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Partly Free

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Overview:

Myanmar's transition from military dictatorship to democracy has faltered under the leadership of the National League for Democracy (NLD), which came to power in relatively free elections in 2015 but has failed to uphold human rights or bring security to areas affected by armed conflict. The military retains significant influence over politics, and the country is under international pressure regarding a 2017 military operation that forced more than 700,000 members of the Rohingya minority, a mostly Muslim ethnic group, to flee to Bangladesh.

Key Developments:

Key Developments in 2018:

- More than 900,000 Rohingya refugees from Myanmar's Rakhine State remained in Bangladesh during the year, including the more than 700,000 who fled there since late August 2017. Civilians also continued to flee fighting between government forces and ethnic minority rebels in Shan and Kachin States.
- A panel of the International Criminal Court (ICC) ruled in September that the ICC had jurisdiction over prosecution of alleged crimes against the Rohingya. The ICC then began examining whether there was enough evidence to proceed to a full investigation.
- The UN Independent International Fact-Finding Mission on Myanmar briefed the UN Security Council in October, with the mission chair calling the Rohingya crisis "an ongoing genocide."
- In September, despite international pressure on their behalf, Reuters journalists Wa Lone and Kyaw Soe Oo were sentenced to seven years in prison on charges of violating the 1923 Official Secrets Act while reporting on a massacre in Rakhine State. The journalists were widely understood to have been entrapped by police and subjected to an unfair trial in reprisal for their work.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 13 / 40

A. ELECTORAL PROCESS: 5 / 12

A1. Was the current head of government or other chief national authority elected through free and fair elections? 2 / 4

The legislature elects the president, who is chief of state and head of government. Military members of the legislature have the right to nominate one of the three presidential candidates, and the elected members of each chamber nominate the other two. The candidate with the largest number of votes in a combined parliamentary vote wins the presidency; the other two candidates become vice presidents, ensuring that a military nominee is always either president or vice president. Htin Kyaw, the NLD candidate, won the presidency in the 2016 election. He resigned in March 2018 and was replaced by Win Myint, one of NLD leader Aung San Suu Kyi's aides.

Aung San Suu Kyi holds the powerful position of state counselor, a post akin to that of a prime minister, which was created for her in 2016 through legislation designed to circumvent provisions in the 2008 military-drafted constitution that had barred her from running for president because members of her immediate family hold foreign citizenship.

The commander in chief of the armed forces holds broad powers, including control over security-related cabinet ministries, and is selected through an opaque process by the military-dominated National Defense and Security Council (NDSC).

A2. Were the current national legislative representatives elected through free and fair elections? 2 / 4

The bicameral Assembly of the Union consists of the 440-seat lower House of Representatives and the 224-seat upper House of Nationalities. Representatives serve five-year terms. A quarter of the seats in both houses are reserved for the military and filled through appointment by the commander in chief of the armed forces.

International electoral observers concluded that the 2015 legislative polls were generally credible and that the outcome reflected the will of the people, despite a campaign period marked by anti-Muslim rhetoric, the exclusion of Muslim candidates, and the disenfranchisement of hundreds of thousands of Rohingya. The NLD, with 57 percent of the overall popular vote in a first-past-the-post system, won 135 of the 168 elected seats in the upper house, 255 of 330 elected seats in the lower house, and 496 of 659 seats across 14 state and regional legislatures. The military-backed Union Solidarity and Development Party (USDP) placed second with 28 percent of the popular vote, 12 seats in the upper house, 30 in the lower house, and 76 in the states and regions. The remaining seats were captured by ethnic minority and other parties as well as independents.

The NLD did not perform as well in November 2018 by-elections, winning 7 out of 13 available seats in various national and subnational legislative chambers. Of those, the party lost 5 out of 6 in ethnic minority areas.

A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 1 / 4

Various features of the electoral framework undermine the democratic nature of the country's elections. These include the military's role in presidential nominations and appointments to both chambers of parliament, as well as rigid citizenship laws and excessive residency requirements that prevent large numbers of people from voting or standing for office.

The Union Election Commission (UEC), which is responsible for electoral administration, is empowered to adjudicate complaints against itself. Its members are appointed by the president and confirmed by the legislature, which has only limited authority to reject nominees. Election monitors have expressed concern about the potential for early voting procedures to facilitate fraud.

