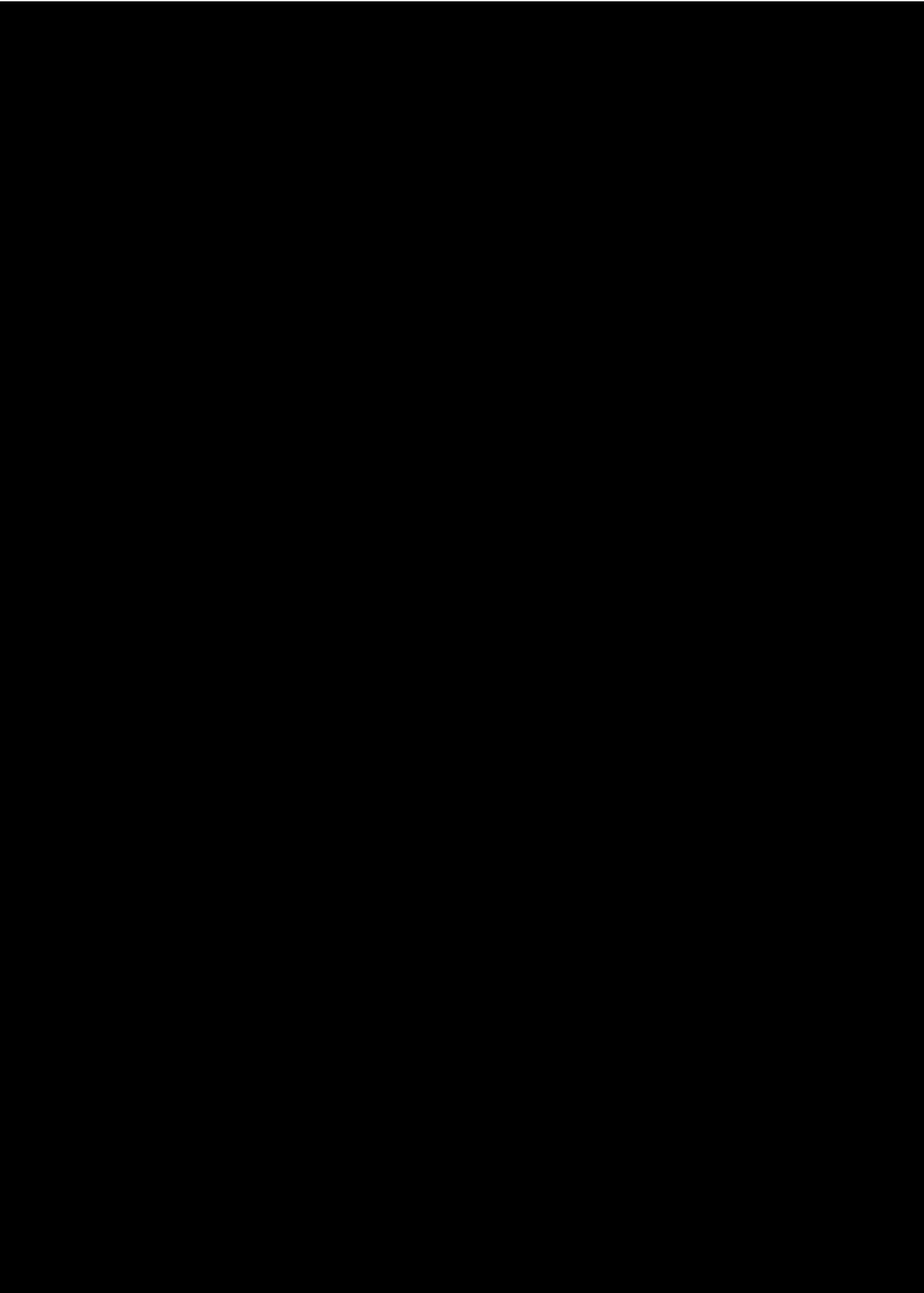


PRINCIPLES

ON DEPRIVATION OF NATIONALITY
AS A NATIONAL SECURITY MEASURE



FOREWORD

FIONNUALA NÍ AOLÁIN*

I welcome these Principles as an important contribution to the legal and political debates concerning deprivation of nationality. As Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism I am profoundly aware of the increased use of nationality deprivation as a security and counter-terrorism measure. Such use has profound human rights consequences for individuals, families and communities. I affirm that statelessness is a distinctly vulnerable status, one that does not merely involve the loss of nationality but has attendant consequences for the protection of a range of fundamental rights. Nationality remains an entry point for individuals and groups to access civil, political, social, economic and cultural rights. Deprivation of nationality cuts an individual off from the capacity to meaningfully exercise such rights and gain protection in multiple dimensions. The knock-on effect of the deprivation of nationality is felt by dependents so that even apparently singular deprivation has a collective effect.

Security challenges are genuine and keenly felt by many states, but as Special Rapporteur I fundamentally maintain that rights and security are not at odds. Rather, it is only through the meaningful enforcement of rights that security in all its dimensions will be realized for states and individuals. It remains essential that States respect safeguards established by international human rights law around the prohibition of arbitrary deprivation of nationality. These safeguards include non-discrimination, fair process, legal representation, the opportunity to effectively challenge decisions before an independent body, ideally of judicial nature and reparations. Decisions must respect the absolute prohibition on *refoulement* and take due consideration of the impact on human rights, including the right to private and family life, as well as the impacts on the rights of the child. Legal safeguards around the prohibition of arbitrary deprivation of nationality are imperative as loss of nationality has serious human rights consequences many of which may be irreparable.

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These Principles provide important guidance to States and civil society spelling out in direct and accessible ways what broad frameworks (proportionality, necessity, legality) mean in practice. These Principles highlight the need to translate the protection of human rights in the context of fraught security debates into practical guidance and affirm that legal process and procedural fairness matter. As Special Rapporteur I am pleased to support these Principles as an important contribution to the dialogue and practice seeking to prevent statelessness, and to support the work of United Nations entities, human rights defenders and civil society actors seeking proactive dialogue and encouraging States to protect and promote human rights in all their security and counter-terrorism practices.

