

## COMMENTARY

# CITIZENSHIP STRIPPING IN MYANMAR AS LAWFARE

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### I INTRODUCTION

In March and April 2022,<sup>1</sup> the military junta of the Republic of the Union of Myanmar (‘Myanmar’), known as the State Administration Council (‘SAC’) issued three orders to strip 33 people (‘the 33 people’) of Myanmar citizenship. Among them were opposition politicians, (ex)-diplomats, dissidents, social media influencers-cum-fundraisers, writers, singers, actors and beauticians who had been leading, involved in or supportive of the (armed) resistance against the military rule known as the Spring Revolution. These orders referred to these people as those ‘who violated the existing laws of the State and left the country illegally [who] were found to be committing acts that could harm the interests of Myanmar’.<sup>2</sup> The SAC justified its orders with s 16 of the 1982 *Myanmar Citizenship Law* (‘1982 Law’).<sup>3</sup> Many of the newly stateless immediately responded that it was an illegitimate use of law by the SAC<sup>4</sup> and that they would continue to revolt against the SAC despite their denationalisation.<sup>5</sup> Opposition politicians who sat in the parallel National Unity Government of the Republic of

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<sup>1</sup> ‘Termination of Citizenship’, *Global New Light of Myanmar* (Yangon, Myanmar, 5 March 2022) 4; ‘Termination of Citizenship’, *Global New Light of Myanmar* (Yangon, Myanmar, 8 March 2022) 2; ‘Termination of Citizenship’, *Global New Light of Myanmar* (Yangon, 2 April 2022) 10.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> ‘နိုင်ငံသားအဖြစ်မှ ရပ်စဲကြောင်း ကြေညာခံရသည့်အပေါ် တုံ့ပြန်ချက်များ [Responses to the Stripping of Citizenship]’, *Democratic Voice of Burma* (online, 5 March 2022) <<http://burmese.dvb.no/archives/520372>>, archived at <<https://perma.cc/YY6D-DBQS>>; Dr Sasa (Facebook, 10 March 2022) <<https://www.facebook.com/DrSasa22222/posts/502207124703483>>, archived at <<https://perma.cc/XMY4-7HFH>>.

<sup>5</sup> ‘နိုင်ငံသားအဖြစ်မှ ရပ်စဲခြင်းဖြင့် တော်လှန်စိတ်ကို ရပ်၍မရ [The Revolutionary Spirit Cannot Be Stopped by Denationalisation]’, *Irrawaddy* (online, 14 April 2022) <<https://burma.irrawaddy.com/article/2022/04/14/251279.html>>, archived at <<https://perma.cc/4Q2K-BHLX>>.

the Union of Myanmar ('NUG') pledged that the *1982 Law* would be repealed with the success of the Spring Revolution and the removal of the SAC.<sup>6</sup>

In this commentary, I contextualise the three orders of denationalisation against the backdrop of the ongoing Spring Revolution against the military junta and the latter's brutal suppression of the former. I argue that the SAC only impulsively and arbitrarily used citizenship stripping or revocation as part of its package of warfare against the revolution.

## II THE *1982 LAW* AND THE PROVISION FOR DENATIONALISATION

The *1982 Law* was originally written during the rule of the xenophobic Burma Socialist Programme Party regime (1974–88). The law divides Myanmar citizenry into a 'native' component, capturing those who had settled in the country before British colonisation (prior to 1823), and a non-native, immigrant component, concerning those who migrated to colonial Burma, where they later settled permanently. By according different rights to two classes of citizens, the law effectively elevates the status of citizens of 'native' ancestry above the status of citizens of immigrant ancestry.<sup>7</sup>

Why did the SAC use the pro-native *1982 Law*, and s 16 in particular, in suppressing alleged 'terrorism' against its rule? The short answer is because this section contains the only provision in the Myanmar legal corpus that permits denationalisation of citizens. Myanmar citizenship may only be revoked under one of two conditions: where the individual leaves Myanmar *permanently* and/or where the individual acquires citizenship and identity documentation, such as a national ID or passport, of a foreign country.<sup>8</sup> The three SAC orders of denationalisation stated that all of the 33 people left Myanmar, thus satisfying the condition as required in the *1982 Law*.

