

# **INSTRUMENTALISING CITIZENSHIP**

*IN THE FIGHT AGAINST  
TERRORISM*

**A GLOBAL COMPARATIVE ANALYSIS OF LEGISLATION  
ON DEPRIVATION OF NATIONALITY AS A SECURITY MEASURE**

"

## EVERYONE HAS THE RIGHT TO A NATIONALITY. NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS NATIONALITY"

ARTICLE 15, UNIVERSAL DECLARATION OF HUMAN RIGHTS

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The [Institute on Statelessness and Inclusion](#) (ISI) is an independent non-profit organisation dedicated to promoting inclusive societies by realising and protecting the right to a nationality for all. Established in August 2014, ISI is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI is incorporated in the Netherlands, where it has Public Benefit Organisation (PBO) status. One of ISI's thematic priorities is countering arbitrary deprivation of nationality. This programme, under which this report was developed, is supported by the Joseph Rowntree Charitable Trust, Open Society Foundations and the Sigrid Rausing Trust.

The [Global Citizenship Observatory](#) (GLOBALCIT) is an online observatory and research network committed to fact-based and non-partisan analysis of citizenship laws and electoral rights around the world. GLOBALCIT is based in Florence at the Global Governance Programme of the Robert Schuman Centre, European University Institute. It relies on a large international network of country experts, regional coordinators and collaborators who provide input for user-friendly databases, reports and contribute to scholarly exchange. GLOBALCIT's activities are supported by the Global Governance Programme of the Robert Schuman Centre, European University Institute; the Research Council of the European University Institute; and the British Academy Research Project CITMODES, codirected by the University of Edinburgh and the European University Institute.

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# EXECUTIVE SUMMARY

Recent years have seen a resurgence of states' practices of nationality deprivation as security measure - repackaged for the 21st century as a counter-terrorism instrument. This report offers the first comprehensive global survey of relevant legislative provisions, covering 190 countries - discussing the prevalence and scope of these powers. For the most commonly applied deprivation ground - disloyalty or harm to the interests or security of the country - the report encompasses a longitudinal study of how deprivation powers have evolved since the year 2000, i.e. after the 9/11 terrorist attacks in the United States and during the period marked by the rise and fall of ISIS. For this deprivation ground, the report also discusses the relevant authority to take

deprivation decisions, which categories of citizens are targeted and whether citizenship stripping can result in statelessness.

While under international law, "it is for each State to determine under its own law who are its nationals", international human rights law provides for the right to a nationality and the right not to be arbitrarily deprived of their nationality. Given the substantial discretionary powers of states' authorities under citizenship stripping based on security concerns, there are serious concerns that increased deprivation practices may violate relevant international legal standards. These concerns highlight the need to study the prevalence and scope of such deprivation powers.

The report identifies four deprivation grounds as relating to international security:  
**disloyalty; military service to a foreign country; other service to a foreign country; other offences.**

A look at the prevalence and scope of these deprivation grounds in contemporary nationality laws around the world reveals:

79% of the 190 countries studied have at least one of these deprivation grounds on their books; most countries provide for two or three of these different deprivation grounds.

Disloyalty is the most common type of ground and is found in 2/3 of countries; the prevalence of the other three categories is much lower, ranging from 37 to 41%.

Deprivation on the grounds of **fraudulent acquisition** is sometimes also used to target populations that have been identified through a securitised lens. Over 80% of countries globally allow deprivation of nationality based on this ground.

Security-related criteria are also present among the naturalisation requirements in the majority of countries.

Looking more closely at the most prevalent security-based deprivation grounds, based on the broad **concept of 'disloyalty'**, the report finds that:

On 1 January 2022, **134 countries** had deprivation grounds on their books that relate to disloyalty/treason. This means a minority of around 30% of countries do not have such powers.

The **scope of deprivation powers relating to disloyalty is often very broad**, leaving much room for discretion and raising concerns around legal certainty - concepts such as 'conducive to the public good' or 'vital interests of the state' are not further defined in the law.

Countries with this form of securitised citizenship stripping **almost universally provide for withdrawal of nationality by decision (i.e. non-automatic)**. This is important because it allows weighing relevant factors in individual cases in order to avoid arbitrariness.

In **2/3 of countries**, deprivation provisions are **only applicable to certain categories of citizens**, most commonly citizens by naturalisation. While this approach limits the scope of powers, it is problematic because it can lead to discrimination against minorities.

**Deprivation powers most commonly sit with the executive branch of government:** in a third of countries, the authority to take deprivation decisions rests with a minister and in around half it is within the competence of the head of state, head of government or another government body. Just 14 countries provide for deprivation of citizenship to be ordered directly by a Court.

In spite of clear international norms prescribing the avoidance of statelessness, **3/4 of countries** that provide for loss of citizenship due to disloyalty **have no safeguards in place to ensure that this does not result in statelessness**.

Based on a longitudinal study of how these **deprivation powers evolved between 2000 and 2022**, the report concludes that:

There is a clear trend of increased prevalence and greater applicability of nationality deprivation based on broadly defined 'disloyalty' security concerns. **37 countries added new grounds for nationality deprivation** that relate to national security or counter-terrorism – equating to 1 in 5 countries studied. Half of these did not have any such powers on the books in 2000.

**In half of the countries introducing new deprivation powers these are explicitly linked to terrorism** – providing for the possibility of stripping a person of citizenship following conviction for a terrorist act that is sanctioned under the state's criminal law or for nationality deprivation if a citizen joins a terrorist group even without a conviction.

**Europe** is the epicentre of the expansion of security-based deprivation powers (**18 countries**), followed by the **MENA region (8 countries)**. There is mixed picture in **Africa, Asia Pacific** and the **Americas** – some states increased deprivation powers, while others limited them.

**15 countries repealed or constrained existing powers** over the same period – an important but smaller counter-trend as compared to the number that expanded their powers. In Canada, nationality deprivation grounds were repealed just three years after their introduction.

Readily available information on **the use, in practice, of security-based nationality deprivation** across states reveals some interesting details about the implementation of these powers:

Lack of reporting on data makes it hard to gauge how much the measure has actually been used. The few **available statistics suggest that the numbers affected are low**. Cases are in the tens, or less, with the exception of Bahrain (434 cases) and the UK (212 cases).

**Some states – such as in Central Asia** – that introduced nationality deprivation to address the perceived threat of 'foreign fighters' returning from Syria and Iraq, **do not appear to have used these powers**, instead focusing on repatriation, rehabilitation and de-radicalisation.

Concrete, individual cases expose a **variety of complex outcomes following nationality deprivation**, including: expulsion back to the country of former nationality; limbo in the country of former nationality due to obstacles to deportation; and burdening a third country, such as Turkey, because there is nowhere to send the denationalised person to. Nationality deprivation is not an easy 'fix' to the complex challenge of combatting international terrorism.

International law protects the right to a nationality, prescribes the avoidance of statelessness and prohibits arbitrary or discriminatory deprivation of nationality, significantly constraining the freedom of states to instrumentalise the loss of nationality. The report shows that when evolving state policy and practice is held up against these international norms – synthesised in the Principles on Deprivation of Nationality as a National Security Measure – a variety of problems arise, such as a high risk of violation of the principle of non-discrimination. A number of UN mandate holders and human rights treaty bodies have engaged with this issue, expressing concern about certain facets of the expansion of state powers and their application. However, there is significant room for improvement in the measure of attention devoted by human rights monitoring bodies to nationality deprivation, given the troubling global picture revealed in this report.

This global study highlights major concerns that come with instrumentalising citizenship in the fight against terrorism. Doing

so a) undermines the security of the most fundamental legal status one can obtain – a nationality, which is also protected as a human right; b) is often implemented without sufficient procedural protections or safeguards against statelessness; c) in practice leads to arbitrariness, second-class citizenship and discrimination against minorities; d) threatens the international legal order and relations between states, by passing the problem of dealing with a possible security risk to another state instead of each state taking responsibility for its own citizens; e) risks normalising denationalisation as a legitimate power for states to hold over their citizens, with a knock-on impact for efforts internationally to protect right to nationality and prevent statelessness. In light of this and of security experts' warnings that this measure is counterproductive to the fight against international terrorism, it is imperative to call a moratorium on the use of citizenship stripping as a national security measure and for states to urgently revisit whether it is appropriate to keep these powers on their books.

# 1

## INTRODUCTION

*“Historically, citizenship has rarely been considered an unconditional entitlement. Banishment was practiced quite widely across Europe until the 1800s, and throughout the 20th century most Western states had laws enabling loss of citizenship for treason or its equivalent. The laws on deprivation that have emerged over the last two decades often modify and update old laws rather than create entirely new powers. That said, denationalisation as a practical instrument of state virtually disappeared in the West after 1945, not least because citizenship stripping was de-legitimised by association with totalitarian regimes. In practice if not in law, then, citizenship became widely understood as unconditional status and the logic of citizenship in the West was overwhelmingly one of rights rather than obligations”.<sup>1</sup>*

In recent years, a new chapter has been added to the story that is captured by this quote, as nationality deprivation enjoyed a remarkable resurgence of interest – repackaged for the 21st century as a counter-terrorism instrument. The media frenzy around a handful of citizenship stripping cases, such as that of Shamima Begum, Jack Letts and Suhayra Aden, has further fuelled heated political debates about the use of stripping citizenship. Proponents draw on a powerful rhetoric of symbolism and belonging to make their case that citizens who have aligned themselves with international terrorist groups can no longer be part of the political community. As deprivation powers in the United Kingdom were expanded and an increasing number of citizens were targeted for denationalisation, the Home Office remarked that “citizenship is a privilege, not a right”.<sup>2</sup>

Critics challenge the legitimacy of this use of government power and point to a ream of contemporary international law obligations that should constrain its use; while also questioning the wisdom of ‘dumping’ these unwanted citizens in volatile and unmonitorable places like North Syria, expressing concern at the longer-term security implications of this strategy. Successive UN Security Council Resolutions call for the cooperation of states in “the fight against terrorism”<sup>3</sup> and “efforts to address the threat posed by foreign terrorist fighters”.<sup>4</sup> Stripping people of their nationality for the stated reason of national security and subsequently expelling them to another state is contrary to this duty of cooperation. Moreover, both the UN General Assembly and the UN Security Council have noted on various occasions that states are under an obligation to bring terrorists to justice under the principle to “extradite or prosecute” (*aut dedere aut judicare*).<sup>5</sup> Whenever states, by means of depriving a person of their nationality, expel known terrorists from their territory, they fail to investigate and punish terrorist action. By expelling (suspected) terrorists, states also lose effective control over those individuals, which has been recognised to significantly complicate the monitoring and prosecution of terrorists. Such exporting of risks is at odds with durable, global security,<sup>6</sup> while also violating the sovereignty and territorial integrity of the other state.<sup>7</sup>

The use of deprivation of nationality on the pretext that it serves national security aims has garnered significant attention and much has been written about it, but just how widely has this measure been adopted? This report offers the **first comprehensive global survey** of relevant legislative provisions, covering 190 countries – discussing the prevalence and scope of these powers (Section 2), as well as questions such as who has the authority to take deprivation decisions, which citizens can be targeted by for denationalisation and can it result in statelessness (Section 3).

### THE PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

Published in March 2020 and enjoying the endorsement of numerous leading international experts, these Principles provide an authoritative overview of existing international law obligations and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure.

The Principles set out the basic rule that “states shall not deprive persons of nationality for the purpose of safeguarding national security”. Any exercise of an exception to this rule, must be “interpreted and applied narrowly, and 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”, and is further limited by other well-established standards of international law.

Further details in  
Section 5 of this report.

The report also encompasses a **longitudinal study of how deprivation powers have evolved since the year 2000** – i.e. after the 9/11 terrorist attacks in the United States and during the period marked by the rise and fall of ISIS (Section 4). To achieve this, the laws in force on 1 January 2000 are compared to those on the books on 1 January 2022, with a view to identifying where grounds for deprivation have been introduced and repealed, expanded and narrowed. A brief discussion of the use of nationality deprivation in practice is included in this section of the report, offering some insights into available data as well as a number of individual cases that help to reveal the variety of “outcomes” that follow after denationalisation.

The report also looks at how we should understand the evolving use of citizenship stripping in light of **contemporary international law standards** (Section 5). International law protects the

right to nationality, prescribes the avoidance of statelessness and prohibits arbitrary or discriminatory deprivation of nationality – significantly constraining the freedom of states to instrumentalise the loss of nationality. International counter-terrorism efforts meanwhile focus on the investigation, prosecution, rehabilitation and reintegration of individuals involved in terrorist activities, meaning that states are expected to take responsibility for their own citizens rather than exporting the security risk to a third country. The patterns and trends identified in the analysis

of deprivation powers and their evolution are assessed against these international norms to identify key issues and explore the extent to which these have garnered the attention of relevant human rights bodies.

Selected case studies are included in each section to illustrate particular issues that emerge from the analysis. The report concludes with a summary of the key issues of concern that this global survey has uncovered with regards to the instrumentalisation of citizenship stripping in the fight against terrorism.

## METHODOLOGY NOTE

This report makes use of the GLOBALCIT Citizenship Law Dataset. This dataset includes information on the different ways in which nationality can be acquired and lost in 190 states, for the year 2020. It is organised around a comprehensive typology of 26 common grounds of acquisition of nationality and 15 common grounds of loss of nationality.<sup>8</sup>

**Section 2** of the report draws directly on the information from this Dataset, which is publicly accessible and can be browsed online in interactive databases or explored by downloading the datafiles, available at: <https://globalcit.eu/modes-loss-citizenship/>. A list of all 190 countries covered by the Dataset, by world region, is included in [Annex 1](#).

**Section 3** of the report takes a closer look at legislation that provides for loss of nationality due to disloyalty. For this analysis, the data with regard to the loss of nationality on grounds of disloyalty in the GLOBALCIT Citizenship Law Dataset for the year of 2020 (mode of loss L07), was updated to 1 January 2022. For the 134 countries with nationality deprivation on grounds of disloyalty, as of 1 January 2022, this information was also supplemented with additional data on statelessness protection mechanisms and the relevant deprivation authority. [Annex 2](#) to this report provides extracts from the relevant articles of domestic nationality law, in force on 1 January 2022, and is available for download here.

**Section 4** of the report focuses in on what legislative changes have occurred specifically relating to disloyalty as a ground for deprivation of nationality since the year 2000. For this analysis, the main legal changes since 2000 in order to analyse the trend in citizenship stripping were coded, by comparing the legislation in force on 1 January 2000 and 1 January 2022. [Annex 3](#) to this report provides an overview of the relevant changes, identifying the year of change and the type of change, and is available for download here.

**Section 5** of the report explores the recommendations issued within the UN Treaty Body system on nationality deprivation in relation to national security. The analysis covers the 37 countries that were identified as having introduced or expanded citizenship stripping powers between 2000 and 2022, looking at any recommendations issued to these states after the law was changed. It draws data from, among others, the Institute on Statelessness and Inclusion Database on Statelessness and Human Rights, available at: <https://database.institutesi.org/>. [Annex 4](#) to this report provides extracts from relevant UN Treaty Body recommendations and is available for download here.

*Please note: The analysis of nationality deprivation powers in this report is based on the primary citizenship legislation in force in the state. It does not necessarily account for all secondary regulations or instructions that may influence the interpretation and application of such powers. Where information is available on state practice, the source is clearly referenced.*

## ENDNOTES

<sup>1</sup> M. Gibney, 'Deprivation of citizenship through a political lens' in *The World's Stateless: Deprivation of nationality*, (Institute on Statelessness and Inclusion 2020), p. 208.

<sup>2</sup> Citation reported in *The Guardian*, Theresa May strips citizenship from 20 Britons fighting in Syria, 23 December 2013, available at: <https://www.theguardian.com/politics/2013/dec/23/theresa-may-strips-citizenship-britons-syria>.

<sup>3</sup> Including UN Security Council Resolutions 1566 (8 October 2004) UN Doc S/RES/1566 (2004); 1624 (14 September 2005) UN Doc S/RES/1624 (2005).

<sup>4</sup> Including UN Security Council Resolutions 2178 (24 September 2014) UN Doc S/RES/2178 (2014); 2396 (21 December 2017) UN Doc S/RES/2396 (2017).

<sup>5</sup> E.g. UN Security Council Resolutions 1456 (20 January 2003) UN Doc S/RES/1456 (2003), 1566 (8 October 2004) UN Doc S/RES/1566 (2004), 1624 (14 September 2005) UN Doc S/RES/1624 (2005), 2178 (24 September 2014) UN Doc S/RES/2178 (2014). As well as: General Assembly Resolutions 72/180 (10 December 2017), UN Doc A/RES/72/180 and 72/284 (26 June 2018) UN Doc A/RES/72/284. This is not an exhaustive list.

<sup>6</sup> cf CoE Committee on Legal Affairs and Human Rights (AS/Jur), 'Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach? Report', AS/Jur (2018) 49, para 49.

<sup>7</sup> See, for instance, Third Report on the Situation of Human Rights in Chile, IACHR OEA/Ser/L/V/II.40, Doc 10, 11 February 1977, at 80-1. States have a duty to (re) admit their nationals, which is a duty it does not owe to the individual concerned, but rather is "an international duty which it owes to its fellow-states". Sir J. F. Williams, 'Denationalization' (1927), 8 *British Yearbook of International Law* 45, 55-6 (emphasis supplied) as cited in G. Goodwin-Gill, 'Deprivation of Citizenship, Statelessness, and International Law' (5 May 2014), available at: <https://www.kaldorcentre.unsw.edu.au/sites/default/files/gsgg%204-deprivationcitizenship-moreauthority.pdf>, p. 4.

<sup>8</sup> M. Vink, L. van der Baaren, R. Bauböck, I. Honohan and B. Manby (2021). GLOBALCIT Citizenship Law Dataset, v1.0. Global Citizenship Observatory, available at <https://hdl.handle.net/1814/73190>. See specifically information from modes of loss of citizenship L07, L03, L04 and L08. The data from the GLOBALCIT Citizenship Law Dataset – Modes of Loss of Citizenship can be explored at: <https://globalcit.eu/modes-loss-citizenship/>. For a discussion of the comparative typology of the Dataset, see L. van der Baaren and M. Vink, 'Modes of acquisition and loss of citizenship around the world: comparative typology and main patterns in 2020' (2021), GLOBALCIT Working Paper, EUI RSC, 2021/90, available at: <https://hdl.handle.net/1814/73267>.

# 2

## NATIONALITY DEPRIVATION POWERS: GLOBAL PATTERNS

The loss of nationality on grounds related to national security has traditionally been considered a common – although by no means universally accepted – practice. For instance, in 1759, a Portuguese court ruled that 11 persons were denaturalised for plotting against the life of King Joseph I.<sup>1</sup> A study conducted for the International Law Commission in 1953 identified a wide variety of provisions in domestic laws of that time, using language such as “acts hostile to the state or harming its prestige, interests or security”, “joining the army of a foreign state (at war with the country whose nationality is held)” and “commission of specified crimes, including treason, sedition and crimes against the security of the state”.<sup>2</sup>

**DEPRIVATION OF NATIONALITY** refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual, including where a state precludes a person or group from obtaining or retaining a nationality, where nationality is automatically lost by operation of the law, and where acts taken by administrative authorities result in a person being deprived of a nationality.

extensive typology of 26 common grounds of acquisition of nationality and 15 common grounds of loss of nationality.<sup>3</sup>

Four grounds of loss catalogued in the GLOBALCIT Citizenship Law Dataset have been identified as relating to national security:

- **DISLOYALTY:** involuntary loss of citizenship by a person due to behaviour or offence that is based on a concept of disloyalty or harm to the interests or security of the country of which he/she is a citizen, including offences such as treason.
- **MILITARY SERVICE TO A FOREIGN COUNTRY:** involuntary loss of citizenship by a person who renders military service to a foreign country or armed group.
- **OTHER SERVICE TO A FOREIGN COUNTRY:** involuntary loss of citizenship by a person who renders nonmilitary services to a foreign country, except for those performing such service with permission or on behalf of their country of citizenship.
- **OTHER OFFENCES:** involuntary loss of citizenship by a person who commits other ordinary criminal offences.

As discussed in the following paragraphs, the prevalence of deprivation powers relating to national security differs considerably in different parts of the world. The details of the provisions themselves also vary widely in content and scope among countries.

### 2.1 HOW PREVALENT IS SECURITY-BASED DEPRIVATION OF NATIONALITY?

In the vast majority of countries (79%), nationals can be deprived of their nationality on at least one security-related deprivation ground (Figure 2.1.a).<sup>4</sup> This means that such security-related grounds for loss are entirely absent in only one in five countries. Typically, in countries with such provisions, nationality can be deprived based on two or three out of four deprivation grounds. In only a minority of 19 countries (10% of all countries), all four security-related grounds for loss of nationality are present.

There is, however, substantial regional variation in the prevalence and number of security-related nationality deprivation grounds (Figure 2.1.b). Relatively large shares of countries maintain no, or only one, of these deprivation grounds in Europe (55%), the Americas (43%) and Asia and the Pacific (41%). In contrast, two or more of these deprivation grounds can be found in domestic nationality laws in most countries in Africa (78%) and the MENA (78%).

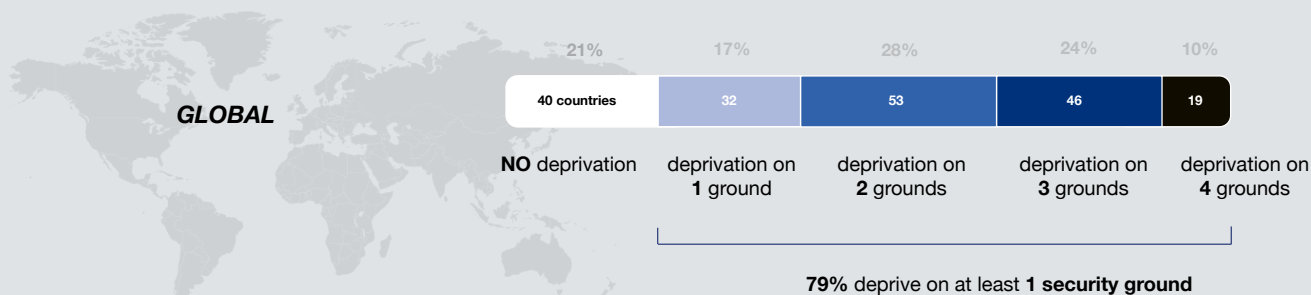
### 2.2 WHAT IS THE SCOPE OF SECURITY-RELATED DEPRIVATION GROUNDS?

The most common security-related ground for loss of nationality around the world that was in force on 1 January 2020 is ‘disloyalty’, as shown by Figure 2.2. Whereas two thirds of the 190 countries covered by the analysis provide for deprivation of nationality on grounds of disloyalty or treason, the other three modes studied were each present in less than half of these countries. Their prevalence ranges from 37% (service in foreign army) to 41% (other offences).

