The Rise of Citizenship Deprivation:

A Global Threat to Human Rights

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Executive Summary

The increasing resort to citizenship deprivation and exile signals a new direction in the social policy of citizenship deprivation designed to counter terrorism, often at the expense of the respect of rule of law and right to nationality. It constitutes a securitisation of citizenship policy operating through a racialised filter and perpetrated through new authoritarian – but still legal – expedients. The citizenship orders disproportionately end up targeting members of the Muslim and other migrant communities. Minorities and those of migrant heritage are judged by a different yardstick and face harsher consequences for their actions.

Bahrain and the UK are the countries that make the most aggressive use of deprivation powers in the world. However, both experiences differ significantly. Bahrain is ruled by a dictatorship that uses denationalisation as a way of suppressing political dissent. Unexpectedly, the disproportionate use of citizenship stripping orders in the UK, a model and an example of 'Western democratic governance' based on respect for human rights, results in a similar outcome as that in Bahrain. The difference is the target, who are Muslims and migrants in the UK. Yet, the UK is not alone in using citizenship deprivation in the Western world.

Therefore, the main objective of this report is to provide an analysis of the political, cultural and legal contexts in which and by which citizenship stripping policies are rooted and nourished as counter-terrorism measures. New legislation in response to the challenges posed by international terrorism, is based on undefined contents and terms, which give enormous and unprecedented powers to the executive and reduce judicial oversight of due process. Such an unbalancing of the democratic functions between the executive and the judiciary ends up further tipping the balance towards legal uncertainty, executive impunity and the progressive erosion of the rule of law.

Counter-terrorism-based citizenship deprivation is analysed as a global phenomenon in a comparative way in Chapter I, and in relation to the UK and Bahrain in Chapter II. Whilst not intended to be a technical legal report in its essence, some legal considerations have been made necessary by virtue of the nature of the subject itself, and placed in a dedicated chapter (Chapter III). Other still relevant comments, legal or political in nature, have been put in specific text boxes for the ease of the reader. Lastly, the adverse effects of the deprivation powers have been further examined in Chapter IV. The impact of such provisions goes a lot further than the individuals subjected to orders and their families; it deeply impacts the communities from which such individuals come and society as a whole.

For the sake of an easier reading, the terms 'citizenship deprivation', 'citizenship revocation' and 'denationalisation' have been used interchangeably here, on par with 'exile', 'deportation' and 'expulsion'. The report ends with conclusions and a set of recommendations.

Canadians affected by this bill are full-fledged Canadians. If they are convicted of heinous crimes, the fact remains that they are still Canadians. Some may even be radicalized in Canada, which makes the problem a Canadian problem. Revoking citizenship will do nothing to improve our security. On the contrary, several of our colleagues explained why it is more dangerous to send these criminals away than to keep them here. What would we accomplish? Some say that we would be sending a message, but what message? That we have two classes of citizens? I find that response counterproductive. The message I would like us to promote is the message in the bill that every Canadian who legitimately obtains Canadian citizenship is a Canadian for better or for worse[...] I'm not so sure that the prospect of losing one's citizenship might convince a radicalized person to refrain from committing a terrorist act.

Hon. Raymonde Gagné to the Senate of Canada, May 3 2017

I - Introduction

The power of a state to revoke citizenship unilaterally is something profoundly undemocratic and objectionable. The philosopher Hannah Arendt famously described citizenship as 'the right to have rights'; political, civil, economic and human rights are not accessible to those with no country of nationality capable of enforcing them. In this sense, revocation of citizenship is a total destruction of an individual's status in any organised system. In other words, it is a 'form of punishment more primitive than torture' (US Supreme Court 1958, *Trop v Dulles*).

Historically, citizenship has rarely been considered an unconditional entitlement. Its revocation was a practice in use quite widely across Europe throughout the 19th and 20th centuries, especially on the grounds of treason. It was in the aftermath of the Second World War that citizenship revocation became associated with totalitarian regimes and progressively disappeared in most Western states. In practice, unless stated in legislation or the constitution, citizenship became widely understood as something with an unconditional status, surrounded by the logic of being 'one of rights rather than obligations' (Institute Statelessness and Inclusion (ISI), 2020b).

In the post-9/11 world, under the pretext of national security, states have returned to using revocation of citizenship as a counter-terrorism instrument, by keeping old laws but clothing them in contemporary garments. The most common deprivation grounds have been reframed from treason to any act which causes 'harm to the interests or security of the country', is against 'the vital interests of the state', or where deprivation would be

'conducive to the public good'. In the vast majority of cases, the new formulas remain undefined or defined broadly in domestic law so as to leave much room for executive discretion.

Indeed, the current counter-terrorism-based citizenship stripping decisions have been performed through procedures that position the executive branch of government at the heart of decision-making and judicial review – be it in the person of a minister, a head of state or head of government, or another government or administrative body. This has sidelined the judiciary and the legislature, institutions that traditionally shoulder the duty of scrutinising government actions. Such unprecedented expansion and dominance of the executive, common across nearly all European countries, is often justified by governments to provide fast and urgent responses to a seemingly endless series of crises or emergencies, by creating a 'perpetual state of exception' that renders the rule of law 'backsliding' more tolerable in the eyes of the public.

Terrorism plays a key role in this new state-of-emergency policy environment. The institutionalisation and normalisation of such a 'perpetual state of exception' is deeply intertwined with the ongoing process of autocratisation and democratic regression (autocratic legalism) whereby the wilful and accurate misuse and abuse of executive powers adversely affects the delicate system of checks and balances of liberal Western democracies (Scheppele, 2018).

Citizenship is not only a legal status, but also a 'social practice' that is embedded in a wider concept of citizenship, evoking issues pertaining to the individual sphere of national identity, belonging, cultural values, and political membership of a state (Bhambra, 2015; Benhabib, 2004). In the West, by making only citizens with a migration background subject to deprivation, their inclusion into modern personhood and statehood seems to be constantly brought into question. They are constantly seen as 'being fundamentally unworthy of citizenship', 'half-way citizens' and 'migrants in their own home' – citizens whose inclusion into citizenship is only ever conditional, partial, temporary or incomplete, and for this reason the deprivation of their rights becomes politically and culturally possible (Shahid, 2021).

It is within such a context of white-dominated and/or racialised policies and institutions in Western autocracies and democracies that current counter-terrorism-based citizenship stripping legislation finds its *raison d'être* and legal and/or socio-political justifications for targeting only certain categories of citizens. Indeed, except for the Middle East and North Africa (MENA) – where political opponents, dissidents and human rights defenders remain the main victims – in the Western context the new deprivation legislation is often weaponised against minority ethnic groups, predominantly against Muslims (Institute of Race Relations, 2022), in an ever-wider range of social policy areas.

II - Deprivation of citizenship: A global phenomenon on rise

There is an increase of deprivation powers in the world, and Europe is the epicentre of this phenomenon; over 18 European countries are impacted, 14 if we consider only those in the EU areas[1]. Notably, over half of these countries have added terrorism as explicit grounds to their laws, directly linking new deprivation powers to national security and counter-terrorism measures. In absolute terms, after the EU, the successive largest set of expanded deprivation powers can be found in the MENA region, where eight countries amended their laws accordingly. In relative terms, the MENA region actually saw the highest prevalence of reforms – 44% of countries in the region saw an expansion of deprivation powers. Here, again, involvement in terrorism was added as specific grounds for deprivation of nationality in a number of these countries – including in the United Arab Emirates, Morocco and Bahrain (ISI, 2022).

The international scenario appears to be quite fragmented and heterogeneous in finding solutions either in terms of extent, forms, contents or limitations on safeguards. The UK, Netherlands and Denmark represent the direst cases within Europe in terms of laws with the most punitive effects on citizens. One of the main criticisms, for instance, revolves around the fact that such legislation knowingly leads to a *de facto* and *de jure* normalisation of statelessness of dual nationals, by potentially assessing the second country's citizenship legislation without consulting the second country's authorities. This is the case, for instance, of citizenship legislation of Denmark, whereby a person is considered not to be stateless so long as he or she is entitled to another citizenship by mere registration in another country (ISI, 2022).