Jonhala Ni Aklaw

INTRODUCTION



**Everyone has the right to a nationality.
No one shall be arbitrarily deprived of his nationality...**

*Article 15 (1) & (2) of
the Universal Declaration of Human Rights*

The Principles on Deprivation of Nationality as a National Security Measure 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.¹ 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. They articulate the international law obligations of States 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 were developed in response to a 21st Century trend of a small, but growing number of States resorting to deprivation of nationality as a counterterrorism and national security measure. While some States have amended their laws to expand existing powers or introduce new powers to enable deprivation of nationality, others have relied on existing powers, which have been construed expansively to apply to situations not previously envisaged. There has also been an increase in deprivation of nationality for other stated purposes (such as fraud), 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 human rights (such as the revocation of passports, refusal to repatriate and the imposition of travel and entry bans).

¹ 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.

The deprivation of nationality as a national security measure disproportionately targets those of minority and migrant heritage and is likely to be discriminatory on various grounds including race, ethnicity, religion, political or other opinion and national origin. Such measures are also likely to be arbitrary and can cause statelessness. There is no evidence to support the use of such measures as being an effective means of protecting national security, and there is growing concern that such actions may actually be counterproductive. There are also significant concerns related to the permanent nature of the measure of deprivation of nationality, its disproportionate impact on individuals, families and communities, and the detrimental impact on other fundamental human rights.

States have a duty to cooperate with each other and to act responsibly and in accordance with international law, to maintain international peace and security and to promote and encourage respect for human rights and fundamental freedoms. The practice of deprivation of nationality, in particular when coupled with the refusal to repatriate and the imposition of entry bans, runs counter to these obligations and can result in the ‘exporting’ of a challenge for other States to deal with.

