

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

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 43/36, 40/16, 43/20, 44/4 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government concerns about the Nationality and Borders Bill and, specifically, the recently introduced Clause 9 on notice of decision to deprive a person of citizenship. We would like to highlight the concerns arising in relation to Clause 9 and its compliance with the State's obligations under international human rights law.

We would like to note several considerations regarding the international law prohibition of arbitrary deprivation of citizenship and the obligation to reduce statelessness. The 1961 Convention on the Reduction of Statelessness, ratified by the UK on 29 March 1966, prohibits the deprivation of nationality where such deprivation would render a person stateless (Article 8 (1)), or is based on racial, ethnic, religious or political grounds (Article 9). The 1961 Convention also requires that a person deprived of nationality must be afforded the right to a fair hearing by a court or other independent body (Article 8 (4)).

We also emphasise that international law imposes express limits on States' powers to regulate nationality law, both through customary international law and treaty obligations.¹

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 UNRIAA 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.

Her Excellency
Ms. Elizabeth Truss,
Secretary of State for Foreign and Commonwealth Affairs

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 international and regional human rights treaties implicitly recognise the prohibition by proscribing discrimination on various grounds in respect of the right to nationality.² More recent treaties, such as the Convention on the Rights of Persons with Disabilities, recognise the prohibition in explicit terms.³ 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.⁴ The UN Secretary General has also issued multiple reports dedicated to the subject.⁵ 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 human rights, and because citizenship constitutes an access point to the enjoyment of rights. The prohibition has also been confirmed in the work of the International Law Commission.⁶ 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, 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. We recall at this stage that Section 40 (2) of the British Nationality Act 1981 allows for the deprivation of a person of citizenship where, *'the Secretary of State is satisfied that deprivation is conducive to the public good'*.

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).

At regional level see 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.

³ 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.")

⁴ 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

⁵ 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.

⁶ 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.

The content of the prohibition of arbitrary deprivation of citizenship

Arbitrariness, under international human rights law⁷ 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*”.⁸ In the human rights context, the prohibition of arbitrariness aims to ensure that even interference with rights is consistent with the provisions, aims and objectives of the relevant law, and above all, is reasonable.⁹ Arbitrariness thus contains both substantive and procedural aspects.

We note that according to UNHCR on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness¹⁰ and 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 broadly defined and imprecise national security grounds, given the capacity of the misuse of such terminology and its inherent lack of precision and clarity 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.¹¹

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).¹² Any withdrawal of nationality by a State must have a clear basis in law and be sufficiently

⁷ 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. See also Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while combatting terrorism intervention before the Special Immigration Appeals Commission in the case of Shamima Begum, 26 October 2020, <https://www.ohchr.org/Documents/Issues/Terrorism/SR/Submissions26Oct2020.pdf>.

⁸ *Eletronica 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.

⁹ 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.

¹⁰ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html> [accessed 9 February 2022]

¹¹ See Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness para. 61-68 and 72-75 on access to fair hearing. See too: 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>

¹² *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.

precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality.¹³ Therefore the current possibility of deprivation of citizenship based only a requirement of “conducive to the public good” would appear to confer the Secretary of State a broad, vague and subjective discretion to determine whether, when and why to deprive a person of citizenship which is contrary to the principle of legal certainty, as provided for in Article 15 ICCPR. This lack of transparency and predictability, could be interpreted as contrary to the prohibition of arbitrary deprivation of citizenship, and extends to the very qualification of a terrorism-related offense.

In an earlier communication, the Experts drew the Government’s attention to the fact that some provisions of the Counter-Terrorism and Sentencing Act (2021), in particular those qualifying terrorist offences, raised issues of incompatibility with the United Kingdom’s international obligations, as they leave much leeway for assumptions and lack precision, particularly in cases where the offences have not been fully completed (see JOL GBR 7/2020). Such vague provisions pose a fundamental challenge to the principles of legality and of certainty of the law, enshrined in article 15(1) ICCPR and article 7 ECHR and non-derogable even in times of emergency. This principle requires that criminal laws must be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle also recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. We remind your Excellency’s Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations.¹⁴

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.¹⁵ States should protect against the adverse consequences of withdrawal of nationality and not artificially prolong offences or draw adverse consequences from previous acts or omissions, 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 a proportionality test, including the amount of time elapsed between the commission of an act or omission and the withdrawal of nationality.¹⁶

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.¹⁷ As set out by the International Law

¹³ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para.92.

¹⁴ A/70/371, para. 46(c); A/73/361, para. 34.

¹⁵ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 93.

¹⁶ UNHCR, ‘UNHCR Guidelines on Statelessness No. 5’ (May 2020), para. 94.

¹⁷ ‘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.