In the US, US-born citizens cannot have their citizenship revoked because it is a birth right guaranteed in the US constitution, unless they make a voluntary act of renunciation. However, naturalised US citizens – that is, people who have immigrated to the US – can have their nationality stripped for a few reasons, including membership of proscribed groups and obtaining US citizenship fraudulently. In Australia, a person can have their citizenship removed on national security grounds if they are a dual citizen of another nation. However, the individual must have been convicted of specific terrorism offences and received a prison sentence of at least six years. Australian law also allows for deprivation of citizenship to target those who have left the country to fight in countries such as Syria (so cannot be easily tried) but, unlike in the UK, it excludes anyone aged 14 or under from this provision. Italian law allows the revocation of citizenship based on a decision of the Minister of the Interior when a person has been convicted for terrorist or subversion offences by the national courts, while Saudi Arabia's provisions apply only during the first five years after naturalisation. Belgium provides another example of a country which has greatly expanded counter-terrorism citizenship deprivation powers. Amended in 2006 and 2012, the new laws have

introduced extremely broad grounds for deprivation when referring to any action or offence 'the commission of which was manifestly facilitated by the possession of Belgian nationality', limited to those born to non-Belgian parents (ISI, 2022).

As a pale ray of hope in the darkness, an important countertrend is to be seen in the example of Canada, which repealed nationality deprivation three years after its introduction. The then-Prime Ministerial candidate Justin Trudeau made the repeal of the Strengthening Canadian Citizenship Act a central focus of his electoral campaign by arguing that the citizenship of every Canadian is devalued when it is made conditional. The progressive amendments brought in by Trudeau's government ensured that dual nationals convicted of national security offences were to no longer be stripped of nationality but instead sanctioned under regular criminal law. The new law also firmly reinstated the oversight of the Federal Court over nationality deprivation cases and took additional steps to ensure that, even where deprivation was found to be appropriate (e.g., fraud or misrepresentation), minimum safeguards such as residency rights were preserved to protect the basic rights of the individual (ISI, 2022).

In the EU context, there exist good practices in the legal frameworks prohibiting deprivation of nationality if this would result in statelessness. Three countries – North Macedonia, Poland, and Czechia – do not have measures to deprive individuals of their nationality at all: nationality may only be lost through voluntary renunciation. In Portugal, Serbia and Slovenia, although deprivation of nationality can be triggered in cases of alleged fraud, it can never render the individual stateless. Portugal and Belgium are the only EU countries requiring that the decision to deprive a person of their nationality be issued by a court, thereby ensuring that deprivation always follows a finding of guilt by a criminal or a civil court. In all remaining 25 EU Member States, the decision to deprive a person of their nationality is taken by a political authority or a government body at executive level (Statelessness Index, 2021).

Deprivation powers in Netherlands

Originally, deprivation of nationality was introduced in 1984 by the Dutch Nationality Act, limited to cases where nationality had been obtained based on fraudulent information during citizenship acquisition (art. 14). From 2010 onwards, there has been a gradual expansion of the powers to revoke nationality, with new grounds added in 2010, 2016 and 2017. Through 2010 and 2016 amendments, the possibility of using the revocation of nationality as a national security or counter-terrorism measure was introduced only in the event of a criminal conviction, by way of a final and conclusive court judgement. The 2017 amendment introduced harsher provisions, by extending its use even in the absence of such a conviction.

Here is the timeline of the Dutch Nationality Act, with a short explanation:

• Art. 14(2) – amended on 17 June 2010: it set forth the revocation of nationality following conviction for various criminal offences, including the commission of terrorist offences, joining foreign armed forces, and other offences under the Rome Statute.

• Art. 14(2b) – amended on 5 March 2016: it added the grounds of assistance in or preparation of the commission of terrorist offences. The prerequisite of a criminal conviction is still needed.

• Art. 14(3) – amended on 10 February 2017: the grounds of voluntarily entering the foreign military service of a State involved in hostilities against the Netherlands was eventually included. For the first time, it was established that revocation of citizenship could be invoked by the Minister of Justice and Security without a prior criminal conviction.

• Art. 14(4) – amended on 10 February 2017: a new ground was inserted, that of 'joining an organisation that is listed as constituting a threat to national security'. Again, it reasserts that the decision can be taken by the Minister of Justice without reference to a prior conviction. The following organisations have been listed as constituting a threat to national security: (1) Al-Qaeda and organisations affiliated with Al-Qaeda; (2) Islamic State in Iraq and al-Sham (ISIS) and organisations affiliated with ISIS; and (3) Hay'at Tahrir al-Sham.

The 2017 amendments were introduced according to the 'sunset provision', i.e. a provision that was due to lapse by operation of law on 1 March 2022, unless changes were made permanent. After extensive debate on questions of counter effectiveness, necessity and proportionality of the measures, as well as its effect on national and international security, the Dutch Parliament decided that the powers would not be made permanent. Rather, it decided to extend them for another five years and made them subject to further evaluations, including that of the Committee for the Supervision of the Intelligence and Security Services.

Since the entry into force of art. 14(4), a decision has been taken to revoke Dutch nationality in 24 cases. In two cases, the Administrative Jurisdiction Division of the Council of State ruled that the withdrawal decision was unlawful because it could not be demonstrated that the person concerned was affiliated to a listed terrorist organisation. As a result of these rulings, the Minister of Justice has decided in five other cases to withdraw the decision to revoke Dutch citizenship. This means that the Dutch citizenship of a total of 17 people has been revoked. In all these cases an appeal has been lodged, either by the person concerned or ex officio (Dutch Advisory Council of State Report, 2021).

III - UK and Bahrain: A strange fate in common

In recent years, the UK has stripped more people of their citizenship than any other country in the world, apart from Bahrain (ISI Report, 2022). In 2013, during Theresa May's tenure as SSHD, there was a sharp spike in the number of nationals stripped of their citizenship by the Home Office. Twenty dual-nationals fighting in Syria were hit by the orders with immediate effect. The total number of cases amounted to 37 in three years (2010-2013); a particularly disturbing figure when compared to the 17 cases in the previous two-and-a-half years, during which the highest recorded number was six cases in a single year (The Independent, 2013). The figures further exploded in 2017 reaching a peak of 104 cases (Lepoutre, 2020). The Home Office does not routinely publish comprehensive figures on citizenship deprivation. The available data shows that there have been at least 550 deprivation orders for fraud, and 217 orders for the 'public good', since 2010. The exact number of successful appeals against these orders is not known (House of Commons Briefing, 2023).

Worryingly, according to The New Statesman's estimation based on data made available by the Office for National Statistics, under the current legislation approximately six million people in England and Wales are considered at risk of being hit by citizenship stripping provisions, most of them belonging to ethnic and/or religious minorities (New Statesman, 2022).

(i) The UK

The UK has long held the power to strip citizenship but has only begun to use it regularly in recent decades. In fact, from 1973 to 2006, not a single person in the UK was deprived of his or her citizenship. Inscribed into a wider process of redesigning nationality laws with a view to restricting immigration in the 1980s, the overhaul of the legislation on citizenship deprivation regained momentum in the aftermath of the London terror attacks of 2005, followed by the highly publicised Abu Hamza and Al-Jedda cases that were linked to terrorism.

The first step started with the Nationality Act in 1981, which marked a pivotal moment in the design of a new idea of British citizenship: it defined, limited and removed the entitlements to citizenship of British nationals in the Commonwealth (the former colonies), and created 'aliens' within the borders of the nation state (Brysk and Shafir, 2004).

Following the 9/11 attacks in the US, the 2000s became the years of the 'perpetual state of war on terror', the doctrine that has reshaped states' security and counter-terrorism policies, being informed by the idea that enemies are to be hunted down 'at home', and that the old citizenship deprivation powers proved weak in addressing 'the types of activity

that might threaten our democratic institutions and ways of life' (Home Office, 2002). As a result, updating the rules on loss of nationality in force at that time was seen as an important way to boost the value of UK citizenship, and fuelled legislative changes repackaged as security concerns. These processes have impacted heavily on Muslims (Choudhury, 2017).

The Nationality, Immigration and Asylum Act 2002 was a defining piece of legislation. It was temporarily designed to curb the excessive executive leeway in deciding cases of deprivation by introducing more stringent safeguards. For example, one of the most important safeguards of the 2002 Act was that citizenship deprivation could not lead to statelessness, except for loss on fraud grounds, and allowed that only dual citizens could be deprived of citizenship. In addition, the 2002 law softened the partially secret procedure whereby the executive's evidence of terrorist involvement remained undisclosed to the party concerned. Furthermore, the judicial scrutiny, along with appeal rights with suspensive effects procedures, were effectively enacted, and a special court (Special Immigration Appeals Commission (SIAC)) established.

