

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

Ref.: UA NLD 4/2021
(Please use this reference in your reply)

8 December 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 43/36, 43/20, 44/4 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the need to protect the rights of a Dutch citizen, and her children.

According to the information received:

Ms. **Fatima Habtat** is a dual Dutch-Moroccan national, born in 1995 of Moroccan parents, who received Dutch citizenship in 1998, together with her parents. She lived in the Netherlands until she left for Syria in July 2013. She married and had two children in Syria, one born in 2015 and one in 2016. Ms. Habtat was transferred to a camp in North-East Syria on 12 March 2019.

On 30 October 2019, having made her way to Turkey in highly challenging circumstances, Ms. Habtat requested consular assistance for the purpose of returning to the Netherlands at the Dutch embassy in Ankara, Turkey with her children. While in the confines of the Dutch Embassy, Ms. Habtat was served with two decisions on this date: the withdrawal of her Dutch citizenship for reasons of "threat to national security", a decision based on an "official notice" prepared by the Dutch General Intelligence and Security Service, and a separate declaration that she is an "undesirable alien".

She was subsequently detained in Turkey and, on 19 November 2019, she was expelled to the Netherlands with her children. She has been detained since her return with limited access to her children, who are in the care of a family member. An initial appeal against the nationality withdrawal and the entry ban decisions was rejected by The Hague District Court in November 2020 and is under review before the Council of State. The Special Rapporteur on the

promotion and protection of human rights and fundamental freedoms while countering terrorism had sought leave to intervene in those proceedings. In parallel, Ms. Habtat was convicted in April 2021 to 48 months of imprisonment (of which 36 were unconditional) in criminal proceedings for membership of a terrorist organisation. She is currently detained in a female prison in Zwolle.

While we do not wish to pre-judge the accuracy of these allegations, and understand that this case is undergoing judicial review, we wish to express our concern regarding respect of the rights of Ms. Habtat and her young children, in particular the prohibition of arbitrary deprivation of citizenship, which provides essential protection to individuals and their families returning from conflict zones where terrorist groups are active.

Prohibition of arbitrary deprivation of nationality

We underscore that international law has a well-established role in limiting States' regulation of nationality. International courts and tribunals have long recognised that international law imposes express limits on States' powers, both through customary international law and treaty obligations.¹

Given that the status of nationality confers a collection of rights,² the right to nationality is enshrined in Article 15(1) of the UDHR, while article 15(2) UDHR prohibits its arbitrary deprivation. All of the principal international³ and regional⁴ human rights treaties implicitly recognise the prohibition by proscribing discrimination on various grounds in respect of the right to nationality. More recent treaties, such as the Convention on the Rights of Persons with Disabilities, recognise the prohibition in express terms.⁵ More specifically, the 1961 Convention on the

¹ *Nationality Decrees Issued in Tunis and Morocco* (Permanent Court of International Justice), Ser. B, No. 4, Advisory Opinion, 7 February 1923, pp. 23-24; *Georges Pinson v United Mexican States* (1928) 5 UNRIIAA 327, p. 364 (France- Mexico Claims Commission). See also Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89, Article 1. ILC, 'Draft Articles on Nationality of Natural Persons in relation to the Succession of States (with commentaries)' (1999) II(2) YBILC, p. 24, para. 3. See also 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009, para. 19.

² For this reason, it is often described as the 'right to have rights': see *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064, [2019] 1 WLR 2070, paras 30 and 49; see also *Trop v Dulles* 356 US 86 (1958), pp. 101-102.

³ See Convention on the Nationality of Married Women (1957) 309 UNTS 65, Articles 1-2; International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195, Article 5(d)(iii); Convention on the Elimination of All Forms of Discrimination Against Women (1979) 1249 UNTS 13, Article 9(1); Convention on the Rights of the Child (1989) 1577 UNTS 3, Article 8(1). See also International Covenant on Civil and Political Rights (1966) 999 UNTS 171, Article 24(3).

