in state legislatures in these areas; developing or sustaining river and tributary systems, communication media including postal, wireless, telephone, facsimile, electronic mailing, internet, intranet and similar media, satellite relay system for audio-visual transmission and reception, and broadcasting and recording.

13. In matters concerning communities, we want to see state legislatures authorized to pass laws to allow: private schools and instructional programs; private charitable hospitals and dispensaries; private medical practice; special aid programs for children, women, handicapped persons, geriatric patients, and aid for the homeless.

14. In matters concerning the following also we want state legislatures to have authorities: general administration, dividing rural, municipal and township areas, regulating house and land leasing, civic organizations, border area development programs and census surveys.

15. Concerning the territorial entity of Kachin State, we want its boundaries to be exactly as it was when the state was originally recognized.

16. A constitution can become the law of the land only if the required majority of its citizens give their approval; accordingly, we want to include in the constitution a specific clause to say it is the fundamental duty of every citizen to protect that right.

17. Concerning citizenship. In the same sense that citizenship of the Union exists, we suggest that there is need for state citizenship as well, and that the law for this should be written. The reason why we support this position is this: in future elections will held according to democratic practice, and assumption of duties by elected representatives will occur. But if there exists only federal law governing this, then we cannot say that the future will not be free of problems of ambiguity and conflict between state and federal electoral jurisdictions.

18. We want to see the laws governing constituent states written in a manner that does not contradict federal laws; however, one region of the country may be very different from other regions from the standpoint of what needs to be in state law to reflect conditions. For this reason, in order for the Union to be strong constituent states must have the authority to write laws that reflect their needs, instead of a top-down legislative system in which state law will be written elsewhere.

19. The defense forces charged with the responsibility to protect the whole country should be a force where all Union nationalities are adequately represented, and only such an integrated force should be called the Tatmadaw of the Union.

The statement is issued by the Central Committee of the Kachin Independence Organization in mid-July, 2007

Appendix 5: The National Referendum Commission⁵⁴

1. U Aung Toe , chairman
2. U N. Zau Naw
3. U Tsaing Yi Chyan
4. U Myo Tint
5. U Saw Win Aung
6. U Hkyet Hting Nan
7. U Lang Zung
8. U Htamai Yung
9. U Kyaw Din & U Htay Yay
10. U Kyaw Tun
11. U Saw Hlaing
12. Dr. Mu Htan
13. U Shi Ti
14. Dr. Maung Too
15. U Maung Hla & U Hla Myint
16. U Chit Maung
17. U Chit Hla
18. Dr. Aung San Win
19. U Aye Maung
20. Dr. Tun Shin
21. U Tun Tun Oo
22. U Tin Maung
23. U Aung Myo
24. U Hkun Aung Nyeing
25. U Tein Shwe Maung
26. U Lahpai La
27. U Taung Nyunt
28. Dr. Tin Maung Aye
29. U Tin Aye
30. U Myat Tu
31. U Tsan Lwin
32. U Saing Tun Myat
33. U Maung Lay
34. U Saing Paung Nat
35. U Tsaing Tsan Tin
36. U Tun Yin
37. U T. Hkun Myat
38. U Ah Le
39. U Tsaing Yi Tit
40. U Daneila
41. U Tin San
42. U Myat Ko,
43. U Maung Maung Tan,
44. U Win Ko, secretary,
45. U Tan Aung, joint secretary