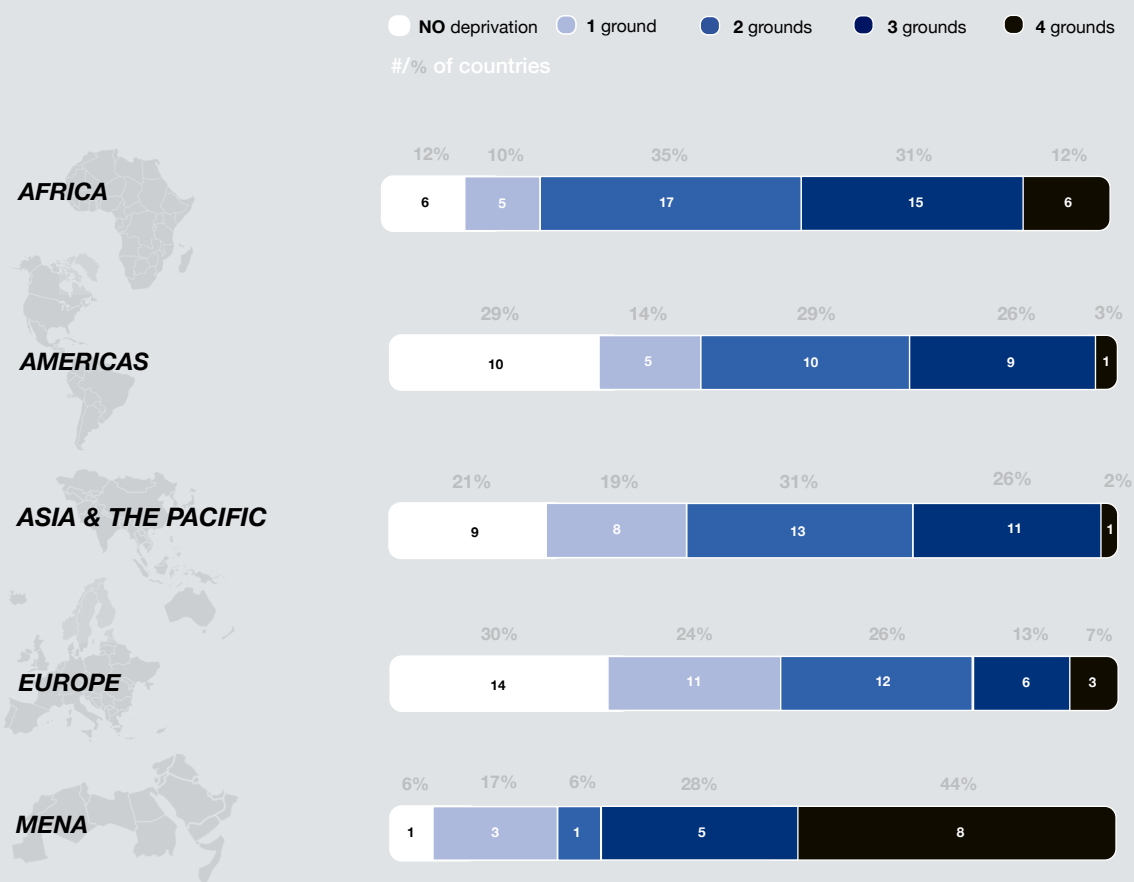
Strong differences can again be found regarding the regional prevalence of specific security-related grounds for loss of nationality. While loss of nationality due to disloyalty is possible in all but one state in the MENA region, only approximately 60% of the countries in the Americas have such a provision. Loss for other offences is possible in a majority of African states and states in the MENA region, but only in a minority of states in the Americas, Asia and the Pacific, and Europe. In the European region, only approximately 15% of the states have such a provision. Loss of nationality for service in a foreign army is exceedingly rare in the Americas, but is not uncommon in other regions of the world, where the prevalence ranges from approximately 30% to 60%. The picture regarding loss for other services to a foreign country is altogether different, which is rare in Europe but present in a majority of states in the MENA region.



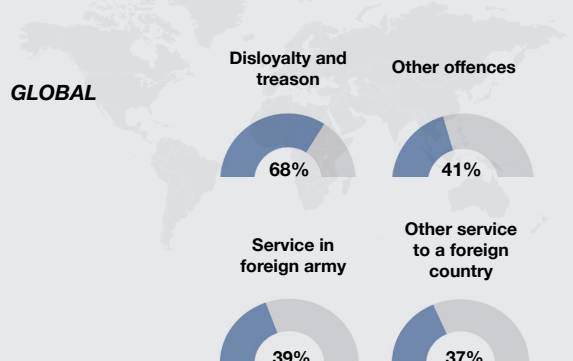
**FIG 2.1. a** SECURITY-BASED DEPRIVATION OF NATIONALITY, GLOBAL, 2020



**FIG 2.1. b** SECURITY-BASED DEPRIVATION OF NATIONALITY, BY WORLD REGION, 2020



**FIG 2.2**  
TYPE OF SECURITY-BASED DEPRIVATION OF NATIONALITY, % OF COUNTRIES, 2020



## DISLOYALTY

Loss of nationality due to disloyalty refers to any behaviour or offence that is based on a concept of disloyalty or harm to the interests or security of the state – a category that may include acts of treason or terrorism against the state. For example, in Lithuania, people who acquired nationality on certain grounds can be deprived of nationality if they (attempted to) commit or prepared certain international crimes such as aggression, genocide, crimes against humanity, war crimes, or criminal acts against the state of Lithuania. Or in Saudi Arabia, nationality can be withdrawn from a “*naturalized individual [who] performed or contributed in any operation that disturbs the public security inside the Kingdom*”. The scope and content of provisions that allow for the loss of nationality due to disloyalty is discussed in detail in **Section 3**.

On 1 January 2020, 129 countries had such a provision in place. By 1 January 2022 this number had climbed to 134 (leaving just 56 states without such a power), following an upward trend since

the year 2000. The evolution of these powers is illustrated by the case study of the United Kingdom below and discussed further in **Section 4** of the report.

## THE UNITED KINGDOM: A GLOBAL LEADER IN THE RACE TO THE BOTTOM

There has been a remarkable increase in the scope and use of citizenship deprivation powers in the UK in the 21st century. The powers were used for the first time in 33 years in 2006. Since then, it is estimated that 175 citizens have been stripped of their nationality on national security grounds.

Legislative developments allowing for easier deprivation of citizenship have often been implemented in the aftermath of events such as terror attacks (e.g. 9/11 and the 2005 London bombing) or following highly publicised cases of individuals linked to terrorism (such as Abu Hamza and Al-Jedda). This suggests a symbolic purpose to this legislation rather than a basis in purely security concerns.<sup>7</sup> The cumulative effect of successive amendments has been to expand powers, increase the scope of who can be targeted, bestow more discretion upon the Home Secretary in the use of nationality deprivation, weaken judicial oversight and erode procedural protections.

In 2002, following 9/11<sup>8</sup> and the race riots,<sup>9</sup> a white paper sought to “develop a stronger understanding of what [British] citizenship really means”,<sup>10</sup> arguing that the threat of citizenship deprivation would “make it clear that the UK is not prepared to welcome [people involved in terrorism or war crimes] as its citizens”.<sup>11</sup> Following this, the law was amended to increase the discretion of the Home Secretary through allowing deprivation if the person had done anything “seriously prejudicial to the vital interests of the UK or a British overseas territory”.<sup>12</sup> Furthermore, powers were extended to apply to UK citizens by birth, but the Home Secretary could not make a deprivation order which would render a person stateless.

In 2004, the law was further amended to allow for deprivation to take immediate effect, removing the suspensive right of appeal.<sup>13</sup> 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 due a delay in UK legal proceedings, and subsequent stripping of his Egyptian nationality, it was illegal to also strip him of his British nationality because that would render him stateless.<sup>14</sup>

Following the 2005 London attacks,<sup>15</sup> there was increasing pressure in the media to deal with ‘terrorist citizens’ and the threshold was further lowered, allowing a person to be deprived of their citizenship if this was “conducive to the public good”.<sup>16</sup>

In 2014, as a direct response to the case of Al-Jedda,<sup>17</sup> the law was amended again, allowing the Home Secretary to make an order even where it would render a naturalised British citizen stateless if they acted in a manner “seriously prejudicial to the vital interests of the UK”, but only if there are “reasonable grounds” to believe that the person can become a national of another country.<sup>18</sup> The purpose of the amendment was to address situations in which the Home Secretary considers it in the “public good to deprive” an individual of their citizenship (i.e. “the most important part of the test” is satisfied), but had been prevented from doing so on the grounds of statelessness - as was the case with Al-Jedda.

The 2021 Nationality and Borders Bill<sup>19</sup> seeks to further diminish procedural protection by allowing the Home Secretary to remove

### TIMELINE OF REFORMS IN THE UK

- **1948 and 1964** – Nationality deprivation grounds successively narrowed.
- **1973** – Last known use of deprivation powers in the 20th century.
- **1981** – Basis of the current nationality act. Nationality can be deprived 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** – Grounds of ‘disloyalty’ replaced with deprivation where a citizen has acted in a manner “seriously prejudicial to vital interests of the UK”. Deprivation extended to UK citizens by birth, but deprivation cannot lead to statelessness.
- **2004** – Suspensive right of appeal removed, so deprivation has immediate effect.
- **2006** – Threshold for deprivation lowered from ‘seriously prejudicial to vital interests of the UK’ to ‘conducive to the public good’.
- **2014** – Power introduced to deprive naturalised British citizens even if they would be made stateless in the case of acts “seriously prejudicial to the vital interests of the UK”. The Home Secretary 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** – Proposed removal of the requirement to give notice of deprivation (‘clause 9’ of Nationality & Borders Bill).

citizenship without notifying the citizen targeted. This is also a direct response to a case in which a deprivation decision was successfully challenged: in D4, the Supreme Court ruled that it was unlawful to deprive a person of their citizenship without telling them (in the case in question, the notice had literally been put in a drawer).

The evolution of the law, mostly in direct response to cases that have not gone the Government's way, demonstrates that the UK is seeking to entrench the position that "citizenship is a privilege, not a right",<sup>20</sup> and to respond to cases where deprivation was not possible due to safeguards in the law. Critics warn that "parliament has given the government unprecedented power to act as judge, jury and executioner without adequate safeguards on the use of that power".<sup>21</sup> If passed, the 2021 Bill would further erode the rule of law and procedural standards, accelerating the UK's race to the bottom.<sup>22</sup>

## MILITARY SERVICE TO A FOREIGN COUNTRY

The second security-related ground of loss is the *rendering of military service to a foreign country*, which can be found in the legislation of 70 of the 190 countries studied (meaning that a majority of 120 states provide for no such ground for loss). In 53 countries of these 70 countries, the loss provision is generally applicable to all citizens, while in a minority of 17 countries, it is restricted to certain groups of nationals – usually nationals by naturalisation.

Provisions of this nature generally refer to formally entering a foreign military and/or taking up a position in a foreign army, although the boundaries may be subject to the interpretation of the authorities. The extent to which military service can result in loss of nationality varies. For example, in a U.S. administrative decision, it was determined that engaging in unarmed weekly military marching was insufficient to result in loss of United States nationality.<sup>23</sup> On the contrary, commentaries on the German loss provision consider that affiliation to a foreign army is the determining factor in this regard and that the function of the person concerned is irrelevant, even if the person only provides minor (non-combatant) services.

The provisions usually only cover service in the official armed forces of another state. This means that serving in a non-state armed group generally falls outside the scope of these provisions, although the exact interpretation differs from state to state. The Netherlands, for example, interprets the provision in a restrictive manner and excludes all services to non-army or non-state

entities (e.g. guerrilla groups or paramilitary groups).<sup>24</sup> In contrast, Germany uses a slightly broader interpretation and also covers services to a paramilitary state organisation.<sup>25</sup> The provisions are not necessarily restricted to service to the armed forces of a *recognised* state; in the United States, for example, service to the army of an unrecognised state that engages in hostilities against the United States can also result in the loss of nationality.<sup>26</sup>

In a majority of the countries, the loss of nationality is subject to additional conditions or safeguards. In 19 countries,<sup>27</sup> nationality can only be lost on this ground if a person has not obtained prior permission to enter a foreign military service. In 14 countries,<sup>28</sup> nationals only lose their nationality on this ground if they have been ordered to leave foreign military service. Only if the person retains the position after a certain timeframe, can nationality be lost. For example, Chadian nationals by naturalisation can lose nationality if they retain a position in a foreign army for more than six months after they were ordered to resign.<sup>29</sup> In nine countries,<sup>30</sup> the provision can only be applied to a person who provides military service to an *enemy* state. In most of these countries, this implies that the other state should be involved in hostilities or warfare against the country. Some states use a lower bar, such as Romania, where the law refers to severed diplomatic relations. In 14 countries,<sup>31</sup> the provision only covers *voluntary* military service. This implies that persons who are obliged by law to perform military service in a foreign country (e.g. dual citizens) will not lose their nationality on this ground.

## UKRAINE:

### EUROPE CONFRONTS A NEW 'FOREIGN FIGHTER' PHENOMENON

On 7 March 2022, Ukraine announced that over 20,000 foreign nationals from 52 countries had expressed their desire to join the Ukrainian armed forces since the country was invaded by Russian military forces two weeks earlier.<sup>32</sup> They responded to a call of the Ukrainian president Volodymyr Zelenskiy for foreigners to join the Ukrainian army's international legion.<sup>33</sup> In addition to that, it is likely that numerous Ukrainian dual nationals have joined the Ukrainian military. It is perhaps telling that when making this announcement, Ukraine refused to specify the countries of origin of the combatants, as the issue of foreign fighters is evidently a controversial one.

First of all, in some states it is considered an offense for a citizen to join a foreign army. The UK foreign secretary Lizz Truss was criticised for saying that she "absolutely" supported Britons joining the Ukrainian army, even though joining a foreign army not engaged in hostilities against the United Kingdom is a criminal offense under the Foreign Enlistment Act.<sup>34</sup> Secondly, as demonstrated in this report, joining a foreign army can put one's nationality at risk. This poses a problem for countries that have taken a strict stance on the issue of foreign fighters in recent years but now voice support for Ukraine. In some countries (e.g. the Netherlands), nationality is only lost on this ground if a national joins the army of an 'enemy state', which could exempt people who join the Ukrainian ranks. If there no such clause, the problem is more difficult to resolve. For example, German-Ukrainian dual nationals who voluntarily joined the Ukrainian army risk losing their German nationality automatically. Hence, it has been reported that the German Federal Ministry of Defense is "examining a solution" for Ukrainian-German combatants.<sup>35</sup> Other countries have taken stronger measures. On 28 February 2022, the Latvian parliament adopted an amendment that exempted citizens who joined the Ukrainian army from Art. 24(2) of the Latvian Law on Citizenship, which provides for the loss of Latvian citizenship upon joining the armed forces of a foreign state without prior permission.<sup>36</sup>

## OTHER (NON-MILITARY) SERVICE TO A FOREIGN COUNTRY

Nationality can also be lost in response to *other (non-military) service to a foreign country* – a ground present in the legislation of 75 countries (while 115 countries do not have such a provision). In 45 of the states where this power exists, the loss provision is generally applicable, while in 30 countries, it is restricted to certain groups of nationals – again, usually nationals by naturalisation.

These provisions traditionally only cover those who formally take up a position in another state's civil service, state agencies, and/or certain international organisations. This may still give states considerable leeway, as the explanatory memorandum to the Austrian loss provision states that taking up a governmental position in the private sector (e.g. in a privatised government agency) can also result in the loss of nationality.<sup>37</sup> Counterintuitively, while it is required that the person acts in a manner that substantially damages the interests and reputation of Austria, these acts do not have to be connected to the services that the person provides to the other state.<sup>38</sup> The provisions can also be much broader in scope and may cover the provision of services without taking up any official position. For example, nationality of the United Arab Emirates can be lost if a person has "*acted for the benefit*" of a hostile nation.<sup>39</sup> Just as for military service, the provisions are not necessarily limited to recognised states and may also cover services provided to unrecognised states.

Further conditions commonly apply to this ground of loss. In 21 countries,<sup>40</sup> the provisions cover services provided to an *enemy* state or a state with which the country is at war. For example, nationals of Mali can lose their nationality on this ground if they hold a position in a foreign service of a state that conducts hostilities against Mali.<sup>41</sup> In six countries,<sup>42</sup> nationality can only be lost on this ground if the service constitutes a threat to the country. In Algeria, for example, the service must either be incompatible with the person's status as an Algerian national or damaging to the Algerian State.<sup>43</sup> In 18 countries, nationality can only be lost on this ground if a person continues to provide services to a foreign country after having been summoned to halt these services. In six countries,<sup>44</sup> a person can avoid the loss of nationality by obtaining prior permission for providing services to a foreign state.

It is important to note that these provisions are not always security related. First of all, some countries also provide for the loss of nationality for services to a foreign state that do not constitute a security threat. For example, Azerbaijani nationality can be lost if a person voluntarily serves in the state or municipal bodies of a foreign country.<sup>45</sup> In other countries, such as Papua-New-Guinea, taking up an elective office in a foreign state is sufficient to lead to the loss of nationality. Such loss provisions are likely based on principled objections against divided allegiance rather than security concerns.

## OTHER OFFENCES

The fourth security-related ground for loss of nationality is other offences, generally encompassing certain specified offences that do not amount to disloyalty or harm to the interests or security of the state, or offences that are punished with a sentence that surpasses a certain minimum threshold. For example, naturalised nationals of Madagascar can be deprived of nationality if they have been convicted in Madagascar or elsewhere for a crime under Madagascan law and sentenced to imprisonment for a duration of at least five years.<sup>46</sup>

The majority of countries do not provide for loss of nationality due to other offences. A total of 112 have no such provision, versus just 78 countries that do. In almost all cases (73 out of

78 countries), the provision is restricted to certain groups of nationals – usually nationals by naturalisation. Only five countries have a loss provision that is generally applicable to all citizens in relation to other offences.

This ground for loss of nationality is very broad in nature, and the provisions therefore vary greatly. In all countries, the provisions contain certain restrictions; there is no country where *any* offence can result in the loss of nationality. In approximately two-thirds of the countries, a minimum sentence applies, meaning that nationality can only be lost if a person is convicted to a prison sentence of a certain duration. In 21 of these countries, a minimum sentence of 12 months imprisonment applies, while in five countries, a minimum sentence of either two or three years imprisonment is required. Even though these minimum thresholds are relatively low, in all except three of these cases, the loss of nationality can only occur if the person has been convicted for such an offence within a certain time limit, commonly a period of five years after the acquisition of nationality. In 18 countries, a higher minimum sentence of five years imprisonment applies. In these cases, only a minority of five countries also apply a time limit. Only one country, namely Vanuatu, applies a higher minimum sentence, namely a prison sentence of at least 10 years (without a limitation in time). In approximately one-third of the countries, nationality can only be lost for certain specified offences. These specifications are usually broad in scope, stating for example that it must be a 'serious offence' (South-Sudan) or an offence involving fraud, dishonesty or moral turpitude (Gambia). In a handful of countries, a combination of both restrictions applies, meaning that nationality can be lost either for certain specified offences or if a certain minimum sentence is surpassed.

Importantly, the majority of these countries require that a person must be *convicted* for an offence and that the imposed sentence is equal to or above the minimum sentence. However, in some countries, it suffices that a person is convicted for an offence that is *punishable* with at least the minimum sentence, which is a significantly lower threshold. In addition to that, in a number of countries, the provision does not explicitly require that a person must be convicted. The Columbian provision, for example, states that naturalisation can be revoked if a person has *committed* a crime that may lead to extradition.<sup>47</sup> Lastly, it is important to note that not all of the provisions are security related. For example, naturalised nationals of the Dominican Republic can lose nationality if they behave immorally or act contrary to public decency, which is arguably broader than security alone. In countries in the MENA region, nationality can commonly be lost if a naturalised national has been convicted for crimes against honour or dishonourable crimes, which may also cover certain punishable sexual acts (e.g. adultery).

## 2.3. WHAT OTHER NATIONALITY RULES HAVE BEEN 'SECURITISED'?

National security considerations have not only affected deprivation provisions, but also conditions for acquisition of nationality. States commonly aim to deter malevolent individuals from acquiring nationality, for example by imposing certain character conditions or excluding applicants who have committed certain crimes in the past. Such requirements exist in 160 states for persons who want to acquire nationality through ordinary naturalisation. In 68 of these states, only a generic requirement without any further specification exists – for instance requiring that the person be of 'good character' or 'good behaviour'. In the other 92 states, the requirement is further specified and security-related language becomes visible. Various countries make explicit reference to interests of (national) security and public order, which may impede acquisition of nationality, or even to terrorism explicitly. In Turkey, for instance, a person must be of good morals, and not pose a threat to national security or public order to be able to naturalise.<sup>48</sup> In Portugal, naturalisation is not possible



for someone who has been convicted for a crime with a prison sentence of at least three years or for activities related to the practice of terrorism, or who is considered a danger or threat to security or national defence.<sup>49</sup>

As a corollary, a person can be deprived of nationality in certain countries if it is later discovered later that these security-related preconditions were violated, as this can be perceived as acquisition of nationality by fraudulent means or misrepresentation of facts. In these cases, it is argued that a person's malevolent acts or intentions were concealed and that nationality would not have been granted if these acts or intentions were revealed during the acquisition process. A well-known example is provided by the European Court of Justice case *Janko Rottman v Freistaat Bayern*, involving a man who acquired German nationality while concealing proceedings against him for criminal acts in Austria and as a consequence was deprived of German nationality.<sup>50</sup> It is difficult to determine the extent of these practices, as the language of the relevant provisions is usually too generic to determine whether they can be used as such. A rare example of an explicit provision can be found in Russia, where nationality can be revoked if a person who acquired Russian nationality “*did not intend to bear the obligations established by the legislation of the Russian Federation for nationals of the Russian Federation, and the purpose of acquiring nationality of the Russian Federation was to carry out activities that pose a threat to the fundamentals of the constitutional order of the Russian Federation*”. In this case, the acquisition of nationality is considered to be fraudulent, as the provision states that the person “*knowingly providing false information regarding the obligation to comply with the Constitution of the Russian Federation and the legislation of the Russian Federation*”.<sup>51</sup>

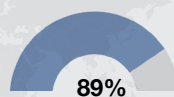
Some countries have (elaborate) lists of grounds for refusal of citizenship in their nationality laws, noting national security interests and terrorism separately. For example, according to articles 9 and 10(1) of the Mongolian citizenship law, citizenship shall be refused if a person (1) committed a crime against humanity, (2) conducted an activity against the national security or vital interests of Mongolia, (3) has been claimed as a member of an international terrorist organisation, (4) has been determined by court to be a dangerous criminal, (5) is serving a sentence, (6) has been deported from the territory of Mongolia, and (7) when the person advertises a religion that inconsistent with the Mongolian national customs and law.