The *1982 Law* was in effect when dissidents, activists and politicians fled Myanmar in search of refuge in neighbouring countries<sup>9</sup> after the military took power in September 1988 in the aftermath of popular protests against the one-party socialist regime. Although, while in power, the military junta used a variety of tools to repress the opposition, they never used the denationalisation provision in the *1982 Law*.<sup>10</sup> The military's decision in March and April 2022 is therefore unprecedented. This, however, was not the first attempt to denationalise or deprive Myanmar Spring revolutionaries and opposition politicians of Myanmar identity documentation. In 2021, the Embassy of the Republic of the Union of Myanmar,

<sup>6</sup> See eg, Zin Mar Aung (Facebook, 5 March 2022) <<https://www.facebook.com/100011819040715/posts/1239702309767059/>>, archived at <<https://perma.cc/P8Y6-K74H>>; Wai Mar Tun, 'နိုင်ငံသားအဖြစ်ရပ်စဲမှု လူ့အခွင့်အရေးချိုးဖောက်ရာရောက်ကြောင်း ဝေဖန် [Critics: Denationalisation is Human Rights Violation]', *Radio Free Asia (Burmese)* (Blog Post, 7 March 2022) <[https://www.rfa.org/burmese/program\\_2/myanmar-citizenship-law03072022164332.html](https://www.rfa.org/burmese/program_2/myanmar-citizenship-law03072022164332.html)>, archived at <<https://perma.cc/2QMN-3QXB>>; Ministry of Justice (Facebook, 4 April 2022) <<https://www.facebook.com/107793768252630/posts/173910538307619/>>, archived at <<https://perma.cc/J2BP-4264>>.

<sup>7</sup> Nyi Nyi Kyaw, 'Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar' (2015) 13(4) *Review of Faith & International Affairs* 50.

<sup>8</sup> *Burma Citizenship Law 1982*, s 16 (Burma).

<sup>9</sup> Bertil Lintner, *Outrage: Burma's Struggle for Democracy* (Review Publishing Company, 1989) 196–215.

<sup>10</sup> Wai Mar Tun (n 6).

Canberra, in the Commonwealth of Australia ('Australia') sent seven documents to the Department of Foreign Affairs and Trade of Australia, stating that the SAC had declared the passports of about 70 people null and void, even though it was not certain all the people in question were outside of Myanmar at that time of notification, let alone in Australia.<sup>11</sup> Further, even if any of the targeted people were in Australia, it was unclear if they had left Myanmar permanently and/or had acquired Australian citizenship and passports.

In issuing denationalisation orders in March and April 2022, the SAC did not provide any evidence of the 33 people having met the conditions of leaving permanently or acquiring other citizenship, which was required for stripping them of Myanmar citizenship. One could argue that the use of the *1982 Law* by the SAC in this case was impulsive and arbitrary.

### III 'ANTI-TERRORISM' LAWFARE AGAINST RESISTANCE IN MYANMAR

The Myanmar military overthrew the democratically elected and re-elected<sup>12</sup> National League for Democracy ('NLD') party government on 1 February 2021 in a coup a few hours before the new parliament convened. Most, if not all, of the NLD leadership, including President Win Myint and State Counsellor Aung San Suu Kyi, were detained. A few days later, hundreds of thousands of Myanmar people, including elected NLD representatives, activists and other dissidents, took to the streets in protest against the coup. This included a general strike of public sector employees, called the Civil Disobedience Movement ('CDM')<sup>13</sup> that aimed to paralyse the bureaucracy. The protests and the CDM came to be known as the Spring Revolution and the Revolution became an armed resistance on 5 May 2021, declaring a war of self-defence on 7 September 2021.

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<sup>11</sup> Stephen Dziedzic, 'Myanmar Junta Cancels Passports of High-Profile Opponents and Shadow Government Figures, Documents Show', *ABC News* (online, 2 December 2021) <<https://www.abc.net.au/news/2021-12-03/myanmar-junta-cancels-passports-of-high-profile-opponents/100669294>>, archived at <<https://perma.cc/64C2-AM43>>. Within Myanmar, citizens have to produce their national IDs, known as Citizenship Scrutiny Cards, as proof of evidence of citizenship, but it is passports that are evidence of Myanmar nationality for people outside the country. Hence, declaring passports of Myanmar citizens null and void is effectively denationalisation.