This less severe legal approach was partially due to the fact that, when exercising its nationality powers, as and EU member state, the UK was obliged to have due regard to EU law even if the EU had no competences in the field of nationality law. This meant that UK was obliged to respect the EU principle of proportionality as a limit to the stripping power, in relation to 1) the consequences for the person concerned, and his or her family members, of losing the rights enjoyed by every citizen of the Union; 2) the gravity of the offence committed; 3) the lapse of time between naturalisation and withdrawal; and 4) the possibility of recovering his or her original nationality (See Text Box, 'The Court of Justice of the European Union').

Likewise, at that time the UK's then-government was determined to ratify the European Convention on Nationality (ECN), which imposes further limits on stripping citizenship powers. According to the Convention, the State cannot contravene the prohibition of statelessness and the non-discrimination principle.

As a result, statelessness grounds were the most effective shield against citizenship deprivation in the UK until 2004, when the case against Muslim cleric Abu Hamza disrupted the status quo (Mantu, 2018). Initially issued with a citizenship deprivation order in 2003 due to his radical preaching, the deprivation order was subsequently withdrawn by SIAC because it rendered Abu Hamza stateless (*Abu Hamza v SSHD*). This failure led to the subsequent government's decision not to ratify the ECN, and all the legal changes since then have introduced a harsher legislation on the matter. Firstly, the suspensive right of appeal has been definitively removed by the Asylum and Immigration Act of 2004: according to the new law, citizenship deprivation orders had immediate effect and the deprived became a foreigner subject to immigration control and expulsion. If outside the UK, an exclusion order could be made preventing the person from entering the UK, forcing them to submit an out-of-country appeal.

The conditions of the law were once again toughened in 2006 and 2014. The Labour government at the time introduced legislation influenced by the 2005 London attacks perpetrated by 'home-grown' terrorists. The new 'conducive to the public good' framing

introduced by the Immigration and Asylum Act 2006 has represented a noticeably broader standard compared to the previous 'anything prejudicial to the vital interests of the UK' of the 2002 Nationality Law, encompassing any 'involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours' (Gower, 2015). The Immigration Act 2014 partially removed the guarantees introduced in 2002 concerning the prohibition of statelessness, allowing the Secretary of State for the Home Department (SSHD) to remove citizenship even if the person becomes stateless, provided that nationality was obtained through naturalisation. While defending the introduction of the 2014 Act in Parliament, the SSHD cited the Al-Jedda case as a reason for removing protection against statelessness and explained that 'the whole point of the measure is to be able to remove certain people from the United Kingdom, which currently we are unable to do' (HC Hansard Debate 01/2014). The Al-Jedda case refers to one of the few cases in which the SSHD was obliged by the national court to withdraw her citizenship stripping order in case of statelessness, because it was made at the SSHD's discretion and according to subjective standards (Mantu, 2018).

Today, citizenship deprivation legislation can be seen as the outcome of ever tighter conditions aimed at discovering terrorists disguised as UK citizens. The cumulative effect of eroding legal safeguards has come with the expansion of stripping powers, increasing the scope of who can be targeted, allowing the SSHD more discretion to use nationality deprivation, weakening judicial oversight, dismantling some procedural protections and allowing statelessness. Lastly, deprivation orders can occur in the absence of a criminal conviction, a specificity of the UK system (only a few such cases have been recorded in Europe) that gives the executive much greater scope to determine what sorts of action can be sanctioned with deprivation.

Appeals against citizenship deprivation orders show that most of those deprived of citizenship are Muslim men; some of them had lived in the UK from an early age; most of them entered the UK as asylum seekers and were later naturalised. Although most cases relate to national security, only a fraction of them have been prosecuted for criminal terrorist acts (Mantu, 2018).

UK Citizenship Deprivation Powers Chronicle

- 1918 – The British Nationality and Status of Aliens Act introduced the practice of deprivation for disloyalty or treason, though the law and subsequent ones did not apply to British-born citizens.
- 1948 and 1964 – Nationality deprivation grounds progressively narrowed.
- 1973 – Last known use of deprivation powers in the 20th century.
- 1981 – Basis of the current nationality act. Nationality can be removed from a naturalised citizen if they have been disloyal or assisted an enemy in war.

• 2002 – White paper entitled 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain' identifies 'promoting the importance of British citizenship' as a goal for Government, including by 'updating' deprivation of citizenship procedures.

• 2002 – The Nationality, Immigration and Asylum Act replaced the list of specific behaviours – e.g. disloyalty, fraud, engagement with enemy – with a 'catch-all' criterion of doing 'anything prejudicial to the vital interests of the UK'. Deprivation is extended to those born British, as well as naturalised and registered citizens, provided they have another citizenship. However, deprivation still cannot lead to statelessness. This removed the distinction between citizens by naturalisation and birth, but by levelling down the protection available rather than levelling up. Alongside this the Life in the UK citizenship test was introduced, meant to re-inject value into citizenship following a 'crisis of multiculturalism'.

• 2004 – Suspensive right of appeal was removed by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, so deprivation has immediate effect as soon as the person is served with notice, instead of after losing an appeal. This was in response to the case of Abu Hamza, a radical cleric who held dual British and Egyptian nationality. The government tried to strip his nationality but the decision was judged illegal as stripping him of his British nationality would render him stateless, since he had already been stripped of his Egyptian citizenship.

• 2006 – Following the 2005 London attacks, the 2006 Immigration and Asylum Act lowered the threshold for deprivation. 'Conducive to the public good' language was inserted in place of 'prejudicial to vital interests', allegedly because the latter threshold was considered too high. In no case, however, could the SSHD make an order of deprivation if 'satisfied that the order would make a person stateless'.

• 2014 – The 2014 Immigration Act for the first time allowed citizenship to be removed from people with no other citizenship, *provided they were believed to be able to acquire one*. The statelessness restraint is therefore circumvented by the provision whereby the SSHD must have 'reasonable grounds' to believe that the person can become a national of another country.

• 2017 – Peak in cases of nationality deprivation: 104 citizens deprived in a single year.

• 2021 – Proposal to incorporate Clause 9 into the Nationality and Borders legislation.

The abhorrent Clause 9

Today's situation has further deteriorated through the approval of a set of amendments progressively eroding the right to be notified and the right to appeal. Originally firmly protected by the British Nationality Act 1981 – whereby the SSHD is required to "give the person *written notice*" (emphasis added) – the British Nationality (General) Regulations 2018 have eased the burden of the State to give notice when the person's whereabouts are unknown, provided that the deprivation notice, and a record of the circumstances are placed on the person's file (art. 10(4)).

The approval of the Nationality and Borders Act 2022, which includes Clause 9, has definitively abrogated the duty of the State to give notice of a citizenship deprivation decision before it becomes effective. In simple terms, if the British government wants to remove someone's citizenship, it will no longer need to tell them in certain circumstances. Strongly advocated for by the then-SSHD Priti Patel, who praised the new law as 'a huge milestone' for the British public, the new law is problematic in several ways, especially in terms of further exposure of citizens to statelessness, right to a fair trial, and arbitrariness (BBC, 2022). Briefly, according to the new law, the SSHD can:

> 1) dispense with the notice requirement when it is in the public interest (art. 10(5E)(a);
>
> 2) exempts the government from the obligation of notification in a range of circumstances, and if 'not reasonably practicable', being not possible to communicate with the person (art. 10(5D));
>
> 3) apply retrospectively: where a decision to deprive has already been made but not notified to the person, the deprivation order stemming from that decision remains valid (art. 10(6)).

Those potentially affected by the clause include any British citizen, whether born British, registered or naturalised, who has another citizenship, or any naturalised British citizen with access to another citizenship. The law has therefore introduced new exceptions to the requirement to give a person notice of that decision. These exceptions are based on a subjective test – what appears to the SSHD to be the case, rather than what can be objectively proven – and are worded extremely broadly. According to the new provisions, no objective tests have been afforded requiring the SSHD to justify her decisions or to take steps to give notice.

The ability of an individual to appeal has been put in jeopardy in successive articles of the Nationality and Borders Act 2022, designed to truncate the period of time in which a person can challenge a Home Office decision, or restrict the appeals to one level of the

immigration tribunal only. Even where the person deprived of citizenship can attend their appeal in national security cases, they get little or no information or evidence explaining the decision, making it very hard to challenge the decision. In addition, the court cannot decide for itself whether the person being deprived is a national security risk, and can only allow an appeal against deprivation if, on the evidence, the SSHD's decision was wholly irrational (Free Movement, 2022a).