⁴ American Convention on Human Rights (1969), Article 20(3) ("No one shall be arbitrarily deprived of his nationality or of the right to change it"); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 24(2) ("No one shall be arbitrarily deprived of his citizenship or of the right to change it"); European Convention on Nationality (1997), Article 4(c) ("No one should be arbitrarily deprived of his or her nationality"); Revised Arab Charter on Human Rights (2004), Article 29(1) ("Every person has the right to a nationality, and no citizen shall be deprived of his nationality without a legally valid reason"); ASEAN Human Rights Declaration (2012), Article 18 ("No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality"). See also African Commission on Human and Peoples' Rights, 234: Resolution on the Right to Nationality, 23 April 2013.

⁵ Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3, Article 18(1) ("... ensuring that persons with disabilities: ... (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability.")

Reduction of Statelessness, to which the Netherlands is a party, explicitly prohibits a State from exercising powers of deprivation causing statelessness, unless certain conditions are met (including the right to a fair hearing).⁶

Beyond this treaty framework, the United Nations has also repeatedly and regularly confirmed the prohibition against the arbitrary deprivation of nationality, including by way of resolutions of the General Assembly, the Human Rights Council and its predecessor the UN Commission on Human Rights.⁷ The UN Secretary General has also issued multiple reports dedicated to the subject.⁸ The issue is regularly revisited given the UN's deep concern that the arbitrary deprivation of nationality may impede an individual's full enjoyment of their broader and essential human rights.⁹ The prohibition has also been examined and upheld by the International Law Commission.¹⁰

Arbitrary deprivation of citizenship is therefore a violation of international law, and it is our clear view that the widespread use of citizenship stripping in the name of countering terrorism works against 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.

The content of the prohibition of arbitrary deprivation of citizenship

Arbitrariness, under international human rights law¹¹ is “*not so much something opposed to a rule of law, as something opposed to the rule of law ... it is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of judicial propriety*”.¹² In the human rights context, the standard aims to ensure that even ‘lawful’ interference with rights is consistent with the provisions, aims and

⁶ Convention on the Reduction of Statelessness (1961) 989 UNTS 175, Article 8(1)-(4). Note that the UK made a declaration under both Article 8(3)(a)(i) and (ii) of the Convention, which does not, for the avoidance of doubt, qualify its due process obligations under Article 8(4): see UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 73.

⁷ See, e.g., UNGA, Resolution 50/152, UN Doc. A/RES/50/152, 9 February 1996, para. 16; UN Commission on Human Rights, ‘Resolution on Human Rights and Arbitrary Deprivation of Nationality’, 1997/36, 11 April 1997, preamble; see also para. 2; UN Commission on Human Rights, ‘Resolution on Human Rights and Arbitrary Deprivation of Nationality, 2005/45, 19 April 2005, preamble; see also para. 2; UN HRC, ‘Human Rights and Arbitrary Deprivation of Nationality’, UN Doc. A/HRC/RES/13/2, 24 March 2010, see generally; UN HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc. A/HRC/RES/20/5, 16 July 2012, see generally.

⁸ See, e.g., ‘Arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/10/34, 26 January 2009; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009; ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc/ A/HRC/25/28, 19 December 2013.

⁹ See, e.g., UN HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 6.

¹⁰ ILC, ‘Draft Articles on Nationality of Natural Persons in relation to the Succession of States (with commentaries)’ (1999) II(2) YBILC, p. 37 (Article 16); ILC, ‘Draft Articles on the Expulsion of Aliens (with commentaries)’ (2014) II(2) YBILC, p. 32 (Article 8), commentary para. 1.

¹¹ It has been described as a general principle of international law: see J. Stone. ‘Arbitrariness, the Fair and Equitable Treatment Standard, and the International Law of Investment’ (2012) 25(1) *Leiden Journal of International Law*, pp. 85- 87.