More generally, over 80% of the 190 countries covered in this survey make it possible to withdraw nationality where it has been acquired by fraud or misrepresentation, as shown in **Figure 2.3**. This means that fraud is a far more prevalent ground for nationality deprivation than disloyalty or the other overtly security-related grounds that this report focuses on. As such, it is more widely available to governments seeking to exclude ‘undesirable’ citizens and there are instances in which this power has been instrumentalised to actively target certain populations that have been identified through a securitised lens. For example, within operations ‘Janus’ and ‘Second Look’, initiated respectively under the Obama and Trump administrations in the United States to review immigration case files in order to retrospectively identify potential fraud in the naturalisation process, “*the Department of Justice indicated that it will prioritise cases based on the country of origin of the target*”.<sup>52</sup> The so-called “special interest countries” that were to be given priority accordingly are a “*fluctuating category of countries ‘that are of concern to the national security of the United States’*”.<sup>53</sup> The depth of impact is also significant, with the

administration estimating that these operations are expected to deliver “*at least several thousand*”<sup>54</sup> denaturalisation cases. The case study of Bosnia and Herzegovina shows an even more direct re-purposing of deprivation grounds relating to fraud to achieve securitised objectives. These types of practices demonstrate that it can be a false assumption to consider “*that fraud-based denationalisations are [...] inherently corrective in nature and operate differently from other forms of denationalisation, for example those justified as protecting the ‘vital interests of the state’*”.<sup>55</sup>

**FIG 2.3** DEPRIVATION OF NATIONALITY ON GROUNDS OF ACQUISITION BY FRAUD OR MISREPRESENTATION, AS % OF COUNTRIES, 2020

Acquisition by fraud



## **BOSNIA AND HERZEGOVINA: ACQUISITION AND LOSS OF CITIZENSHIP FOR ‘FOREIGN FIGHTERS’**

During the war in Bosnia and Herzegovina from 1992 to 1995, “*the atrocities carried out against Bosnian Muslims served to galvanize not only local Bosnian Muslims to action, but foreigners as well*”.<sup>56</sup> Several thousand foreign fighters – known as *mujahideen* – entered the country, where many were incorporated into the regular Bosnian army. Following the cessation of hostilities, the Dayton Peace Accords stipulated the withdrawal of foreign fighters from the country. To circumvent this, then-president Alija Izetbegovic offered them citizenship, in recognition of their military services and this led many to choose to stay.<sup>57</sup>

Following the 9/11 attacks in the United States in 2001, Bosnia became a focus of counter-terrorism discussions. Two of the 9/11 hijackers had trained and fought in Bosnia and an individual described as the ‘principal engineer’ of the attacks was also found to have trained there. Following the 9/11 attacks, some former *mujahideen* also called for their followers to support *jihad* around the globe and there was evidence of terrorist training camps being established on Bosnian territory.<sup>58</sup>

The international community pressured Bosnia to respond, seeing any continued presence of the *mujahideen* as a security threat. After passing a law to criminalise terrorism and terrorist financing in 2003, Bosnia enacted further counter-terrorism measures in the following years. In 2005, the Law on Citizenship was amended to task the Bosnian Citizenship Review Commission with reviewing “*the status of persons who acquired the citizenship through naturalisation*” since 1992.<sup>59</sup> According to the terms of this law, citizenship could be

withdrawn if the regulations on naturalisation in force at the time “*had not been applied*”, if citizenship was acquired by fraud, or if there was “*a lack of genuine link*” between the citizen and the state. The review that proceeded led to deprivation of nationality from more than a thousand citizens<sup>60</sup> and “*largely credited with helping the country extradite a large percentage of the foreign terrorist fighters that remained in the country*”.<sup>61</sup>

While the Bosnian authorities responded to criticism of the citizenship review process by claiming that their policy was merely reversing illegal decisions that had been made at the end of the war, some Bosnian politicians and international officials saw the policy change as primarily motivated by the desire not to be viewed as a safe haven for Islamic terrorists and other radicals.<sup>62</sup> At the same time, the role of the Citizenship Review Commission was lauded by, for example, the US government.<sup>63</sup> Therefore, there is a strong nexus between national security considerations and the powers of nationality deprivation. Pressure from the international community was a driving force behind this.

## ENDNOTES

<sup>1</sup> Sentença de Exautoração, e desnaturalização, que proferio a Suprema Junta da Inconfidencia antes de proceder a Sentença definitiva (13 de Janeiro de 1759), in: Julio Firmino Judice Biker, *Collecção dos Negocios de Roma no reinado de el-Rey Dom José I, ministerio do Marquez de Pombal e pontificados de Benedicto XIVe Clemente XIII*, Vol. 1, Imprensa Nacional, 1874, pp. 64–66 [in Portuguese], available at: <https://www.digitale-sammlungen.de/en/view/bsb11185212?page=68,69>.

<sup>2</sup> Nationality, including Statelessness – National Legislation Concerning Grounds for Deprivation of Nationality – Memorandum Prepared by Mr. Ivan S. Kerno, Expert of the International Law Commission, A/CN.4/66, 6 April 1953, available at: [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_66.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_66.pdf).

<sup>3</sup> M. Vink and L. van Baren, ‘Modes of acquisition and loss of citizenship around the world Comparative typology and main patterns in 2020’ (2021), Globalcit Working Paper. See specifically information from GLOBALCIT ‘modes of loss’ L03, L04, L07 and L08. The full GLOBALCIT Citizenship Law Dataset – Modes of Loss of Citizenship is available at: <https://globalcit.eu/modes-loss-citizenship/>.

<sup>4</sup> Note that all data provided in Section 2 of this report is based on legislation in force on 1 January 2020, unless stated otherwise.

<sup>5</sup> Art. 22(1), 22(2) LIT.

<sup>6</sup> Article 21(b) SAU.

<sup>7</sup> S. Pillai and G. Williams ‘The utility of Citizenship Stripping Laws in the UK, Canada and Australia’ (2017) Melbourne University Law Review, Vol. 41(2).

<sup>8</sup> Select Committee on the Constitution: NATIONALITY, IMMIGRATION AND ASYLUM BILL (2002), p. 6, available at: <https://publications.parliament.uk/pa/ld200102/ldselect/ldconst/129/129.pdf>.

<sup>9</sup> In Bradford, Oldham and Burnley in 2001.

<sup>10</sup> Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (2002), p. 10, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/250926/cm5387.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250926/cm5387.pdf).

<sup>11</sup> Ibid, p.35.

<sup>12</sup> 2002 Nationality, Immigration and Asylum Act, available at: <https://www.legislation.gov.uk/ukpga/2002/41/section/4>.

<sup>13</sup> 2004 Asylum and Immigration Act, available at: <https://www.legislation.gov.uk/ukpga/2004/19/schedule/2>.

<sup>14</sup> Abu Hamza publicly praised the September 11 terrorist attacks and Osama bin Laden.

<sup>15</sup> S. Mantu, ‘Terrorist’ citizens and the human right to nationality’ (2018), Journal of Contemporary European Studies, Vol 26(1); Abu Hamza v. SSHD (2003), SIAC, SC/23/2003, para 22.

<sup>16</sup> 2006 Immigration, Asylum and Nationality Act, available at: <https://www.legislation.gov.uk/ukpga/2006/13/section/56>.

<sup>17</sup> Secretary of State for the Home Department v Al-Jedda [2013] UKSC 62. Then Home Secretary Theresa May explicitly stated that this amendment was “a consequence of a specific case”: Al-Jedda.

<sup>18</sup> 2014 Immigration Act, available at: <https://www.legislation.gov.uk/ukpga/2014/22/section/66/enacted>.

<sup>19</sup> Nationality and Borders Bill, available at: <https://bills.parliament.uk/bills/3023>.

<sup>20</sup> The Guardian, ‘New bill quietly gives powers to remove British citizenship without notice’ (17 November 2021), available at: <https://www.theguardian.com/politics/2021/nov/17/new-bill-quietly-gives-powers-to-remove-british-citizenship-without-notice>.

<sup>21</sup> Time, ‘Maximum Suffering: A Man Stripped of His Citizenship Sheds Light on the Potential Impact of the U.K.’s Nationality Bill’ (10 February 2022), available at: <https://time.com/6146655/uk-citizenship-nationality-immigration-bill/>.

<sup>22</sup> A. de Chickera, ‘Patel’s citizenship-stripping bill would accelerate UK race to the bottom’, Open Democracy (26 November 2021), available at: <https://www.opendemocracy.net/en/opendemocracyuk/patels-citizenship-stripping-bill-would-accelerate-uk-race-to-the-bottom/>.

<sup>23</sup> Board of Immigration Appeals, Quintanilla-Montes (1970), No. A-18464888, available at: <https://www.justice.gov/eoir/vll/intdec/vol13/2031.pdf>.

<sup>24</sup> Section 14-3, Para. 2, Handleiding Rijkswet op het Nederlanderschap 2003 [Dutch], available at: [https://wetten.overheid.nl/BWBR33099/2022-01-01#Circulaire.divisie14\\_Circulaire.divisie14.4\\_Circulaire.divisie2](https://wetten.overheid.nl/BWBR33099/2022-01-01#Circulaire.divisie14_Circulaire.divisie14.4_Circulaire.divisie2).

<sup>25</sup> Para. 28 Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht 2000 [German], available at: [https://www.verwaltungsvorschriften-im-internet.de/bsvwvbund\\_13122000\\_V612400513.htm](https://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_13122000_V612400513.htm).

<sup>26</sup> United States Department of State, Foreign Affairs Manual, Vol. 7, United States Department of State, Section 1275, available at: <https://fam.state.gov/FAM/07FAM/07FAM1270.html>.

<sup>27</sup> Timor Leste, Egypt, Estonia, Georgia, Germany, Indonesia, Kiribati, Latvia, Liberia, Lithuania, Namibia, Papua New Guinea, Philippines, Seychelles, Solomon Islands, Suriname, Turkey, Vanuatu, and Yemen.

<sup>28</sup> Bahrain, Chad, Republic of the Congo, France, Greece, Guinea, Italy, Kuwait, Madagascar, Morocco, Qatar, Somalia, Togo, and Tunisia

<sup>29</sup> Art. 27(3) CHA.

<sup>30</sup> Botswana, Burundi, Mali, Panama, Romania, South Africa, Syria, Uganda and the United States of America.

<sup>31</sup> Austria, Azerbaijan, Bosnia and Herzegovina, Germany, Indonesia, Liberia, Moldova, Montenegro, Netherlands, Sao Tome and Principe, Somalia, Spain, Turkey, and Uganda.

<sup>32</sup> CNN, ‘Ukraine says more 20,000 foreign volunteers want to join special unit to combat Russian forces’ (7 March 2022), available at: [https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-07-22/h\\_dc1526f075096e276baec8fa7632f300](https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-07-22/h_dc1526f075096e276baec8fa7632f300).

<sup>33</sup> The Guardian, ‘Ukraine appeals for foreign volunteers to join fight against Russia’ (27 February 2022), available at: <https://www.theguardian.com/world/2022/feb/27/ukraine-appeals-for-foreign-volunteers-to-join-fight-against-russia>.

<sup>34</sup> The Guardian, ‘Liz Truss criticised for backing Britons who wish to fight in Ukraine’ (28 February 2022), available at: <https://www.theguardian.com/world/2022/feb/27/liz-truss-says-she-would-back-britons-going-to-ukraine-to-fight-russia>.

<sup>35</sup> Welt, ‘Zwei deutsche Staatsbürger, die für Selenskyj alles riskieren wollen’ [German] (9 March 2022), available at: <https://www.welt.de/politik/deutschland/plus237316083/Ukraine-Zwei-deutsche-Staatsbuenger-die-fuer-Selenskyj-alles-riskieren-wollen.html>.

<sup>36</sup> GLOBALCIT, ‘Latvia: Citizens joining the Ukrainian army can retain citizenship’ (2 March 2022), available at: <https://globalcit.eu/latvia-citizens-joining-the-ukrainian-army-can-retain-citizenship/>.

<sup>37</sup> ARegierungsvorlage 497 der Beilagen zu den stenographischen Protokollen des Nationalrates X.GP [German], p. 32, available at: [https://www.parlament.gv.at/PAKT/VHG/X/I/I\\_00497/imfname\\_328450.pdf](https://www.parlament.gv.at/PAKT/VHG/X/I/I_00497/imfname_328450.pdf).

<sup>38</sup> Ibid.

<sup>39</sup> Art. 15 para. b. UAE.

- <sup>40</sup> Antigua and Barbuda, Bahamas, Bahrain, Barbados, Brunei Darussalam, Chile, Dominica, Grenada, Guyana, India, Jamaica, Mali, Myanmar, Panama, Philippines, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, South Sudan, and United Arab Emirates.
- <sup>41</sup> Art. 251 MAL.
- <sup>42</sup> Algeria, Austria, Central African Republic, Comoros, Kuwait, and Lithuania.
- <sup>43</sup> Art. 22(3) ALG.
- <sup>44</sup> Angola, Dominican Republic, Timor Leste, Estonia, Suriname, and Syria.
- <sup>45</sup> Art. 18(2) AZE.
- <sup>46</sup> Art. 50-52 MAD.
- <sup>47</sup> Art. 20(1)(b) COL.
- <sup>48</sup> Arts. 10 & 11 TUR.
- <sup>49</sup> Art. 6(1) POR.
- <sup>50</sup> European Court of Justice, *Janko Rottmann v Freistaat Bayern* (2010), ECLI:EU:C:2010:104.
- <sup>51</sup> Art. 22 RUS.
- <sup>52</sup> L. Bingham, 'Easy precedents' – Fraud, denationalization and perpetual scrutiny of citizenship questions', in *World's Stateless Report*, (Institute on Statelessness and Inclusion 2020), p. 190.
- <sup>53</sup> *Ibid.*, p. 190, citing Open Society Justice Initiative, *Unmaking Americans: Insecure citizenship in the United States* (2019).
- <sup>54</sup> *Ibid.*, p. 189.
- <sup>55</sup> *Ibid.*, p. 187.
- <sup>56</sup> Counter Extremism Project, *Bosnia & Herzegovina: Extremism and Terrorism*, available at: <https://www.counterextremism.com/countries/bosnia-herzegovina>.
- <sup>57</sup> J. de Roy van Zuijdewijn and E. Bakker, 'Returning Western foreign fighters: The case of Afghanistan, Bosnia and Somalia', ICCT Background Note (2014) available at: <https://www.icct.nl/app/uploads/download/file/ICCT-De-Roy-van-Zuijdewijn-Bakker-Returning-Western-Foreign-Fighters-June-2014.pdf>
- <sup>58</sup> S. Zosak, 'Revoking Citizenship in the Name of Counterterrorism: The Citizenship Review Commission Violates Human Rights in Bosnia and Herzegovina' (2010), *Northwestern Journal of Human Rights Law*, Vol. 8, p. 219-220.
- <sup>59</sup> Law on amendments to the law on Citizenship of Bosnia and Herzegovina, 82/05, available at: <https://bit.ly/3ifKT44>.
- <sup>60</sup> J. de Roy van Zuijdewijn and E. Bakker, 'Returning Western foreign fighters: The case of Afghanistan, Bosnia and Somalia', ICCT Background Note (2014).
- <sup>61</sup> Counter Extremism Project, *Bosnia & Herzegovina: Extremism and Terrorism*, available at: <https://www.counterextremism.com/countries/bosnia-herzegovina>.
- <sup>62</sup> S. Zosak, 'Revoking Citizenship in the Name of Counterterrorism: The Citizenship Review Commission Violates Human Rights in Bosnia and Herzegovina' (2010), *Northwestern Journal of Human Rights Law*, Vol. 8, p. 222
- <sup>63</sup> *Ibid.*

# 3

## A CLOSER LOOK AT NATIONALITY DEPRIVATION FOR 'DISLOYALTY'

This section takes a closer look at legislation that provides for loss of nationality due to *disloyalty*. This is a broad category that encompasses provisions that sanction a range of behaviour or offences relating to harm to the interests or security of the state, including acts of treason or terrorism. As set out in Section 2, two-thirds of the 190 countries covered by the analysis in this report provide for this mode of deprivation of nationality in their legislation: 134 countries total, as of 1 January 2022.<sup>1</sup>

The following paragraphs offer an analysis of these provisions, guided by a series of questions: can deprivation of nationality for disloyalty lead to statelessness? Do the deprivation provisions apply to all citizens or can only certain categories of citizen be targeted? What language is used to frame the scope of the powers and how much room for interpretation – and discretion – does this give to states? Can nationality be lost automatically or by decision, and which authority holds the power to deprive? This break-down of legislative provisions enables the identification of specific patterns and lays the foundation for an evaluation of deprivation powers against international law standards such as the avoidance of statelessness, the principle of non-discrimination and the prohibition of arbitrary deprivation of nationality (see **Section 5** for further details).

### 3.1. CAN DEPRIVATION LEAD TO STATELESSNESS?

In spite of clear international norms prescribing the avoidance of statelessness,<sup>2</sup> only just over a quarter of the countries that provide for loss of citizenship due to disloyalty expressly state in their law that this may not result in statelessness – as shown in **Figure 3.1.a**. In these cases, it is generally formulated either as a requirement that loss of citizenship may not make the affected person stateless (e.g. France) or that citizenship can only be lost if the affected person is also a citizen of another country (e.g. Kosovo). The regional variation in prevalence of safeguards against statelessness can be seen in **Figure 3.1.b**, which shows that European states most commonly have such safeguards in place.

It should be noted that these safeguarding provisions do not adequately protect citizens from statelessness in all cases. For example, if authorities determine whether a person is also a citizen of another country by assessing that country's citizenship legislation without consulting the authorities of that other country, divergent interpretations may arise.<sup>3</sup> In 2020, the British Special Immigration Appeals Commission determined that a woman whose British citizenship had been revoked due to terrorist activities was not stateless as she was also considered to be a citizen of Bangladesh,

even though the Bangladeshi authorities publicly denied that.<sup>4</sup> Another challenge is posed by potential lenient interpretations of the safeguarding provisions. For example, even though the relevant Danish provision states that citizenship cannot be revoked if the person in question would thereby become stateless, the Danish government has stated that a person will be considered not to be stateless if they are entitled to another citizenship by mere registration in another country.<sup>5</sup> This interpretation has been criticised as it is considered to run counter to Denmark's obligations under international law.<sup>6</sup>

In the remaining 98 countries, there is no explicit provision in place that prevents loss of citizenship due to disloyalty resulting in statelessness. However, in 92 of these 98 countries, citizenship can only be lost on this ground by a decision of the authorities, which provides room for individual assessments. In some countries, such an assessment is required before deprivation of citizenship can take place. In Brazil, for example, the loss provision stipulates that *"the risk of generating statelessness will be taken into account before the loss of nationality takes effect"*.<sup>7</sup> However, such an assessment does not altogether preclude states from deprivation decisions resulting in statelessness. In the remaining six countries (Angola, El Salvador, Haiti, Indonesia, Myanmar, and Sao Tome and Principe), citizenship can be lost automatically due to disloyalty. As there is no room for individual assessments in these cases, there is no adequate protection against statelessness in place.

### 3.2. CAN ANY CITIZEN BE TARGETED FOR NATIONALITY DEPRIVATION?

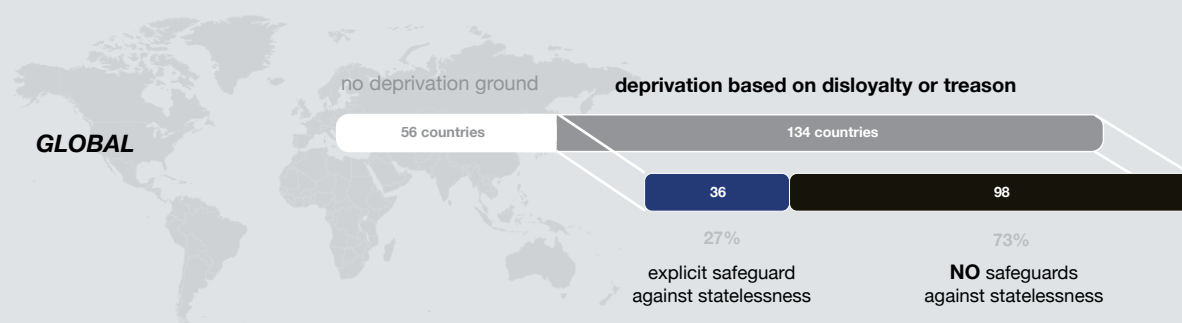
In 45 countries, equating to approximately a third of those that provide for deprivation of nationality due to disloyalty, citizenship can be lost by all categories of citizens, regardless of how citizenship was acquired – as shown in **Figure 3.2**. However, in seven of these 45 countries,<sup>8</sup> an additional loss provision is in place that only covers certain categories of citizens, usually citizens by naturalisation. This generally means that the threshold for the loss of citizenship is lower for that particular category of citizens. In Qatar, for example, any citizen can lose Qatari citizenship for joining any group whose purpose it is to undermine Qatar or for being convicted of a crime which impugns the person's loyalty to Qatar.<sup>9</sup> However, a naturalised citizen can already lose citizenship if withdrawal is considered to be, with sufficient supporting justification, in the public interest.<sup>10</sup>

In two-thirds of the countries that provide for deprivation of nationality due to disloyalty, the loss provisions are only applicable to certain categories of citizens. This usually means that citizens by birth cannot lose their

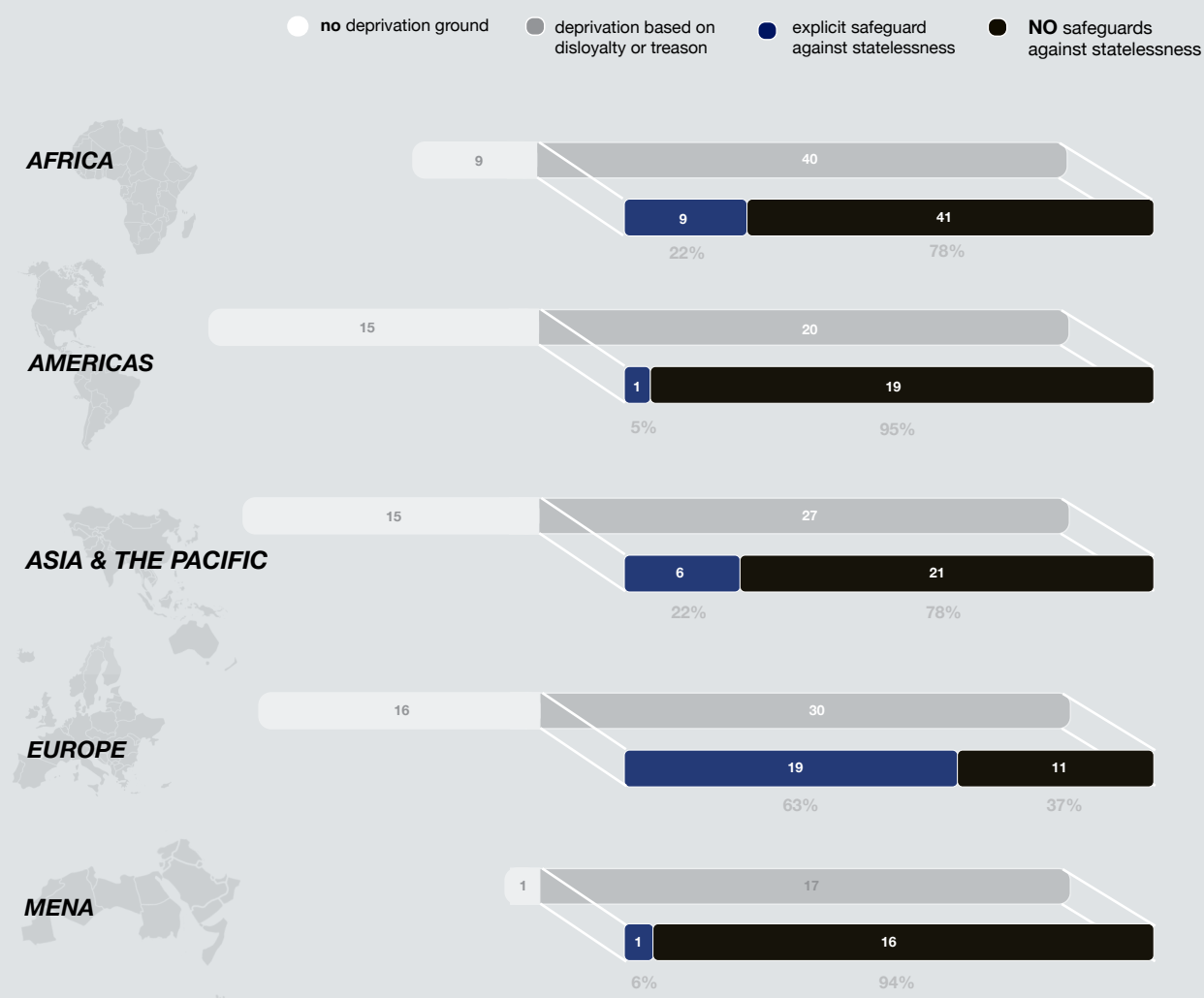
Suhayra Aden is an Australian-New Zealand dual national. She was born in New Zealand, but having moved to Australia at the age of six, she grew up there. After reportedly travelling on her Australian passport to join IS, she was stripped of Australian nationality. After Aden was detained by the Turkish authorities when trying to enter that country from Syria, **diplomatic incident** arose between the Australia and New Zealand. In this context, the New Zealand prime minister remarked that the country "is tired of having Australia exporting its problems". New Zealand eventually agreed to admit Aden.



