THE WORLD'S STATELESS

DEPRIVATION OF NATIONALITY

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A HUMAN RIGHTS AND SECURITY PERSPECTIVE

DEPRIVATION OF NATIONALITY AS A COUNTER-TERRORISM MEASURE: *A HUMAN RIGHTS AND SECURITY PERSPECTIVE*

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Deprivation of nationality as a counter-terrorism measure is on the rise. To take just one example, in 2017, the British citizenship of 104 individuals was reportedly revoked on the grounds of being "conducive to the public good", a striking increase from the years before (four in 2014, five in 2015 and 14 in 2016).[1]

But just how "conducive to the public good" is depriving a few dozen citizens of their nationality? We will argue that the measure is problematic from both an international law and a security perspective.

An important consideration in the context of international law is to realise that deprivation of nationality impacts the right to have a nationality, a human right linked to the enjoyment of other rights. It constitutes, in the famous words of Hannah Arendt, the right to have rights.[2] Due to this very far-reaching consequence for the enjoyment of other human rights, it has been suggested that any deprivation of citizenship is incompatible with international human rights law.

At a bare minimum, international law imposes an obligation to avoid statelessness, entailing that the nationality of a mono-citizen cannot be revoked, and prohibits any arbitrary deprivation of nationality. Even if deprivation of citizenship were

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[1] J. Grierson, 'Lib Dems to call for overhaul of revocation of UK citizenship rules', *The Guardian* (15 September 2019), available at https://www.theguardian.com/politics/2019/sep/15/lib-dems-to-call-for-overhaul-of-revocation-of-uk-citizenship-rules-shamima-begum accessed 18 February 2020

[2] H Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Co. 1951).

permissible under national law, the exercise of such powers must never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right. Where the exercise of functions and powers involves a restriction upon a human right that allows for limitations, any such restriction should utilise the least intrusive means possible and should: (a) be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and (b) be proportionate to the benefit obtained in achieving the legitimate aim in question.[3]

Even if deprivation of nationality might be permissible in national law, one can wonder whether the measure can ever be seen as the least intrusive means available and be necessary and proportionate. After all, in contrast to dual nationals, mono-citizens will not be deprived of their nationality, in order to avoid statelessness. Instead, they will face criminal prosecution, or less far-going administrative measures such as a (temporary) area ban. If mono-citizens can thus be dealt with in a less intrusive way, then why should these same responses not simply apply to citizens with dual nationality? In addition, the measure cannot be discriminatory either.[4] Also here, serious problems arise as the measure (as explained) can and will only be applied to citizens with dual nationality, who are often overrepresented in minority groups. This means these groups are disproportionally targeted by this measure, resulting in the creation of two different classes of citizens. This was also concluded in an *amicus curiae* brief submitted to the Dutch Immigration and Naturalisation Service in 2018 by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume.[5]

Finally, the measure clashes with other international law obligations. When used against alleged terrorists who have not been prosecuted, the measure undermines UN Security Council Resolutions such as Resolution 1373, which makes clear that all states must bring terrorists *to justice*. This is also echoed by victims of terrorism, who have indicated they want justice to be done.

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[3] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, 'Ten areas of best practices in countering terrorism', A/HRC/16/51, (22 December 2010), Practice 2, available at https://www.refworld.org/docid/4e0c2ace15.html.

[4] See OSCE Office for Democratic Institutions and Human Rights (ODIHR), 'Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework', 2018, p. 32, available at: https://www.osce.org/odihr/393503?download=true; UN Counter-Terrorism Implementation Task Force (CTITF), Working Group on Protecting Human Rights while Countering Terrorism, 'Basic Human Rights Reference Guide: Security Infrastructure', Updated 2nd edition, March 2014, para. 5, available at: https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/StoppingAndSearching_en.pdf and UN General Assembly, 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance', A/72/287 (4 August 2017), available at: https://undocs.org/pdf?symbol=en/A/72/287

[5] Amicus brief, The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (23 October 2018), available at https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf.

Bringing terrorists to justice involves terrorism suspects being prosecuted so that a judicial record can be established about what happened to the victims' loved ones. Conversely, deprivation of nationality constitutes an obstacle to accountability and justice, as the connection with the active nationality principle – one of the main possibilities to exercise criminal jurisdiction – is removed.