B. POLITICAL PLURALISM AND PARTICIPATION: 8 / 16

B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 2 / 4

New political parties were generally allowed to register and compete in the 2015 elections, which featured fewer restrictions on party organization and voter mobilization than the 2010 vote. Only sporadic interference from government officials was reported. Ninety-one parties competed in the elections, and many of them convened meetings and large rallies throughout the country.

However, competition is skewed in part by the USDP's systematic support from the military, whose personnel and their families are eligible to vote, casting ballots in military barracks in some cases. Moreover, some legal provisions can be invoked to restrict parties' operations. The constitution contains a requirement that political parties be loyal to the state, which carries the potential for abuse. Laws allow for penalties, including deregistration, against political parties that accept support from foreign governments or religious bodies, or that are deemed to have abused religion for political purposes or disrespected the constitution.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4

As evidenced by both the NLD's overwhelming parliamentary victory in 2015 and its losses in the 2018 by-elections, there is a realistic opportunity for the opposition to increase its support and gain power through competitive balloting. However, the military's constitutional prerogatives, as well as its close ties to the USDP, limit the degree to which any opposition force can secure control over the executive or the legislature through elections.

B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4

The results of the 2015 elections and subsequent transition talks suggested that the military had a waning ability or determination to influence electoral outcomes. Nevertheless, the military retains considerable power over political affairs, particularly in conflict areas where it has a dominant presence, and in 2015 the USDP reportedly benefited from pressure on public employees and students to attend rallies and cast ballots for the party.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 1 / 4

Minority groups face restrictions on their political rights and electoral opportunities. In particular, citizenship, residency, and party registration laws disadvantage ethnic and religious minorities, particularly the mainly Muslim Rohingya, the majority of

whom were rendered stateless by the 1982 citizenship law. In 2015, under pressure from Buddhist nationalists, the president issued a decree revoking the temporary identification cards, or “white cards,” that had allowed Rohingya to vote in previous elections. A Constitutional Tribunal ruling later in 2015 then found that voting by white-card holders was unconstitutional. Nearly all Rohingya were consequently left off the voter rolls for the 2015 elections. In addition, a sitting Rohingya lawmaker from the USDP was barred from running in the polls.

Other Muslims with citizenship documents were able to vote, but of more than 6,000 candidates on the final list, only about 28 were Muslim. No Muslim sits in the current parliament.

While ethnic parties generally fared poorly in the 2015 legislative elections, the Shan Nationalities League for Democracy (SNLD) and the Arakan National Party (ANP) performed well in their respective states. The SNLD won a lower house seat in the 2018 by-elections.

Women remain underrepresented in the government and civil service, due largely to societal biases that discourage their political participation. Notwithstanding the prominence of Aung San Suu Kyi, whose father led Myanmar’s independence struggle, few women have achieved ministerial-level appointments.

C. FUNCTIONING OF GOVERNMENT: 4 / 12

C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4

Although elected officials are able to set policy in some subject areas, the military is guaranteed control over the Defense, Home Affairs, and Border Affairs Ministries. The military also effectively controls at least six seats on the powerful 11-member NDSC. The 2008 constitution allows the military to dissolve the civilian government and parliament and rule directly if the president declares a state of emergency. Governance is contested in some areas between the armed forces and ethnic minority rebel groups.

C2. Are safeguards against official corruption strong and effective? 1 / 4

Corruption is rampant at both the national and local levels, and recent government initiatives aimed at curbing it have generally not produced meaningful results. For example, an Anti-Corruption Commission (ACC) established in 2014 has yet to establish a strong track record of investigations against high-ranking officials. In its most prominent cases to date, the ACC brought bribery charges against the chief of the Food and Drug Administration in April 2018 and a number of senior regional law enforcement officials in Yangon in September.

Privatization of state-owned companies and other economic reforms in recent years have allegedly benefited family members and associates of senior officials. The government has ignored tax evasion by the country’s wealthiest companies and individuals.

C3. Does the government operate with openness and transparency? 1 / 4

The government does not operate with openness and transparency. A draft Right to Information Law was developed in 2016, and a new draft was released in December 2017, but the measure remained stalled in the parliament during 2018. Some information about the budget has been released in recent years, but it receives limited parliamentary scrutiny.

ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION

Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favor of another group? -4 / 0

The government has long used violence, displacement, and other tactics to alter the demographics of states with ethnic unrest or insurgencies. The Rohingya in Rakhine State have faced particularly harsh restrictions for decades, including limits on family size and the ability and right to marry, the denial of legal status and social services, and disenfranchisement and loss of citizenship. Human rights experts and the United Nations have labeled the abuses against the Rohingya as crimes against humanity and ethnic cleansing, and some analysts have argued that they constitute either genocide or a precursor to genocide.

Repression of the Rohingya escalated in 2017, after rebels from the Arakan Rohingya Salvation Army (ARSA) attacked multiple police posts with rudimentary weapons. The military launched a severe counteroffensive against Rohingya communities across the northern part of the state, leading to reports of torture, rape, indiscriminate killings, and the burning of villages, worsening already-dire humanitarian conditions and causing an outflow of more than 700,000 Rohingya refugees to Bangladesh. Those

refugees joined another 200,000 who had crossed into Bangladesh to escape previous rounds of persecution before 2017. Aung San Suu Kyi has drawn sharp criticism from international observers for her reluctance to explicitly condemn state violence against Rohingya civilians. Attempts to organize a repatriation system that would allow refugees to return to Myanmar made little progress during 2018, as the government failed to address the conditions that had caused the Rohingya to flee.

The UN Independent International Fact-Finding Mission on Myanmar, chaired by former Indonesian attorney general Marzuki Darusman, released its full report in September 2018. Darusman briefed the UN Security Council in October, calling the situation in Myanmar “an ongoing genocide” in which Rohingya who remain in Rakhine State are “at grave risk.” A panel of the ICC ruled in September that the court has jurisdiction over prosecution of the crime of deportation of the Rohingya, and later that month the ICC chief prosecutor launched a preliminary inquiry to establish whether there was enough evidence to proceed to a full investigation. Myanmar is not a signatory of the ICC’s founding Rome Statute, but Bangladesh is; the ICC judges ruled that they had jurisdiction because the deportations occurred on the territory of Bangladesh.

CIVIL LIBERTIES: 17 / 60 (–1)

D. FREEDOM OF EXPRESSION AND BELIEF: 5 / 16 (–1)

D1. Are there free and independent media? 1 / 4 (–1)

Media freedoms have improved since the official end of government censorship and prepublication approval in 2012. However, existing laws allow authorities to deny licenses to outlets whose reporting is considered insulting to religion or a threat to national security, and the risk of prosecution under criminal defamation laws encourages self-censorship. While internet access has expanded in recent years, online activity is still subject to criminal punishment under several broadly worded legal provisions, particularly those in the Electronic Transactions Law. Journalists and social media users continued to face defamation and incitement cases during 2018.

Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice, and reporters covering sensitive topics risk harassment, physical violence, and imprisonment. In the most prominent case of 2018, two Reuters journalists were sentenced in September to seven years in prison for violating the Official Secrets Act after a deeply flawed trial. The charges stemmed from an incident in late 2017 in which the reporters met with a police officer at his invitation at a restaurant in Yangon. When they got up to leave, the officer handed them supposedly secret documents, and they were quickly arrested in front of the restaurant before they could even look at the papers. The reporters, Wa Lone and Kyaw Soe Oo, were investigating a 2017 massacre of Rohingya at Inn Din village in Rakhine State, and the case against them was criticized internationally as an unjust reprisal for their work.

Score Change: The score declined from 2 to 1 due to increasing restrictions on the media’s ability to cover sensitive topics including the military’s actions in Rakhine State, as illustrated by the entrapment, conviction, and imprisonment of two journalists who had investigated atrocities by security forces.

D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 1 / 4

The constitution provides for freedom of religion. It distinguishes Buddhism as the majority religion, but also recognizes Christianity, Islam, Hinduism, and animism. The government occasionally interferes with religious assemblies and attempts to control the Buddhist clergy. Authorities discriminate against minority religious groups in practice, refusing to grant them permission to hold gatherings and restricting educational activities, proselytizing, and construction and repair of houses of worship.

Anti-Muslim hate speech and discrimination have been amplified by social media, and by some state institutions and mainstream news websites. Facebook, which had received criticism for allowing such hate speech on its platform, removed hundreds of Myanmar accounts during 2018, including many linked to the military. The officially illegal Buddha Dhamma Parahita Foundation, formerly known as Ma Ba Tha, agitates for the protection of Buddhist privileges, urges boycotts against Muslim-run businesses, and disseminates anti-Muslim propaganda. Reports have detailed systematic discrimination against Muslims in obtaining identity cards, as well as the creation of “Muslim-free” villages with the complicity of officials.