**FIG 3.1 a** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: SAFEGUARD AGAINST STATELESSNESS, 2022



**FIG 3.1 b** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: SAFEGUARD AGAINST STATELESSNESS, BY WORLD REGION, 2022



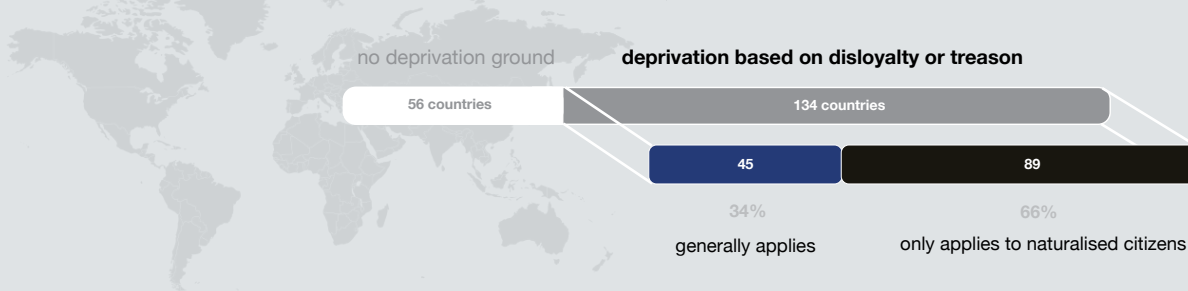
citizenship on this ground, while (some) other categories of citizens can. In many of these countries, the provision is only applicable to *naturalised* citizens. In Guinea-Bissau, for example, a naturalised citizen who has been definitively convicted for a crime against the state's external security can lose their citizenship.<sup>11</sup> In other cases, the provisions are broader in scope. For example, anyone who acquired citizenship of Angola "after birth" can lose Angolan citizenship on grounds of disloyalty.<sup>12</sup>

If provisions are only applicable to certain categories of citizens, this generally entails that the majority of citizens are shielded from deprivation of citizenship on this ground. This can lead to

discrimination,<sup>13</sup> because certain groups of citizens hold a more contingent citizenship status than others. As such, 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.<sup>14</sup>

Moreover, where states provide for deprivation of nationality but do not allow statelessness, this also has the effect of targeting the measure at a specific sub-set of citizens: those who hold dual or multiple nationality. Of the 45 countries that have generally applicable deprivation powers for disloyalty, 21 maintain safe-

**FIG 3.2** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: SCOPE OF APPLICATION, 2022



guards against statelessness, such that the citizenship of mono nationals is secure while that of dual nationals is not. The targeting of dual nationals is also contentious because of the effect of passing responsibility for someone who may pose a security risk to the 'other' country of nationality – as demonstrated by the response of Canada in the case of Jack Letts<sup>15</sup> and New Zealand in the case of Suhayra Aden.<sup>16</sup>

### 3.3. HOW ARE POWERS FRAMED AND HOW MUCH ROOM FOR INTERPRETATION IS THERE?

A qualitative analysis of the legislative provisions relating to deprivation of nationality for 'disloyalty', using various explorative text analyses, provides a clearer picture of the breadth and scope of these deprivation powers. It reveals, in particular, how the terminology employed by states in defining deprivation powers relating to disloyalty regularly relies on vague language. Such vagueness may pertain directly to the concept of 'disloyalty' or to other elements present in the framing of many of the legislative provisions, such as the notions of 'acts against state security', 'harmful to (vital) state interests', or 'conducive to the public good'.

Nearly half of the countries with deprivation powers relating to disloyalty refer in rather general terms to acts against national security in their provisions (62 countries), with the majority failing to specify what precisely encompasses such acts. For example, the 1954 Jordanian citizenship law, provides that:

“(2) *The Council of Ministers may, with the approval of His Majesty, declare that a Jordanian has lost Jordanian nationality if: [...] (c) He commits or attempts to commit an act deemed to endanger the peace and security of the State*”.<sup>17</sup>

The language of “vital state interests” is similarly prevalent – slightly over half of countries make at least one reference to this notion (69 countries). Here too, an issue of specification arises. The 2005 Norwegian Citizenship Act, for instance, provides in Article 26(b), that “the Ministry may, for reasons of fundamental

*national interests, make a decision on the loss of citizenship for a person who also has another citizenship, and who has exhibited conduct which may indicate that he or she will severely damage such interests*”.<sup>18</sup> Any indication as to the nature of the conduct remains absent. In contrast, the citizenship law of Slovenia also provides for deprivation of nationality if a citizen’s “activities are harmful to the international or other interests of the Republic of Slovenia”, but it goes on to define a list of activities that fall within the scope of this deprivation clause.<sup>19</sup>

In 27 countries – approximately one-fifth of those studied – the notion of ‘conducive to the public good’ is contained in provisions on deprivation of citizenship, but remains similarly undefined and is typically subject to an element of discretion. This is the case, for instance, in the United Kingdom, where Article 40(4A)(b) of the 1981 British Nationality Act<sup>20</sup> provides that nationality may be deprived if:

“...the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory ...”

In this instance, the determination of what is conducive to the public good and what encompasses conduct that is seriously prejudicial to the vital interests of the state is left to the Secretary of State and whether or not they are ‘satisfied’ that this is the case.

Where terms remain undefined and their content is left to the discretion of the authority charged with taking deprivation decisions, questions may arise as to whether the law provides enough specificity to ensure legal certainty – which can otherwise render the deprivation of nationality arbitrary under international law.<sup>21</sup> There is also greater scope for the powers to be ‘stretched’ or used abusively, as illustrated by the case study of Bahrain.

### BAHRAIN: TARGETING OF HUMAN RIGHTS DEFENDERS WITH NATIONALITY REVOCATION FOR ‘SECURITY’ REASONS

The case of Bahrain represents a powerful example of how legislation introduced under the pretext of national security and counterterrorism, can be **weaponised against political opponents, dissidents and human rights defenders** leading to their arbitrary denial of citizenship. In 2011, during the height of the Arab Spring in the Middle East, protests erupted in the Kingdom of Bahrain. Deeming these demonstrations to be a national security threat, the government reacted with a set of regressive reforms. It progressively expanded the grounds for nationality deprivation and consolidated the power to deprive Bahrainis of nationality at the behest of the Minister of Interior.

In 2013, the Government amended Bahrain's 2006 counter-terrorism law (Law 58 on Protecting Society from Terrorist Acts), adding Art. 25 which set out a non-exhaustive list of terror-related acts for which a citizen could be denationalised. Then in 2014, the 1963 Nationality Act was also amended, **broadening the grounds for deprivation** to include “...caus[ing] harm to the interests of the Kingdom or act in a manner that contradicts the duty of loyalty to it to the State”. In 2019, the Nationality Act was amended again, **consolidating power to deprive nationality** almost exclusively under the portfolio of the Minister of Interior, with no judicial oversight.

This gradual expansion of broad and vaguely worded powers, to strip Bahrainis of nationality, has led to the denationalisation of more than 985 people between 2012 and 2019. A large proportion of those targeted over the years include human rights defenders, academics, political opponents and religious scholars. For example, in 2015, a total of 208 people were stripped of nationality, and while the majority were denationalised through criminal courts, an astonishing 35% were stripped of nationality by Decree – receiving no official notification of the intention to deprive them nationality, no investigation prior to denationalisation and no opportunity defend themselves before a court.<sup>22</sup> This trend continued in the years to follow, spiking in 2018 when 115 were stripped of nationality on national security terrorism charges and a further 47 dissidents denationalised through the criminal court.<sup>23</sup> This expansion of deprivation powers coupled with the erosion of procedural protections under the pretext of national security and counter terrorism, has been effectively used in the context of Bahrain as a tool to silence dissent.

In 2019, the Bahraini King reinstated the nationality of 551 individuals who had lost nationality since the expansion of powers to deprive were introduced, however at the time of writing 435 individuals had not yet had their nationality restored.<sup>24</sup> While there is no more recent information on the extent to which these provisions continue to be used, it is worth highlighting the far-reaching and continuing impact these measures have had on families, in particular children, who are born stateless as a result of these tactics to strip nationality without judicial decisions or a court ruling.<sup>25</sup>

In some countries, the legislative provisions on deprivation of citizenship are far more precise, which increases the legal certainty of these provisions and limits the discretionary power of the body that is responsible for taking deprivation decisions. The 2007 *Australian Citizenship Act*, serves to illustrate this and offers an example of the intricate detail provided in some legislative clauses that regulate nationality deprivation. Citizenship may be deprived if an Australian citizen engages in specific conduct and that conduct “demonstrates that the person has repudiated their allegiance to Australia”.<sup>26</sup> The “conduct” is then explicitly specified in paragraph (5) to consist of several acts and a clarification of the notion of ‘repudiation of allegiance’ is found elsewhere. Section 36A, for instance, refers to “conduct incompatible with the shared values of the Australian community”, whereas Section 36C(2)(a) (iii) refers to being “opposed to Australia, or to Australia’s interests, values, democratic beliefs, rights or liberties”. A further requirement is that “it would be contrary to the public interest for the person to remain an Australian citizen”.<sup>27</sup> According to Section 36E(2), in determining whether it would be contrary to the public interest, the Minister must have regard to, *inter alia*, the severity of the conduct, the degree of threat posed by the person, the age of the person, and Australia’s international interests.

### 3.4. CAN NATIONALITY BE LOST AUTOMATICALLY?

Loss of citizenship due to disloyalty rarely takes place automatically, but rather it must usually be instigated by a decision of the authorities – an important aspect of ensuring adequate procedural safeguards in the event of nationality deprivation.<sup>28</sup> As shown in **Figure 3.3**, 127 countries provide that citizenship can be lost on this ground by decision. Who this power is delegated to varies from country to country and is discussed in detail in **Section 3.5**.

If citizenship is lost by explicit decision, the loss of citizenship will generally take place at the moment when such a decision is made or, alternatively, at the moment when the decision is communicated or published. In Albania, for example, citizenship can be lost by decision if a person supports, acts on the behalf of, or is a member of an organisation whose activities aim to undermine the national security and constitutional order of Albania.<sup>29</sup> Firstly, either a final court judge-

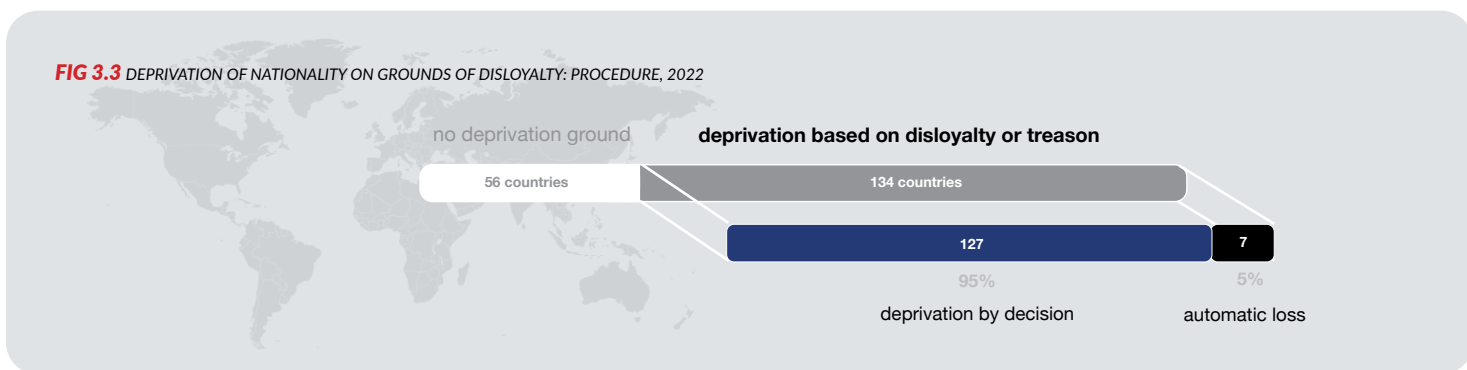
ment or information verified by the law enforcement authorities is required.<sup>30</sup> The Ministry of Public Order and Security will collaborate with the law enforcement authorities in order to verify any relevant information.<sup>31</sup> Subsequently, the Ministry of Public Order and Security can propose a decree for the deprivation of citizenship to the President of the Republic.<sup>32</sup> Albanian citizenship is lost at the moment when the decree is communicated to the affected person or, in case the decree cannot be communicated to that person, when the decree is published in the Official Gazette.<sup>33</sup>

In just seven countries (Angola, El Salvador, Germany, Haiti, Indonesia, Myanmar, and Sao Tome and Principe), citizenship is lost automatically due to disloyalty. This entails that citizenship is lost *ex lege* at the moment when the act of disloyalty was committed. In practice, this generally means that the authorities establish at a later point in time that citizenship was lost at that particular moment. For example, German citizens lose their citizenship automatically at the moment when they participate in concrete combat action in a terrorist organisation abroad. For reasons of legal certainty, it is required that the authorities use the standard procedure for the establishment of German citizenship in order to determine that citizenship was indeed lost at the moment when they first participated in such action.

A problematic aspect of the automatic loss of citizenship on this ground is that a time gap may occur between the moment when the *ex lege* loss of citizenship occurs and the moment when that loss is established by the authorities. This is illustrated by a former Australian loss provision. Between 2015 and 2020, Australian citizenship could be tacitly renounced by conduct. This entailed that Australian citizens could ‘renounce’ their citizenship by acting inconsistently with their allegiance to Australia by engaging in certain specified conduct (i.e. acts related to terrorism).<sup>34</sup> The renunciation took effect immediately upon the person engaging in the conduct. Australian citizenship was also lost if a person served in the armed forces of a country at war with Australia or a declared terrorist organisation.<sup>35</sup> In that case, a person ceased to be an Australian citizen when they commenced serving or fighting,<sup>36</sup> creating problems in terms of the legal consequences that flow from this approach, as shown in the case in the **boxed text**.<sup>37</sup> The loss provi-

In July 2019 an Australian woman was sent an official notice that stated that her citizenship had been lost on 6 May 2016 due to her alleged service to a declared terrorist organisation (ISIS). As her children were reportedly born after the citizenship cessation took place, namely in July 2016 and September 2018, they retrospectively never acquired Australian citizenship by birth from their mother, exposing them to a risk of statelessness.

**FIG 3.3** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: PROCEDURE, 2022

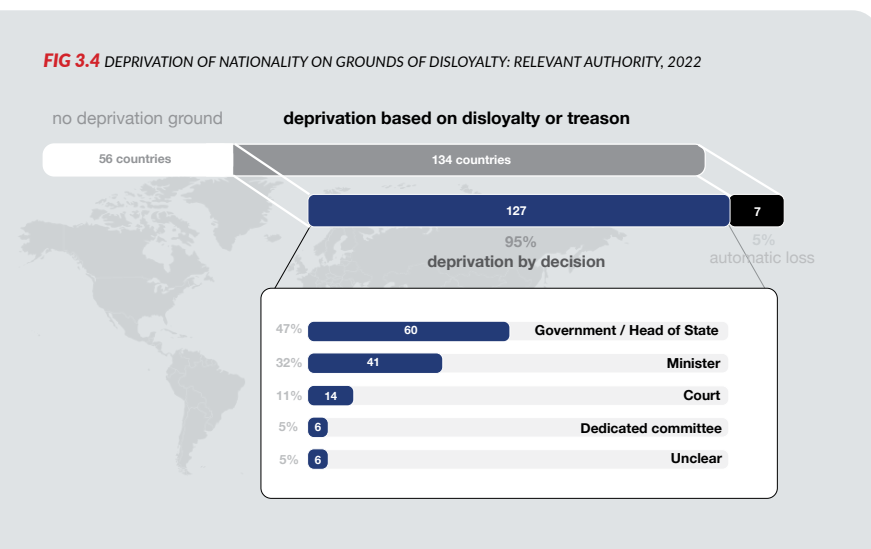


sions became the subject of criticism and they were amended in 2020.<sup>38</sup> The amendment revoked the renunciation clause, while the citizenship cessation clause was amended in such a way that citizenship is only be lost at the moment when the determination of cessation is made by the authorities.

### 3.5 WHICH AUTHORITY HOLDS THE POWER TO DEPRIVE?

A further question that is of importance to understanding how deprivation powers are applied in practice and how any room for discretion might be used, is *who* holds the power to take the decision to strip an individual of citizenship.<sup>39</sup> For instance, is this the executive or judicial branch of the state? For 121 out of the 127 states that actively withdraw nationality by decision (see **Section 3.4**), the body responsible for deprivation of citizenship could be derived, either from the legislative provisions directly pertaining to deprivation or from related documents – as shown in **Figure 3.4**.

**FIG 3.4** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: RELEVANT AUTHORITY, 2022



In half of these states, the Head of State or Government, or another government body, is in charge of decision-making on nationality deprivation. In 30 countries, it is the Head of State or Government; and in 30 other countries it is another government body – either the Cabinet, or another central or even decentralised government authority.

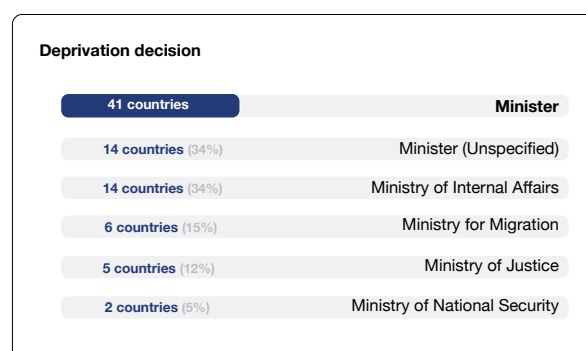
On aggregate, ministers from various ministries are responsible in 41 states, equating to around a third of countries where deprivation happens by decision. As shown in **Figure 3.5**, authority is commonly bestowed on ministers of Internal Affairs, Migration, Justice, and National Security. In 14 countries, however, while providing that 'the Minister' shall be responsible for deprivation of citizenship, no specification as to which minister is appointed to exercise this task is provided. The Tanzanian Citizenship Act, for example, defines the minister that is responsible for deprivation in Article 3(1) as "the Minister for the time being responsible for matters relating to citizenship of the United Republic".<sup>40</sup> No further information as to the responsible

minister is provided, however, in either the relevant legislation nor on the government website.<sup>41</sup> Overall, given the sectors of specialisation of different ministers, it is not obvious that they will necessarily possess extensive knowledge on the matter of citizenship. This is also problematic when considering that, in an additional 29 countries, nationality is withdrawn by other bodies on the *recommendation or advice* of a minister. For instance, in Oman, the 2014 Citizenship Law provides in Article 7 that "Omani citizenship may only be granted, renounced, reacquired, withdrawn or lost by virtue of a Royal Decree at the recommendation of the Minister [of the Interior]".<sup>42</sup>

A greater extent of knowledge on matters of citizenship may be found in dedicated committees, such as the "Citizenship Commission" in Romania<sup>43</sup> or the "National Citizenship and Immigration Board" in Uganda<sup>44</sup>, which hold the power to deprive in six states. In four countries,<sup>45</sup> such dedicated committees are not directly responsible for deprivation of nationality, but rather serve as an advisory body to the authority that is ultimately in charge of deprivation. For example, the 2011 Kenyan Citizenship and Immigration Act states that "the Cabinet Secretary may, where there is sufficient proof and on recommendation of the Citizenship Advisory Committee, revoke any citizenship acquired by registration".<sup>46</sup>

Courts and judicial bodies play a far more marginal role in deprivation processes. Just 14 countries provide for deprivation of citizenship to be ordered directly by a Court. In two additional countries, the Court performs a 'check' on the decision to deprive nationality before it takes effect. For instance, Article 25 of the French Civil Code provides that "an individual who has acquired the French nationality may be declared, by decree adopted after assent of the Conseil d'Etat, to have forfeited French nationality".<sup>47</sup> It is important to note, however, that this picture does not take into account the possibility for deprivation decisions to be appealed *after the fact*, before a court, or other remedies that may be available to a person subsequent to the decision.