Following the approval of the new law, any British citizen who is abroad and is deprived of citizenship may not know about it until he or she is travelling to the UK border, or in need of contacting the British Embassy to obtain new documents, or seeking diplomatic protection if arrested or exposed to ill-treatment, torture or execution by the authorities of the persecuting country (Institute of Race Relations, 2022).

The case of Shamima Begum

One of the most notable and publicised cases surrounding deprivation of citizenship in recent years is that of Shamima Begum. Her case concerns both the potential unlawful failure to notify, as well as doubts over national security reasoning given by the Home Office for stripping her of her citizenship. Begum is a British-born woman who, at the age of 15, travelled from the UK in 2015 to Syria to join ISIL (the Islamic State of Iraq and the Levant). Ten days after she arrived in Syria, she was married to Dutch-born Yago Riedijk, a Muslim convert who had moved to Syria in 2014. The couple went on to have three children, all of whom have since died. In 2019, she was discovered in a Syrian refugee camp, close to the warzone, and said she wanted to return home but she was stripped of her British citizenship by then SSHD Sajid Javid in the same year.

In April 2019 she was granted legal aid to fight the decision to strip her of her British citizenship, with the aim of returning back to the UK. She lost her first appeal against this decision. The Home Office said it was possible to strip the teenager of British nationality on the grounds that she is eligible for citizenship of another country – Bangladesh, through her mother, who is a Bangladeshi citizen. However, Bangladesh's Ministry of Foreign Affairs said Begum is not a Bangladeshi citizen and there was 'no question' of her being allowed into the country (The Guardian, 2022).

In July 2020, the Court of Appeal ruled that Begum should be permitted to return to the UK in order to fairly contest the SSHD's decision. This ruling was appealed to the Supreme Court of the United Kingdom which, on 26 February 2021, ruled unanimously against her, reversing the decision of the Court of Appeal and preventing her return. Tasnime Akunjee, lawyer for the Begum family, obtained a hearing in November 2022 to challenge the removal of Begum's citizenship on the basis that as SSHD, Sajid Javid had failed to consider

that she was a victim of human trafficking. However, the hearing at the SIAC followed the Supreme Court decision to refuse her permission to enter (BBC, 2019b).

Mitigating factors that appear to have been unduly disregarded include: a) her youth, and the fact that she was a child when she left for Syria; b) her status as a victim of the well-known sophisticated online grooming practices of ISIL; c) her lack of connection with Bangladesh, of which she was said to be a citizen (denied by the Bangladesh authorities); d) the lack of evidence of any actions on her part which would support a criminal prosecution; e) the inhumane and life-threatening conditions in the prison camp; and f) the possibility of being tried and executed for terror offences in Syria (Institute of Race Relations, 2022).

(ii) Bahrain

The expansion of deprivation powers has been used in Bahrain to silence political dissent under the pretext of national security and counter terrorism, reinforcing the State doctrine whereby the ruling Sunni elite is superior whilst the remaining Bahraini population is deemed inferior. What Bahrain's case shows is that there is a dangerous norm with regard to creating statelessness. If the state continues to see citizenship stripping as a powerful political weapon, the worry is that such a policy may serve the ultimate aim of reinforcing the narrative of Bahrain as a Sunni nation-state through the contraction of the state's citizenry, and become the most important means for perpetuating ethnic cleansing against the Shia majority.

The volatile situation in Bahrain started in February 2011 in the wake of the Arab Spring, when protests erupted throughout the country demanding more political freedoms and equality between all citizens. The Bahraini state responded to these protests by suppressing them and the imposition of a state of emergency, declaring a State of National Security. This action led to violations by officials causing extra-judicial deaths, torture and mistreatment of civilians. In November 2012, the Bahraini government ordered that 35 of its citizens, all of them prominent opposition figures, be stripped of their Bahraini nationality. According to most reports, only six of them held another nationality (Bahrain does not recognize dual nationality), rendering an estimated 25 people stateless individuals (Aiena, 2014).

Hitherto, citizenship revocation had been strictly limited by art. 17 of the 2002 Constitution to 'cases of treason, and such other cases as prescribed by law'. The Bahraini Nationality Law of 1963 allows the withdrawal of nationality under extreme circumstances, only by order of the King (art. 10), the Cabinet – specifically initiated by the Minister of Interior – and the judiciary.

Following the protests, the government reacted with a set of regressive reforms, consolidating the power to deprive Bahrainis of their nationality at the behest of the Minister of Interior (Aiena, 2014). The 2013 decree, amending the 2006 Law on Protecting Society

from Terrorist Acts, adds further specificity to art. 10(c), by setting out the terrorism-related crimes for which a citizen could be denationalised.[2] The 1963 Nationality Act was amended again in 2014 and 2019. The first amendment broadened the grounds for deprivation to include "[those who cause] harm to the interests of the Kingdom or act in a manner that contradicts the duty of loyalty to the State". In 2019, the successive amendment further consolidated power to deprive nationality almost exclusively under the portfolio of the Minister of Interior, with no judicial oversight, bypassing and nullifying the King's role and his royal decrees (Abbas, 2021).

To date, the Bahraini authorities have continued to step up arbitrary punitive measures whenever there are protests demanding democracy. In general, if citizens from an ethnic or cultural community are involved in any protests, they will be deprived of Bahraini nationality regardless of their rights. In practice, it seems that such arbitrary and punitive measures are aimed at a specific group of political opponents, particularly those subscribing to the Shia school of thought in Islam.

According to available information, 985 persons were deprived of their nationality between 2012 and 2021. These arbitrary nationality deprivations were carried out through various means – royal decrees, judicial rulings and ministerial orders – often with no due process: 108 revocations were issued by decision of the King or the Minister of Interior on the basis of art. 10(c) of the 1963 Nationality Law. The rest of the revocations were made by order of the criminal courts, under art. 24 of Law No. 58 of 2006 on Terrorism. In April 2019, the King ordered the citizenship of 551 Bahrainis to be restored, bringing down the number of persons whose citizenship remains revoked to 434 (Abbas, 2021).

Even though their nationality has been restored, most of these people are still suffering from the consequences of their nationality revocations. They have lost their jobs, homes and properties, and are struggling to cope with the multiple rights deprivations they endured as a result of having their nationality revoked. Further, their experience, and the looming threat of their citizenship being revoked again, has had the desired chilling effect on the activism and expression of most of these people. Many continue to live under the cloud of threat of citizenship deprivation, and are reluctant to speak of their predicament for fear of further reprisals.

Lastly, individuals deprived of their Bahraini nationality cannot pass on their citizenship to children, thus impacting future generations as well. Indeed, most of the children who were born after their fathers were stripped of their nationality have effectively become stateless, given that Bahraini nationality is transmitted only through the male line. Children, therefore, are not granted official documents, including identity cards, except birth certificates. This complicates their access to basic rights such as education, health, and various services (Abbas, 2021).

IV - States against the Law

The purpose of this section is not to provide an exhaustive insight into international laws and obligations upon states, but rather to illustrate the main conflicting arguments, distilled into thematic clusters, which one is likely to come across when debating counter-terrorism-based citizenship stripping practice.

Even though the definition and conferral of nationality is within the sovereign domain of states, it has long been recognised by international law and legal standards that international law imposes a specific set of international standards and a number of non-derogable human rights (*jus cogens*). Such standards imply the respect for legality and procedural safeguards, the protection of the right to a nationality, the prohibition of arbitrary or discriminatory deprivation of nationality and the avoidance of statelessness. It is clear that international law sets a high threshold for citizenship deprivation. Consequently, even in a time of emergency, any contemplation of citizenship deprivation must adhere to the prohibition of arbitrariness, equal protection of the law and the prohibition of discrimination.

A huge effort has been made in this field by the Institute on Statelessness and Inclusion in 2020, collating all the normative texts into the Principles on Deprivation of Nationality as a National Security Measure, accompanied by a draft Commentary elaborating in detail the international law base for each provision addressed.[3]

In March 2020, the Principles on Deprivation of Nationality as a National Security Measure were published by the Institute on Statelessness and Inclusion with a view to articulating and unpacking the limitations imposed by international law on states' freedom to use nationality deprivation as a national security or counter-terrorism measure. The Principles were developed over a 30-month research and consultation period, with input from more than 60 leading experts plus 39 civil society organisations in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas.