D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 1 / 4

Political activity on university campuses is generally restricted, and universities are not autonomous. Student unions are discouraged, have no formal registration mechanisms, and are viewed with suspicion by authorities.

In January 2018, 14 students at Mandalay's Yadanabon University were expelled for holding a campus protest calling for more education funding. More than 20 other students were reportedly expelled that month for taking part in similar protests at other schools. The Ministry of Education issued a directive in May that required students to get permission from the head of their university to hold events on campus, obliging them to submit names and biographies of speakers, titles of public talks, and the number of people expected to attend. After students file their application, the request must be submitted to the ministry's Higher Education Department for approval.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 2 / 4

Private discussion and personal expression are constrained by state surveillance and laws that inhibit online speech. Numerous defamation cases involving online commentary have been filed under Section 66(d) of the 2013 Telecommunications Law, which includes bans on online activity deemed to be threatening or defamatory.

Social media users and those quoted in the media have faced prosecution for expressing their views on particular topics, particularly when they entail criticism of the authorities. A former child soldier, Aung Ko Htwe, was sentenced to two years in prison for incitement in March 2018 due to a media interview in which he spoke about being abducted by the military at age 14 and claimed that he had faced abuse by officials during a previous trial for a 2007 murder that occurred while he was escaping from the military. In September, a social media user in Mon State was sentenced to a year in prison for allegedly defaming the state's chief minister.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 6 / 12

E1. Is there freedom of assembly? 2 / 4

Under the Peaceful Assembly and Peaceful Procession Law as revised in 2016, unauthorized demonstrations are still punishable with up to six months in prison; a variety of other vaguely defined violations can draw lesser penalties. Protesters no longer have to ask permission for assemblies, but they do need to notify authorities 48 hours in advance, and local officials often treat this process as a request for permission in practice. Additional problematic amendments to the law were under consideration in 2018. Separately, a blanket ban on protests in 11 townships of central Yangon has been in place since November 2017, though it is selectively enforced.

Among other cases during the year, the authorities arrested 47 antiwar protesters across the country in May 2018, charging them with offenses such as disturbing the public, staging an unlawful protest, and criminal defamation. The peaceful demonstrations were held to protest the conduct of military operations in Kachin State.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 2 / 4

The 2014 Association Registration Law features simple, voluntary registration procedures for local and international nongovernmental organizations (NGOs) and no restrictions or criminal punishments for noncompliance. Although the law was seen as a positive development, in 2015 the Home Affairs Ministry issued implementing regulations that required NGOs to obtain government approval prior to registration, drawing sharp criticism from civil society leaders.

E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4

A ban on independent trade unions was lifted in 2011, and union activity has taken root in Myanmar. In recent years, factory workers have held strikes in Yangon with fewer repercussions and arrests than in the past. However, trade unionists continue to face retaliation for their efforts, and legal protections against abuse by employers are weak. In October 2018, a group of men armed with metal rods attacked striking garment workers in Yangon; six workers were hospitalized for head injuries.

F. RULE OF LAW: 1 / 16

F1. Is there an independent judiciary? 0 / 4

The judiciary is not independent. Judges are nominated by the president, and lawmakers can reject the choice only if it is clearly proven that the nominee does not meet the legal qualifications for the post. The courts generally adjudicate cases in accordance with the government's interests, particularly in major cases with political implications.

F2. Does due process prevail in civil and criminal matters? 1 / 4

Administrative detention laws allow individuals to be held without charge, trial, or access to legal counsel for up to five years if they are deemed a threat to state security or sovereignty. A 2017 assessment by the British-based NGO Justice Base found that the country performed poorly in nearly every measure of international fair trial standards.