The Principles present a wide range of well-established and developing international law standards, which States are obliged to uphold, when considering the introduction of new powers or the implementation of existing powers to deprive the nationality of their citizens. The Principles serve to provide a clear and authoritative overview of existing international law obligations; they do not establish any new standards. However, by collating the numerous international law standards at play, the Principles articulate the extremely high threshold to be met, for a State to deprive nationality while satisfying its international obligations. An analysis of current State practice shows that this threshold is not being respected by any State which has taken the measure of depriving nationality of its citizens to safeguard national security.

The **Basic Rule** articulated in Principle 4, synthesises all relevant international standards, to conclude that “States shall not deprive persons of nationality for the purpose of safeguarding national security”. It asserts that any exercise of an exception to this rule, must be “interpreted and applied narrowly”, and is further limited by other well-established standards of international law. Namely:

- The avoidance of statelessness;
- The prohibition of discrimination;
- The prohibition of arbitrary deprivation of nationality;
- The right to a fair trial, remedy and reparation; and
- Other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law.

Subsequent Principles provide further elaborations on each of these limitations, which are to be individually and collectively applied and respected. This means for example, that it is not lawful for a State to abide by its obligation to avoid statelessness, by resorting to discrimination between single and dual nationals.

At a time when the institution of citizenship is increasingly under threat, the Principles serve to remind us of the longstanding and strong international law framework which obligates States to respect, protect, promote and fulfil everyone's right to a nationality; and which recognises the importance of doing so, in order to also protect other fundamental human rights. It is no coincidence that these international standards were developed in response to our shared world history in which the State's power to deprive citizens of their nationality has been a precursor to committing the gravest crimes and unimaginable atrocities.

The drafters and endorsers of the Principles hope that they will be a useful tool in the hands of the legal community and other stakeholders, to promote and protect our fundamental human rights, security and the rule of law.

PREAMBLE

Affirming that States are obligated under the Charter of the United Nations to take joint and separate action to maintain international peace and security and to achieve universal respect for, and observance of, human rights and fundamental freedoms for all without distinction;

Recalling basic principles of international law, as set out in the UN Charter, general principles of law, treaties, customary international law, judicial decisions and legal scholarship, regional legal frameworks and other sources;

Recognising that States have an international legal obligation to protect all persons in their territory or subject to their jurisdiction and a right to take effective and lawful steps to protect national security;

Upholding the principle of non-regression and encouraging the progressive development and codification of international law;

Reaffirming that States and the international community as a whole must ensure that any measures taken to protect security and counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law;

Underscoring that respect for human rights, fundamental freedoms and principles of non-discrimination, equality and the rule of law are complementary and mutually reinforcing with effective security measures, and are an essential part of a successful security and counter-terrorism effort;

Remembering our shared world history in which the State's power to deprive citizens of their nationality has been a precursor to committing the gravest crimes and unimaginable atrocities which deeply shocked the conscience of humanity;

Noting that a small but growing number of States have resorted to deprivation of nationality as a counter-terrorism and national security measure, with some States amending their laws to expand existing powers or introduce new powers to enable deprivation of nationality, and other States relying on existing powers, which are being construed expansively to apply to situations not previously envisaged;

Recognising that States have increasingly used deprivation of nationality to safeguard national security, despite the lack of any evidence of its effectiveness and in the face of evidence that such practices are likely to be counterproductive.

Recalling Article 15 of the Universal Declaration of Human Rights, according to which everyone has the right to a nationality and no one shall be arbitrarily deprived of his or her nationality, and asserting that States should ensure that they exercise their discretionary powers concerning nationality issues in a manner that is consistent with their international obligations in the field of human rights;

Concerned at the permanent nature of the measure of deprivation of nationality, and its potential for being unnecessary, without legitimate purpose, disproportionate, discriminatory, arbitrary and unlawful, while at the same time being ineffective and subject to abuse;

Equally concerned that the deprivation of nationality can entail or facilitate other violations of international law, affecting both the person deprived and connected persons including children, impairing access to a wide range of civil, cultural, economic, political and social rights, including through: denial of the right to enter and remain in one's own country; discrimination; *refoulement*; torture, cruel, inhuman or degrading treatment or punishment; deprivation of liberty and security of the person; denial of access to education, healthcare and housing; denial of legal personhood; denial of private and family life; denial of access to justice; and denial of the right to an effective remedy;