The Principles do not establish a new norm; rather, they integrate the cumulative import of relevant international law standards, applying them to the context of citizenship deprivation, distilled into one Basic Rule (Principle 4), which reads as follows:

4.1 States shall not deprive persons of nationality for the purpose of safeguarding national security.

4.2 Where a state, in exception to this basic rule, provides for the deprivation of nationality for the purpose of safeguarding national security, the exercise of this exception should be interpreted and applied narrowly, only in situations in which it has been determined by a lawful conviction that meets international fair trial standards, that the person has conducted themselves in a manner seriously prejudicial to the vital interests of the state.

4.3 The exercise of this narrow exception to deprive a person of nationality is further limited by other standards of international law. Such limitations include:

4.3.1 The avoidance of statelessness;

4.3.2 The prohibition of discrimination;

4.3.3 The prohibition of arbitrary deprivation of nationality;

4.3.4 The right to a fair trial, remedy and reparation;

4.3.5 Other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law.

4.4 This basic rule also applies to the deprivation of nationality for other purposes, which serve as proxies to the purpose of safeguarding national security, as well proxy measures, which do not amount to deprivation of nationality but are likely to have a similarly adverse impact on individual rights

(i) Nationality vs Statelessness

The right to nationality and the duty upon States to avoid statelessness are considered fundamental principles of customary international law (art. 15, Universal Declaration of Human Rights).[4] According to the UN Secretary-General's Guidance Note on the UN and Statelessness, the avoidance of statelessness exists 'as a corollary to the right to nationality itself' and 'States must make every effort to avoid statelessness through legislative, administrative and other measures' (Guidance Note of the Secretary-General on the United Nations and Statelessness, 2018).

Furthermore, the right to nationality and the prohibition of statelessness have been enshrined in the UN Convention on the Reduction of Statelessness of 1968, respectively art.

4 and art. 8. Although in these articles the prohibition of statelessness has been protected, many Western states however retained their right to deprive of citizenship anyone acting 'in a manner seriously prejudicial to the vital interests of the state' (art. 8(3)(ii)). In this regard, it is worth questioning why such an exception has been introduced, effectively nullifying the purpose of the obligations. In a sense, it seems that the hegemonic global powers have negotiated and dictated the formulation of the Convention to best suit their political agendas, while still appearing to comply with international obligations. (E-International Relations, 2022).

Nevertheless, the duty to avoid statelessness imposes an obligation upon the competent authorities of the depriving state: to ensure and prove whether the person possesses another nationality *at the time of loss or deprivation*, not whether they could acquire a nationality at some future date (UNHCR, Handbook on Protection of Stateless Persons, 2014). Or, in UNHCR's words, any assessment on an individual's citizenship should be 'neither a historic nor a predictive exercise'. This assessment should not be made on the basis of one state's interpretation of another state's nationality law; rather, it should be informed by consultations with, and written confirmation from, the state in question. The state should demonstrate conclusively that this is indeed the case by, for example, providing an attestation from the other state that the person concerned is regarded as a national of that state (UNHCR, Tunis Conclusions, 2014).

The UN Convention on The Reduction of Statelessness was adopted on 30 August 1961 and entered into force on 13 December 1975. It complements the 1954 Convention relating to the Status of Stateless Persons and was the result of over a decade of international negotiations on how to avoid the incidence of statelessness. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to art. 15 of the Universal Declaration of Human Rights which recognizes that 'everyone has the right to a nationality.'

Art. 8 of the UN Convention on The Reduction of Statelessness reads:

1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of art. 7 (i.e. long-termed residence abroad, fraud, misrepresentation of naturalised citizens), it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

(ii) Counter-Terrorism vs Vital interest

Often states have claimed legitimacy for stripping citizenship in cases of terrorism-related acts on the grounds of national security, considering these acts be 'prejudicial to the vital interests of the States', and invoking art. 8(3)(a)(ii) of the UN Convention on the Reduction of Statelessness. That means that 'national security' and 'counter-terrorism' have been interpreted synonymously in their domestic law. On the contrary, the international community has showed uncertainty on whether certain 'terrorist acts' fall within the scope of art. 8(3)(a)(ii). For these reasons, UNHCR has come to impose a high threshold on states, making clear that:[5]

•. the ordinary meaning of the terms 'seriously prejudicial' and 'vital interests' must be intended as acts threatening 'the foundations and organisation of the State whose nationality is at issue'. The term 'seriously prejudicial' requires that the individuals concerned have the capacity to impact negatively on the State. Similarly, 'vital interests' sets a considerably higher threshold than 'national interests'.

•. Affiliation to a terrorist group does not constitute per se a terrorist act. In this

> regard, UNHCR establishes that (1) a "mere membership in a terrorist group or the fact of receiving training from a terrorist group generally does not constitute a terrorist act"; and (2) the relevant acts must already have been committed at the time a decision to deprive a person of his or her nationality is taken; they cannot consist of acts potentially occurring in the future.

In addition, the UN Security Council imposes upon all Member States the obligation (1) to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought 'to justice according to their domestic laws and regulations'; and (2) to ensure that their domestic laws are sufficient to provide the ability to prosecute and to penalise in a manner duly reflecting the seriousness of the offence. This applies also to 'their nationals who travel or attempt to travel from/to a state other than their states of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training' (UN Security Council, 2014).

(iii) Equality vs Discrimination

Citizenship stripping legislation, as well as legislation on terrorism, immigration, nationality, banning or deportation of non-citizens from a country, has the potential indirect discriminatory effect of penalising certain groups or certain communities. Almost everywhere in Western states' terrorism-grounded legislation, direct discrimination on the basis of nationality disproportionately affects dual nationals of 'non-Western' origin, through the perpetuation of stereotypes resulting in indirect discrimination, hostility and stigmatisation of certain groups such as Muslims, foreigners and migrants.

In this context, any distinction operated via a state law, or practice perpetuating direct or indirect discrimination, especially among their own nationals, regardless of whether they acquired nationality at birth or through naturalisation, and whether they are mono or dual/multiple nationals, is legally problematic under a multitude of international and regional human rights treaties and customary law. The right to equality and non-discrimination, equality before the law and equal protection of the law are particularly relevant in this field.[6]

While states claim that such a distinction is justified on the basis of protecting against statelessness, it is important to note that protection of mono-nationals from statelessness cannot be a legal justification or defence for exposing dual nationals to citizenship stripping (UN Special Rapporteur on Contemporary Forms of Racism, 2018). The prohibition of discrimination is not in conflict with and cannot be made subservient to the principle of the avoidance of statelessness. Both must reflect the highest protective standard for the individual concerned. In this regards, international law is unequivocal: the principle of non-discrimination must be considered as a stand-alone and absolute bar against nationality deprivation in any context. In other words, the prohibition of deprivation of nationality on racial, ethnic, religious or political grounds, irrespective of whether the deprivation would lead to statelessness or not,

surpasses the limitations and exceptions set out in art. 8 of the Convention (ISI, 2020; UN Special Rapporteur, 2022).

(iv) Expulsion power vs right to return to own country

Although international law generally allows states to expel aliens, this is prohibited in respect of the states' own nationals. A customary principle, embodied in the Universal Declaration of Human Rights (UDHR, art. 13 and art. 15), establishes that all persons have the right to enter, remain in, leave and return to their own country. Expulsion of nationals is expressly prohibited in several international and regional human rights instruments, including art. 9 and 13(2) of the UDHR and art. 12(4) of the International Covenant on Civil and Political Rights (ICCPR). This means that by depriving a person of their nationality and expelling them as a result, a state is, by definition, arbitrarily denying that person the right to return and remain in their own country, amounting to a violation of international law. This is further articulated by art. 8 of the International Law Commission (ILC) Draft Articles on the Expulsion of Aliens, which provides that 'a state shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her' (International Law Commission, 2014). This duty is derived from the obligation to admit nationals who have been expelled from a third country, which, in turn, derives from the right of states under international law to expel aliens.[7]

The Human Rights Commission has further clarified that the scope of the term "own country" is broader than the term "country of nationality". It can include a country of former nationality that has arbitrarily deprived the individual of his or her nationality, regardless of the purpose of the measure and whether or not this deprivation causes statelessness. This means that the concept also applies to nationals who have been stripped of their nationality, as they still maintain special ties to that country (UN Human Rights Committee 1999; CCPR General Comment No. 27).