<sup>12</sup> The National League for Democracy ('NLD') won both general elections held in November 2015 and November 2020 in a landslide. Although the military did not dispute the result of the 2015 elections, it alleged that there was huge systemic fraud in the 2020 elections, in spite of international and local independent observers' conclusions that the polls were free and fair to a satisfactory level: see, eg, PACE Myanmar, *2020 Global Elections Observation Report* (Report, 16 March 2020); Asian Network for Free Elections, *The 2020 Myanmar General Elections: Democracy Under Attack* (Report, 2021).

<sup>13</sup> On a broader understanding, boycotts of goods and services produced by military-owned and linked enterprises by ordinary citizens, who are neither public servants nor private sector employees, also form part of the Civil Disobedience Movement ('CDM'). In the early days of the CDM, several thousand employees of enterprises and businesses in the private sector also joined the CDM. However, public servants are the core of the CDM.

The SAC responded with the suspension, revision and introduction of laws,<sup>14</sup> crackdowns,<sup>15</sup> charges of disruption of public service<sup>16</sup> and sedition,<sup>17</sup> arrests,<sup>18</sup> mass incarceration,<sup>19</sup> imprisonment,<sup>20</sup> extrajudicial killings,<sup>21</sup> the suspension, dismissal and removal of members of CDM ('CDM-ers')<sup>22</sup> and the replacement of CDM-ers' positions.<sup>23</sup> They also froze assets and bank accounts of (alleged) funders and financiers of the Spring Revolution,<sup>24</sup> branded the revolution as terrorism and revolutionaries as terrorists<sup>25</sup> and commenced deadly 'clearance' operations against places that were (allegedly) hosting freedom fighters.<sup>26</sup>

The legal package of repression or lawfare is particularly relevant here. The term *lawfare* is defined as the use or misuse of law in waging international or

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14 'Myanmar: Post-Coup Legal Changes Erode Human Rights', *Human Rights Watch* (online, 2 March 2021) <<https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights>>, archived at <<https://perma.cc/RG5G-ND4Y>>; see also 'Myanmar: Post-Coup Legal Changes Erode Human Rights', *International Commission of Jurists* (online, 2 March 2021) <<https://www.icj.org/myanmar-post-coup-legal-changes-erode-human-rights/>>, archived at <<https://perma.cc/5CD3-M8WE>>.

15 See, eg, "'Day of Shame": Dozens of Anti-Coup Protesters Killed in Myanmar', *Al Jazeera* (online, 27 March 2021) <<https://www.aljazeera.com/news/2021/3/27/myanmar-coup-leaders-put-on-show-of-force>>, archived at <<https://perma.cc/AS8T-2NSQ>>.

16 'More than 80 Protesters at Mandalay Sit-In Charged with Violating 505a', *Myanmar Now* (online, 9 March 2021) <<https://myanmar-now.org/en/news/more-than-80-protesters-at-mandalay-sit-in-charged-with-violating-505a>>, archived at <<https://perma.cc/YF8W-K5NB>>.

17 'Win Htein Indicted on Sedition Charge', *Myanmar Now* (online, 16 July 2021) <<https://www.myanmar-now.org/en/news/win-htein-indicted-on-sedition-charge>>, archived at <<https://perma.cc/PY5J-58VD>>.

18 'Daily Briefing in Relation to the Military Coup', *Assistance Association for Political Prisoners* (online, 5 August 2022) <<https://aappb.org/?p=22658>>, archived at <<https://perma.cc/2YTM-Z5UC>>.

19 *ibid.*

20 *ibid.*

21 *ibid.*

22 See, eg, 'Junta's Investment Ministry Fires More Than 80 Staff over CDM Participation', *Myanmar Now* (online, 11 April 2021) <<https://myanmar-now.net/en/news/juntas-investment-ministry-fires-more-than-80-staff-over-cdm-participation>>, archived at <<https://perma.cc/9H9B-SSG2>>; Naw Say Phaw Waa, 'Junta Suspends Thousands of Academics, University Staff', *University World News* (online, 14 May 2021) <<https://www.universityworldnews.com/post.php?story=20210514110259910>>, archived at <<https://perma.cc/RAT8-47BM>>.

23 See, eg, 'Military Council Tries to Replace Striking Internal Revenue Staff with Relatives of Junta Personnel', *Myanmar Now* (online, 20 August 2021) <<https://www.myanmar-now.org/en/news/military-council-tries-to-replace-striking-internal-revenue-staff-with-relatives-of-junta>>, archived at <<https://perma.cc/577Y-JPJS>>.