**FIG 3.5** DEPRIVATION OF NATIONALITY ON GROUNDS OF DISLOYALTY: RELEVANT MINISTER, 2022





## ENDNOTES

- <sup>1</sup> Note that all data provided in Section 3 of this report is based on an analysis of legislation in force on 1 January 2022, unless stated otherwise.
- <sup>2</sup> Principles on Deprivation of Nationality as a National Security Measure (2020). Principle 5 provides that “States must not render any person stateless through deprivation of nationality”. See further Section 5.
- <sup>3</sup> The assessment of whether a person would be left without any nationality should not be made on the basis of one state’s interpretation of another state’s nationality law but rather should be informed by consultations with and written confirmation from the state in question. See further UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, (“UNHCR Guidelines No. 5”) (May 2020) available at: <https://www.refworld.org/docid/5ec5640c4.html>.
- <sup>4</sup> Special Immigration Appeals Commission, *Shamima Begum v. The Secretary of State for the Home Department* (7 February 2020), Appeal no. SC/163/2019, available at: <https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment-1.pdf>; BBC, ‘Shamima Begum will not be allowed here, Bangladesh says,’ BBC (21 February 2019), available at: <https://www.bbc.com/news/uk-47312207>.
- <sup>5</sup> U. Dahlin, ‘Institut: Tesfayes ministerium bruger ‘meget tvivlsom’ fortolkning af konvention i lovforslag,’ Information (22 October 2019) [Danish], available at: <https://www.information.dk/indland/2019/10/institut-tesfayes-ministerium-bruger-tvivlsom-fortolkning-konvention-lovforslag>; Forslag til Lov om ændring af lov om dansk indfødsret, nr. 2020/1 LF 230 (4 May 2021) [Danish], available at: <https://www.retsinformation.dk/eli/ft/202012L00230>.
- <sup>6</sup> Institut for Menneskerettigheder, ‘Horingssvar over lovudkast om frakendelse af statsborgerskab for strafbare forhold, som er til alvorlig skade for Statens vitale interesser M.V.’, (13 January 2022) [Danish], available at: <https://bit.ly/3u5haAt>.
- <sup>7</sup> Art. 75 BRA.
- <sup>8</sup> Afghanistan, Bahamas, Kuwait, Malaysia, Myanmar, Qatar, and Singapore.
- <sup>9</sup> Art. 11(3-4) QAT.
- <sup>10</sup> Art. 12 QAT.
- <sup>11</sup> Art. 10(2) BIS.
- <sup>12</sup> Art. 17(2)(a), 17(2)(e) ANG.
- <sup>13</sup> Principles on Deprivation of Nationality as a National Security Measure (2020), Principle 6. See further Section 5.
- <sup>14</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (25 April 2018) A/HRC/38/52, para. 57.
- <sup>15</sup> Jack Letts was stripped of his British citizenship, leaving him only with his Canadian nationality – a move which Canadian Public Safety Minister Ralph Goodale said “was an attempt by the United Kingdom to ‘off-lead’ its responsibilities in the case”. Reuters, ‘Canada says it will not help ‘Jihadi Jack’ come back to the country’ (21 August 2019), available at: <https://www.reuters.com/article/us-canada-britain-islamist-idUSKCN1VA2BW>.
- <sup>16</sup> See boxed text for details of the case, which draws information from the following reports: Morning Report, ‘Australia-NZ Diplomatic Incident over NZ Citizen Suspected of Terrorism Detained in Turkey,’ RNZ (17 February 2021), available at: <https://www.rnz.co.nz/national/programmes/morningreport/audio/2018783914/australia-nz-diplomatic-incident-over-nz-citizen-suspected-of-terrorism-detained-in-turkey>; Al Jazeera, ‘Ardern Condemns Australia for Revoking ISIL Suspect’s Citizenship,’ Al Jazeera (16 February 2021), available at: <https://www.aljazeera.com/news/2021/2/16/ardern-slams-australia-for-revoking-isil-suspects-citizenship>; NZ Herald, ‘Isis bride’ Suhayra Aden arrives in New Zealand; PM Jacinda Ardern says public safety ‘an absolute priority’, NZ Herald (21 August 2021), available at: <https://www.nzherald.co.nz/nz/isis-bride-suhayra-aden-arrives-in-new-zealand-pm-jacinda-ardern-says-public-safety-an-absolute-priority/AX3NQPOLLMJSLGNAXRBYX72CRI/>.
- <sup>17</sup> Art. 18(2)(c) JOR.
- <sup>18</sup> Art. 26(b) NOR.
- <sup>19</sup> Art. 26 SVN. These include “1. if the person is a member of an organisation engaged in activities to overthrow the constitutional order of the Republic of Slovenia; 2. if the person is a member of foreign intelligence service and as such harms the interests of the Republic of Slovenia or if he/she harms such interests by serving under any government authority or organisation of a foreign state; 3. if the person is a persistent perpetrator of criminal offences prosecuted ex officio and of offences against the public order; 4. if the person, despite the appeal of the competent authority, refuses to carry out the duty of a citizen of the Republic of Slovenia prescribed by the Constitution and the law”.
- <sup>20</sup> Art. 40(4A)(b) GBR.
- <sup>21</sup> Principles on Deprivation of Nationality as a National Security Measure (2020). Principle 7.3 and 7.3.1 provide that “There must be a clear and clearly articulated legal basis for any deprivation of nationality. This requires inter alia that: [...] The powers and criteria for deprivation of nationality are provided in law, publicly accessible, clear, precise, comprehensive and predictable in order to guarantee legal certainty”. See further Section 5.
- <sup>22</sup> Salam for Democracy and Human Rights, Institute for Statelessness and Inclusion, and the Hawiati MENA Statelessness Network, ‘Arbitrary Revocation of Nationality in Bahrain: A Tool of Oppression,’ (2021), available at: <https://www.institutesi.org/year-of-action-resources/report-arbitrary-revocation-of-nationality-in-bahrain>, p. 34.
- <sup>23</sup> *ibid.*
- <sup>24</sup> *ibid.*
- <sup>25</sup> See further EuroMed Human Rights Monitor, ‘Bahrain: Depriving children of those stripped of nationality from obtaining citizenship is inhumane,’ (8 September 2021), available at: <https://euromedmonitor.org/en/article/4612/Bahrain:-Depriving-children-of-those-stripped-of-nationality-from-obtaining-citizenship-is-inhumane>.
- <sup>26</sup> Art. 36B(1) AUS.
- <sup>27</sup> Art. 36B(1) AUS.
- <sup>28</sup> Principles on Deprivation of Nationality as a National Security Measure (2020). Principle 7.6.1 provides that “Deprivation of nationality for the purpose of national security must never be automatic by operation of the law”. See further Section 5.
- <sup>29</sup> Art. 15(1)(b) ALB.
- <sup>30</sup> Art. 15(3) ALB.
- <sup>31</sup> Art. 19(1) ALB.
- <sup>32</sup> Art. 19(2) ALB.
- <sup>33</sup> Art. 19(3) ALB.
- <sup>34</sup> Art. 33AA Australian Citizenship Act 2007, as introduced by Section 2 of the Australian Citizenship Amendment (Allegiance to Australia) Act 2015, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5507](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5507).
- <sup>35</sup> Art. 35(1) Australian Citizenship Act 2007, as amended by art. 4 of the Australian Citizenship Amendment (Allegiance to Australia) Act 2015, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5507](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5507).
- <sup>36</sup> Art. 35(2) Australian Citizenship Act 2007, as introduced by art. 4 of the Australian Citizenship Amendment (Allegiance to Australia) Act 2015, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5507](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5507).
- <sup>37</sup> The boxed text draws information from the following reports: P. Karp, ‘Woman stripped of Australian citizenship over alleged Isis role launches bid to overturn law,’ The Guardian (9 June 2020), available at: <https://www.theguardian.com/australia-news/2020/jun/09/woman-stripped-of-australian-citizenship-over-alleged-isis-role-launches-bid-to-overturn-law>; S. Maiden, ‘Kids of jihadi bride Zehra Duman may have lost right to claim Australian citizenship,’ The New Daily (9 October 2019), available at: <https://thenewdaily.com.au/news/national/2019/10/09/kids-zehra-duman-citizenship-doubt/>.
- <sup>38</sup> Parliamentary Joint Committee on Intelligence and Security, ‘Review of the renunciation by conduct and cessation provisions in the Australian Citizenship Act 2007,’ (2019), available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Citizenship2019/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Citizenship2019/Report); Independent National Security Legislation Monitor, ‘Report to the Attorney-General: Review of the operation, effectiveness and implications of terrorism-related citizenship loss provisions contained in the Australian Citizenship Act 2007,’ (2019), available at: <https://www.inslm.gov.au/sites/default/files/2019-11/INSLM%20Citizenship%20Unclassified%20report%20FINAL.PDF>; Australian Citizenship Amendment (Citizenship Cession) Bill 2020, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6409](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6409) <sup>39</sup> Principles on Deprivation of Nationality as a National Security Measure (2020). Principle 7.3.3 provides that “Deprivation of nationality must only be considered lawful if it is carried out by an appropriate and legally vested competent authority whose deprivation powers are clearly established by law”. See further Section 5.
- <sup>40</sup> Art. 3(1) TZA.
- <sup>41</sup> United Republic of Tanzania, ‘Government Portal: Ministries’, available at: [https://www.tanzania.go.tz/directoryrecords/sub\\_dir/26](https://www.tanzania.go.tz/directoryrecords/sub_dir/26).

<sup>42</sup> Art. 7 OMN.

<sup>43</sup> Art. 14(1) ROU.

<sup>44</sup> Art. 17(1) UGA.

<sup>45</sup> These are Greece, Kenya, Latvia and Somalia.

<sup>46</sup> Art. 21(1) KEN.

<sup>47</sup> Art. 25 FRA.

# 4

## THE EVOLUTION OF NATIONALITY DEPRIVATION SINCE 2000

Since the terrorist attacks of 9/11 in the United States, a wide range of policy measures have been adopted by states globally to fight the ‘war on terrorism’. Further efforts to bolster (inter) national security were prompted by subsequent attacks and bombings – including in London, Madrid, Brussels, Paris and Berlin – as well as the rise and then fall of ISIS in Syria and Iraq. The “*legislative fever*”<sup>1</sup> with which numerous governments have responded to contemporary terrorism threats has included the adoption or expansion of nationality deprivation powers. Citizenship has thereby become another policy area to be impacted by the evolution of “*exceptionalist*” counter-terrorism measures.<sup>2</sup>

This section of the report maps out the global trends emerging since 9/11. It looks more closely at the following questions: In which countries is deprivation for disloyalty *not* possible and which countries have reeled in their powers (by narrowing the grounds on which they can deprive nationality or abandoning them altogether)? Where has legislation remained unchanged? And finally, where has the power to deprive citizens of their nationality been extended or newly introduced, and how have these deprivation powers been used in practice?

The analysis again covers 190 countries and focuses in on what legislative changes have occurred specifically relating to *disloyalty* as a ground for deprivation of nationality since the year 2000. By comparing the legislation in force on 1 January 2000 and 1 January 2022, it offers an insight into the main longitudinal trends during this period. As shown in **Figure 4.1**, the overall picture is mixed, although a clear majority of states have not amended their legislation. It should be noted that by measuring only two moments in time, the analysis does not capture reforms that came into effect after 2000 but were repealed again before 2022 – an example of which is offered through the case study of Canada in **Section 4.2**. Nor does the discussion provide a fully itinerated account of each individual change that states made to their legislation during this period. In reality, numerous states made successive amendments, adding new language incrementally – as illustrated by the case studies of the United

Kingdom in **Section 2.2** and the Netherlands in **Section 4.4**.

### 4.1. WHICH COUNTRIES DO NOT PROVIDE FOR DEPRIVATION FOR ‘DISLOYALTY’?

On 1 January 2000, there were 67 countries *without* provisions in their law enabling deprivation of nationality for disloyalty. By 1 January 2020, this number had dropped to 61, and as of 1 January 2022, it had fallen further to 56 – as shown in **Figure 4.1**. Notwithstanding this general trend, the fact that 30% of the countries do not provide for citizenship stripping for disloyalty shows that it is by no means a universally accepted practice.

Breaking down the picture by region, significant disparities become evident. As shown in **Figure 4.2**, The Americas is the region where deprivation powers relating to disloyalty are least prevalent – 43% do not make provision for this in their legislation. In Europe and the Asia Pacific region, approximately a third of countries have no deprivation powers relating to disloyalty in place. In Africa, the proportion of countries without such powers falls to one in five; while in the MENA region there is only one country (out of 18 analysed) that does not provide for nationality deprivation for disloyalty.

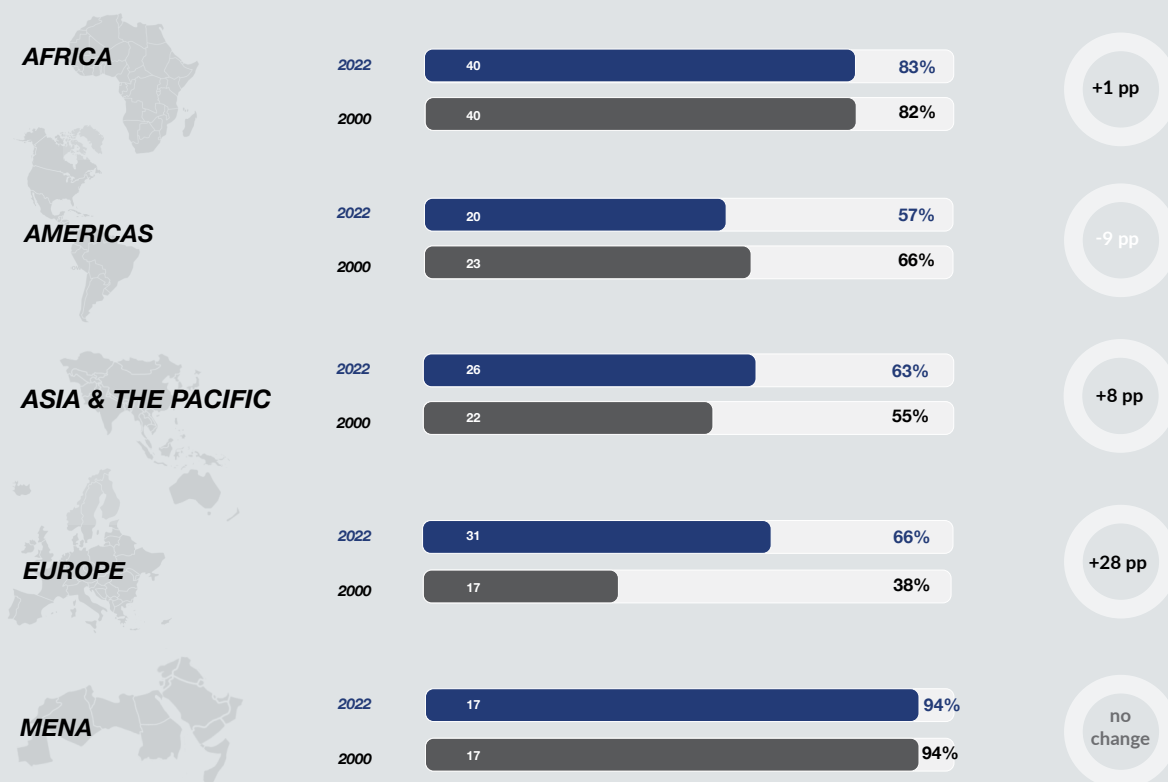
In some countries, the absence of disloyalty or other security-related loss grounds can be explained by the fact that nationals are constitutionally protected against the (involuntary) loss of nationality – in particular in the Americas and in Europe. For example, Article 53 of the 1993 Constitution of Peru states that “*Peruvian nationality is not lost, except by express renunciation before a Peruvian authority*”. As a consequence, Peruvian nationality cannot be lost on security-related grounds either. Similar provisions are in place, for example, in the Constitutions of Costa Rica,<sup>3</sup> Panama,<sup>4</sup> and Paraguay;<sup>5</sup> but also European countries like Croatia,<sup>6</sup> the Czech Republic,<sup>7</sup> Poland,<sup>8</sup> and Slovakia<sup>9</sup> have similar constitutional provisions in place. Such constitutional protections prevent states from instrumentalising nationality for policy aims.

**FIG 4.1** COUNTRIES *WITHOUT* NATIONALITY DEPRIVATION FOR DISLOYALTY

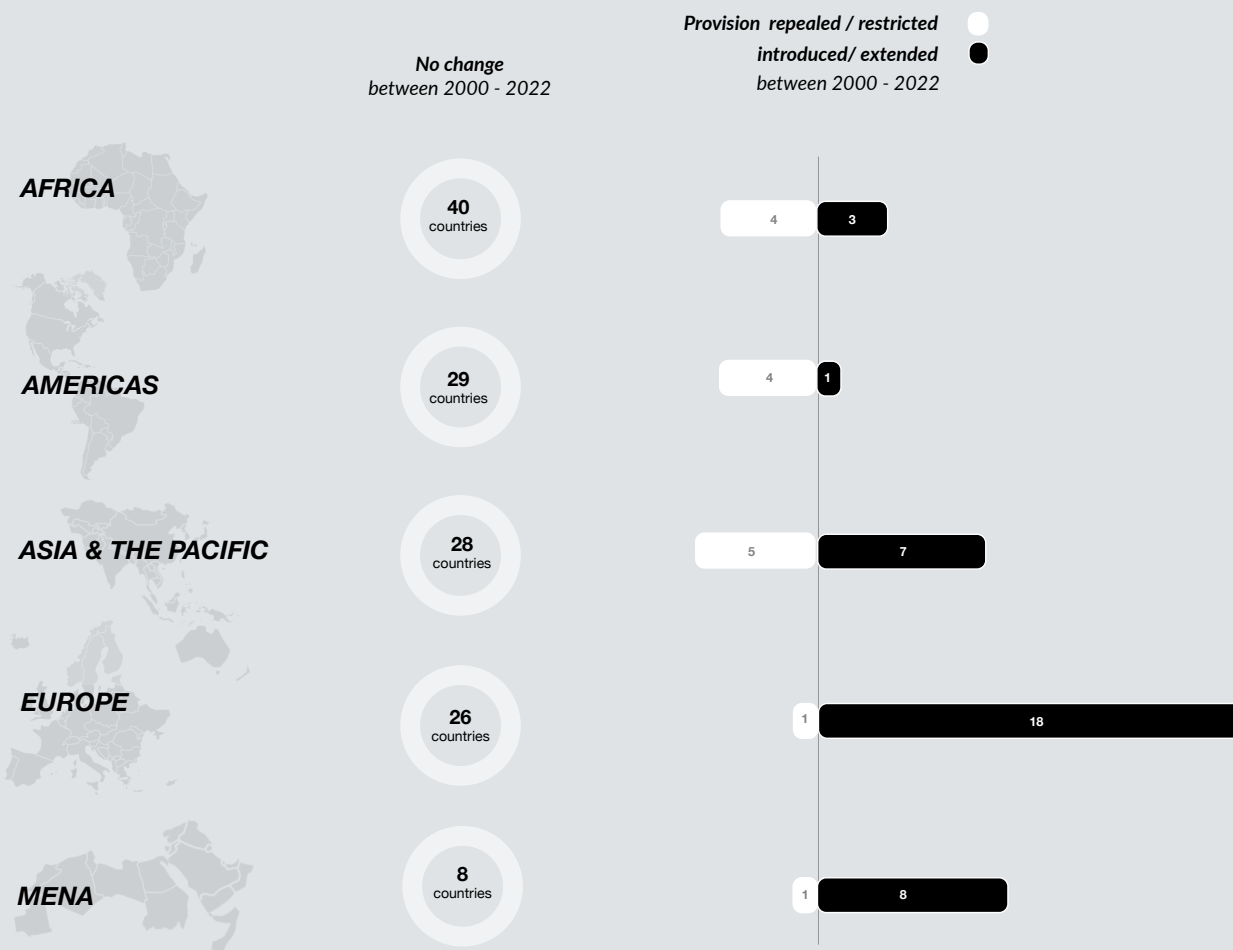
As of 1 January 2022



**FIG 4.2** PREVALENCE OF DEPRIVATION OF NATIONALITY DUE TO DISLOYALTY OR TREASON, TREND 2000 - 2022



**FIG 4.3** TYPE OF CHANGE IN REGULATION OF DEPRIVATION OF NATIONALITY DUE TO DISLOYALTY OR TREASON\*, TREND 2000 - 2022



\*Maximum one major amendment coded per country. Where the content of amendments is unclear, these are excluded. Further information on all coded amendments in Annex 4.



## 4.2. WHERE HAVE DEPRIVATION POWERS BEEN REPEALED OR RESTRICTED?

Between 2000-2022, 15 countries around the world repealed or significantly restricted powers to deprive citizenship for 'disloyalty'. This equates to 8% of states included in the survey, or 1 in 12 countries. Once again, as shown in **Figure 4.3**, there were considerable regional disparities.

In the Americas, four countries repealed these powers outright: Trinidad and Tobago (2000), Peru (2001), Chile (2005) and Ecuador (2017). Of these, Trinidad and Tobago is particularly interesting: having repealed its nationality deprivation provisions prior to the rise in global terrorism, anti-terror legislation was subsequently introduced in 2005, 2010 and 2018 *without* bringing back citizenship deprivation powers. This is particularly noteworthy because Trinidad and Tobago was among the countries with the highest number of nationals *per capita* traveling to Syria and Iraq as 'foreign fighters', constituting the highest proportion of ISIS recruits in the entire western hemisphere.<sup>10</sup>

In the Asia Pacific region, three countries also repealed their deprivation powers between 2003-2009: Sri Lanka in 2003, followed by Nepal and Tuvalu in 2009. In the same region, both the Lao People's Democratic Republic and Samoa significantly narrowed their powers to deprive citizenship for disloyalty in 2004. There was also a shift in the Africa region with Burundi and the Democratic Republic of the Congo (DRC) relinquishing

deprivation powers in 2000 and 2004 respectively, while Kenya and Mali both narrowed their powers in 2010.

Luxembourg was the only country in Europe to repeal deprivation of nationality provisions, in 2017 – at a time when multiple countries in the region expanded or introduced new powers. There were no countries in the MENA region that took legislative steps to repeal or narrow deprivation powers during this period. In fact, on the contrary, a large proportion of those countries that expanded their powers were in the MENA region.

When we consider the timing of when countries repealed or narrowed deprivation provisions, an interesting picture emerges. More than half of countries that repealed or narrowed their deprivation powers did so between 2000-2005,<sup>11</sup> at a time when – despite the rise in global terrorism<sup>12</sup> – such events may have been perceived as isolated or carried out by international terrorist cells based abroad. There was another significant batch of reforms between 2006-2010, when almost the same number of countries repealed or narrowed provisions,<sup>13</sup> signalling no significant national security concern from within. However, from 2011 onwards, there was an evident decline in countries repealing or restricting deprivation laws, which can be linked to the start of the Syrian civil war, the rise of ISIS and the emergence of the phenomenon foreign fighters.<sup>14</sup> Just two countries enacted such a reform since 2011: Luxembourg and Ecuador, both in 2017.

### CANADA:

#### DEPRIVATION POWERS REPEALED BECAUSE “A CANADIAN IS A CANADIAN IS A CANADIAN”

Prompted by a 2014 terrorist incident in Africa implicating Canadian citizens, the conservative Harper administration moved to introduce new grounds to deprive Canadians of citizenship. The Strengthening Canadian Citizenship Act profoundly changed Canada's legislative landscape on deprivation of nationality: grounds for deprivation of nationality were expanded to include national security and terrorism offences, and procedural changes severely curtailed the remit of the Federal Court, essentially leaving nationality deprivation powers concentrated in the hands of the Minister.<sup>15</sup>

Just three years later, however, Canada abandoned these measures. Then Prime Ministerial candidate Justin Trudeau made it a central focus of his electoral campaign to repeal parts of the Strengthening Canadian Citizenship Act, arguing that the law created two classes of citizens. Memorably proclaiming that “*a Canadian is a Canadian is a Canadian*”, **Trudeau argued that the citizenship of every Canadian is devalued when it is made conditional for anyone.**<sup>16</sup>

The progressive amendments brought in by Trudeau's government ensured that dual nationals convicted of national security offences were no longer stripped of nationality (but rather sanctioned under regular criminal law), at the same time also introducing new stand-alone grounds for the grant of citizenship to stateless persons.<sup>17</sup> The new law also firmly reinstated oversight by the Federal Court on nationality deprivation cases and took additional steps to ensure that even where deprivation was found to be appropriate (e.g., fraud misrepresentation), minimum safeguards, like residency rights were preserved to protect the basic of rights of the individual.