¹² *Elektronica Sicula S.p.A. (ELSI) (United States of America v Italy)* [1989] ICJ Rep. 15, para. 128 (emphasis added). This lack of equivalence between unlawfulness and arbitrariness was specifically recognised in the drafting history of Article 15(2) of the UDHR: the majority of State representatives took the view that a person could neither be deprived of nationality in breach of existing laws, nor on the basis of laws that operated arbitrarily: I. Ziemele and G. Schram, ‘Article 15’ in. A. Eide, G. Alfredson (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (1999), pp. 302-303.

objectives of the relevant law, and above all, is reasonable.¹³ Arbitrariness thus contains both substantive and procedural aspects.

We note that according to the Principles on Deprivation of Nationality as a National Security Measure developed by 60 experts and the Institute on Statelessness and Inclusion, States should strive to strengthen the protection of citizenship and thus not deprive persons of nationality for the purpose of safeguarding national security. 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: carried out in pursuance of a legitimate purpose; provided for by law; necessary; proportionate; and in accordance with procedural safeguards.¹⁴

Key aspects of arbitrariness in the context of the prohibition against the arbitrary deprivation of nationality

Principle of Legality

The deprivation of nationality must conform to the law – both to its letter and its object (so as to avoid an outcome that is unjust, illegitimate or unpredictable).¹⁵ Any withdrawal of nationality by a State must have a clear basis in law and be sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality.¹⁶ Consequently, in our opinion, expressions such as “outside the Kingdom” found in article 14(4) of the Dutch Nationality Act should be interpreted in a way that avoids unjust and unpredictable outcomes for a citizen who has come to a Dutch Embassy seeking for consular assistance. Where other grounds for deprivation, such as those pursuant to a criminal procedure, are more appropriate, these should be used even when they seem more burdensome or inconvenient for State authorities.

Further, where States introduce new grounds for loss or deprivation of nationality, they should include transitional provisions to prevent an individual from losing their nationality due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground.¹⁷ States should safeguard against the adverse consequences of withdrawal of nationality and not artificially prolong offences or draw adverse consequences from previous acts, in line with the general principle that a person may not be tried for conduct that was not an offence at the time the conduct occurred. States should also take into consideration the time factor in carrying out their proportionality test, including the amount of time elapsed between the commission of an act and the withdrawal of nationality.¹⁸

¹³ UN Human Rights Committee, ‘CCPR General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17)’ (1988), para. 4.

¹⁴ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.1. February 2020, <https://files.institutesi.org/PRINCIPLES.pdf>

¹⁵ *Ibid*; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, paras 24-25. See, e.g., *Ivcher Bronstein v Peru*, Inter-American Court of Human Rights, Judgment, 6 February 2001, Ser. C, No. 74, para. 95.

¹⁶ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para.92.

¹⁷ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 93.

¹⁸ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 94.

Purpose

The deprivation must serve a legitimate purpose that is consistent with international law and must be necessary and proportionate to the well-articulated interest that the State seeks to protect.¹⁹ As set out by the International Law Commission, the State is not justified in depriving a person of nationality for the sole purpose of expelling him or her²⁰ nor can State be justified in depriving for the purpose of denying a national entry into the territory, given that nationals have the right, enshrined in Article 13(2) of the UDHR, to return to their country of nationality.²¹

We find concerning that the stated objective of Article 14(4) of the Dutch Nationality Act is to “remove the terrorist threat to the Netherlands [...] posed by persons who have joined a terrorist organization abroad”,²² as the purpose of this measure seems precisely to prevent (re-)entry to the Netherlands of a citizen, by removing their nationality. Similarly concerning is the situation where a citizen located within an Embassy in a third country is served with a withdrawal decision whose sole purpose is to prevent the authorities from returning them to their country of citizenship.