Commission, the State is not justified in depriving a person of nationality for the sole purpose of expelling him or her¹⁸ 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.¹⁹

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 human rights. We are particularly mindful of the long-term human rights consequences of extended prison sentences for crimes of terrorism and cumulative administrative measures after criminal sentences are completed, which will have a substantial impact on family relationships, and the rights to private and family life.²⁰

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 pursued.²¹ A human rights compliant proportionality assessment must be read in conjunction with the right to private and 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 upon the right to private and family life of the person being deprived of his or her nationality,²² but also the right to family life of family members, which has a particularly serious impact on children and the rights of the child. Deprivation of adult nationality may in practice result in de facto deprivation of nationality for children.

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

¹⁸ 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.

¹⁹ 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

²⁰ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36.

²¹ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5.1.

²² 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.

The protection of the rights of the family in all of its diverse forms is critical to the protection and promotion of human rights. The effects of arbitrary deprivation of citizenship implicate human rights beyond the usual scope of analysis regarding national security policies, requiring attention to States' legal obligations, including to protect the rights to private and family life, and the rights of the child.²³

The deprivation of citizenship for a family member has profound consequences for the integrity, functionality and vulnerability of the family as a whole. Where the family is the male head of household, his uncertain status or deportation can render the entire family as the object of suspicion and surveillance. The loss of a family member, particularly in households with highly stratified gender roles, may result in loss of income or, in countries with robust welfare infrastructure, loss of entitlement to assistance.²⁴ 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.²⁵ The lack of an internationally agreed definition of either radicalization or extremism underscores the accompanying legal uncertainty and potential for abuse.²⁶ The burden that a parent's deprivation of nationality will inevitably have on 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.

In addition, deprivation of nationality must be the least intrusive and effective means of achieving the stated legitimate purpose.²⁷ 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.

²³ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, paras. 18 and 21.

²⁴ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, para. 23.

²⁵ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, para 23.

²⁶ *Ibid.*

²⁷ Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', Principles 7.5.2. and 7.5.3.

Procedural guarantees and safeguards and specific considerations regarding Clause 9 of Nationality and Borders Bill

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*".²⁸ Those standards are "*essential to prevent abuse of the law*".²⁹ They apply in all cases, whether or not statelessness is involved.³⁰ In practice, the individual concerned must be notified in writing of the intent to deprive nationality prior to the actual decision to do so,³¹ 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.³² 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 decision³³, and that the individual is entitled to participate personally, arguing his/her case in front of a court or other independent body³⁴. We are concerned that under the current provisions in clause 9, the Secretary of State for the Home Department would be empowered to deprive a person of their British nationality without notice under a range of circumstances. In particular, obligation to notify the concerned individual would be lifted if:

- (a) *the Secretary of State does not have the information needed to be able to give notice under that subsection,*
- (b) *it would for any other reason not be reasonably practicable to give notice under that subsection, or*

²⁸ '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.

²⁹ 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009, para. 43.

³⁰ UNHCR, 'UNHCR Guidelines on Statelessness No. 5' (May 2020), para. 100.

³¹ Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', Principle 7.6.2.

³² Article 14 ICCPR, UNHCR, 'UNHCR Guidelines on Statelessness No. 5' (May 2020), para. 98.

³³ European Court of Human Rights, *McGinley and Egan v. The United Kingdom*, 21825/93 and 23414/94, 9 June 1998.

³⁴ UNHCR, 'UNHCR Guidelines on Statelessness No. 5' (May 2020), para. 74 ("contest the facts and arguments ... in front of a court or other independent body"); *Anudo Ochieng Naudu v United Republic of Tanzania*, African Court on Human and Peoples' Rights, Judgment, 22 March 2018, para. 79 ("allowing the concerned to defend himself before an international body").

- (c) *notice under that subsection should not be given*
 - (i) *in the interests of national security*
 - (ii) *in the interests of the relationship between the United Kingdom and another country, or*
 - (iii) *otherwise in the public interest.*

This provision could effectively dispense the UK authorities to inform citizens of the decision based on rather vague grounds and be contrary to the requirements of due process. This clause and its impact on access to fair trial would also further exacerbate the risk that the UK will be in breach of its obligations under Article 8 (4) of the 1961 Convention and Article 14 of the ICCPR when depriving people of citizenship on alleged national security or other grounds under Section 40 (2) of the British Nationality Act 1981 as expressed above.

In addition, concerns are raised over the lack of suspensive effect of appeals. Individual must continue to enjoy nationality until such time as the appeal has been completed. 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.³⁵

Concerns regarding deprivation of citizenship and Non-discrimination

Deprivation of citizenship is also prohibited when it is irreconcilable with the prohibition of discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by your Excellency's Government on 7 March 1969, prohibits both direct discrimination ("purposive or intentional discrimination") and indirect discrimination ("discrimination in effect") on the grounds of race, colour, descent or national or ethnic origin.³⁶ While Section 40 (2) of the British Nationality Act 1981 applies equally to all persons, we are concerned that the UK's practice of depriving people of citizenship may have a disproportionate impact on people from non-white racial and ethnic backgrounds, and especially people from Muslim and migrant communities. This is also because they may be more likely to have or be eligible for another nationality. Information released by the media, based on a statistical analysis of data from the Office for National Statistics, has found that two in every five people from non-white backgrounds are likely to be eligible for the deprivation of their British nationality under Section 40 (2), compared with just one in 20 people categorised as white.³⁷ Such disproportionate impacts will likely constitute prohibited discrimination on the grounds of race, colour, descent, and national or ethnic origin, as well as other grounds such as religion. We are further concerned that the citizenship deprivation powers in the UK may be used disproportionately against people from Muslim communities. Several United Nations human rights experts have raised

³⁵ 'Human rights and arbitrary deprivation of nationality: Report of the Secretary General', A/HRC/25/28 (2013), para. 33.