(v) Legality vs Arbitrariness

The obligation upon States to uphold the rule of law and fulfil full procedural safeguards are the issues at stake here. Deprivation powers must be pursued by a legally vested competent authority – whose powers are clearly established by law – and should never be carried out with immediate effect by the executive by operation of the law. Decisions on the deprivation of nationality must be open to effective administrative and/or judicial review and appeal to a court, and can only enter into effect at the moment all judicial remedies have been exhausted. Procedural safeguards include the right of the person to effectively defend him or herself; to be present at his or her appeal; to communicate with legal representatives (Involuntary Loss of EU Citizenship, 2015).[8]

A recurrent concern is that the executive prefers to use its administrative power to deprive suspected terrorists of their citizenship (Parliamentary Assembly of the Council of Europe,

2019), noticeably with lower procedural safeguards if compared to those in criminal law (ISI Commentary (2020), UN Special Rapporteur (February 2022)). For instance, the 'beyond reasonable doubt' standard of proof required in criminal proceedings offers more stringent safeguards than the lower 'balance of probabilities' standard used in a civil or administrative claim, by which a trier of fact (usually a magistrate or judge in civil proceedings) must determine the existence of contested facts as most likely to have occurred.

However, regardless of their qualification in domestic law, and even where they are administrative and do not follow a prior criminal conviction, citizenship deprivation orders as a punishment for terrorist acts (or any criminal acts) must always be regarded as having an inherent penal nature in view of their severity as a punishment and their lasting impact on the individual's life (Human Rights Commission, 2007). The Parliamentary Assembly of the Council of Europe (PACE) has expressed concern about some of its member states that allow for deprivation of liberty by way of administrative decisions, particularly because such decisions are mostly made without the knowledge and/or the presence of the person concerned (PACE, 2019).

Citizenship deprivation in absentia is particularly problematic under art. 12(4) of the ICCPR, whereby the right to enter one's own country is granted to citizens as well as to 'nationals of a country who have been stripped of their nationality in violation of international law'. This implies that denationalisation cannot be used for removing unwanted individuals from the state when abroad. If they were citizens, expulsion would not be lawful. When decisions on the deprivation of nationality apply to citizens abroad, he or she must be given the opportunity to enter and remain in that country in order to participate in person in legal proceedings related to that decision.

Comprehensive List of Legal Sources on Deprivation of Nationality

The legal principles and obligations surrounding the right to nationality and the prohibition of arbitrary or discriminatory deprivation of nationality have been drawn from the following legal sources.

Hard Laws:

- 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws
- 1948 Universal Declaration of Human Rights
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1951 Refugee Convention Relating to the Status of Refugees
- 1954 Convention on the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- 1965 Convention on the Elimination of All Forms of Racial Discrimination

- 1966 International Covenant on Civil and Political Rights
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1969 American Convention on Human Rights
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1986 African Charter on Human and Peoples' Rights
- 1989 Convention on the Rights of the Child
- 1990 African Charter on the Rights and Welfare of the Child
- 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 1997 European Convention on Nationality
- 2000 Charter of Fundamental Rights of the European Union
- 2004 Arab Charter on Human Rights
- 2007 International Convention for the Protection of All Persons from Enforced Disappearance
- 2017 Draft Protocol to the African Charter on Human and Peoples Rights on the Specific Aspects on the Right to a Nationality and the Eradication of Statelessness in Africa

Courts

European Court of Human Rights
Court of Justice of the European Union
African Court on Human and Peoples' Rights
Inter-American Court of Human Rights and related jurisprudence;
International Court of Justice

Soft Law (including opinions, commentaries, declarations, handbooks, resolutions by:)

Human Rights Committee
International Law Commission
African Commission on Human and Peoples' Rights
Handbook on Protection of Stateless Persons
Office of the High Commissioner for Human Rights
Parliamentary Assembly of the Council of Europe
United Nations High Commissioner for Refugees
United Nations Security Council
Treaty-specific Commission (Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Elimination of Racial Discrimination (CERD), etc.)

(vi) National security vs Worldwide security

Generally speaking, a key principle of customary international law, also in view of the UN Charter, is the duty of states to cooperate and to maintain peaceful and friendly relations and adhere to the principle of reciprocity (art. 55). By stripping an individual of his or her nationality for the reason of national security and subsequently expelling him or her to another state, the expelling state is exporting a security risk to another country. By expelling convicted or suspected terrorists, states lose effective control over those individuals, which has been recognised to significantly complicate the monitoring and prosecution of terrorists. Although a state depriving a person of nationality may argue that this is necessary for its own security, such a practice goes against the principle of international cooperation in combatting terrorism, reaffirmed, inter alia, by the UN Security Council when it said 'that states should prevent foreign fighters from leaving their state of residence or nationality, and may expose local populations to violations of international human rights and humanitarian law' (UN Security Council, 2014).

And this is not the only point to consider. Citizenship deprivation orders resulting in expulsion to third states are considered as violating the latter's sovereignty and territorial integrity. Under the 1933 Montevideo Convention on the Rights and Duties of States, states have committed to respect the sovereign equality of all states as well as their territorial integrity. These principles were expanded upon in the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of states (1965) and were held to comprehend, amongst others, the right to 'sovereignty, political independence, territorial integrity, national unity and security of all states' (UN General Assembly, 1981).

At the European level, the 2005 Council of Europe (CoE) Convention on the Prevention of Terrorism also includes the obligation for state parties to prevent terrorist offences and, 'if not prevented, to prosecute and ensure that they are punishable by penalties which take into account their grave nature'. State parties should therefore prosecute the alleged terrorist at home, instead of depriving a person of nationality and deporting this person or preventing him or her from re-entering the country.

The European Court of Human Rights (ECtHR)

Despite the fact that the ECtHR has repeatedly held that 'that an arbitrary denial of citizenship *might* in certain circumstances raise an issue under art. 8 of the Convention because of the impact of such a denial on the private life of the individual', one cannot help but notice that, generally, citizenship revocation is not problematic under the European Convention on Human Rights. As shown below, ECtHR case law shows that no citizenship revocation has been objected to under art. 8 so far, except for the Court decision against Russia (*Usmanov v Russia*):

Ramadan v Malta (2016): the revocation resulted in the applicant's statelessness. Nonetheless, the Court established that the Maltese government's decision was admissible. A few principles have been stated: (1) 'the fact that a foreigner has renounced his or her nationality of a state does not mean in principle that another state has the obligation to regularise his or her stay in the country'; and (2) that the burden of proof of statelessness rests upon the applicant rather than the state (Malta), inevitably favouring the defendant state and putting the applicant in a more difficult position. Several of the court justices dissented, writing separate opinions from the majority's decision (Strasbourg Observers, 2016).

K2 v the United Kingdom (2017): the case was the first related to the issue of deprivation of nationality in the context of counter-terrorism and national security policies. A few principles have been restated here by the Court: (1) an out-of-country appeal does not necessarily render a citizenship deprivation order 'arbitrary'; and (2) art. 8 cannot be interpreted so as to impose a positive obligation on states to facilitate the return of every person deprived of citizenship in order to pursue an appeal against that decision. The UK court had rejected K2's claims about not being able to argue his case from abroad, and the Court did not consider itself in a position to call into question that finding.

Ghoumid and Others v France (2020): the Court held that even though the measure had been imposed on the applicants long after their conviction (ten years after the facts and almost seven years after the judgment on appeal), the time which had elapsed was insufficient in itself to render the deprivation arbitrary. In the same vein, in the case of *Johansen v Denmark* (2022), the Court established that it was legitimate for the contracting state (Denmark) to take a firm stand against terrorism, which in itself constituted a grave threat to human rights, and that citizenship revocation could not be said to be disproportionate to the legitimate aim pursued; that is, the protection of the public from the threat of terrorism.

Questions of discrimination between single and dual nationals, on the one hand, and naturalised and birth-right citizens, on the other, remain unsettled in ECtHR case law. Pending cases such as *El Aroud v Belgium* should create new opportunities to rule on this issue in the foreseeable future (Lepoutre, 2020).

The Court of Justice of the European Union (CJEU)

The EU has no competences in the field of nationality law. However, the CJEU has acknowledged the legitimate interests of a state to withdraw fraudulent naturalisations, but identified the EU principle of proportionality as a limit to state power because losing national citizenship leads to loss of EU citizenship.