Further, deprivation of citizenship which has as a basis the alleged commission of acts of terrorism, such as membership or travel, may – despite its alleged ‘administrative’ nature - also be in violation of the principle of *ne bis in idem*, given the severely punitive impact of deprivation and the consequences on other rights that it holds. We are particularly mindful of the long-term human rights consequences of extended prison sentences for terrorism and cumulative administrative measures after criminal sentences are completed, which will have a substantial impact on family relationships and the human rights of individuals within families.

Necessity and proportionality

The proportionality assessment requires that the immediate and long-term impact of deprivation of nationality on the rights of the individual, including their children and their family life, is proportionate to the legitimate purpose being

¹⁹ ‘Arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/10/34, 26 January 2009, para. 49; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 25. Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5

²⁰ ILC, ‘Draft Articles on the Expulsion of Aliens (with commentaries)’ (2014) II(2) YBILC, p. 13 (Article 8), commentary, para. 1. See also UN Human Rights Committee, ‘CCPR General Comment No. 27: Article 12 (Freedom of Movement)’ (1999), para. 21.

²¹ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.2.1.2 and UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, *Intervention in the case of Shamima vs. Secretary of State for the Home Department*, UK Court of Appeal (2020), para. 19

²² Tweede Kamer der Staten-Generaal, *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*, 9 December 2015, available at: <https://zoek.officielebekendmakingen.nl/kst-34356-3.html>, p. 2.

pursued.²³ A human rights compliant proportionality assessment must be read in conjunction with the right to a family life, as protected by Article 17 ICCPR and Article 8 ECHR, as well as with article 3(1) of the Convention of the Rights of the Child, which enshrines the principle that in all actions concerning children, the best interest of the child shall be a primary consideration.

Deprivation of nationality, particularly when combined with a declaration that the person is an “undesirable alien” – which amounts to an entry ban – increases the risk of that person being expelled or refused re-admission, including upon completion of any criminal sentence. This impacts the right to family life of the person being deprived of his or her nationality,²⁴ but also the right to family life of family members, which has a particularly serious impact on minor children.

The protection of the rights of the family in all of its diverse forms remains a distinct and complex agenda within the international legal framework for the protection and promotion of human rights. We are particularly concerned that the very construction of the family is being shaped and distorted by counter-terrorism law and practice. The effects implicate human rights beyond the usual scope of analysis regarding national security policies, requiring attention to States’ obligations, such as those not to interfere with family life, and to protect and assist the family, and the rights of children as rights holders.²⁵

The essential ingredient of family life is the right to live together so that family relationships may develop normally and members of the family may enjoy each other’s company.²⁶ The child’s interests dictate that the child’s ties with the family must be maintained, that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations.²⁷ In assessing what is considered to be in the best interests of the child, the potential negative long-term consequences of losing contact with the child’s parents and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible have to be sufficiently weighed in the balance. It is imperative to consider the long-term effects which a permanent separation of a child from its natural mother might have.²⁸ In cases of expulsion, the best interests and wellbeing of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination must be taken into account, including the best interests of minor children and the hardship of returning to the country of origin of the parent.²⁹

²³ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5.1.

²⁴ Arbitrary denial of nationality can raise an issue under the right to private life as it is part of a person’s social identity protected as part of this right. European Court of Human Rights, *Genovese v. Malta*, Application no. 53124/09, para 30. European Court of Human Rights, *Ramadan v. Malta*, Application no. 76136/12, para 85; European Court of Human Rights, *K2 v United Kingdom*, Application no. 42387/13, para 49. See also Institute on statelessness and Inclusion, ‘Deprivation of nationality as a national security measure: An assessment of the compliance of the Netherlands with international human rights standards’, July 2020.

²⁵ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, paras. 18 and 21.

²⁶ European Court of Human Rights, ‘Guide on Article 8 ECHR’, December 2020, para. 266.

²⁷ European Court of Human Rights, ‘Guide on Article 8 ECHR’, December 2020, para. 308.

²⁸ European Court of Human Rights, ‘Guide on Article 8 ECHR’, December 2020, para 256.