³⁶ UN Committee on the Elimination of Racial Discrimination, 'CERD General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination' (2009), para. 7.

³⁷ Ben van der Merwe, 'Exclusive: British citizenship of six million people could be jeopardised by Home Office plans' New Statesman (01 December 2021).

concerns that the United Kingdom's counter-terrorism laws and policies, most notably the "Prevent Strategy", have "created an atmosphere of suspicion towards members of Muslim communities" and encourage impermissible racial, ethnic or religious profiling.³⁸ In her report following her official country visit to the United Kingdom, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported "the large role that mainstream political responses have played in amplifying and legitimating anti-Muslim panic, and even Islamophobia, through rhetoric and policies rooted in the national framework for countering non-violent extremism."³⁹ This persistent pattern of difference in treatment could indicate that the deprivation of citizenship from British Muslims is motivated by political and/or discriminatory factors.

Specific impact measures regarding deprivation of citizenship have on women

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.⁴⁰ In this regard, 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.⁴¹ 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.⁴²

In the application of the measures discussed in this letter, 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.

³⁸ UN Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland' (2016), CERD/C/GBR/CO/21-23, para. 18. See also 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland' (2017), A/HRC/35/28/Add.1, para. 8.

³⁹ 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on her mission to the United Kingdom of Great Britain and Northern Ireland' (2019), A/HRC/41/54/Add.2, para. 46.

⁴⁰ UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, paras. 4 and 10.

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

⁴² UN Working Group on Discrimination against Women and Girls, A/HRC/23/50, para. 86.

States must be mindful of the potential for coercion, co-option, 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.⁴³

Specific considerations regarding the implementation of the principle of non-punishment for victims of trafficking in persons in relation to deprivation of citizenship and the obligation of non-discrimination

We would like to highlight the State's legal obligations to assist and protect victims of trafficking, without discrimination. The OHCHR Recommended Principles and Guidelines on Human Rights at International Borders provide that measures taken to address irregular migration or to counter terrorism, human trafficking or migrant smuggling, should not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds. (OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders 2014). Of particular relevance, is the State's obligation to ensure non-punishment of victims of trafficking in persons.⁴⁴ The failure by the State to identify and protect victims of trafficking, in particular where they are allegedly associated with terrorism, leads to stigmatisation and punishment in violation of international law. The intersections of gender, race and ethnicity, migration status and poverty are visible in failures to implement the principle of non-punishment.

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 17 December 2008, 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 9 February 2006, namely, to protect and assist victims of trafficking with full respect for their human rights, and without discrimination. 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 stated by the Special Rapporteur on trafficking in persons in her report to the Human Rights Council in 2021, A/HRC/47/34 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

⁴³ 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).

⁴⁴ 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"

committed (para 55 and 57). Forms of punishment may include the arbitrary deprivation of nationality (para 41). The troubled history of arbitrary deprivation of nationality is rooted in histories of racism, positioned at the very heart of attempts to exclude and limit the application of human rights law on discriminatory grounds. Arbitrary deprivation of nationality is an administrative sanction that not only 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 8 March 1953. 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"⁴⁵

Finally, the Special Rapporteur on trafficking has also raised concerns in relation to the separation of children from parents. Where punishment of a victims of trafficking 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). The Special Representative of the Secretary-General on Children and Armed Conflict has highlighted States' legal obligations not to "doubly victimize" children who have been abducted, recruited, used and exposed to violence at an early age. Of particular relevance is the requirement under the Trafficking in Persons Protocol, to take into account the age, gender and special needs of victims of trafficking in persons, in particular the rights of the child, including in the context of forced criminality. That includes the obligations of States parties to ensure the right of the child to be heard and that the best interests of the child are taken as a primary consideration, also taking into consideration the fact that, in the context of international migration, children may be in particularly disadvantaged and vulnerable situations.⁴⁶

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:

⁴⁵ 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.

⁴⁶ Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration, para. 23.

1. Please provide any additional information and/or comment(s) you may have on how Your Excellency's Government intends to proceed with Clause 9 of the Nationality and Borders Bill, including how the Government intends to ensure that the legislation and practice complies with its international law obligations to reduce statelessness, prevent discrimination and ensure the right to fair proceedings.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. 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.

E. Tendayi Achiume

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Fionnuala Ní Aoláin

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

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