⁵⁴ New Light of Myanmar, 26 February 2008

Appendix 6: Summary of Voting in Some KIO Administrative Areas

Area	Advance Votes	Yes	No	Invalid	Total	Approximate Percentage of Yes Votes (excludes advance votes)	Approximate Percentage of Yes Votes (excluding invalid and advance votes)	Percentage of Invalid Votes
Headquarters Region								
1. Lai Za	0	801	471	27	1299	62%	63%	2%
2. Na Lung	0	320	411	13	744	43%	44%	2%
3. Pan Daung	0	241	158	84	483	50%	60%	17%
4. Ban Sau	0	168	166	13	347	48%	50%	4%
5. Awng Ja	0	195	17	7	219	89%	92%	3%
6. Nam San	0	881	152	2	1035	85%	85%	0%
7. Madi Yang	0	0	76	0	76	0%	0%	0%
8. Chyanam Zup	0	0	66	0	66	0%	0%	0%
Sub-Total	0	2606	1517	146	4269	61%	63%	3%
Gara Yang Area								
1. Ding Ga Village	0	28	64	15	107	26%	30%	14%
2. Mahan Ti Village	0	1100	3	7	1110	99%	100%	1%
3. Nawng Hki Village	0	450	450	16	916	49%	50%	2%
4. Jam Ga Village	0	1200	400		1600	75%	75%	0%
5. Ywa Tit Village	0	630	20	50	700	90%	97%	7%
6. Jahkan Yang Village	0	450	20	30	500	90%	96%	6%
7. Hkatsu Village	0	93	90	0	183	51%	51%	0%
8. Sam Pai Village	81	45	195	50	371	16%	19%	13%
9. Gara Yang Village	0	214	440	18	672	32%	33%	3%
10.(9) mile area	0	264	111	0	375	70%	70%	0%
11. Nlung Hka Village	0	898	115	7	1020	88%	89%	1%
Sub-Total	81	5372	1908	193	7554	72%	74%	3%
Sadung Area								
1. Sadung Block	0	34	112	2	148	23%	23%	1%
2. Luhtawng Village	40	40	75	5	160	33%	35%	3%
3. Saga Pa Village	680	96	300	14	1090	23%	24%	1%
4. Lahpai Village	21	75	81	10	187	45%	48%	5%
5. Lajawng Village	0	60	40	4	104	58%	60%	4%
6. Sana Village	0	313	20	0	333	94%	94%	0%
7. Sadung Pa (1) area	90	92	7	0	189	93%	93%	0%
8. Sadung Pa (2)	107	157	28	13	305	79%	85%	4%
9. Lahta Sama Village	100	127	57	6	290	67%	69%	2%
10. Dailum Village	0	69	37	3	109	63%	65%	3%
Sub-Total	1038	1063	757	57	2915	57%	58%	2%

Area	Advance Votes	Yes	No	Invalid	Total	Approximate Percentage of Yes Votes (excludes advance votes)	Approximate Percentage of Yes Votes (excluding invalid and advance votes)	Percentage of Invalid Votes
Wa Shawng Area								
1. Nam Wa Village	1	816	327	71	1215	67%	71%	6%
2. U Ra Yang Village	20	828	272	35	1155	73%	75%	3%
3. Gwi Htu Village	16	248	18	3	285	92%	93%	1%
4. N'gan Village	0	302	160	13	475	64%	65%	3%
5. Hkan Yang Village	0	113	62	2	177	64%	65%	1%
6. Wa Shawng Village	0	588	1178	1766	3532	17%	33%	50%
7. Ding Jang Village	30	320	97	29	476	72%	77%	6%
8. Hkan Bu Village	0	362	160	13	535	68%	69%	2%
9. Sai Law Village	0	213	90	100	403	53%	70%	25%
10. Mading Village	0	1050	460	87	1597	66%	70%	5%
11. Hka Gum Village	0	380	211	8	599	63%	64%	1%
12. Tang Bau Village	0	360	96	30	486	74%	79%	6%
13. NawngSiPaw Village	0	120	86	10	216	56%	58%	5%
14. Mung Na Village	18	180	61	9	268	72%	75%	3%
Sub-Total	85	5880	3278	2176	11419	52%	64%	19%
1. Ban Sau Village	0	168	0	13	181	93%	100%	7%
2. Gang Dau Block	0	369	214	37	620	60%	63%	6%
3. Dabak zone	200	289	453	130	1072	33%	39%	12%
4. Sama zone	42	6	7	0	55	46%	46%	0%
Sub-Total	242	832	674	180	1928	49%	55%	9%
Nam San Yang Sub-Township Area								
1. Na Lung Village	51	320	411	13	795	43%	44%	2%
2. Ban Dawng Village	0	241	158	85	484	50%	60%	18%
3. Nam San Yang zone	0	881	152	2	1035	85%	85%	0%
4. Awng Ja Village	0		12	0	12	0%	0%	0%
5. Ja Ing Yang Village	0	680	12	1	693	98%	98%	0%
6. Da Law Village	1600	2364	362	43	4369	85%	87%	1%
Sub-Total	1651	4486	1107	144	7388	78%	80%	2%
Dawhpum Yang Area								
1. Hpak Gyi Village	0	460	540	16	1016	45%	46%	2%
2. Kung Law Village	0	1077	473	0	1550	69%	69%	0%
3. Man Nawng Village	0	1035	1045	0	2080	50%	50%	0%
4. Si Het Village	0	200	500	0	700	29%	29%	0%
5. Num Lang Village	0	312	17	0	329	95%	95%	0%
6. Ting Lung Village	0	301	132	2	435	69%	70%	0%
7. Ban Chu Hai Village	0	530	200	40	770	69%	73%	5%