²⁹ European Court of Human Rights, ‘Guide on Article 8 ECHR’, December 2020, para. 370.

The deprivation of citizenship for a family member has profound consequences for the integrity, functionality and vulnerability of the family as a whole. Removal of a family member to another jurisdiction undermines parent-child relationships and, as recognized in the Convention on the Rights of the Child, limits children's capabilities and opportunities in multiple ways. The fact that citizenship stripping can control and define on security grounds who may legally benefit from family membership reveals the deep connection being forged between family regulation and security policy. The removal of citizenship status from a family member based on assumptions or claims of radicalization, extremism or engagement in or support of terrorism and/or the failure to preserve family units affect the fundamental rights of all its members.³⁰ 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. This is particularly important as rights to family life and best interest of children can be skewed by undue reliance on the (little) information that security services may provide in such proceedings. Nationality laws which discriminate against women have been challenged in the courts of many countries and in international human rights mechanisms, resulting in a number of positive court decisions.³¹

In addition, deprivation of nationality must be the least intrusive and effective means of achieving the stated legitimate purpose.³² When there is a choice between several appropriate measures, recourse must be had to the least onerous, having fully explored all other, less intrusive options. This assessment must always take into account the fact that deprivation is permanent, and therefore so must be the risk posed by the individual to the State's vital interests. In our opinion, the possibility or the realisation, of other solutions, including criminal proceedings, place a significantly higher threshold to the proportionality test, particularly where the criminal prosecution is not seriously prejudicial to the vital interests of the State. Lastly, we would like to warn against the idea that even where the security risk is demonstrated, its displacement to their countries would positively benefit either national security or international security.

Procedural guarantees and safeguards

Sufficient procedural guarantees and safeguards must be in place to protect against the risk of arbitrariness in the decision-making process. The UN has frequently underlined States' obligation to observe what it terms "*minimum procedural standards*".³³ Those standards are "*essential to prevent abuse of the*

³⁰ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, para 23.

³¹ See A/HRC/23/23, paras. 19–20.

³² Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', Principles 7.5.2. and 7.5.3.

³³ 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009, paras 43 and 63; UN HRC, 'Human Rights and Arbitrary Deprivation of Nationality', UN Doc. A/HRC/RES/13/2, 24 March 2010, para. 10; UN HRC, 'Human rights and arbitrary deprivation of nationality', UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 10.

³⁴ 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009, para. 43.

law”.³⁴ They apply in all cases, whether or not statelessness is involved.³⁵ In practice, the individual concerned must be notified of the intent to deprive nationality prior to the actual decision to do so,³⁶ to ensure that the individual is able to provide facts, arguments and evidence in defence of their case, which are to be taken into account by the relevant authority. This is important as it allows the person concerned to provide facts, arguments and evidence in defence of their case, which might be relevant for the decision to deprive nationality, before any decision is taken.

In addition, due process must be respected at all times as a matter of international law.³⁷ This obligation is made explicit in Article 8(4) of the 1961 Convention, which provides that those whose nationality has been revoked must be granted the right to a fair hearing by a court of law or another independent body. The minimum content of the requirement of due process in this context is that an individual is able to understand the reasons why their nationality has been withdrawn and has access to legal and/or administrative avenues through which they may challenge the withdrawal of nationality. The fairness of proceedings can only be ensured if the individual has access to all relevant information and documents relating to the deprivation decision³⁸.

The right to appeal must have a suspensive effect, and the individual must continue to enjoy nationality until such time as the appeal has been settled. Access to the appeals process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien, is expelled.³⁹

We also underscore that the existence of ongoing criminal procedures relating largely to the same series of facts also undermines the effective exercise of the right to a fair trial, in that it restricts a number of procedural guarantees, as outlined above, as well as the presumption of innocence and undermines the right to not be compelled to testify against themselves or to confess guilt, a key component of article 14 ICCPR. In such cases, we are of the strong opinion that the administrative authorities are under an obligation to await the outcome of any already advanced criminal procedures before commencing any deprivation procedure.