Canada's experience shows that **restrictive measures are not irreversible**. While initially introduced with the justification that citizenship stripping powers were necessary to protect Canada's national security, this perspective was successfully challenged and ultimately reversed. Importantly, amendments to the law saw that the one individual stripped of his nationality on national security grounds, was able to have it reinstated, while others threatened with revocation had those attempts abandoned. One of the most compelling arguments advanced in the Parliamentary debates in Canada on this topic, holds true for global debates on this issue:

“*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

#### 4.3. WHERE HAVE DEPRIVATION POWERS REMAINED UNCHANGED?

While the increasing instrumentalisation of nationality deprivation powers as a national security or counter-terrorism measure has gained significant attention in the media, in policy corridors and among commentators, the reality is that the overwhelming majority of countries have *not* amended nationality deprivation powers relating to disloyalty. Comparing the legislation on the books in 2000 with that in force on 1 January 2022, reveals that 131 countries – i.e. over two thirds – have not passed any substantive reforms. The short case studies of France, Sweden and the Czech Republic offer concrete examples of resistance to the introduction or expansion of deprivation powers in a region that has otherwise seen a sweep of reforms (as set out in **Section 4.4**).

Among the other countries where nationality deprivation powers remain unchanged are a number that have been significantly affected by the 'foreign fighter' phenomenon in relation to ISIS in Syria and Iraq. For instance, Tunisia is suggested to have had the highest ratio of foreign fighters *per capita* in the world,<sup>18</sup> and yet citizenship deprivation has not been a feature of the response to the challenge of dealing with returnees.<sup>19</sup> Tunisia's nationality legislation remains unchanged and indeed the new Constitution adopted in 2014 actually provides that "*No citizen shall be deprived*

*of their nationality, exiled, extradited or prevented from returning to their country*".<sup>20</sup> Other countries that saw a significant number of citizens join ISIS, but have similarly maintained their existing stance on citizenship deprivation and not expanded their powers include Jordan, Lebanon, Russia, China and Indonesia.

#### 4.4. WHERE HAVE DEPRIVATION POWERS BEEN NEWLY INTRODUCED OR EXPANDED?

Despite steps by some countries to repeal or restrict powers to deprive citizens of nationality between 2000-2022, more countries ventured in the opposite direction. 20 countries put in place deprivation grounds relating to disloyalty where previously there had been none,<sup>33</sup> while a further 17 widened the scope of existing grounds.<sup>34</sup> Together, this means that one in five of the countries *introduced* or *expanded* provisions to strip citizens of nationality for reasons relating to 'disloyalty' – and in almost all cases, national security or terrorism grounds were cited.

A further seven countries made amendments to their deprivation provisions, however it was unclear whether the scope of the amendments was such that powers were expanded, restricted

#### FRANCE, SWEDEN & THE CZECH REPUBLIC: RESISTING EXPANSION OF DEPRIVATION POWERS

The longitudinal analysis of changes to nationality deprivation provisions relating to national security since 2000 uncovered a particular prevalence of expanding powers in Europe. 18 of the 37 countries that either introduced or extended deprivation powers globally can be found in Europe, with the cumulative result that close to 40% of European countries saw an increase in the scope of these powers. However, the majority of states in Europe (over 60%) have resisted this trend. In several countries where politicians made public calls for powers to be expanded or bills were even tabled in parliament to enact legislative change, these initiatives were defeated.

In **France**, the use of deprivation of citizenship as a counter-terrorism measure was introduced in 1996,<sup>21</sup> as a direct response to a series of bloody attacks on the Paris metro in the summer of 1995.<sup>22</sup> Nationality can be revoked from a person who acquired it by naturalisation or declaration following conviction for specified terrorist or national security related crimes. In 2015, following the Charlie Hebdo and the Paris attacks<sup>23</sup> – the latter being considered as the "deadliest terrorist attack in French history"<sup>24</sup>—President Francois Hollande proposed that the French Constitution be amended through the Draft Constitutional Law on the "Protection of the Nation".<sup>25</sup> The amendment aimed to allow the government to revoke the nationality of French citizens by birth who have been convicted of terrorist acts (expanding the scope beyond naturalised citizens) and would also allow statelessness to result.<sup>26</sup> While the National Assembly supported the proposal, the bill was considered problematic by the Senate and ultimately the reform effort was abandoned. Since 2000, only a minor amendment to the nationality deprivation powers was passed in France, extending the time limit after naturalisation for deprivation of nationality in relation to terrorist acts from 10 years to 15. Moreover, while France is one of the largest source countries of 'foreign fighters' in Europe, with an estimated 1910 people traveling from there to Iraq or Syria,<sup>27</sup> nationality deprivation numbers are low, with 16 reported cases between 2002 and 2020.<sup>28</sup>

**Sweden** is another European country that has seen a significant number of its citizens travel to Syria or Iraq – around 300 people, similar to the Netherlands and Austria.<sup>29</sup> This sparked debate in the media and among politicians on whether to withdraw nationality as a national security measure, following the lead of other European countries. However, when calls were made to introduce nationality deprivation powers in 2017<sup>30</sup> and again in 2019,<sup>31</sup> key members of the government spoke out strongly against this proposal. Sweden remains one of the 16 countries in Europe (56 globally) that has no deprivation powers relating to national security in force whatsoever.

In the **Czech Republic**, the Constitution explicitly protects citizens from involuntary loss of nationality (similarly to the constitutions of Poland, Croatia and Slovakia). According to Article 12(2) of the Czech Constitution: "*No person may be deprived of his citizenship against his will*". In September 2016, making explicit reference to reports of Czech citizens traveling to Syria or Iraq to join the ISIS, the leader of the SPD party called for a constitutional amendment that would allow nationality deprivation for cases of terrorism, treason or cooperation with the enemy.<sup>32</sup> However, it seems that this item did not even make it to the parliamentary agenda for the Chamber of Deputies and the legislative procedure for an amendment never formally commenced. The constitutional protection against nationality deprivation remains in force and the Czech Republic is another country with no deprivation powers on its books.

or remained substantively similar. Three of these countries (Israel, Nauru and Switzerland) also now explicitly tie nationality deprivation and terrorism.

As shown in **Figure 4.3**, Europe emerges as the epicentre of expanding powers, accounting for almost half of all countries globally that amended their legislation to that effect. 18 European states expanded their powers since the year 2000: Bosnia and Herzegovina, Albania, Austria, Azerbaijan, Belarus, Belgium, Denmark, Estonia, Finland, Germany, Italy, Kazakhstan, Latvia, Liechtenstein, the Netherlands, Norway, Romania and the United Kingdom. Notably, over half of these countries added terrorism as an explicit ground in their laws, directly linking new deprivation powers to national security and counter-terrorism measures.<sup>35</sup>

In absolute terms, the second largest set of expanded deprivation powers can be found in the MENA region, where eight countries amended their laws. 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 in this period.<sup>36</sup> Here, again, involvement in terrorism was added as a specific ground for deprivation of nationality in a number of these countries – including in the United Arab Emirates, Morocco and Bahrain.

Other countries introducing deprivation powers were geographically scattered, including Fiji, Honduras, Seychelles, South Korea, and Tonga. It should be noted that in some cases, these newly introduced powers employ broad language and offer significant scope for discretion. For example, Honduras amended its legislation in 2003 to enable deprivation of nationality from “[t]he naturalized Honduran citizen ...[who] becomes unworthy of Honduran nationality”.<sup>37</sup>

Looking more closely at the timing and substance of these law reforms, a clear correlation emerges between the expansion of deprivation powers and the rise of global terrorism. There has been an acceleration of countries reforming their legislation to introduce or expand these powers between 2016-2022. This was clearly directly linked to the question of how to deal with ISIS returnees – a challenge with which the international community as a whole was grappling, including through the UN Security Council, as discussed in the **boxed text**. Between 2006-2010, of the nine countries that added or expanded grounds for deprivation, five of them specifically added terrorism as a ground for deprivation. From 2011 to 2015, a further six countries added or expanded grounds for deprivation – three of which added terrorism as a ground, while one country added the ground of joining an armed conflict abroad. However, between 2016-2022, a period undoubtedly marked by the declining influence of ISIS and the challenge of how to deal with the return of ISIS fighters, there was a significant increase in countries expanding or introducing new deprivation powers. Of the 14 countries that took those steps in this period,<sup>38</sup> nine countries added terrorism as a ground for deprivation and three countries added armed conflict abroad demonstrating a concerted effort to block the return of ISIS returnees and using citizenship stripping as a tool to do so. Moreover, several of the countries that had already introduced or expanded their powers during one of the earlier periods passed further reforms between 2016 and 2022, extending the scope of those powers significantly in some cases – such as in Australia, Denmark and the Netherlands.

As mentioned, the broadening of deprivation power over the last two decades has been most prevalent in Europe. In 2000, Estonia's deprivation grounds were relatively straightforward, but also unequal in application. There, only those who acquired nationality otherwise than by birth could be stripped of it, and this could only occur where a person joined the intelligence or security service of a foreign state, or an armed organisation of such a state, or attempted to change the constitutional order of

In September 2014, the Security Council unanimously adopted resolution 2178 to counter the threat posed by “foreign terrorist fighters” – formally introducing this language into the UN system and catalysing the adoption of a broad array of policy measures and action plans by states to tackle this phenomenon. The resolution explicitly reaffirms that states' counter-terrorism policies and actions must be consistent with international human rights law, international refugee law, and international humanitarian law. However, as noted by the UN High Commissioner for Human Rights, “some of the measures taken under the scope of Security Council resolution 2178 may have a negative impact, for example, on the right [...] be protected against arbitrary deprivation of nationality” (A/HRC/28/28).

The analysis undertaken for this report shows that, indeed, since resolution 2178 was adopted, 15 countries have introduced or expanded citizenship stripping powers, the majority linking deprivation specifically to involvement with terrorist or extremist groups. Moreover, resolution 2178 determines that states must “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” and the subsequent UN Security Council Resolution 2396 (2017) calls for strengthened judicial cooperation and for prosecution, rehabilitation and reintegration of ‘foreign terrorist fighters’ and their accompanying family members. Yet, states undermine commitments to international cooperation when they strip a person of nationality, expel them to a third country or subject them to removal proceedings, thereby exporting the potential security risk and failing to take responsibility for their own nationals.

Estonia by force. In 2021 however, these grounds were expanded to include multiple other grounds such as treason, espionage or crimes against international security, including terrorism. Notably, the expanded grounds did incorporate procedural safeguards, including allowing for deprivation only after a conviction.

Belgium provides another example of a country which greatly expanded the grounds on which one can be deprived of nationality. According to Belgian law, only those born to non-Belgian parents can be deprived of their nationality. In the year 2000, persons in this category could lose Belgian nationality if they “seriously fail in their duties as Belgian citizens”<sup>39</sup>. Successive amendments in 2006 and 2012 significantly expanded the ground on which nationality could be deprived. Consequently, any person not born to Belgian parents who had been “sentenced, as perpetrator, co-perpetrator or accomplice, to at least five years imprisonment for specified offenses” or for “an offense the commission of which was manifestly facilitated by the possession of Belgian nationality”, could be stripped of nationality. While procedural safeguards were incorporated into the amendment, the scope of the provisions are extremely broad and encompass a multitude of actions. Given also that deprivation of nationality on these grounds is limited to those who are not born to Belgian parents, there is an inherent inequality in the application of these provisions.

The heavy influence of political debates on counter-terrorism and how to deal with citizens who travelled to Syria and Iraq to join ISIS have left their mark in other European states as well, prompting some to include deprivation grounds for which it is not necessary for a person to be convicted. Rather, it is sufficient that the individual “actively participates in fighting by a terror organization abroad” (Germany)<sup>40</sup> or “voluntarily takes an active part in combat operations abroad on behalf of an organized armed group

in connection with an armed conflict" (Austria).<sup>41</sup> The case study of the Netherlands, below, offers another illustrative example of the successive expansion of deprivation powers in Europe. In Denmark, law reform has gone one step further still and the nationality law now precludes children from acquiring Danish citizenship by descent if they are born in a "conflict zone" – as set out in the **boxed text**.<sup>42</sup>

The MENA region has also seen sweeping changes to laws on nationality deprivation, with eight states amending their laws to broaden powers<sup>43</sup> – in many cases adding ambiguous grounds that apply mostly to naturalised citizens and often without basic procedural safeguards in place. Six of the eight countries that expanded the scope of their deprivation powers maintain grounds that can be invoked without a conviction. Moreover, none of these countries provide for safeguards to ensure that statelessness does not occur.

In 2005, for example, Algeria broadened the scope of its deprivation powers. Previously, in 2000, a naturalised citizen could be stripped of nationality for being convicted of a crime "against security of the State"<sup>44</sup>, but this ground was expanded in 2005 to include crimes "affecting the fundamental interests"<sup>45</sup> of the state. It is worth noting that there are procedural protections inherent in this ground for deprivation as it is subject to a criminal conviction. The procedural protections regarding other pro-

Denmark presents a particularly striking example of the influence of national security considerations on citizenship policy. Already having amended its laws in 2004, the country adopted additional provisions in 2020, not specifically on depriving nationality, but rather on the transmission of nationality to children born to parents unlawfully residing in "conflict zones". The amendment blocks the *jus sanguinis* acquisition of citizenship for children born in areas where a terrorist organisation is party to an armed conflict. The bill's explanatory report provides an insight into the justification for this extreme policy: '[t]hese children are born to parents who have turned their back to Denmark and Danish values, and they cannot be expected to grow up under circumstances that will provide for their attachment to Denmark and Danish values'.

visions however are less clear. For example, one of the grounds for deprivation relates to "acts deemed incompatible or prejudicial" to the State. Under the law in force in 2000, the scope of this provision extended to acting on behalf of a "foreign state"<sup>46</sup>. Under the 2005 amendment, the scope of this provision was extended to include acting on behalf of a "foreign actor".<sup>47</sup> In both cases there is no requirement for these acts to be established by a court of law.

Libya's deprivation laws also apply to a subcategory of naturalised citizens – those who acquired nationality within a specific time frame. In 2000, only those who had committed certain acts within five years of acquiring nationality, could be stripped of it. Those offences were largely centred around disloyalty to the state and the King, but also included other ambiguous grounds such as conviction of any offence involving moral turpitude or a royal decree showing grounds for the same. In 2010 the law was amended extending the time frame in which a naturalised citizen could be stripped of nationality from five to ten years. New grounds for denationalisation were also introduced with amendments to

the provisions – including for instance *infringing* upon Libya's security or any of its interests. These new grounds and parameters greatly broadened the scope and grounds of who could be stripped of nationality, notably with no procedural safeguard in place.

## THE NETHERLANDS: SUNSET CLAUSES, EVALUATIONS AND (IN)EFFECTIVENESS OF NATIONALITY DEPRIVATION

In its original form, as promulgated in 1984, Article 14 of the Dutch Nationality Act (DNA) only provided for deprivation of nationality where it had been obtained by fraud (currently Art. 14(1)).<sup>48</sup> Since 2010, there has been a gradual expansion of the powers to revoke nationality for national security reasons:

- 2010: Article 14(2)<sup>49</sup> – Following conviction for various criminal offences, including the commission terrorist offences, joining foreign armed forces, and offences under the Rome Statute.
- 2016: Article 14(2b)<sup>50</sup> – Following conviction for assistance in or preparation of the commission terrorist offences.
- 2017: Articles 14(3) and 14(4)<sup>51</sup> – Voluntarily entering the foreign military service of a state involved in hostilities against the Netherlands; or joining an organisation that is listed as constituting a threat to national security.<sup>52</sup>

Different procedural standards are at play in the application of these nationality deprivation powers: while Article 14(2) requires a criminal conviction in order to be invoked, Articles 14(3) and 14(4) can be invoked by the Minister of Justice and Security without a conviction. All of these provisions are, however, subject to Article 14(8) DNA, which provides that "the loss of Dutch nationality shall not occur if it would result in statelessness". As such, these deprivation powers can only be exercised against Dutch citizens who also hold another nationality.

A key and controversial provision for deprivation of nationality in a counter-terrorism context in the Netherlands is Article 14(4) DNA, introduced in 2017:

“ Our Minister may revoke the Dutch citizenship of a person who has reached the age of sixteen and who is outside the Kingdom in the interest of national security, if his conduct shows that he has joined an organization that Our Minister, in accordance with the views of the Council of Ministers, has been placed on a list of organizations that participate in a national or international armed conflict and that pose a threat to national security.”



The introduction of this provision was justified by the government because “[g]lobal jihadism poses **a substantial threat to the national security of the Netherlands**”<sup>53</sup> and there was a need to deal with Dutch nationals who left the Netherlands to join jihadist groups in Syria and Iraq (*uitreizigers*). The General Intelligence and Security Service (AIVD) estimates that a total of 300 people departed from the Netherlands to join jihadist groups in Syria and Iraq. Between 11 September 2017 and 6 May 2020 nationality was revoked under Article 14(4) DNA in **21 cases**.<sup>54</sup>

Even as the introduction of this measure was being debated, **concerns were raised about its necessity and effectiveness**. The AIVD was doubtful of the practical utility of the measure and of the effect on national security because terrorist activity can continue and clandestine return to the Netherlands remains possible. The Netherlands Institute for Human Rights also pointed out that “*since withdrawal of Dutch citizenship is limited to persons who have dual or multiple nationality, the measure makes only a very limited contribution to enhancing national security*”.<sup>55</sup> The provision was ultimately adopted with a sunset clause, such that it would expire in 2022, unless legislation is passed to extend it. An evaluation of the measure was furthermore mandated, which could inform the decision as to whether or not to extend the power.

In 2020, **two comprehensive evaluations** of Article 14(4) DNA were carried out: by the Dutch Review Committee on the Intelligence and Security Services (CTIVD)<sup>56</sup> and by the Research and Documentation Centre (WODC).<sup>57</sup> Neither evaluation provided evidence of the effectiveness of the measure. On the contrary, the CTIVD reiterated that it is “*uncertain whether the measure will have the desired effect of preventing return of uitreizigers*”. The WODC admits that the question as to whether Article 14(4) has contributed to a decrease in the threat of terrorist activities by members of jihadi organisations on Dutch territory and thereby an increase in the degree of national security, “*cannot be answered*”. At the same time, the evaluations show that the public prosecutor (OM) views deprivation of Dutch nationality as an encroachment on prosecution interests. Also, deprivation of nationality does not guarantee that the person will not return: in two cases in which people whose nationality had been deprived, Turkey nevertheless unilaterally decided to deport them directly to the Netherlands.<sup>58</sup>

Despite inconclusive evaluations and criticism of the measure, a proposal was submitted to parliament in October 2021 to permanently embed the nationality deprivation powers in the law. However, after extensive debate on questions of (counter-)effectiveness, necessity and proportionality of the measure, as well as its effect on national and international security, parliament decided that the power would not to be made permanent. Instead, the power is **extended for another five years** and made subject to further evaluations, as well as CTIVD supervision.<sup>59</sup> This will ensure continued scrutiny of the controversial powers and their use.

#### 4.5. HOW HAVE DEPRIVATION POWERS BEEN USED IN PRACTICE SINCE 2000?

There has yet to be a comprehensive study of how often nationality deprivation powers have been used globally as a national security measure. Publicly available data that could offer an insight into state practice is scarce. Few governments issue information on the use of these powers and reporting by the press tends to be tied to specific announcements of deprivation decisions or focused on a select number of individual cases that have gained notoriety. It is therefore difficult to discern what the full extent of the application of deprivation powers is.

It goes beyond the scope of this report to attempt to fill this data gap. However, what data could be readily identified is compiled in the **black box**. Note that these figures have been extracted from an array of different (types of) sources and were issued at different times, and therefore may not represent the full picture for each country. Nevertheless, the data suggests that, in practice, nationality deprivation powers have been deployed against a relatively small number of citizens. Only in Bahrain<sup>60</sup> and the United Kingdom<sup>61</sup> do the numbers reported exceed more than a few dozen people – often even less.

For many of the countries where powers were introduced or expanded since 2000, there do not (yet) appear to be any reports of deprivation cases – despite the fact that some of these reforms were passed with considerable political fanfare as a ‘show of strength’ in the fight against international terrorism. Moreover, several of the countries that introduced deprivation powers specifically in the context of concerns about how to respond to citizens traveling to Syria or Iraq to join ISIS subsequently refrained from using them in practice, instead adopting other policies towards these ‘foreign fighters’.

This is apparent in Central Asia, identified as “*the third biggest source of foreign fighters to Iraq and Syria, and if the outflow is*

*calculated per capita, based on ICSR report data, it is comparable to that of the largest contributors such as Turkey, Tunisia, Jordan, Russia, and Saudi Arabia*”.<sup>72</sup> Azerbaijan, Kyrgyzstan, Uzbekistan and Kazakhstan all introduced deprivation powers into their laws between 2015-2017. All of these states were initially focused on protecting against the perceived threat of returning ‘foreign fighters’. Kyrgyzstan even held a referendum to reform its constitution in order to pave the way for the introduction of this measure. However, there was subsequently a policy

434	BAHRAIN <sup>62</sup>
212	UK <sup>63</sup>
60	UNITED ARAB EMIRATES <sup>64</sup>
52	BELGIUM <sup>65</sup>
21	NETHERLANDS <sup>66</sup>
16	FRANCE <sup>67</sup>
12	AUSTRALIA <sup>68</sup>
6	DENMARK <sup>69</sup>
2	ESTONIA <sup>70</sup>
1	AUSTRIA <sup>71</sup>

transition “towards prioritising [...] actively returning their citizens, and then domestically prosecuting or reintegrating them based on their newly developed criminal history”.<sup>73</sup> As a result, these Central Asian governments have focused on taking responsibility for the repatriation, rehabilitation and de-radicalisation of their citizens, who have come to also be portrayed as ‘victims’ in need of support rather than uniquely as a security threat.

Another avenue through which to further to better understand the use of deprivation powers in practice is to look more closely at who has been targeted and the circumstances of the case. Thanks to the media frenzy that surrounded her case, many are familiar with the story of Shamima Begum and what happened to her after she was stripped of her British nationality.<sup>74</sup> But what happened to other denationalised citizens? Here are four examples of what followed after deprivation of nationality.

When the wider global trend towards increased instrumentalisation of citizenship stripping as a national security measure is distilled down to the level of an individual case, the practicali-

ties of what is involved in and what follows after deprivation of nationality are laid bare. According to security experts that are critical of the use of nationality deprivation in the fight against terrorism, states that have embraced this measure are essentially “avoiding the tough, but necessary, responsibility of dealing with their own citizens”.<sup>88</sup> As the case of Prakash demonstrates, this may result in “moving the problem around like a hot potato”,<sup>89</sup> passing the responsibility of dealing with such individuals to another state – in his case Turkey, a country that has felt the brunt of other governments’ recourse to nationality deprivation of ‘foreign fighters’ who joined ISIS. The cases of Fatima H., Hisham R., and Kamel Daoudi show that even this outcome is not guaranteed, as the governments that served the deprivation decisions remain encumbered with the problem of what to do with these former-citizens, now in limbo on their territory. The killing by drone strike of Mohamed Sakr and Bilal al-Berjawi demonstrates what the withdrawal of their British citizenship – and with it, the protection of the state – can precipitate. In none of these cases is nationality deprivation an easy administrative ‘fix’ to the complex challenge of combating international terrorism.