24 'Myanmar Bank Faces Boycott After Freezing Accounts to Block Donations to Anti-Coup Forces', *Coconuts Yangon* (online, 10 August 2021) <<https://coconuts.co/yangon/news/myanmar-bank-faces-boycott-after-freezing-accounts-to-block-donations-to-anti-coup-forces/>>, archived at <<https://perma.cc/YP4A-3C6Z>>.

25 'Myanmar Junta Declares National Unity Government, CRPH, Defense Forces as "Terrorist" Groups', *Irrawaddy* (online, 10 May 2021) <<https://www.irrawaddy.com/news/burma/myanmar-junta-declares-national-unity-government-crph-defense-forces-as-terrorist-groups.html>>, archived at <<https://perma.cc/98AT-4FS8>>.

26 'Myanmar Junta Intensifies Arson Attacks in Resistance Strongholds', *Irrawaddy* (online, 27 May 2022) <<https://www.irrawaddy.com/news/burma/myanmar-junta-intensifies-arson-attacks-in-resistance-strongholds.html>>, archived at <<https://perma.cc/E999-Y4D8>>.

bilateral wars<sup>27</sup> and in discriminating and persecuting minorities.<sup>28</sup> I define it as the misuse of law by governments, democratic or authoritarian, in crushing dissent and resistance. Myanmar has been ruled by the military or military-dominated regimes from 1962 until 2011 and from February 2022 until present. Regimes headed by active or retired generals used a repertoire of existing laws and wrote new laws to target those who dissented or opposed the military as a form of repression.<sup>29</sup> Such laws may be said to bring about ‘material, emotional, and psychological injurious actions that target an entire group of people with a particular set of shared social characteristics’<sup>30</sup> among revolutionaries, activists and dissidents in Myanmar. For example, enjoying impunity, a Myanmar military soldier said that ‘when protestors refuse to listen to our orders to disperse, we shoot at the protestors in accordance with the law’.<sup>31</sup>

Existing laws including, but not limited to, the *Penal Code*,<sup>32</sup> the *Code of Criminal Procedure*<sup>33</sup> and the *Ward or Village-Tract Administration Law*<sup>34</sup> have been amended or repealed, while laws such as the *Counter-Terrorism Law* have been increasingly used to punish dissidence and resistance. For example, the SAC suspended ss 5, 7, and 8 of the *Law Protecting the Privacy and Security of Citizens*, which prohibits a police search of private homes without two witnesses, prohibits the detention of anyone for more than 24 hours without a court order and requires seizure, surveillance, spying or investigating to be conducted without affecting citizens’ privacy, security and dignity.<sup>35</sup> After the suspension of ss 5, 7 and 8, an unknown number of private homes, workplaces and shops have faced raids.<sup>36</sup> By adding new sub-sections to s 505 of the *Penal Code*, the SAC also criminalised

<sup>27</sup> Charles J Dunlap Jr, ‘Lawfare Today: A Perspective’ (2008) 3(1) *Yale Journal of International Affairs* 146, 146 quoted in Orde F Kittrie, *Lawfare: Law as a Weapon of War* (Oxford University Press 2016) 1.

<sup>28</sup> John L Comaroff, ‘Symposium Introduction: Colonialism, Culture, and the Law: A Foreword’ (2001) 26(2) *Law & Social Inquiry* 305, 305–306; Kari Telle, ‘Faith on Trial: Blasphemy and “Lawfare” in Indonesia’ (2018) 83(2) *Ethnos* 371, 374.

<sup>29</sup> Nick Cheesman, ‘Thin Rule of Law or Un-Rule of Law in Myanmar?’ (2009/2010) 82 *Pacific Affairs* 597, 601–604.

<sup>30</sup> Cecilia Menjivar and Leisy J Abrego, ‘Legal Violence: Immigration Law and the Lives of Central American Immigrants’ (2012) 117(5) *American Journal of Sociology* 1380, 1414.

<sup>31</sup> Pwint Htun, ‘Beyond the Coup in Myanmar: “In Accordance with the Law” — How the Military Perverts Rule of Law to Oppress Civilians’, *Just Security* (Blog Post, 28 April 2021) <<https://www.justsecurity.org/75904/beyond-the-coup-in-myanmar-in-accordance-with-the-law-how-the-military-perverts-rule-of-law-to-oppress-civilians/>>, archived at <<https://perma.cc/K748-UCAH>>.

