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Myanmar

Country:

Myanmar

Year:

2018

Freedom Status:

Partly Free

Political Rights:

5

Civil Liberties:

5

Aggregate Score:

31

Freedom Rating:

5.0

Overview:

Myanmar's democratic transition now appears uncertain under the leadership of the National League for Democracy (NLD), which came to power in relatively free elections in 2015, but has since failed to uphold fundamental human rights or bring security to areas affected by militant insurgencies and the army's offensives against them. In 2017, a military clearance operation in response to an armed insurgency forced more than 650,000 members of the country's Muslim Rohingya minority to flee to Bangladesh, in what the Office of the UN High Commissioner for Human Rights called "a textbook example of ethnic cleansing." The military retains significant influence over politics.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 13 / 40 (-1)

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 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. Htin Kyaw, the NLD candidate, won the presidency in the 2016 election.

NLD leader Aung San Suu Kyi holds the powerful position of state counselor, a post akin to that of a prime minister. The NLD created the office and named Aung San Suu Kyi to it in 2016, through legislation designed to circumvent constitutional provisions that prevented her from running for president.

The commander in chief of the armed forces holds broad powers and is selected through opaque processes 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

Under the 2008 military-drafted constitution, 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 Muslims. The NLD 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 12 seats in the upper house, 30 in the lower house, and 76 in the states and regions. (Myanmar's first-past-the-post system allowed the NLD to translate its popular vote margin into a much larger majority in terms of seats; it took 57 percent of the popular vote, compared with the USDP's 28 percent.) The remaining seats were captured by ethnic minority and other parties and independents.

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

Numerous legal provisions unduly influence electoral results. A quarter of all legislative seats are unelected, and instead appointed by the military leadership. Rigid citizenship laws have resulted in the disenfranchisement of a significant portion of the population. Citizenship laws and excessive residency requirements prohibit many people from standing for office.

The Union Election Commission (UEC), which is responsible for election administration, operates opaquely, and regulations allow it to adjudicate complaints against itself. Election

monitors have expressed concern about the potential for early voting procedures to facilitate fraudulent voting.

Constitutional provisions barred Aung San Suu Kyi from becoming president due to the foreign nationality of her immediate family members, thus prompting the NLD to pass legislation establishing her role as “state counselor.”

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, including the NLD, convened meetings and large rallies throughout the country.

However, some legal provisions can be invoked to restrict parties' operations. The constitution contains a requirement that political parties be loyal to the state, which has the potential for abuse. Laws allow for penalties, including deregistration, against political parties that accept support from foreign governments or religious bodies, or which 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 the NLD's overwhelming parliamentary victory in 2015, there is a realistic opportunity for the opposition to increase its support and gain power through elections. However, the military still retains substantial influence over politics under a nondemocratic constitution.

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 election and subsequent transition talks suggest a waning ability or determination by the military to influence electoral outcomes. Nevertheless, the military retains considerable power over political affairs, and many former military officers hold positions in the country's bureaucracy. The 2008 constitution allows the military to dissolve the civilian government and parliament and rule directly if the president declares a state of emergency. It has the right to administer its own affairs.

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 the mainly

Muslim Rohingya, who were rendered stateless by a 1982 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. Additionally, 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.

Women remain underrepresented in the government and civil service, due largely to social pressures 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

Though the NLD began in 2016 to lay out plans for policy changes among its various ministry portfolios, the military remains a dominant force in policymaking, particularly through its constitutional control over the Defense, Home Affairs, and Border Affairs Ministries. The military effectively controls at least six seats on the powerful 11-member NDSC. Over one-fifth of the total budget is devoted to the military.

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 established in 2014 has only penalized a handful of people.

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 developed in 2016 remains stalled in the parliament. Some information about the budget has been released in recent years, and saw limited parliamentary scrutiny.

ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION

ADD Q: 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 (-1)

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, while some analysts have argued that they constitute either genocide or a precursor to genocide.

Repression of the Rohingya escalated in August 2017, after armed men from the Arakan Rohingya Salvation Army (ARSA), formerly known as Harakah al-Yaqin, attacked multiple police posts with rudimentary weapons. Burmese military forces launched a severe counteroperation on 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 650,000 Rohingya refugees to Bangladesh. In September, the head of the Office of the UN High Commissioner for Human Rights deemed the situation “a textbook example of ethnic cleansing.” NLD leader Aung San Suu Kyi has drawn withering criticism from international observers for her reluctance to explicitly condemn violence against the Rohingya.

Score Change: The score declined from -3 to -4 because of renewed violence against Rohingya communities in Rakhine state, which resulted in the forced displacement of over 650,000 people to Bangladesh amid reports of torture, rape, and indiscriminate killing by military forces.

CIVIL LIBERTIES: 18 / 60

D. FREEDOM OF EXPRESSION AND BELIEF: 6 / 16 (-1)

D1. Are there free and independent media? 2 / 4

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 national security danger, and the threat of prosecution under criminal defamation laws encourages self-censorship. Journalists and social media users continued to face defamation cases in 2017. Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice.

Reporters covering sensitive topics risk harassment, physical violence, and imprisonment. In June 2017, three journalists covering an antidrug rally conducted by an ethnic armed organization were arrested and imprisoned on junta-era charges of unlawful association,

despite a provision in the 2014 News Media Law that exempts journalists from detention while covering conflicts. Two Reuters journalists were imprisoned and charged in December under the State Secrets Act while covering the conflict in Rakhine State.

Previous constraints on internet access have largely unraveled, and the proliferation of smartphones has rapidly increased usage. However, internet activity is still subject to criminal punishment under several broadly worded legal provisions, particularly those in the Electronic Transactions Law.