## THE NETHERLANDS

### Fatima H. and Hisham R.

*Deported to the Netherlands after being stripped of Dutch nationality*

In 2019, Turkey **deported** Dutch-Moroccan Fatima H. and her two children **back to the Netherlands, after her Dutch citizenship was revoked** under Article 14(4) DNA. Turkey gave two reasons for deporting Fatima H. back to the Netherlands: Turkey does not have sufficient extradition agreements with Morocco, and it was the Netherlands’ own choice to revoke her nationality.<sup>75</sup> After returning to the Netherlands, she was taken into custody as an undesirable foreigner and prosecuted for participating in terrorist activities. In 2021, a court in Rotterdam found Fatima guilty of actively participating in a terrorist organisation and sentenced her to four years of imprisonment.<sup>76</sup> After serving her sentence, the Dutch government will seek to deport her to Morocco. In 2021, Hicham R. was similarly deported back to the Netherlands by Turkey, despite already being deprived of his Dutch nationality. He was arrested on arrival, and placed into custody, with the government seeking to prosecute him and then deport him to Morocco.<sup>77</sup>

## FRANCE

### Kamel Daoudi

*Stranded in limbo in France after being stripped of French nationality*

Daoudi was a French-Algerian dual national. He was arrested in the UK in September 2001 on suspicion of having plotted a terrorist attack against the US Embassy in Paris. He was convicted of “criminal association in relation to a terrorist undertaking” and was stripped of his French nationality in May 2002. After serving a six-year prison sentence, he was released in April 2008 and immediately placed in a detention center pending deportation.<sup>78</sup> In 2009, however, the European Court of Human Rights held that deporting him to Algeria would expose him to prohibited “inhuman and degrading treatment”,<sup>79</sup> and therefore ordered France to suspend the deportation order.<sup>80</sup> Daoudi was instead made the subject of **compulsory and lifelong house arrest**.<sup>81</sup> In 2018, the French authorities declined to renew Daoudi’s provisional residence permit leaving him in an undocumented legal position.<sup>82</sup>

## AUSTRALIA

### Neil Prakash

*Stuck in immigration detention in Turkey after being stripped of Australian nationality*

After Melbourne-born Neil Prakash appeared in recruitment material for Islamic State and was linked to several Australia-based attack plans, the Australian government stripped him of his citizenship in December 2018.<sup>83</sup> While the Australian government claims Prakash is a Fijian national, the authorities of Fiji do not, in fact, recognise him as a citizen.<sup>84</sup> When Prakash completed a prison sentence for terrorism-related charges in Turkey in February 2022, he was remanded into immigration detention while Turkey waits to see if any country will take him.<sup>85</sup>

## UNITED KINGDOM

### Mohamed Sakr and Bilal al-Berjawi

*Killed by drone strike after being stripped of British nationality*

In 2010, the UK government stripped Mohamed Sakr and Bilal al-Berjawi of their British citizenship while they were in Somalia, on the grounds that they were allegedly involved with al Shabaab.<sup>86</sup> They were on the list of the British counter-terrorism agencies for some years. In 2012, both of them were **killed in a US drone strikes**.<sup>87</sup> Berjawi was survived by his wife and son, while Sakr was survived by his parents who blamed the British government for his death.

## ENDNOTES

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- <sup>2</sup> D. Burchardt and R. Gulati, 'International counter-terrorism regulation and citizenship-stripping laws—reinforcing legal exceptionalism,' (2018), *Journal of Conflict & Security Law*, vol 23, p. 13.
- <sup>3</sup> Art. 16 CRI.
- <sup>4</sup> Art. 13 PAN.
- <sup>5</sup> Art. 147 PRY.
- <sup>6</sup> Art. 9 HRV.
- <sup>7</sup> Art. 12(2) CZE.
- <sup>8</sup> Art. 34(2) POL.
- <sup>9</sup> Art. 5(2) SVK.
- <sup>10</sup> C. Simon, 'The calypso caliphate – How Trinidad became a recruiting ground for ISIS,' (2019), *International Affairs*, vol. 95(2).
- <sup>11</sup> Eight countries repealed or narrowed deprivation powers between 2000-2005: Burundi, Trinidad and Tobago, Peru, Sri Lanka, Democratic Republic of the Congo (DRC), Lao People's Democratic Republic, Samoa and Chile.
- <sup>12</sup> Including September 11 terrorist attack on the USA (2001), Bali bombings (2002), Moscow theatre hostage crisis (2002), Madrid train bombings (2004), London bombings (2005).
- <sup>13</sup> Five countries repealed or narrowed deprivation powers between 2006-2010: Iraq, Nepal, Tuvalu, Kenya and Mali.
- <sup>14</sup> See further Section 4.4 on trends with regard to the introduction and expansion of deprivation powers.
- <sup>15</sup> Bill C-24, the Strengthening Canadian Citizenship Act (SCCA), (19 June 2014), available at: <https://www.parl.ca/DocumentViewer/en/41-2/bill/C-24/royal-assent/page-30>.
- <sup>16</sup> Vice News, 'A Canadian Is a Canadian': Liberal Leader Says Terrorists Should Keep Their Citizenship,' Vice News (28 September 2015), available at: <https://www.vice.com/en/article/7xaxby/a-canadian-is-a-canadian-liberal-leader-says-terrorists-should-keep-their-citizenship>.
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- <sup>19</sup> See for a discussion of Tunisia's policy towards returnees, T. Rendard, 'Returnees in the Maghreb: Comparing policies on returning foreign terrorist fighters in Egypt, Morocco and Tunisia' (2019) *Egmont Paper* 107, available at: <https://aei.pitt.edu/97375/1/EP107-returnees-in-the-Maghreb.pdf>.
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- <sup>21</sup> Art. 25, 25-1 FRA.
- <sup>22</sup> P. Wautelet, 'Deprivation of citizenship for 'jihadists' Analysis of Belgian and French practice and policy in light of the principle of equal treatment' in P. Kruiniger (ed), *Jihad Islam en Recht: Jihadisme en Reacties vanuit het Nederlands en Belgische Recht* (Boom Juridische Uitgevers 2017), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2713742](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713742).
- <sup>23</sup> France 24, 'November 2015 Attacks: A Timeline of the Night That Shook the French Capital,' France24 (8 September 2021), available at: <https://www.france24.com/en/france/20210908-paris-november-2015-attacks-a-timeline-of-the-night-that-shook-the-city>.
- <sup>24</sup> Ibid.
- <sup>25</sup> W. Helbling, 'French President Proposes Constitutional Amendment,' *Jurist* (27 December 2015), available at: <https://www.jurist.org/news/2015/12/french-president-proposes-constitutional-amendments/>.
- <sup>26</sup> Ibid.
- <sup>27</sup> R. Barrett, 'Beyond the Caliphate: Foreign Fighters and the Threat of Returnees' (2017) *The Soufan Centre*.
- <sup>28</sup> M. Bolhuis and J. van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism,' (2020), *European Journal of Migration and Law*, vol. 22(3).
- <sup>29</sup> R. Barrett, 'Beyond the Caliphate: Foreign Fighters and the Threat of Returnees' (2017) *The Soufan Centre*.
- <sup>30</sup> C. Tomlinson, 'Swedish Minister Refuses to Strip Returning Islamic State Fighters of Swedish Citizenship,' *Breitbart* (8 August 2017), available at: <https://www.breitbart.com/europe/2017/08/08/swedish-minister-refuses-strip-returning-islamic-state-fighters-swedish-citizenship/>.
- <sup>31</sup> TheLocal, 'Sweden Democrats call on government to strip Isis fighters of citizenship,' TheLocal (13 March 2019), available at: <https://www.thelocal.se/20190313/sweden-democrats-call-on-government-to-strip-isis-fighters-of-citizenship/>.
- <sup>32</sup> T. Okamura, 'Tomio Okamura: Musíme zabránit pobytu džihádistů v ČR,' (8 September 2016) [Czech], available at: <https://www.spd.cz/tomio-okamura-musime-zabranit-pobytu-dzhihadistu-v-cr/>; T. Okamura, 'Vláda by měla vyjednat dohodu o zákazu vstupu všem džihádistům,' (6 September 2016) [Czech], available at: <https://www.parlamentnilisty.cz/profil/Tomio-Okamura-13074/clanek/Vlada-by-mela-vyjednat-dohodu-o-zakazu-vstupu-vsem-dzhihadistum-72392>.
- <sup>33</sup> These are Albania, Austria, Belarus, Bosnia and Herzegovina, Denmark, Fiji, Finland, Germany, Honduras, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, the Netherlands, Norway, Seychelles, South Korea, Tonga and Uzbekistan.
- <sup>34</sup> These are Algeria, Angola, Australia, Azerbaijan, Bahrain, Belgium, Estonia, Libya, Morocco, Oman, Qatar, Romania, Saudi Arabia, Solomon Islands, Uganda, United Arab Emirates and the United Kingdom.
- <sup>35</sup> These include Denmark, the Netherlands, Germany, Italy, Finland, Kazakhstan and Kyrgyzstan.
- <sup>36</sup> As compared to 38% in Europe, 17% in Asia-Pacific, 6% in Africa and 3% in the Americas.
- <sup>37</sup> Art. 65(3) HON. See further Section 3.3, on the use of vague terms or discretionary language in nationality deprivation provisions.
- <sup>38</sup> Kyrgyzstan, Liechtenstein, Uzbekistan and Angola in 2016; Kazakhstan and the United Arab Emirates in 2017; Italy, Norway and the Solomon Islands in 2018; Finland and Germany in 2019; Belarus and Albania in 2020; and Estonia in 2021.
- <sup>39</sup> Art. 23(1) BEL (2000).
- <sup>40</sup> Art. 28(1-ii) DEU (2022).
- <sup>41</sup> Art. 32(2) AUT (2022).
- <sup>42</sup> The information in the boxed text is drawn from E. Ersbøll, 'Birthright citizenship and children born in a conflict zone' (5 February 2020) blogpost for European Network on Statelessness, available at: <https://globalcit.eu/birthright-citizenship-and-children-born-in-a-conflict-zone/>.
- <sup>43</sup> Algeria, Bahrain, Libya, Morocco, Oman, Qatar, Saudi Arabia and United Arab Emirates.
- <sup>44</sup> Art. 22(1) DZA (2000).
- <sup>45</sup> Art. 22(1) DZA (2022).
- <sup>46</sup> Art. 22(3) DZA (2000).
- <sup>47</sup> Art. 22(3) DZA (2022).
- <sup>48</sup> For instance, when a person fails to declare in their naturalisation process that they have been convicted in the past, this would constitute an omission of a fact relevant to the naturalisation process, and would provide a ground for deprivation of nationality under Art. 14(1)). Handleiding Rijkswet op het Nederlanderschap 2003, nr. BWBW33099 (2003) [Dutch], available at: <https://wetten.overheid.nl/BWBW33099/2022-01-01>.
- <sup>49</sup> Rijkswet van 17 juni 2010, houdende wijziging van de Rijkswet op het Nederlanderschap met betrekking tot meervoudige nationaliteit en andere nationaliteitsrechtelijke kwesties, nr. stb-2010-242 (17 June 2016) [Dutch], available at: <https://zoek.officielebekendmakingen.nl/stb-2010-242.html>.
- <sup>50</sup> Rijkswet van 5 maart 2016 tot wijziging van de Rijkswet op het Nederlanderschap ter verruiming van de mogelijkheden voor het ontnemen van het Nederlanderschap bij terroristische misdrijven, nr. stb-2016-121 (5 March 2016) [Dutch], available at: <https://zoek.officielebekendmakingen.nl/stb-2016-121.html>.
- <sup>51</sup> Rijkswet van 10 februari 2017, houdende wijziging van de Rijkswet op het Nederlanderschap in verband met het intrekken van het Nederlanderschap in het belang van de nationale veiligheid, nr. stb-2017-52 (10 February 2017) [Dutch], available at: <https://zoek.officielebekendmakingen.nl/stb-2017-52.html>.
- <sup>52</sup> Besluit van de Minister van Veiligheid en Justitie van 2 maart 2017, nr. 2050307, tot vaststelling van de lijst met organisaties die een bedreiging vormen voor de nationale veiligheid, nr. stcrt-2017-13023 (2 March 2017) [Dutch], available at: <https://zoek.officielebekendmakingen.nl/stcrt-2017-13023.html>. 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.

- <sup>53</sup> Memorie van Toelichting: Wijziging van de Rijkswet op het Nederlanderschap in verband met het intrekken van het Nederlanderschap in het belang van de nationale veiligheid, nr. kst-34356-3 (9 December 2015) [Dutch], available at: <https://zoek.officielebekendmakingen.nl/kst-34356-3.html>.
- <sup>54</sup> A. Marseille, V. Bex-Reimert, P. de Winter, M. Wever and H. Winter, 'Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid,' (2020) WODC Rapport 3107 [Dutch], available at: <https://repository.wodc.nl/handle/20.500.12832/2488>.
- <sup>55</sup> College voor de Rechten van de Mens, 'Advies conceptwetsvoorstel intrekken Nederlanderschap,' (2015) [Dutch], available at: <https://mensenrechten.nl/nl/publicatie/35355>.
- <sup>56</sup> CTIVD, 'Toezichtsrapport. Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid,' (2020) [Dutch], available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/16/aanbieding-ctivd-rapport-intrekking-nederlanderschap>.
- <sup>57</sup> A. Marseille, V. Bex-Reimert, P. de Winter, M. Wever and H. Winter, 'Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid,' (2020) WODC Rapport 3107 [Dutch], available at: <https://repository.wodc.nl/handle/20.500.12832/2488>.
- <sup>58</sup> Institute on Statelessness and Inclusion, 'Deprivation of Nationality as a National Security Measure in The Netherlands,' (2021), available at: [https://files.institutesi.org/Deprivation\\_of\\_Nationality\\_the\\_Netherlands.pdf](https://files.institutesi.org/Deprivation_of_Nationality_the_Netherlands.pdf). See also 'Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children, and the Working Group on discrimination against women and girls,' (8 December 2021) UA NLD 4/2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26814,p.4>.
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- <sup>60</sup> See further the case study of Bahrain in Section 3.3.
- <sup>61</sup> See further the case study of the United Kingdom in Section 2.2.
- <sup>62</sup> Salam for Democracy and Human Rights, Institute for Statelessness and Inclusion, and the Hawiati MENA Statelessness Network, 'Arbitrary Revocation of Nationality in Bahrain: A Tool of Oppression,' (2021).
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# 5

## INTERNATIONAL STANDARDS AND RESPONSES TO EXPANDING DEPRIVATION POWERS

Under international law, “it is for each State to determine under its own law who are its nationals”<sup>1</sup>, which is accompanied with the right to determine who are not or no longer its nationals in so far as it is consistent with international law. Simultaneously, however, international *human rights* law provides for the right to a nationality and the right to not be arbitrarily deprived of nationality. The right to a nationality was first included in Article 15 of the Universal Declaration of Human Rights (UDHR)<sup>2</sup>, and has since been enshrined in various international and regional human rights instruments. The right to a nationality as a human right thus limits the sovereign prerogative of the state to regulate matters of nationality, as do a number of other related international standards, as set out below.

This section of the report offers a closer look at the application of the various international standards that curtail the use of nationality deprivation. There is a particular focus on the avoidance of statelessness, the principle of non-discrimination and the norms relating to arbitrariness, proportionality and due process. An analysis is also provided of the extent to which the bodies that monitor the implementation of relevant UN treaty norms have engaged with evolving state deprivation powers.

### 5.1. INTERNATIONAL LAW AND THE DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE.

A full analysis of the international law obligations that apply to situations in which states take, or consider taking, steps to deprive a person of nationality as a national security measure can be found in the *Principles on Deprivation of Nationality as a National Security Measure* (the Principles). The Principles were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas.<sup>3</sup>

The *Principles* restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice – discussed in detail in the accompanying extensive *Commentary*.<sup>4</sup> As set out in the ‘Basic Rule’ articulated by the *Principles*, when considered collectively, the standards that limit and govern practices of nationality deprivation suggest that nationality should *not* be deprived for the purpose of safeguarding national security.

#### PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

##### Principle 4 - Basic Rule

**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; and
- 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.

Yet the analysis presented in this report shows that four out of five countries worldwide contain legal provisions allowing for the possibility of deprivation of nationality on at least one security-related ground (Section 2). As of 1 January 2022, a total of 134 out of 190 countries allow deprivation of nationality on the grounds of *disloyalty* – sanctioning a range of behaviour or offences relating to harm to the interests or security of the state, including acts of treason or terrorism (Section 3). Moreover, since the year 2000, 37 countries have actually *introduced* or *expanded* powers to deprive citizens of their nationality for disloyalty (Section 4), showing significant regression in respect of the international normative standards.

This trend has been met with concern by human rights experts, as illustrated by a collective letter from five UN mandate holders to the United Kingdom in respect of the government’s intention to further erode procedural protections in relation to nationality deprivation by way of the 2021 Nationality and Borders Bill:

“ *International law imposes express limits on States’ powers to regulate nationality law [...] It is our clear view that the widespread use of citizenship stripping, in the name of countering terrorism, is inconsistent with the spirit and intention of the International Covenant on Civil and Political Rights, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, as well as other provisions of international human rights law and customary international law*.”<sup>5</sup>

There have also been a number of interventions in individual cases, including a joint communication by six UN mandate holders in the case of Fatima H. in the Netherlands,<sup>6</sup> and *amicus curiae* by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the appeals filed by Shamima Begum in the United Kingdom.<sup>7</sup>

In the regular monitoring of state practice through the UN Treaty Body system,<sup>8</sup> the evolution of nationality deprivation powers has also received some attention. Of the 37 countries that introduced or amended the scope of their legislation regarding citizenship deprivation, 35 were reviewed at least once by at least a UN Treaty Body after they changed their legislation.<sup>9</sup> In total, 188 sets of Concluding Observations were addressed to these 35 countries after their change in legislation by the Human Rights Committee (CCPR), the Committee Against Torture (CAT), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CEDAW) and the Committee on Migrant Workers (CMW). An analysis of the recommendations contained in these Concluding Observations reveals that only five focus explicitly on the deprivation of nationality in a national security context. Nine address deprivation of citizenship more broadly and 11 refer more generally to the counter-terrorism measures adopted by the state. Out of the total of 188 sets of recommendations issued, language on citizenship deprivation and issues raised by wider counter-terrorism legislation is included in just 25 of these.<sup>10</sup> This shows significant room for improvement in the measure of attention devoted by the Treaty Body system to the issue. Nevertheless, those recommendations that have been provided to states address a variety of the different concerns that nationality deprivation powers raise under international law, as set out in the following paragraphs.<sup>11</sup>

## 5.2. STATELESSNESS

A close corollary to the right to a nationality is the duty to avoid statelessness, which is considered “a fundamental principle of international law”<sup>12</sup> and has been acknowledged as an obligation of customary international law.<sup>13</sup> Article 8(1) of the 1961 Convention on the Reduction of Statelessness, for instance, prohibits the deprivation of nationality of a person “if such deprivation would render him stateless”. As such, in seeking to deprive a person of their nationality, states must make every effort to determine whether such deprivation would render a person stateless. This is an exercise that is neither historic nor predictive. The question to be answered is whether at the point of deprivation, the individual is considered by the competent authority of any other state, as a national under the operation of its law.<sup>14</sup> Establishing whether a person is considered as a national under the operation of a state’s law requires a careful analysis of how the competent authority of a state applies its nationality laws in an individual’s case in practice; it is a mixed question of law and fact.<sup>15</sup>

As discussed in **Section 3.1**, only around a quarter of countries that provide for deprivation of citizenship due to disloyalty expressly state in their law that this may not result in statelessness.

In contrast, 73% of states fail to prescribe a safeguard against statelessness. In those countries that have introduced or expanded deprivation powers since the year 2000, the legislative practice is somewhat better: safeguards are present in 16 of these 37 countries, equating to around 43%. This suggests that although the trend has been towards expanding the use of deprivation of nationality as a national security measure since the terror attacks of 9/11, more states recognise that statelessness is to be avoided.

In their review of states that have introduced or expanded nationality deprivation powers, the UN Treaty Bodies have paid attention to the issue of statelessness. The CEDAW, for instance, recommended in its concluding observations on Kazakhstan that when legislation allows for deprivation of nationality on national security grounds, it should provide:

“ *safeguards against the arbitrary deprivation of nationality with a view to preventing statelessness, including the right to lodge an appeal with suspensive effect and the availability of effective remedies, which should include the possibility of restoring nationality*.”<sup>16</sup>

The CCPR, with regard to the United Kingdom, held that “the State party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless”.<sup>17</sup> In all, five of the 25 relevant recommendations issued by the UN Treaty Bodies (i.e., 20%) make specific reference to the need to avoid statelessness from arising from deprivation of nationality.<sup>18</sup>

## 5.3. NON-DISCRIMINATION

Deprivation of nationality is further constrained by the principle of non-discrimination, which is one of the foundational tenets of international human rights law. The rights to equality and non-discrimination are, as such, enshrined in all the core international and regional human rights treaties, with the 1961 Convention specifically providing that a person or a group of persons may not be deprived of their nationality “on racial, ethnic, religious or political grounds”.<sup>19</sup> It therefore follows that states must not deprive any person or group of persons of their nationality as a result of direct or indirect discrimination in law or practice, on any ground prohibited under international law. The 2016 resolution of the UN Human Rights Council on this issue provides the following non-exhaustive list of discriminatory grounds in relation to understanding when the deprivation of nationality is arbitrary: “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, including disability”.<sup>20</sup> Measures of deprivation exercised on these grounds are prohibited under international law.<sup>21</sup>

Discrimination can either be direct or indirect, each of which is equally prohibited under international law. An example of direct discrimination can be found in the policy of limiting provisions on deprivation of citizenship to certain categories of citizens, such as naturalised citizens, which is often specified explicitly. In this case, the differential treatment thus derives directly from the citizenship status of the person – or their ‘national or social origin’. Indirect discrimination, by contrast, is more covert, and may exist when an apparently neutral policy of deprivation has discriminatory effects. As has been discussed in previous sections of this report, states regularly provide that citizenship may be deprived insofar it does not risk rendering the individual stateless, which is in line with the duty to avoid statelessness under international law. This seemingly neutral provision, however, may generate significant indirect discriminatory effects, because it leads states to differentiate between ‘mono nationals’ – those in possession of one citizenship – and individuals with multiple nationalities. Citizenship, then, is only deprived of the latter, because they are not rendered stateless by such decision. While such discrimination is purportedly justified on the basis of

'avoiding 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".<sup>22</sup> Where nationality deprivation is limited to naturalised citizens or dual nationals, it is applied primarily – if not solely – to individuals of foreign descent. This raises an additional issue of racial discrimination, as such discriminatory policies can have a stigmatising effect on minority communities.