Affirming that the prohibition of racial discrimination is a peremptory norm of international law, and noting that prevailing national laws and practices of deprivation of nationality are likely to disproportionately target members of minority or marginalised communities;

Recognising that international law prohibits the expulsion of nationals, as a measure which undermines international cooperation and the national sovereignty of other States, and emphasising that it is not a legitimate purpose to deprive nationality in order to effect expulsion;

Recognising that under relevant UN Security Council, Human Rights Council and General Assembly Resolutions, States are required and called upon to address threats to international peace and security, in a manner consistent with international human rights law, international humanitarian law and international refugee law, and through a comprehensive approach that addresses underlying factors which can be conducive to terrorism, including by promoting political and religious tolerance, good governance, economic development, and social cohesion and full national inclusion;

These **Principles** restate international law, reflect existing standards and draw on practices that guide and limit State power to deprive persons of their nationality as a purported counter-terrorism and national security measure.

PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

1. SCOPE OF APPLICATION, SOURCES & INTERPRETATION

1.1. Scope of application

- 1.1.1. These Principles apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure.
- 1.1.2. Any existing or proposed national legal provisions which provide for the deprivation of nationality for the purpose of safeguarding national security should fully comply with international law standards as set out in these Principles.
- 1.1.3. The Principles are also relevant in the interpretation and application of international law to other situations of deprivation of nationality.
- 1.1.4. The Principles are also relevant to other practices, including measures to revoke passports, expel or prohibit entry of nationals as a national security measure.

1.2. Sources of law

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.

1.3. Interpretation

- 1.3.1. In all circumstances, the Principles should be interpreted in accordance with international human rights law and standards, applying the most favourable provision of protection.
- 1.3.2. The Principles set out minimum standards. Nothing in these Principles shall be invoked as a reason to apply a lower level of protection against deprivation of nationality than that currently provided in national laws.

- 1.3.3. Where permitted, any exceptions stated in the Principles should be interpreted in the narrowest possible manner.

2. DEFINITIONS

For the purpose of the Principles, the following definitions are applied:

2.1. Nationality

- 2.1.1. *Nationality* refers to a legal status of an individual in relation to a State and embodies the legal bond between the individual and State for the purposes of international law.
- 2.1.2. It is for each State to determine who is considered a national according to its law, in compliance with international law standards.
- 2.1.3. For the scope of application and interpretation of the Principles, the terms *nationality* and *citizenship* are synonymous.

2.2. Deprivation of nationality

- 2.2.1. *Deprivation of nationality* refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual. This includes 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.
- 2.2.2. *Deprivation of nationality* also covers situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a person as a national, including where authorities persistently refuse to issue or renew documents, or in cases of confiscation of identity documents and/or expulsion from the territory coupled with a statement by authorities that a person is not considered a national.

2.3. Statelessness

- 2.3.1. The term *stateless person* means a person who is not considered as a national by any State under the operation of its law.
- 2.3.2. 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.

3. THE RIGHT TO A NATIONALITY

- 3.1. Every person has the right to a nationality.
- 3.2. No one shall be arbitrarily deprived of their nationality nor denied the right to change their nationality.

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.

5. THE AVOIDANCE OF STATELESSNESS

- 5.1. States must not render any person stateless through deprivation of nationality.
- 5.2. An assessment of whether deprivation of nationality will render a person stateless, is neither a historic nor a predictive exercise. 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.

6. THE PROHIBITION OF DISCRIMINATION

- 6.1. A State 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, including race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation.
- 6.2. Each State is bound by the principle of non-discrimination between its nationals, regardless of whether they acquired nationality at birth or subsequently, and whether they have one or multiple nationalities.