In 2016, the parliament repealed the 1950 Emergency Provisions Act, which the former military government had invoked frequently to silence and imprison dissidents. The 1975 State Protection Act, which was used to hold then opposition leader Aung San Suu Kyi under house arrest during the period of military rule, was also repealed in 2016. Nevertheless, individuals who are considered political prisoners continue to be held in the country. According to the Assistance Association for Political Prisoners (Burma), as of December 2018 there were 35 serving sentences, 56 in pretrial detention, and 236 awaiting trial outside prison.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 0 / 4

The NLD government's push for the creation of a more comprehensive peace mechanism remained hampered in 2018 by military offensives against various ethnic rebel groups, particularly in Shan and Kachin States, as well as by attacks from such groups against security forces and continued divisions among signatories and nonsignatories to a 2015 national cease-fire agreement. The NLD's own approach to dealing with ethnic minorities has also been faulted for inhibiting peace efforts.

Indiscriminate shelling, extrajudicial killings, forced disappearances, and other abuses by the military continue to be reported, while rebel groups engage in forced disappearances and forced recruitment. Areas in the north remain riddled with landmines planted by both rebels and the army. Authorities at times prevent aid groups from reaching populations affected by violence. Civilians continued to flee fighting in Shan and Kachin States in 2018, leaving more than 100,000 internally displaced by year's end. Episodes of fighting and displacement were also reported in Karen and Chin States.

Prisons in Myanmar are severely overcrowded, and conditions for inmates are sometimes life-threatening.

F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 0 / 4

Some of the country's worst human rights abuses, commonly committed by government troops, are against ethnic and religious minorities. The government's failure to protect victims, conduct investigations, and punish perpetrators is well documented.

The 1982 Citizenship Law discriminates based on ethnicity. The law does not allow for anyone who entered the country or is descended from someone who entered the country after 1948 to become a full citizen. Naturalization of spouses is only allowed if the spouse holds a Foreigner's Registration Certificate from before the enactment of the 1982 law. Only those who are descended from ethnic groups deemed to be indigenous to the country prior to 1823 are considered full citizens who can run for public office. Full citizens cannot have their citizenship revoked unless they become a citizen of another country.

In addition to conflict-related violence, women are subject to discrimination in employment, against which there are no explicit legal protections. A number of laws create a hostile environment for LGBT (lesbian, gay, bisexual, and transgender) residents. Same-sex sexual conduct is criminalized under the penal code, and police subject LGBT people to harassment, extortion, and physical and sexual abuse.

G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 5 / 16

G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 2 / 4

Freedom of internal travel is generally respected outside of conflict zones for Myanmar citizens. This is not the case for Myanmar's large population of stateless residents, who have significant restrictions on their travel, particularly Rohingya in Rakhine State. Numerous exiled activists who returned to the country after the transition to partial civilian rule have experienced substantial delays and evasion from government authorities when attempting to renew visas and residency permits. Illegal toll collection by state and nonstate actors has been a problem in some areas. The parliament voted in 2016 to repeal a long-standing rule requiring overnight houseguests to be registered with local authorities; guests staying for more than a month must still be registered.

G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 1 / 4

Contentious disputes over land grabbing and business projects that violate human rights continued in 2018. Myanmar's property transfer laws prohibit transfers to or from a foreigner except in certain state-approved cases of inheritance, and

require registration of foreign-owned property. Stateless residents, including the Rohingya, cannot legally buy or sell property or set up a business.

Instances of forced eviction and displacement, confiscation, lack of sufficient compensation, and direct violence against landholders by state security officials abound. Court cases are frequently brought against farmers for trespassing on land that was taken from them. In May 2018, for example, 33 farmers were found guilty of trespassing on land that was seized by a military-run economic entity in 1996 but never developed.

Amnesty International reported in March that the military was involved in a massive land grab in Rakhine State, building military infrastructure over razed Rohingya villages.

G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 1 / 4

Men and women formally enjoy equal rights on personal status issues, though there are restrictions on marriages of Buddhist women to non-Buddhist men. Laws that might protect women from domestic abuse and rape are weak and poorly enforced, and such violence is an acute and persistent problem. The army has a record of using rape as a weapon of war against ethnic minority women, and security personnel typically enjoy impunity for sexual violence.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 1 / 4

Human trafficking, forced labor, child labor, and the recruitment of child soldiers all remain serious problems in Myanmar, and the government's efforts to address them are inadequate. Child soldiers are enlisted by the military and ethnic rebel groups, which also recruit civilians for forced labor. Various commercial and other interests continue to use forced labor despite a formal ban on the practice since 2000. Trafficking victims include women and girls subjected to forced sex work and domestic servitude. People displaced by conflict are especially vulnerable to exploitation.