The analysis in this report shows a high risk of violation of the principle of non-discrimination. As discussed in **Section 3.2**, two thirds of countries that provide for deprivation of nationality for disloyalty target only certain categories of citizens with this measure – usually *naturalised* citizens. Of the 43 countries in which deprivation powers are generally applicable, 19 have safeguards against statelessness that render the measure applicable only against dual nationals. This means that over 80% of states that provide for deprivation of nationality for disloyalty make the citizenship of only *some* citizens contingent while others are 'safe' because they cannot be targeted.

In reviewing state practice, UN mandate holders have emphasised that states must ensure that citizenship deprivation policy does not further entrench racial discrimination and inequality, including, *inter alia*, by stigmatising racialised and marginalised groups as threats to national security, or by depriving members of racialised and marginalised groups of their nationality at a disproportionate rate. In reviewing the deprivation practices of the Netherlands, for instance, the UN Special Rapporteur on Racism concluded that:

**“ [...] because dual nationality in the Netherlands incorporates and is shaped by ethnic or national origin, any Netherlands policy that utilizes a mono-/dual-nationality-distinction will disparately affect minorities on the basis of ethnicity, national origin, and descent in violation of its international human rights law obligations. In this way, the Netherlands' citizenship stripping policies result in unequal classes of citizenship on these bases (national origin, ethnicity, and descent). This is indirect discrimination.”<sup>23</sup>**

Some recommendations issued by the UN Treaty Bodies also place specific emphasis on the issue of discriminatory deprivation of nationality or discriminatory treatment in the context of counter-terrorism practices, though in considerably lesser numbers than recommendations on procedural guarantees or statelessness. For example, the CERD also provided a recommendation to the Netherlands covering non-discrimination (as well as procedural guarantees and prevention of statelessness):

**“ The State Party should: (d) Take measures to ensure that its policy of stripping dual nationality is only applied with regard to grave criminal offences, does not lead to statelessness, is subject to effective legal remedies, and does not lead to discriminatory effects based on race, ethnicity, national origin or descent.”<sup>24</sup>**

The CCPR also expressed concern on this matter in its own review of the Netherlands.<sup>25</sup>

Nevertheless, this aspect of citizenship stripping powers has received less attention than the avoidance of statelessness in terms of explicit language issued by the UN Treaty Bodies. Other recommendations refer more generally to the need to comply with the principle of non-discrimination in respect of counter-terrorism legislation and practices overall – but without directly commenting on citizenship deprivation powers, even where this is a pertinent issue in the state under review. For instance, the CCPR recommended to South Korea that “the State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant, are applicable to terrorism

alone and comply with the principle of non-discrimination”.<sup>26</sup> This recommendation was issued in 2015, five years after citizenship deprivation powers were introduced into the country's legislation for “citizens other than by birth” in the event of “acts contrary to national security”.<sup>27</sup>

#### 5.4. ARBITRARINESS AND DUE PROCESS

In any instance, the deprivation of nationality on national security grounds is presumptively arbitrary. The prohibition of arbitrary deprivation of nationality is set out in Article 15(2) of the UDHR and is subsequently enshrined in different international and regional legal instruments. This presumption of arbitrariness may only be overridden in circumstances where deprivation is, at minimum: 1) carried out in pursuance of a legitimate purpose; 2) provided for by law; 3) necessary; 4) proportionate; and 5) in accordance with procedural safeguards. It must be noted that the (non-)arbitrariness test is a cumulative one: if a measure or decision falls short in any of these areas, it must be understood to be arbitrary.<sup>28</sup>

The primary condition for the avoidance of arbitrariness is that deprivation of nationality must be carried out in pursuance of a legitimate purpose.<sup>29</sup> In order to assess whether the purpose is legitimate, it has been held that the purpose must be clearly defined. The following, among others, do not constitute legitimate purposes for nationality deprivation: administering sanction or punishment; facilitating expulsion or preventing entry;<sup>30</sup> or exporting the function and responsibility of administering justice to another state.

In addition to legitimacy considerations, it is important to assess whether deprivation of nationality is *strictly necessary* for achieving the stated legitimate purpose. The determination of whether a restriction on a right, in this case the right to a nationality, is 'necessary; most commonly involves the test of 'least intrusive' means. That is, the deprivation of nationality must be the least intrusive of the various means available to achieve the desired result. Given the extensive negative consequences associated with deprivation of nationality and the permanence of the measure, it is unlikely that it is the least intrusive means available. The effectiveness of the measure in achieving the stated legitimate purpose is a further consideration when assessing its necessity and requires that progress towards expected results should be monitored and tracked.<sup>31</sup>

Given the permanence and extensive impact of the measure, deprivation decisions must be in accordance with procedural safeguards under international law and must respect fair trial standards. Article 14(3)(a) of the ICCPR provides that amongst the procedural safeguards is the requirement that the individual concerned be “informed promptly and in detail in a language which he understands” of the intent to deprive nationality prior to the actual decision to do so. This implies, also, that deprivation must never be automatic, to ensure that the person concerned can provide facts, arguments and evidence in defence of their case. Related to this is the requirement that deprivation decisions must be open to effective judicial review by a “competent, independent and impartial” judicial body, where the proceedings are completed “without undue delay”, and where the defendant is present to defend his case and has his right to be treated “equal[ly] before the courts and tribunals” respected.<sup>32</sup>

In the analysis of states' legislation set out in this report, a mixed picture emerges with respect to questions of arbitrariness, proportionality and due process. On the one hand, the overwhelming majority of states that provide for deprivation of nationality for disloyalty ensure that citizenship cannot be lost *automatically*,<sup>33</sup> thereby recognising that the individual circumstances of the case must be assessed in order to ensure compliance with international law. On the other hand, the

terminology employed by states in defining deprivation powers regularly relies on vague language, leaving considerable room for interpretation at the discretion of the body authorised to take deprivation decisions.<sup>34</sup> Deprivation powers are also bestowed most often on the executive branch of government – a head of government, government body, or minister<sup>35</sup> – where broader policy considerations may carry more weight and there is likely to be less of a 'balancing' between the interests of the state and the rights of the individual than if deprivation were decided by a court.

While not comprehensively addressed in this report, there is also evidence of states evading important procedural protections in the practical application of deprivation powers against citizens. For example, the right to be present during proceedings has been subject to regular violation due to the widespread use of deprivation powers to target citizens while they are abroad. The case of Shamima Begum is illustrative: she was deprived of her British nationality after joining Islamic State and then denied the right to return to the UK to attend her appeal proceedings. While the UK Court of Appeal ruled in 2020 that Ms. Begum's presence in the proceedings constituted a prerequisite for the fulfilment of the right to a fair trial,<sup>36</sup> this was subsequently overturned by the UK Supreme Court in early 2021. The Supreme Court reasoned that:

**“ [...] if a vital public interest – in this case, the safety of the public – makes it impossible for a case to be fairly heard, then the courts cannot ordinarily hear it. The appropriate response to the problem in the present case is for the appeal to be stayed until Ms Begum is in a position to play an effective part in it without the safety of the public being compromised. That is not a perfect solution, as it is not known how long it may be before that is possible.”<sup>37</sup>**

Besides the violation of the right to attend judicial proceedings in person, the position of the Court also threatens the right to be tried without undue delay.

When it comes to the recommendations pertaining to the deprivation of nationality in the national security context, UN Treaty Bodies have placed significant emphasis on the need for procedural guarantees. 13 recommendations issued to states that have introduced or expanded deprivation powers in relation to disloyalty since 2000 include language addressing the need for due process. It is an issue that is raised primarily by the CCPR. For instance, in its 2015 concluding observations on the United Kingdom, it noted that:

**“ the State Party should review its laws to ensure that restrictions on re-entry, and denial of citizenship, on terrorism grounds, include appropriate procedural protections and are consistent with the principles of legality, necessity and proportionality.”<sup>38</sup>**

These issues are similarly raised in recommendations concerning deprivation of nationality more generally,<sup>39</sup> as well as those pertaining to counter-terrorism measures.<sup>40</sup> In the context of the latter, the CCPR recommended Australia to:

**“ ...comprehensively review its current counter-terrorism laws, policies, and practices on a continuing basis with a view to ensuring their full compliance with the Covenant, in particular by ensuring that any limitations of human rights for national security purposes serve legitimate government aims, are necessary and proportionate to those legitimate aims and are subject to appropriate safeguards.”<sup>41</sup>**

Finally, even if the cumulative requirements set out above are fulfilled, deprivation of nationality may still be arbitrary and therefore prohibited where such deprivation would lead to a violation of other rights set forth in international human rights law, international humanitarian law, and international refugee law. These include:

- The right to enter and remain in one's own country;
- The prohibition of refoulement;
- The prohibition against torture and cruel, inhuman, or degrading treatment or punishment;
- The right to liberty and security of the person;
- The right to legal personhood;
- The right to private and family life; and
- The rights of the child.<sup>42</sup>

The risk of consequential violations flowing from decisions to deprive nationality has also been raised by UN human rights experts in commenting on state practice. For instance, in their communication on the case of Fatima H. in the Netherlands, UN mandate holders remarked that:

**“ The removal of citizenship status from a family member based on assumptions or claims of radicalisation, extremism or engagement in or support of terrorism and/or the failure to preserve family units affect the fundamental rights of all its members. The burden that a mother's deprivation of her nationality will inevitably have on her underage children, even if their right to a nationality is not affected, must therefore be a key aspect of the proportionality assessment.”<sup>43</sup>**

This illustrates how, when exercising deprivation powers, the circumstances of the case must be carefully weighed – including assessing the risk of direct consequential human rights violations – as part of determining whether the principle of proportionality would be violated and thereby whether deprivation would be arbitrary under international law.

## ENDNOTES

<sup>1</sup> Convention on Certain Questions relating to the Conflict of Nationality Laws, opened for signature 12 April 1930, 179 UNTC 89 (entered into force 1 July 1937) art 1.

<sup>2</sup> The UDHR is recognised as part of customary international law. See ACTHPR, *Anudo v Tanzania* (2018), Application no. 012/2015.

<sup>3</sup> The Principles were drafted by the Institute on Statelessness and Inclusion in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. Over a 30 month period, extensive research was conducted into global trends, the effectiveness of citizenship deprivation and international standards related to deprivation, three expert meetings were convened (London – 2017, and The Hague – 2018 & 2019) and multiple drafts were developed by the team, under the guidance of an expert Drafting Committee and subject to the review of a wider group of experts. The Principles were finalised in February 2020 and remain open for institutional and individual endorsement until June 2021. For more information, visit [www.institutesi.org](http://www.institutesi.org).

<sup>4</sup> The Principles and the accompanying Commentary are available at: [www.institutesi.org](http://www.institutesi.org).

<sup>5</sup> Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on



discrimination against women and girls, Letter to Her Excellency Ms. Elizabeth Truss, Secretary of State for Foreign and Commonwealth Affairs (11 February 2022) OL GBR 3/2022, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27073>. See also, more generally, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (25 April 2018) A/HRC/38/52.

<sup>6</sup> Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children, Letter to the Netherlands (8 December 2021) UA NLD 4/2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26814>. See further on this case Section 4.5 of the report.

<sup>7</sup> Available together with other Amicus Curiae by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism at: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/AmicusBriefsExpertTestimony.aspx>.

<sup>8</sup> UN Treaty Bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Further information available at: <https://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>.

<sup>9</sup> Albania and Estonia have yet to be reviewed by any UN Treaty Body after the passage of new nationality deprivation powers.

<sup>10</sup> These recommendations can be found in Annex 4.

<sup>11</sup> Please note that the analysis of the engagement of the UN human rights system on nationality deprivation as a national security measure in this section of the report is limited to those countries which saw the introduction or expansion of deprivation powers for disloyalty since 2000. It does not provide a comprehensive overview of engagement on the issue. To explore UN human rights bodies' recommendations relating to nationality and statelessness more generally, please visit ISI's Database on Statelessness and Human Rights, available at: <https://database.institutesi.org/>.

<sup>12</sup> UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General', A/HRC/25/28 (2013), p. 3.

<sup>13</sup> Explanatory Report to the European Convention on Nationality, para 33.

<sup>14</sup> See further UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, ("UNHCR Guidelines No. 5") (May 2020) available at: <https://www.refworld.org/docid/5ec5640c4.html>.

<sup>15</sup> See for a detailed discussion of the international norms pertaining to the avoidance of statelessness in the context of deprivation of nationality as a national security measure the Commentary to Principle 5 of the Principles.

<sup>16</sup> CEDAW/C/KAZ/CO/5, para 34(c).

<sup>17</sup> CCPR/C/GBR/CO/7, para 15

<sup>18</sup> See Annex 4.

<sup>19</sup> Art. 9.

<sup>20</sup> UN Human Rights Council, A/HRC/RES/32/5 (2016), paras. 2 and 4.

<sup>21</sup> See for a detailed discussion of the international norms pertaining to non-discrimination in the context of deprivation of nationality as a national security measure the Commentary to Principle 6 of the Principles

<sup>22</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 'Amicus Brief before the Dutch Immigration and Naturalisation Service' (23 October 2018), para. 40.

<sup>23</sup> Ibid, para. 50.

<sup>24</sup> CERD/C/NLD/CO/22-24, para 26(d)

<sup>25</sup> CCPR/C/NLD/CO/5, para 51.

<sup>26</sup> CCPR/C/KOR/CO/4, para. 21.

<sup>27</sup> ROK 14(4).

<sup>28</sup> See for a detailed discussion of the international norms pertaining to arbitrariness and due process in the context of deprivation of nationality as a national security measure the Commentary to Principles 7 and 8 of the Principles

<sup>29</sup> UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General', A/HRC/25/28 (2013), para. 40.

<sup>30</sup> ILC Draft Articles on the Expulsion of Aliens, Art. 8.

<sup>31</sup> Glion Recommendations (2019), p. 12. In the Netherlands, security oversight body CTIVD reported that: "The direct effect of deprivation of Dutch nationality on national security in broad terms was, furthermore, limited. The measure certainly imposed a restriction on the ability to return to the Netherlands, but it failed to remove the (potential) threat emanating from a person." CTIVD, 'Report no. 68 on the actions of the AIVD in the context of revocation of Dutch citizenship in the interest of national security' (2020), p. 10, available at: <https://www.ctivd.nl/onderzoeken/aivd-mivd-intrekking-nederlandschap/documenten/rapporten/2020/06/16/index>

<sup>32</sup> ICCPR, Article 14(1).

<sup>33</sup> Only 6 countries provide for automatic loss of nationality on the grounds of disloyalty – see Section 3.4.

<sup>34</sup> Terms such as "acts against national security", "public good" and "seriously prejudicial to the vital interests of the state" commonly remain unspecified in the law. See Section 3.3.

<sup>35</sup> See Section 3.5.

<sup>36</sup> UK Court of Appeal (16 July 2020). On Appeal from the Special Immigration Appeals Commission (T2/2020/ 0644) (sitting also as a Divisional Court in CO/798/2020) (T3/2020/0708) and the Administrative Court (T3/2020/0645). Available at: <https://www.judiciary.uk/judgments/shamima-begum-v-sshd/> (para 121).

<sup>37</sup> UK Supreme Court (26 February 2021). R (on the application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant), para. 135.

<sup>38</sup> CCPR/C/GBR/CO/7, para 15. See also: CCPR/C/BEL/CO/6 and CCPR/C/NLD/CO/5.

<sup>39</sup> E.g., CEDAW/C/KAZ/CO/5 (para 34(c)), CCPR/C/BHR/CO/1 (para 62), CERD/C/NLD/CO/22-24 (para 26(d)), CMW/C/BIH/CO/1, and CAT/C/BIH/CO/2-5 (para 15),

<sup>40</sup> E.g., CERD/C/MAR/CO/17-18 (para 15), CCPR/C/AUS/CO/6 (para 16), CCPR/C/DNK/CO/6 (para 28), and CCPR/C/DEU/CO/7 (para 15).

<sup>41</sup> CCPR/C/AUS/CO/6 (para 16).

<sup>42</sup> See for a detailed discussion of the further human rights, humanitarian and refugee law obligations and standards that must be considered in the context of deprivation of nationality as a national security measure the Commentary to Principle 9 of the Principles.

<sup>43</sup> Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children, Letter to the Netherlands (8 December 2021) UA NLD 4/2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26814>.

# 6

## CONCLUSION

Recent years have seen a resurgence of states' practices of nationality deprivation as security measure, repackaged for the 21st century as a counter-terrorism instrument. By comprehensively surveying legislative provisions in force today around the world and exploring the evolution of nationality deprivation powers since the year 2000, this report reveals the full extent of this resurgence for the first time. It confirms an alarming gravitation towards the securitisation of citizenship.

Today, in almost 80% of countries around the world, citizens can be deprived of their citizenship based on disloyalty, military or other service to a foreign country or other criminal offences. These deprivation powers have *increased* significantly in the post-9/11 period. Since 2000, one in five countries have added new grounds for nationality deprivation that relate to disloyalty, national security or counter-terrorism – with Europe at the helm, closely followed by the MENA region. In a number of countries, such as the United Kingdom and the Netherlands, the cumulative effect of successive legislative amendments has been to expand powers, increase the scope of who can be targeted, bestow more discretion to the executive in the use of nationality deprivation and weaken procedural protections.

The report also shows that when evolving state policy and practice is held up against international norms – synthesised in the *Principles on Deprivation of Nationality as a National Security Measure* – a variety of problems arise. International law protects the right to a nationality, prescribes the avoidance of statelessness and prohibits arbitrary or discriminatory deprivation of nationality, significantly constraining the freedom of states to instrumentalise the loss of nationality. This global survey shows that there is a high risk of arbitrariness and the violation of the principle of non-discrimination due to the framing of legislative powers. Two thirds of countries that deprive citizens of nationality due to disloyalty or treason target these powers only to certain categories of citizen (usually *naturalised* citizens), who are often from minority groups, increasing both direct and indirect discrimination and serving to bolster and justify racist, xenophobic and populist narratives. Moreover, the measure is often implemented without sufficient procedural protections or safeguards against statelessness. Three quarters of countries lack safeguards to prevent statelessness and many laws employ vague language, leaving the interpretation such clauses to the discretion of the authority in charge of taking deprivation decisions. This creates legal uncertainty and the possibility for powers to be 'stretched' and abused – as in the case of Bahrain where human rights defenders have been a prime target.

Yet, a countertrend is also visible, with 15 countries either completely repealing or significantly limiting their deprivation powers during the same post 9/11 period. These countries, found mainly in the Americas and Asia Pacific region, demonstrate that political decisions to broaden deprivation powers are not irreversible. Canada presents a noteworthy example, where restrictive deprivation powers introduced in 2014 were reversed just three years later, in favour of pursuing justice through the application of criminal law. These changes were ushered in under the leadership of

Prime Minister Justin Trudeau, who helped to underscore that while national security and counterterrorism remain serious concerns that need to be addressed, states have other tools to adequately respond without having to resort to nationality stripping.

Today, there are 56 countries globally where nationality cannot be deprived on grounds relating to national security – including several where citizens are protected against involuntary loss of their nationality under the constitution. As discussed in this report, a number of countries (including Sweden and the Czech Republic) have resisted populist calls to instrumentalise citizenship in the fight against terrorism – favouring the use of criminal justice measures and steering away from a measure which hugely divisive and has, in any case, not proven to be effective.

In fact, as more countries expanded citizenship stripping powers on the pretext of protecting national security or fighting terrorism, this generated concern not only among human rights mandate holders but also from the security sector. Such instrumentalisation of nationality deprivation threatens the international legal order and relations between states, by passing the problem of dealing with a possible security risk to another state instead of each state taking responsibility for its own citizens. Referring to Osama Bin Laden as "*Exhibit A of the folly of stripping a foreign fighter's citizenship and then washing your hands and assuming the individual is no longer your problem*",<sup>1</sup> counter-terrorism experts warn that nationality deprivation will be counter-effective to security goals:

“ **By blocking the return of people they regard as dangerous, these states believe that they are protecting their citizens at home. In reality, however, this “hands off” stance will only create greater danger in the future [...] The denial of citizenship by their home nations will bolster their sense of being, in effect, citizens of the Islamic State, potentially preparing them to form the core of a future resurgence. Similar conditions brought the modern Salafist-jihadist movement into being in the first place.**<sup>2</sup>

A closer look, in this report, at a selection of individual cases, exposes a variety of complex outcomes following nationality deprivation, including: expulsion back to the country of former nationality; limbo in the country of former nationality due to obstacles to deportation; and burdening a third country, such as Turkey, because there is nowhere to send the denationalised person to. Perhaps already aware that citizenship stripping is not an easy 'fix' to the complex challenge of combatting international terrorism, some states – such as in Central Asia – that introduced deprivation powers to address the perceived threat of 'foreign fighters' returning from Syria and Iraq, do not appear to have used these powers, instead focusing on repatriation, rehabilitation and de-radicalisation. Indeed, while the lack of reporting on data makes it hard to gauge how much the measure has actually been used, the few available statistics suggest that the numbers affected are low overall – cases are in the tens, or less, with the exception of Bahrain (434 cases) and the UK (212 cases).

Nevertheless, even if the number of individuals directly impacted by nationality deprivation is relatively limited and powers brought in remain unused in some states, the resurgence of citizenship stripping has a corrosive effect on the most fundamental legal status one can obtain: a nationality, which is also protected as a human right. Instrumentalising citizenship in the fight against terrorism risks normalising denationalisation as a legitimate power for states to hold over their citizens, with a knock-on impact for efforts internationally to protect right to nationality and prevent statelessness. In an era of rising authoritarianism, growth of the security state, and increasing populism, xenophobia and racism, citizenship is under threat in countries around the globe in ways not seen for generations. As more states treat nationality as a privilege that can be taken away at the discretion of the government, the prospect for successfully protecting against

arbitrary deprivation of nationality – as provided for under the Universal Declaration of Human Rights – is progressively eroded. It is imperative to call a moratorium on the use of citizenship stripping in the fight against terrorism. It is time for those states that recognise nationality as a right to lead the way in challenging the post 9/11 expansion of nationality deprivation powers and for states that have these powers on their books to urgently reconsider the appropriateness of instrumentalising citizenship stripping as a security measure.

The widely endorsed [Principles on Deprivation of Nationality as a National Security Measure](#) and their accompanying [Commentary](#) provide a framework to guide states on how they can effectively navigate this issue, in line with their international obligations.

## ENDNOTES

<sup>1</sup> D. Malet, 'ISIS Foreign Fighters: Keep Your Enemies Closer', Australian Outlook (28 February 2019), available at: <https://www.internationalaffairs.org.au/australianoutlook/isis-foreign-fighters-keep-enemies-closer/>.

<sup>2</sup> 'Open Letter from National Security Professionals to Western Governments: Unless We Act Now, the Islamic State Will Rise Again', (11 September 2019) available at: <https://thesoufancenter.org/wp-content/uploads/2019/09/FTF-Open-Letter.pdf>.