7. THE PROHIBITION OF ARBITRARY DEPRIVATION OF NATIONALITY

7.1. Arbitrary deprivation of nationality

The deprivation of nationality of citizens on national security grounds is presumptively arbitrary. This presumption may only be overridden in circumstances where such deprivation is, at a minimum:

- 7.1.1. Carried out in pursuance of a legitimate purpose;
- 7.1.2. Provided for by law;
- 7.1.3. Necessary;
- 7.1.4. Proportionate; and
- 7.1.5. In accordance with procedural safeguards.

7.2. Legitimate purpose

- 7.2.1. The following, among others, do not constitute legitimate purposes for deprivation of nationality:

- 7.2.1.1. Administering sanction or punishment;
- 7.2.1.2. Facilitating expulsion or preventing entry; or
- 7.2.1.3. Exporting the function and responsibility of administering justice to another State.

7.2.2. Regardless of the stated purpose, any punitive impact incurred by deprivation of nationality is likely to render this measure incompatible with international law.

7.3. Legality

There must be a clear and clearly articulated legal basis for any deprivation of nationality. This requires *inter alia* that:

- 7.3.1. 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;
- 7.3.2. The power to deprive nationality must not be enacted or applied with retroactive effect; and
- 7.3.3. 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.

7.4. Necessity

The deprivation of nationality as a national security measure must be strictly necessary for achieving a legitimate purpose, which is clearly articulated.

7.5. Proportionality

The decision to deprive someone of their nationality must respect the principle of proportionality. This requires that in any case of deprivation:

- 7.5.1. The immediate and long-term impact of deprivation of nationality on the rights of the individual, their family, and on society is proportionate to the legitimate purpose being pursued;
- 7.5.2. The deprivation of nationality is the least intrusive means of achieving the stated legitimate purpose; and

- 7.5.3. The deprivation of nationality is an effective means of achieving the stated legitimate purpose.

7.6. Procedural Safeguards

Any administrative, executive or judicial process to deprive nationality must be in accordance with procedural safeguards under international law, including:

- 7.6.1. Deprivation of nationality for the purpose of national security must never be automatic by operation of the law.
- 7.6.2. The individual concerned must be notified of the intent to deprive nationality prior to the actual decision to do so, to ensure that the person concerned is able to provide facts, arguments and evidence in defence of their case, which are to be taken into account by the relevant authority.
- 7.6.3. Decisions on deprivation of nationality must be individual, as opposed to collective.
- 7.6.4. With regard to the principle of the avoidance of statelessness, the burden of proof in determining that the person concerned holds another nationality must lie with the competent authorities of the depriving state.
- 7.6.5. Individuals must be notified in writing of the decision to deprive nationality and of the reasons underlying the decision. This must be done so in a prompt manner and in a language that they understand.
- 7.6.6. Decisions on the deprivation of nationality must be open to effective judicial review and appeal to a court, in compliance with the right to a fair trial.
- 7.6.7. No person whose nationality has been withdrawn shall be deprived of the right to enter and remain in that country in order to participate in person in legal proceedings related to that decision.

8. THE RIGHTS TO A FAIR TRIAL, EFFECTIVE REMEDY AND REPARATION

- 8.1. Everyone has the right to a fair trial or hearing. In any proceedings concerning the deprivation of nationality, the right to equal access to a competent, independent and impartial judicial body established by law

and to equal treatment before the law must be respected, protected and fulfilled.

- 8.2. Everyone has the right to an effective remedy and reparation. States must provide those who claim to be victims of a violation with equal and effective access to justice and effective remedies and reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

9. FURTHER HUMAN RIGHTS, HUMANITARIAN AND REFUGEE LAW OBLIGATIONS AND STANDARDS

Deprivation of nationality is also limited by other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law.

9.1. The right to enter and remain in one's own country

- 9.1.1. All persons have the right to enter, remain in and return to their own country.
- 9.1.2. States are prohibited from expelling their own nationals.
- 9.1.3. In no situation, including where a person has been deprived of their nationality, may a person be arbitrarily expelled from their own country or denied the right to return to and remain in their own country.
- 9.1.4. The scope of the term “own country” is broader than the term “country of nationality”. It includes a country of former nationality that has arbitrarily deprived the individual of its nationality, regardless of the purpose of the measure and whether or not this deprivation causes statelessness.