<sup>32</sup> ‘State Administration Council Law No (5/2021): Law Amending the Penal Code, 14 February 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 15 February 2021) 2 (‘State Administration Council Law No (5/2021)’).

<sup>33</sup> ‘State Administration Council Law No (6/2021): Law Amending the Code of Criminal Procedure, 14 February 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 15 February 2021) 2.

<sup>34</sup> ‘State Administration Council Law No (3/2021): Fourth Amendment of the Ward or Village-Tract Administration Law, 13 February 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 14 February 2021) 2.

<sup>35</sup> ‘State Administration Council Law No (4/2021): Amendment of Law Protecting the Privacy and Security of the Citizens, 13 February 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 14 February 2021) 1.

<sup>36</sup> David Pierson, ‘Myanmar’s Military Sows Fear and Terror in Nighttime Raids’, *Los Angeles Times* (online, 12 March 2021) <<https://www.latimes.com/world-nation/story/2021-03-12/myanmar-nighttime-raids>>, archived at <<https://perma.cc/CX4L-MKCE>>. The author also witnessed about a dozen such raids in Mandalay in February and March 2021.

encouraging government employees to join the CDM and made illegal publicly naming and shaming government employees who do not join the CDM.<sup>37</sup>

Harsher punitive sentences, including death penalties and life sentences, have also been handed down under martial law declared in six townships in Yangon since mid-March 2021.<sup>38</sup> By 4 March 2022, one day before the first order of denationalisation was issued, 827 people had been sentenced (including 45 death sentences) and 9,507 people were in detention and awaiting charges to be brought or sentences to be handed down under one or more laws from the aforementioned package of lawfare.<sup>39</sup> In February 2022, or one year after the coup, the International Commission of Jurists noted that neither the rule of law nor judicial independence were present in Myanmar under the SAC.<sup>40</sup>

That said, the package of lawfare briefly reviewed in this commentary does not include a single provision for denationalisation, even in the *Counter-Terrorism Law*.<sup>41</sup> For this reason, the SAC has turned to the *1982 Law*.

#### IV CONCLUSION

The SAC used the *1982 Law* and its provision for denationalisation as part of its package of lawfare against the Spring Revolution, despite lack of clear evidence that the 33 people had left Myanmar permanently. While some of the 33 people are now out of Myanmar or working from the Thai–Myanmar border — possibly having acquired foreign citizenship and identity documentation, permanent or temporary — the use of the *1982 Law* is intended to permanently cast out opposition to the SAC.

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<sup>37</sup> ‘State Administration Council Law No (5/2021)’ (n 32).

<sup>38</sup> ‘State Administration Council: Martial Law Order 1/2021, 14 March 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 15 March 2021) 1; ‘State Administration Council: Martial Law Order 2/2021, 15 March 2021’, *Global New Light of Myanmar* (Yangon, Myanmar, 16 March 2021) 3.

<sup>39</sup> ‘Daily Briefing in Relation to the Military Coup’, *Assistance Association for Political Prisoners* (online, 4 March 2022) <<https://aappb.org/?p=20399>>, archived at <<https://perma.cc/26K7-JRMY>>.

<sup>40</sup> ‘Myanmar: A Year After Military Takeover, No Rule of Law or Judicial Independence’, *International Commission of Jurists* (online, 10 February 2022) <<https://www.icj.org/myanmar-a-year-after-military-takeover-no-rule-of-law-or-judicial-independence/>>, archived at <<https://perma.cc/N5J3-UTKL>>.

<sup>41</sup> Denationalisation has been increasingly used in countries including the United Kingdom, Germany and Norway as a tool in combating home-grown terrorism during the War on Terror: Milena Tripkovic, ‘Renouncing Criminal Citizens: Patterns of Denationalization and Citizenship Theory’ (2022) *Punishment & Society* (advance). For ethical and practical debates on using denationalisation as terrorism control, see Matthew J Gibney, ‘Should Citizenship Be Conditional? The Ethics of Denationalization’ (2013) 75 *The Journal of Politics* 646; Matthew J Gibney, ‘Denationalisation and Discrimination’ (2020) 46 *Journal of Ethnic and Migration Studies* 2551; Christian Joppke, ‘Terror and the Loss of Citizenship’ (2016) 20 *Citizenship Studies* 728.