Janko Rottman v Free State of Bavaria (2010): the CJEU had stated that a citizenship deprivation order needs to examine the effects of that measure in relation to loss of both national and EU citizenship, by performing a proportionality check that scrutinises the consequences for the person concerned and his family members, the gravity of the offence committed, the lapse of time between naturalisation and withdrawal, and the possibility of recovering the original nationality.

M.G. Tjebbes and Others v Dutch Ministry of Foreign Affairs (2019): The CJEU ruled that the obligation upon Member States to respect the principle of proportionality does not raise concerns over art. 7 of the Charter of Fundamental Rights of the European Union (right to respect for private and family life), and art. 24 (child's best interests). Even if the Court's decision does not directly address the issue, it seems reasonable that residence-based loss of nationality between Member States would eventually inhibit freedom of movement and, therefore, be deemed incompatible with EU law.

V - Social and Political Impact: Some reflections

The state's citizenship stripping powers cannot be understood outside a nationality-immigration-security nexus. Terrorism has been credited with starting a process of transformation of the citizenry concept with some social, political and legal implications, by questioning the citizenry credentials of naturalised citizens and of citizens with a foreign background during politically or economically unstable times (Mantu, 2015; Salerno, 2017).

It is worth noticing that from a political point of view, the new citizenship stripping practices – as they are reformulated and repurposed in modern-day Europe – aim at reinforcing a postcolonial model for society based on a tiered system of entitlement to right. Therefore, the progressive erosion of the right to nationality represents an attack based on old colonial policies on individual rights, whereby people with foreign-born parents are considered and treated as second-class citizens.

The conditional nature of a so-conceived post-colonial citizenship is built on the principle that citizenship of Western democracies, such as – but not limited to – the UK is a kind of commodity rather than a matter of right, by birth or otherwise, that governments can take away on political grounds at their discretion and with very limited restraints. Widely manipulated in public debate by some political parties, the same concept has been echoed in the slogan 'UK citizenship is a privilege, not a right', with the direct effect of perpetuating discrimination and stigmatisation.

In the UK case in particular, new citizenship legislation has empowered three tiers of citizenship, in a sort of 'pyramid of the disenfranchised':

- the most secure top-tier citizens, i.e. the 'native' and/or white British-born people who have no other nationality, whose citizenship cannot be taken away in any circumstances;

- the less secure mid-tiered citizens, i.e. born to British dual nationals, who can be deprived of citizenship with no risk of statelessness; and

- the least secure, bottom-tiered citizens, i.e. those naturalised as British citizens who have no other nationality. They can be stripped of their citizenship even if this results in their statelessness, if the SSHD believes on reasonable grounds that the person is able to become a citizen of another state.

It is unquestionable that the deprivation of nationality as a national security measure tends to disproportionately target those of minority or migrant heritage, and is likely to be discriminatory on various grounds including race, ethnicity, religion or national origin. It

has been calculated that out of six million people who are expected to be affected in the UK, an estimated 2.5 million will be Black Britons (40%) and 3 million British Asians (50%), compared to 300,000 (5%) people from a white background. In practice, those most affected by these changes are British Muslims, particularly of South Asian heritage (The New Statesman, 2021, 2022; Institute of Race Relations, 2022).

Citizenship deprivation seems to call the concept of citizenship and nationhood into question, and allows for further discussion about the adverse socio-political (even before legal) effects they have on individuals, local communities and society as a whole (Herzog, 2015). Certainly, citizenship stripping reopens old wounds left by racist former colonial state policies; from the differential treatment of citizens who acquired citizenship through a colony rather than through British ancestry, which led to the 1968 East African Asians scandal, and the quiet withdrawal of British citizenship from former colonial citizens when their countries became independent, which led to the Windrush scandal, through the dilution of the right of citizenship by birth (*jus soli*) in 1981, to current laws which apply the logic of deportation to black and brown citizens (Webber, 2022).

Development of the Right of Abode and the East African Asians and Windrush scandals

The British Nationality Act 1948: the United Kingdom and Colonies gives the status of 'Citizen of the United Kingdom and Colonies' (CUKC), and the right of settlement in the UK, to everyone who was at that time a British subject by virtue of having a close relationship (either through birth or descent through father's line) with the United Kingdom and its remaining colonies.

British Nationality Act 1962: the distinction between the UK and the Colonies was introduced for the first time by the act of 1962. Only the 'Commonwealth citizens' (a term which included CUKCs) who were born in or whose ancestors were from the UK, rather than a colony, or who were the holders of UK passports (as opposed to British passports issued by a colonial authority) had the right of entry to the UK. Those citizens who had no such ties were therefore subject to immigration control. In addition, as many colonies became independent between 1949 and 1983, former British subjects from colonies could generally lose CUKC citizenship if they had acquired, or would acquire, citizenship of former colonies after independence.

The Commonwealth Immigrants Act 1968: CUKCs of Asian descent living in East African dependencies generally retained their citizenship of the UK and Colonies when those territories became independent. They became 'UK passport holders' on independence and were therefore excluded from the scope of the

1962 Act. This led to the passage of the Commonwealth Immigrants Act 1968, which amended the 1962 Act definition of 'CUKCs holding UK passports' to citizens who were born, adopted, registered or naturalised in the UK, or who had such a parent or grandparent.

The Immigration Act 1971: the law introduces the concept of 'patriality and right to abode', by which CUKCs and Commonwealth citizens had the right of abode in the UK only if they, their husband (if female), their parents, or their grandparents were connected directly to the United Kingdom by birth or descent.

British Nationality Act 1981: the application of *jus soli* in British nationality was cancelled.

As a result of such legislation, the UK found itself in the rare position of denying some of its nationals entry into their country of nationality. This was the case in the African Asians scandal in 1968, which saw British Asians of Indian ethnicity expelled from East African countries (primarily Uganda and Kenya), as a result of the 'Africanisation policy', trying to enter the UK in increasing numbers. Although they opted to retain UK citizenship instead of becoming Kenyan citizens on independence, they were deprived of their right to enter their country of nationality (the UK) on racial grounds.

The second scandal in 2018 involved the so-called 'Windrush' generation, namely those who arrived in the UK from Caribbean countries between 1948 and 1973 as a result of Britain's post-war labour shortage. As the Caribbean was, at the time, part of the British Commonwealth, those who arrived were automatically British subjects and free to permanently live and work in the UK, with no duty of submitting any documentation to the authorities. The Joint Council for The Welfare of Immigrants (JCWI) provide the the following summary of the Windrush saga:

> Commonwealth citizens were affected by the government's 'Hostile Environment' legislation - a policy announced in 2012 which tasked the NHS, landlords, banks, employers and many others with enforcing immigration controls. It aimed to make the UK unlivable for undocumented migrants and ultimately push them to leave.
>
> Because many of the Windrush generation arrived as children on their parents' passports, and the Home Office destroyed thousands of landing cards and other records, many lacked the documentation to prove their right to remain in the UK. The Home Office also placed the burden of proof on individuals to prove their residency predated 1973. The Home Office demanded at least one official document from every year they had lived

here. Attempting to find documents from decades ago created a huge, and in many cases, impossible burden on people who had done nothing wrong.

Falsely deemed as 'illegal immigrants' / 'undocumented migrants' they began to lose their access to housing, healthcare, bank accounts and driving licenses. Many were placed in immigration detention, prevented from travelling abroad and threatened with forcible removal, while others were deported to countries they hadn't seen since they were children.

Their harmful and unjust treatment provoked widespread condemnation of government's failings on the matter, with calls being made for radical reform of the Home Office and the UK's immigration policy. In response to these demands, then Home Secretary, Sajid Javid announced in May 2018 that the Home Office would commission a 'Windrush Lessons Learned Review'. (JCWI)

As in the past, the new design of nationality, embedded in the configuration of citizenship (as both legal status and 'cultural belonging'), continues to move along the inclusion/exclusion binary, by applying the logic of deportation and exclusion to Muslim citizens as potential terrorists, but with some differences. Unlike in the past, new citizenship policies are now not only restricted to shared ethnicities, but encompass as well the presumed 'British shared values', positing commitment to such British values as a key weapon in the 'war on terror' (Choudhury, 2017).