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 have also discriminated against minority religious groups, refusing to grant them permission to hold gatherings and restricting educational activities, proselytizing, and construction of houses of worship.

Anti-Muslim hate speech and discrimination has been amplified by social media, and some state institutions and mainstream news websites. Ma Ba Tha, or the Committee for the Protection of Nationality and Religion, agitates for the protection of Buddhist privileges, urges boycotts against Muslim-run businesses, and disseminates anti-Muslim propaganda. Reports have shown systematic discrimination against Muslims in obtaining identity cards, as well as the spread 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. Student unions are discouraged, have no formal registration mechanisms, and are viewed with suspicion by authorities.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 2 / 4 (-1)

Free private discussion is constrained by state surveillance and laws that inhibit online speech. Numerous defamation cases involving online commentary have been filed under Article 66(d) of the 2013 Telecommunications Law, which includes broadly worded bans on online activity deemed to be threatening or defamatory. The rights organization Free Expression Myanmar found 106 cases of complaints made under Article 66(d) of the Telecommunications Act between November 2015 and November 2017, most of which were filed under the NLD government. The law was amended in August 2017 to reduce the maximum penalty for violations to two years, from three previously.

Score Change: The score declined from 3 to 2 due to continued arrests under Article 66(d) of the Telecommunications Law, and the parliament’s move to preserve its repressive nature during an amendment process.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 6 / 12 (+1)

E1. Is there freedom of assembly? 2 / 4

Under the 2014 revised Peaceful Assembly and Peaceful Procession Law, unauthorized demonstrations are punishable with up to six months in prison; a variety of other vaguely worded violations can draw lesser penalties. An antigovernment protest by farmers in April 2017 was permitted, while in February a medical student was arrested for protesting against violence in Rakhine 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 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.

Surveillance of activists by the military-controlled Home Affairs Ministry continued in 2017.

E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4 (+1)

Independent trade unions were banned until 2011, and while union organizers continue to face retaliation for their work, union activity has nevertheless taken root in Myanmar. In recent years, factory workers have held strikes in Yangon with fewer repercussions and arrests than in the past. And in late 2017, in response to activism by workers, a government committee approved a 33 percent increase in the national daily minimum wage to approximately \$3.56, which was expected to take effect in 2018.

Score Change: The score improved from 1 to 2 because labor activity has increased gradually over recent years, and labor activists have faced fewer arrests and other repercussions.

F. RULE OF LAW: 1 / 16

F1. Is there an independent judiciary? 0 / 4

The judiciary is not independent. Judges are appointed or approved by the government and adjudicate cases according to its decrees.

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 deemed a threat to state security or sovereignty. A 2017 assessment by the British-based NGO Justice Base, which promotes the rule of law, found that the country performed poorly in nearly every measure of international fair trial standards. According to a report by the Assistance Association for Political Prisoners

(Burma), at the end of November, 228 individuals were being repressed due to political activities, of whom 46 were currently serving sentences, 49 were in pretrial detention, and 133 were awaiting trial outside of prison.

In 2016, the parliament repealed the 1950 Emergency Provisions Act, which the previous military government had invoked frequently to silence and imprison dissidents.

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

In January, U Ko Ni, a prominent Muslim lawyer, democracy advocate, and advisor to the NLD, was assassinated at the Yangon airport, in what was interpreted as a warning to democracy and rights activists in the country. He had reportedly received death threats from nationalists prior to his murder. While several people were arrested in connection with his killing, at year's end no one had been convicted of it.

The NLD government's push for the creation of a more comprehensive peace mechanism continued to be hampered by military offensives against various ethnic rebel groups, particularly in Shan and Kachin States, attacks by such groups against security forces, and continued divisions among signatories and non-signatories to a 2015 national cease-fire agreement. Reports of indiscriminate shelling, extrajudicial killings, forced disappearances, and other abuses by the military continued, as militant groups engaged in forced disappearances and forced recruitment. Areas in the north remain riddled with land mines planted by both militants and the army. Authorities at times prevented aid groups from reaching populations affected by violence.

Prison conditions are frequently 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.

In August 2017, military forces launched a supposed antiterrorist clearance operation against Rohingya communities in northern Rakhine State, which reportedly included torture, rape, indiscriminate killing, and the burning of villages, worsening already dire humanitarian conditions and causing an outflow of more than 650,000 Rohingya refugees to Bangladesh. The NLD government in June refused entry to a UN-mandated fact-finding mission commissioned in the wake of similar attacks and refugee displacement that took place in 2016.

The anti-Muslim Ma Ba Tha and the similar 969 movement have been accused of stoking outbreaks of violence with inflammatory sermons, leaflets, and other materials, and local government officials have actively sought out administrative loopholes to destroy Muslim schools and houses of worship.

A number of laws create a hostile environment for LGBT (lesbian, gay, bisexual, and transgender) people. 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. Numerous exiled activists who returned to the country 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 2017. Instances of forced eviction and displacement, lack of sufficient compensation, and direct violence by state security officials abound. The NLD government's Central Committee on Confiscated Farmlands and Other Lands, formed in 2016 has been accused of releasing data that omits land grabs initiated by the military, other government bodies, and corporations.

In December 2017, President Htin Kyaw approved a law that would simplify processes for establishing private businesses, though it had not been implemented by year's end.

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

Laws protecting women from violence and exploitation are inadequate, and violence against women is a 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

While the government has made increased efforts to identify and prosecute human trafficking, it remains a serious problem. Child labor is widespread. 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.

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