The above has shown that the measure is not in conformity with international (human rights) law. This already demonstrates that the measure is ineffective from a counter-terrorism perspective. After all, as also stated in the 2006 UN Global Counter-Terrorism Strategy: "States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law"[6] and "effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing".[7]

However, it is not only because of the above-mentioned international law violations that deprivation of citizenship is troublesome from a counter-terrorism or security perspective - the pretext often used by politicians to justify the measure in the first place. Deprivation of nationality constitutes a highly symbolic measure, basically communicating the message that certain behaviour will not be tolerated and that perpetrators have forfeited the bond with their home countries. Depriving someone of his or her nationality may seem like a strong and efficient counter-terrorism measure, but as explained, it does not bring people to justice, and it fails to rehabilitate and reintegrate them; rather, it shoves the problem temporarily away, into the hands of actors that may have fewer or no capabilities to do something about it. Indeed, the measure is characterised by a 'pass the buck mentality', where the potential risk is not addressed, but exported somewhere else, making it the problem of others. Moreover, in the long term, the person deprived of nationality could become a risk for the national security of the depriving country and the security of the people under its jurisdiction, if a person disappears off the radar and manages to get back into the country that turned its back on him or her. In this case, while politicians state that national security will be strengthened because the person will be removed from the territory or will not be allowed to re-enter it, this constitutes a very narrow perspective of the concept of security - both in terms of time and place - and one that is arguably no longer in sync with the realities of our hyper-connected world.

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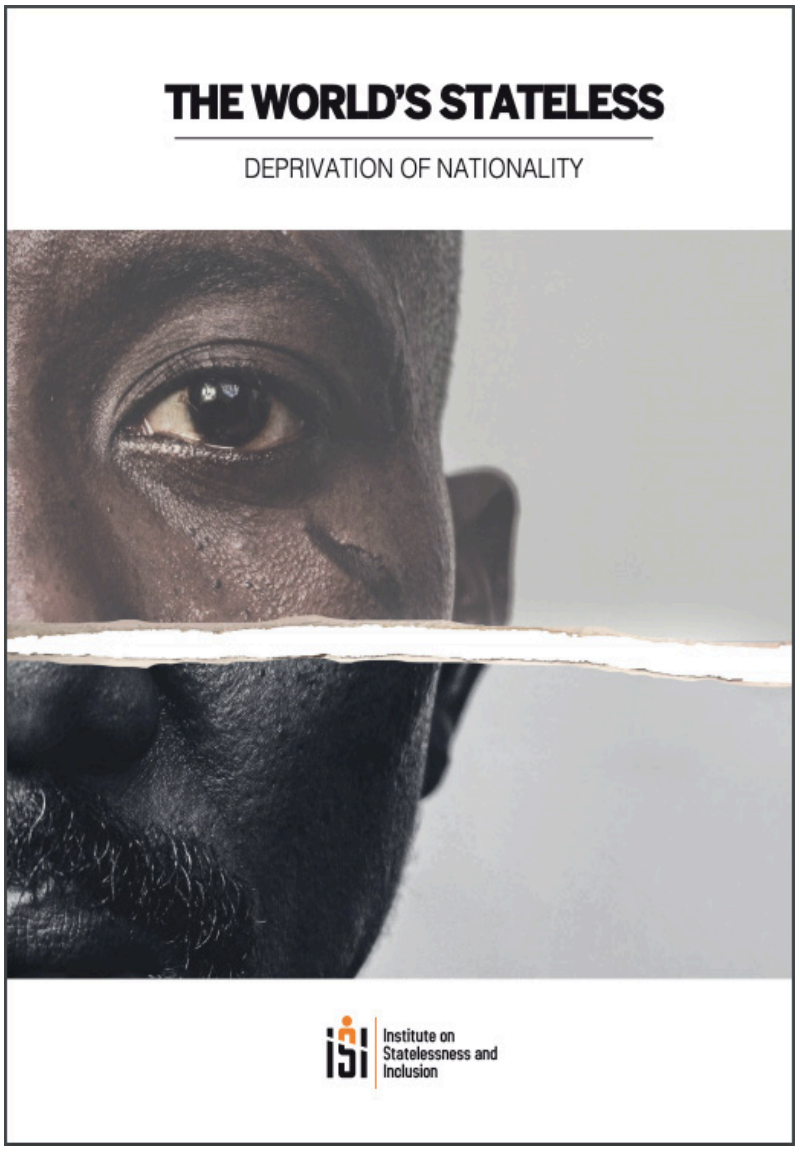
[6] United Nations General Assembly (UNGA) Resolution of 8 September 2006, A/RES/60/288, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement
[7] United Nations General Assembly (UNGA) Resolution of 8 September 2006, A/RES/60/288, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement.

Another important aspect to consider is the wider effect of this measure: it not only impacts the person whose nationality has been revoked, but also his/her family (especially children). Moreover, it can have an effect on people further removed from the targeted person, such as friends, neighbours and other members of the minority group the targeted person belongs to. All of these people may feel unjustly singled out by a measure that is not applicable to mono-citizens of the same country, hence also designating them as second-class citizens. As such, citizenship stripping is not only moving the problem around like a hot potato, it may even make the problem worse. If people from certain groups, often minorities, see that only 'their' people are targeted by a specific measure, there is a risk that these people will feel alienated and discriminated against. In this regard, one needs to be mindful that exclusion, marginalisation and (perceived) discrimination are among the drivers of terrorism.

In short, revoking the citizenship of individuals is not "conducive to the public good". To the contrary, it is a measure that is problematic from both an international law and (thus also) a security perspective and may sometimes even turn out to be a condition conducive to terrorism.



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