Area	Advance Votes	Yes	No	Invalid	Total	Approximate Percentage of Yes Votes (excludes advance votes)	Approximate Percentage of Yes Votes (excluding invalid and advance votes)	Percentage of Invalid Votes
8. Ta Li zone	0	716	23	33	772	93%	97%	4%
9. Ting Hpra Village	0	756	18	2	776	97%	98%	0%
10. Da Sai Village	0	464	244	2	710	65%	66%	0%
11. Nga Pyaw Yang Village	0	963	7	5	975	99%	99%	1%
12. Daw Hpum Yang - Block-1	81	0	174	0	255	0%	0%	0%
13. Daw Hpum Yang - Block -2	34	129	17	7	187	84%	88%	4%
14. Daw Hpum Yang - Block-3		94	179	0	273	34%	34%	0%
15. Myo Thit Block	33	975	17	3	1028	98%	98%	0%
16. Nawng Nang Village	8	70	8	0	86	90%	90%	0%
17. Dung Hung Village	90	55	28	5	178	63%	66%	3%
18. Ding Ga Village	9	125	84	3	221	59%	60%	1%
Sub-Total	0	8262	3706	118	12341	67%	69%	1%
3rd Brigade Area								
1. Bang Gaw Village	0	149	100	29	278	54%	60%	10%
2. U Lang Pa	0	21	88	0	109	19%	19%	0%
3. Je Sawng Village	0	140	235	45	420	33%	37%	11%
4. Prang Hku Dung	0	319	23	2	344	93%	93%	1%
5. Mai Bat	212	352	113	10	687	74%	76%	1%
6. N Ba Pa Village	0	53	39	17	109	49%	58%	16%
7. Dumbuk Village	0	69	87	6	162	43%	44%	4%
8. Ding Sing Pa	0	58	22	1	81	72%	73%	1%
9. Wa Ra Bum	0	38	72	2	112	34%	35%	2%
10. La Jawng	0	112	67	11	190	59%	63%	6%
11. Zing Rau	0	66	50		116	57%	57%	0%
12. Da Gaw	0	133	88	17	238	56%	60%	7%
13. Kung Pyi	16	0	0	0	16	na	na	na
14. Sin Lum Kaji	0	143	1	2	146	98%	99%	1%
15. Balawng Kawng	0	51	46	5	102	50%	53%	5%
16. N Hkawng Pa	0	77	43	1	121	64%	64%	1%
17. Kawng Sa	0	513	215	27	755	68%	70%	4%
18. Seng Mai Pa	0	251	90	14	355	71%	74%	4%
Sub-Total	228	2545	1379	189	4341	62%	65%	4%

Area	Advance Votes	Yes	No	Invalid	Total	Approximate Percentage of Yes Votes (excludes advance votes)	Approximate Percentage of Yes Votes (excluding invalid and advance votes)	Percentage of Invalid Votes
4th Brigade Area								
Loi Kan Village	0	713	12	0	725	98%	98%	0%
Man Je Village	0	1202	51	113	1366	88%	96%	8%
Nan Htung Village	0	349	0	0	349	100%	100%	0%
Dat Naing Village	0	1618	0	0	1618	100%	100%	0%
Sub-Total	0	3882	63	113	4058	96%	98%	3%
Grand Total	3,325	34,928	14,389	3,316	55,958	66%	71%	6%

STEPS IN THE DIRECTION OF REAL DEMOCRACY

- (1) Be aware of one's basic human rights
- (2) Inform others of these rights
- (3) Demand respect for these rights
- (4) Organize in order to collectively demand respect for these rights
- (5) Hold community leaders accountable according to these rights
- (6) Hold political leaders accountable to these rights
- (7) Hold government officials accountable according to these rights

The Institute for Political Analysis and Documentation (IPAD) has produced this report to serve three purposes:
to provide readers with a broad and objective overview of the referendum,
to facilitate awareness raising, and a historical record.