Non-discrimination

Deprivation of citizenship is also prohibited when it is irreconcilable with the prohibition of discrimination. In her 2020 report following her official visit to the Netherlands, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stated that “although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and

³⁴ ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 43.

³⁵ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 100.

³⁶ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.6.2.

³⁷ Article 14 ICCPR, UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 98.

³⁸ European Court of Human Rights, *McGinley and Egan v. The United Kingdom*, 21825/93 and 23414/94, 9 June 1998.

³⁹ ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary General’, A/HRC/25/28 (2013), para. 33.

procedures apply only to citizens with dual nationality and therefore disproportionately affects Netherlanders of Moroccan ... descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination".⁴⁰ The Special Rapporteur fully concurs with the view that by failing to treat mono and dual nationals as equals vis-à-vis citizenship deprivation, the Dutch legislation recasts dual nationals' citizenship as contingent in a manner that cannot be reconciled with obligations of equal citizenship.⁴¹

Specific impact on women

The counter-terrorism arena is often viewed as gender-neutral, both in its practices and consequences. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism is of the opinion that that view is mistaken. Security and counter-terrorism intrusions, harms and human rights violations do not fall equally on men and women and on all women, girls and families. The overregulation and visibility of some families, some women and some girls to the security State operates largely along entrenched racial, ethnic and religious lines.⁴² She is concerned that disproportionate gender harm is manifested in this case combined with discrimination on grounds of race or ethnicity.

The Working Group on Discrimination against Women and Girls noted in its thematic report on women deprived of liberty that measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, and sometimes even women human rights defenders. Women and girls may also be targeted and detained based on their religion, ethnicity, tribal identity or place of origin.⁴³ In its report on discrimination against women in political and public life with a focus on political transition and its position paper on discrimination against women in nationality, the Working Group stated that women and girls belonging to minority communities, rural and indigenous women, migrant women, refugee women and those seeking asylum, and poor women face discriminatory practices in the implementation of laws on nationality and citizenship. They face prejudicial attitudes as well as structural obstacles which might limit access to civil and political rights and may jeopardize the enjoyment of the wide range of rights to their underage children who are their dependents. Without such access, women from these communities become disproportionately vulnerable due to the uncertain legal status which affects the exercise of other rights as citizens and their underage children. In addition, emotional suffering caused by family separation can impact the wellbeing of mothers and their children in violation of their right to health.⁴⁴

⁴⁰ UN Special Rapporteur on Racism, visit to the Netherlands, A/HRC/44/57/Add.2, para. 60.

⁴¹ UN Special Rapporteur on Racism, Amicus Brief before the Dutch Immigration and Naturalisation Service, 23 October 2018, para. 40.

⁴² UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, paras. 4 and 10.

⁴³ UN Working Group on Discrimination against Women and Girls, A/HRC/41/33, para. 73.
UN Working Group on Discrimination against Women and Girls, A/HRC/23/50, para. 86.

We stress the critical need to understand that women's and girls' association with terrorist groups can be highly complex, notably regarding the distinction between victims and perpetrators. States must be mindful of the potential for coercion, co-optation, trafficking, enslavement, sexual exploitation and harm on joining or being associated with non-state armed groups, on-line grooming and recruitment for marriage, sexual or household services or labour for the organization. States must always undertake individualised assessments pertaining to the specific situation of women and girls, and the specific risks that they face based on their sex and gender, including Ms. Habtat.⁴⁵

Implementation of the principle of non-punishment for victims of trafficking in persons.

Given the consideration of interlinkages between trafficking in persons and terrorism and the stigmatization and criminalization that wrongly unidentified victims of trafficking suffer as a consequence of their affiliation with terrorist groups, we would like to raise your attention regarding the effective implementation of the principle of non-punishment of victims of trafficking in persons⁴⁶.