9.2. The prohibition of *refoulement*

- 9.2.1. In line with principles of international refugee law, States must not expel or return (*refouler*) any person, including one whom they have stripped of nationality, to a situation in which they face a threat to life or freedom or risk facing persecution, including on the grounds of race, religion, nationality, membership of a particular social group or political opinion.
- 9.2.2. In line with the principles of international human rights law, States must not expel or return (*refouler*) any person, including one whom they have stripped of nationality, to a situation in which they face a real risk of

serious human rights violations, including torture or cruel, inhuman or degrading treatment or punishment, enforced disappearances, capital punishment, flagrant denial of justice and the right to liberty, or arbitrary deprivation of life.

9.3. Prohibition against torture and cruel, inhuman or degrading treatment or punishment

- 9.3.1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- 9.3.2. Deprivation of nationality is likely to constitute cruel, inhuman or degrading treatment or punishment, particularly where it results in statelessness.
- 9.3.3. Attempted expulsion consequent to deprivation of nationality is likely to meet the threshold of cruel, inhuman or degrading treatment or punishment when this leads to:
 - 9.3.3.1. arbitrary detention;
 - 9.3.3.2. a violation of the principle of *non-refoulement*; or
 - 9.3.3.3. the forcible separation of families.

9.4. Liberty and security of person

- 9.4.1. Everyone has the right to liberty and security of the person and no one shall be subject to arbitrary arrest or detention.
- 9.4.2. The arbitrary detention of persons who have been deprived of their nationality is prohibited.

9.5. Legal personhood

- 9.5.1. Everyone has the right to recognition everywhere as a person before the law. All persons are equal before the law.
- 9.5.2. It is not permissible for States to deny any person's legal personhood or their equality before the law through the deprivation of nationality and denial of the right to enter and remain in their own country.

9.6. Right to private and family life

- 9.6.1. Everyone has the right to private and family life.

- 9.6.2. This includes the right to live together as a family and not be separated as a result of a family member being deprived of their nationality and subject to detention or expulsion in violation of international law.

9.7. The rights of the child

- 9.7.1. Every child has the right to a nationality. States must protect the child's right to acquire and preserve their nationality and to re-establish their nationality when arbitrarily deprived of it.
- 9.7.2. States are required to treat all persons under the age of 18 in accordance with their rights as children.
- 9.7.3. States must protect the rights of the child and the best interests of the child must be a primary consideration in all proceedings affecting the nationality of children, their parents and other family members.
- 9.7.4. It can never be in the best interest of a child to be made stateless or be deprived of nationality.
- 9.7.5. States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

9.8. Derivative deprivation of nationality

The derivative deprivation of nationality is prohibited.

10. DEPRIVATION BY PROXY AND PROXY MEASURES

- 10.1. States must not use powers to deprive nationality for other stated purposes, including fraud, with the ulterior purpose of depriving nationality as a national security measure.
- 10.2. States must not subject persons to proxy measures, which do not amount to deprivation of nationality, but which have a similar impact and implications on human rights, without subjecting such decisions to the same tests and standards set out in these Principles. Such measures may include the withdrawal or refusal to renew passports or other travel documents and the imposition of travel or entry bans.

- 10.3. The measures referred to in section 10.2 may in some circumstances, be considered to constitute deprivation of nationality, particularly when imposed on persons when they are abroad.

11 INTERNATIONAL COOPERATION

- 11.1. States have a duty to cooperate and to act responsibly and in accordance with international law to maintain international peace and security and to promote and encourage respect for human rights and fundamental freedoms.
- 11.2. States must not undermine the principle of reciprocity or commitments to international cooperation, by stripping a person of nationality, expelling a person to a third country or subjecting a person to removal proceedings, thereby exporting the stated security risk to a third country and failing to take responsibility for their own nationals.
- 11.3. States are obligated to take responsibility for their own citizens and to investigate and prosecute crimes and threats to national security through their national criminal justice frameworks in accordance with international standards.