While the concept of civic citizenship holds the potential for a more inclusive national identity, and in this sense seems to be more capable of addressing the new 'multicultural' face of contemporary societies, it nevertheless 'constructs a hierarchy in which the formal equality of legal citizenship is hollowed out by the creation of the hierarchy that draws a distinction between the "good" "tolerated" and "failed' citizen" (Choudhury, 2017). Muslims are at best 'Tolerated Citizens', barely tolerated on state territory, and their opposition to terrorism and commitment to British values is not assumed, but something that needs to be evidenced and enacted. Muslims holding unacceptable values, and therefore deemed to be opposed to British values, are considered 'Failed Citizens', whose failure as citizens is severe enough to justify the deprivation of citizenship (Anderson, 2013). Such a shift in the new nationality policies is the necessary passage for designating young (usually male) Muslims as the main target for policy intervention via raising concerns over the issue of radicalisation.

Crucially, the UK government's counter-terrorism policy identifies holding 'extremist' views, defined as 'vocal opposition to core British values', as a key indicator of the risk of radicalisation (HM Government, 2011). In reality, such a muscular liberal approach by the government to countering 'extremism' and preventing radicalisation cannot but lead to the opposite result. The new citizenship stripping policies can only accelerate the radicalisation of new generations by feeding a sense of frustration, persecution and resentment against

being treated as citizens not on a par with others. This becomes evident when comparing with similar cases in British history, where denationalisation and exile as tools of counter-terrorism policy were never used during the conflict in Northern Ireland, but are increasingly being used against British Muslims. This amounts to saying that a 'top-tier citizen', for whatsoever reason, can commit the same heinous crimes as his or her mid- and bottom-tiered peers, but receive a different legal treatment and punishment.

Lastly, the rhetoric of denationalisation does not explain how revocation may contribute to enhancing the security of the general population. On the part of the state, there are two reasons why citizenship deprivation might be presented as a solution for addressing the phenomenon of terrorism. On one hand, it may have a deterrent purpose, since the prospect of losing citizenship might dissuade individuals from engaging in terrorist activities. On the other hand, if they are abroad, revoking their citizenship prevents them from returning to their home country to commit crimes. Yet, evidence suggests that the deterrent effect of citizenship deprivation is very weak: if they remain in their home country, their threat to national security remains the same; if they are abroad, they still may be involved in terrorist activities or travel to other countries and establish contacts with other terrorists. Thus, in reality, deprivation of citizenship is an ineffective measure for protecting national security.

VI - Conclusion

The overhaul of the citizenship deprivation rules started as a global phenomenon after 2000 and can be described as part of a wider process of redesigning the concept of nationality with a view to restricting immigration and responding to concerns about international terrorism. The need to deal with radicalised citizens who pose a threat to national security and 'develop legal avenues to secure the national community' are superimposed upon older debates about who deserves to be a citizen. The legal rules devised to embody this answer focus on dual nationality and naturalisation as markers of foreignness, suggesting the development of 'citizenship hierarchies' (Mantu, 2018).

As widely discussed above, the revocation of individual citizenship is not a practice that is contrary to international law per se. Nevertheless, there must be a convergence of legal standards that states must take into account when trying to deprive of citizenship 'due to the anchoring of nationality issues to human rights' (Mantu, 2018). Despite the symbolic nature of citizenship deprivation powers, the attempt to dilute and circumvent existing human rights standards concerning nationality deserves a more robust engagement from the international community. This is moved from the presumption that:

1. Nationality is to be considered an individual right. It is not 'absolute since its concrete exercise still depends upon each state's willingness, but its importance should not be understated' (Pinto, 2018). Nationality can be seen as 'no less than the right to have rights', and the condition necessary to benefit from the effective protection by the state of a number of other fundamental rights: right to education, right to move, right to property, right to health etc.

2. Even if allowed in some exceptional cases, when issuing deprivation orders, states are always obliged to respect fundamental human rights, i.e. rule of law, right to a fair trial, and the minimum legal procedural standards.

3. Nationality is an 'inherent attribute' of every person and should never be withdrawn as a punishment or reprisal, especially on the grounds of terrorism.

4. Security experts and the international community have repeatedly warned that citizenship stripping measures are counterproductive to the fight against international terrorism.

5. The current normalisation process of denationalisation across the world is instrumental to the operationalisation of a racialised citizenship system that has impacted heavily on local minority communities, putting their very citizenship into question.

6. The unbalancing of the democratic functions of the executive and judiciary, executive impunity and erosion of the rule of law are all essential corollaries to the new form of legal authoritarianism, with executive bodies empowered to act as judge, jury and executioner without adequate safeguards on the use of those powers.

However, state practice shows a quite opposite trend in this regard:

1. States are increasingly introducing wide definitions of what constitutes a terrorist act, thus enlarging the list of behaviours that may lead to loss of nationality.

2. The commission by a citizen of acts totally contrary to state interests constitutes a breach of the bond of loyalty, and justifies in the public eye the decision to deprive the perpetrator of his or her citizenship.

3. States act on the basis of domestic legislation whose terms remain undefined, and their content is left to the discretion of the authority charged with taking deprivation decisions, without meaningful scrutiny by the courts.

4. The prohibition of statelessness should function as a pillar of protection but the existence of divergent legal standards concerning citizenship deprivation on terrorism grounds leading to statelessness (e.g. *UN v ECN*) complicates matters.

5. The new citizenship deprivation orders disproportionately target members of the Muslim and/or minority communities, by stigmatising racialised and marginalised groups as threats to national security and depriving them of their nationality at a disproportionate rate. Minorities and those of migrant heritage are judged by a different yardstick and face harsher consequences for their actions.

As a result of the above, it is recommended that:

1. Deprivation of nationality should be proportionate to the fundamental rights of the person concerned and adequate procedural guarantees should be respected.

2. Statelessness should be avoided within the limits imposed by the law and jurisprudence.

3. Arbitrary deprivation of nationality must be understood as including cases where the person is deprived with a view to making expulsion or deportation possible. No person who has been stripped of his or her citizenship should be expelled to another state.

4. State power to deprive on national security grounds is to be held to account by the judiciary. Judicialisation encourages state authorities to take internationally agreed nationality standards more seriously.

5. Orders of deprivation should be issued only after a conviction for crimes related to terrorism and only with regard to individuals who are physically present in the territory of the state.

6. The status of citizenship, as the grounding principle of state membership, simply ought to be a status which admits of no gradations or rankings.

7. International and European human rights bodies should play a more active role in securing the protection of the human right to nationality, and challenge state practices that deviate from these standards.

Endnotes

[1] Bosnia and Herzegovina, Albania, Austria, Azerbaijan, Belarus, Belgium, Denmark, Estonia, Finland, Germany, Italy, Kazakhstan, Latvia, Liechtenstein, the Netherlands, Norway, Romania and the United Kingdom.

[2] Art. 5: hijacking means of transportation for terrorist attacks; art. 6: creation or organisation of a group to prevent state laws or state institutions from functioning; art. 7: compelling a person to join terrorist groups or organisations

[3] The Principles on Deprivation of Nationality as a National Security Measure, available at https://files.institutesi.org/PRINCIPLES.pdf. The commentary to the Principles on Deprivation of Nationality as a National Security Measure is available at https://files.institutesi.org/Principles_COMMENTARY.pdf

[4] The UDHR is recognised as part of customary international law. See African Court on Human and Peoples' Rights, *Anudo v Tanzania* (2018). The right of every individual to a nationality, including the right to retain and change nationality, has since been enshrined in various international human rights treaties and regional instruments, including: CERD, art. 5(d)(iii); CEDAW, art. 9; CRC, arts. 7 and 8; American Convention on Human Rights, art. 20; ECN, art. 4; Arab Charter on Human Rights, art. 24; Covenant on the Rights of the Child in Islam, art. 7; ASEAN Human Rights Declaration, para. 18; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, art. 24.

[5] UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under art. 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at https://www.refworld.org/docid/5ec5640c4.html. The Guidelines provide authoritative guidance on the interpretation of art. 5-9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 ('Tunis Conclusions') and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2019. See also the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism report on 'The human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria' (2022).

[6] UDHR art. 1-2; ICCPR and ICESCR art. 2; ICCPR art. 26. The prohibition of discrimination and equal protection of the law is also a foundational, guiding principle of the issue-specific international human rights treaties.

[7] Art. 8 of the Draft Articles on the Expulsion of Aliens, adopted by the International Law Commission in 2014, were welcomed by the UN General Assembly in Resolution 69/119 of 10 December 2014 (UN Doc A/RES/69/119). See also SR Human rights and CT, Intervention in the case of *Begum v SSHD* (2020), para. 1

[8] 1961 Convention, Art. 8(4); ICCPR, Art. 14(3).

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