The non-punishment principle is a general principle of law, recognized in international and regional legal instruments, including the Council of Europe Convention on Action against Trafficking in Human Beings, article 26, ratified by your Excellency's government on 22 April 2010, as well as in domestic legislation and in case law of regional and domestic courts. As a principle, it is essential to the object and purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency's government on 27 July 2005, namely, to protect and assist victims of trafficking with full respect for their human rights. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR). As it has been raised by the Special Rapporteur on trafficking in persons in her report to the Human Rights Council in 2021, A/HRC/47/34, the implementation of the principle entails that States should ensure that the principle of non-punishment is applied by all relevant domestic authorities, including the police, immigration and border officials, labour inspectorates and any other law enforcement agency or official, as soon as there are reasonable grounds to believe that a person has been trafficked, and for any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation, regardless of the gravity or seriousness of the offence committed (para 55 and 57). As it has been raised in the report of the Special Rapporteur, forms of punishment may also include the arbitrary deprivation of nationality (para 41). Additionally, deprivation of nationality is an administrative sanction that not only

⁴⁵ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, Invisible Women (2019).
See for example Report of the Secretary-General on conflict-related sexual violence (S/2020/487), para. 15 cited in the report of the Special Rapporteur on trafficking in persons, especially women and children to the General Assembly in 2021 on the linkages between trafficking in persons and terrorism, A/76/263, para 13: "The Secretary-General has reflected that: "women and children formerly associated with violent extremist and terrorist groups are viewed primarily as 'affiliates' rather than victims"

violates the non-punishment principle, but also increases risks of trafficking or re-trafficking. The links between statelessness and heightened risks of trafficking are well documented. Exposing victims and potential victims to such risks is a failure of States' to uphold their legal obligations of due diligence and an egregious failure of protection (para 42).

The non-punishment principle is also intimately related to the obligation of States to identify and protect victims, recognized as part of the positive obligations deriving from the obligation to comply with article 4 of the European Convention on Human Rights, ratified by Your Excellency's government on 31 August 1954. In a recent Judgement considering the application of the principle of non-punishment (V.C.L. and A.N. v. United Kingdom), the European Court of Human Rights has noted that: "In order for the prosecution of a victim or potential victim of trafficking to demonstrate respect for the freedoms guaranteed by Article 4, his or her early identification is of paramount importance. It follows that, as soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking"⁴⁷

Finally, the Special Rapporteur on trafficking has also raised concerns in relation to the separation of children from parents in the context of ongoing conflict and the limited repatriation of citizens from camps in the north-east of the Syrian Arab Republic. Where punishment includes the separation of a child from his or her parent or guardian, the child's right to family life is engaged, which includes the right to not be arbitrarily separated from his or her parent or guardian and to maintain contact, if separation occurs (A/HRC/47/34 para. 40).

We are issuing this appeal in order to safeguard the rights of the above individuals from irreparable harm and without prejudicing any eventual legal determination.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Habtat in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations, in particular on how Ms. Habtat's deprivation of citizenship combined with the entry ban and the circumstances in which they occurred comply.

⁴⁷ European Court of Human Rights, V.C.L. and A.N. v. United Kingdom, (applications No. 74603/12 and No. 77587/12), judgment of 16 February 2021, para. 160.

2. Please provide information to show how this deprivation of citizenship is not arbitrary, specifically its discharge on the territory of the Dutch Embassy in Turkey.
3. Please clarify if Ms. Habtat's citizenship withdrawal has a suspensive effect.
4. Please clarify if there has been any consideration or identification procedure regarding indicators of trafficking in persons in the case of Ms. Habtat
5. Please provide information on the legal grounds for the detention of Ms. Habtat and how this is compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
6. Please clarify what steps have been taken to address the protection of Ms. Habtat's family life and respect for the rights of her children.
7. Please share information on how your Government will ensure that Ms. Habtat's right to a family life and the rights of her children will be maintained after her detention has ceased;

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls