

Joint Submission to the  
Human Rights Council

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## UNITED KINGDOM

Institute on Statelessness and Inclusion  
Rights & Security International

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Joint Submission  
to the Human Rights Council  
at the 41<sup>st</sup> Session  
of the Universal Periodic Review.

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## A. Introduction

1. Rights & Security International ('RSI')<sup>1</sup> and the Institute on Statelessness and Inclusion ('ISI')<sup>2</sup> make this joint submission to the Universal Periodic Review ('UPR') on the right to nationality in the United Kingdom ('UK') and the State's obligation to reduce statelessness. This submission focuses on UK law and policy, as well as the UK's practice of nationality deprivation, which raise significant human rights concerns.
2. We are concerned that the UK's existing powers to deprive people of nationality on grounds of national security – and the way the UK uses these powers – are contrary to the UK's obligations under international law to reduce statelessness; prevent arbitrary or discriminatory deprivation of nationality; and respect the rights to fair proceedings and effective remedies. The impact of the use of these powers on individuals, families and communities is disproportionate and pervasive, resulting in violations of a range of other human rights.
3. While statistics on nationality deprivation are scarce, according to available information it appears that the UK has deprived more people of nationality on national security grounds than almost any other country, with 212 nationality deprivations between 2006 and 2020. This places the UK second only to Bahrain (434 deprivations between 2012 to 2019). The UK is also among those countries that maintain the broadest and most vague bases for nationality deprivation. Further, of the 37 countries that have expanded their nationality deprivation powers since the turn of the century, the UK is one of only five European countries that allow for deprivation even when it causes statelessness.<sup>3</sup>
4. Our submission is structured as follows:
  - a. Part B provides a summary of previous UPR recommendations to the UK and related recommendations by UN human rights treaty bodies and experts;
  - b. Part C outlines the UK's relevant international legal obligations;
  - c. Part D outlines the impact of nationality deprivation;

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<sup>1</sup> RSI is a London-based NGO with over 30 years of experience advocating for a human-rights-based and non-discriminatory approach to nationality security. The organisation has conducted research into the UK's deprivation of nationality laws and practice, litigated freedom of information requests, been involved in deprivation of nationality appeals, and conducted parliamentary outreach and advocacy. For more information, see <https://www.rightsandsecurity.org/>.

<sup>2</sup> ISI is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 90 country-specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 41st UPR Sessions. For more information, see <https://www.institutesi.org/>.

<sup>3</sup> For more information, see Institute on Statelessness and Inclusion & Global Citizenship Observatory, 'Instrumentalising citizenship in the fight against terrorism' (2022), available at: [https://files.institutesi.org/Instrumentalising\\_Citizenship\\_Global\\_Trends\\_Report.pdf](https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf).

- d. Part E outlines the existing law on nationality deprivation and the evolution of the law;
- e. Part F outlines four key issues with the UK's nationality deprivation provisions and practice:
  - i. arbitrary deprivation of nationality;
  - ii. lack of adequate procedural safeguards and violations of the right to fair proceedings;
  - iii. lack of adequate safeguards against statelessness; and
  - iv. discriminatory nature and impact.
- f. Part G, proposes a number of recommendations for States to make to the UK.

## B. Previous UPR and other relevant recommendations to the UK

5. The UK was previously reviewed during the first, 13<sup>th</sup> and 27<sup>th</sup> sessions of the UPR, in 2008, 2012, and 2017, respectively. At the 27<sup>th</sup> UPR session, the UK received several recommendations concerning issues linked to nationality deprivation, including:
  - a. Several recommendations to review counter-terrorism and immigration laws and policies to ensure conformity with international human rights standards, and in particular to ensure that they do not target or stereotype people based on race, ethnic background, or religion, including Muslims or Muslim communities;<sup>4</sup> and
  - b. Several recommendations to improve access to British nationality for stateless persons in Britain.<sup>5</sup>
6. However, as explained below, the UK has made far greater use of its power to deprive people of British nationality, and shown intent to further expand these powers, since its last UPR session.
7. Several UN human rights treaty bodies have also made relevant recommendations to the UK. Most relevantly, in 2015, the UN Human Rights Committee recommended that the UK 'review its laws to ensure that restrictions on re-entry [to the UK], and denial of citizenship, on terrorism grounds, include appropriate procedural protections and are consistent with the principles of legality, necessity and proportionality.'<sup>6</sup> The Committee also recommended that the UK 'ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.'<sup>7</sup>
8. In February 2022, multiple UN human rights experts, including the Special Rapporteurs on racism, counter-terrorism and human trafficking, wrote a joint letter to the UK government, outlining their concerns that the UK's existing nationality deprivation powers may be inconsistent with the international prohibition on arbitrary deprivation of nationality and incompatible with the requirements of legality, necessity, proportionality, and the provision of procedural safeguards to

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<sup>4</sup> E.g., 132.62 Ensure that all laws and policies adopted are in conformity with international human rights law and standards, including on the fight against terrorism (Botswana); 134.128 Review counter-terrorism measures which target individuals or groups based on race, ethnic background or religion, including Muslims or Muslim communities (Malaysia); 134.131 Ensure that the planned counter-extremism bill is in compliance with international law and does not single out certain organizations on the stereotypical assumption, based on general characteristics such as religion and the predominant race of the membership of the organization (State of Palestine); 134.190 Reviewing the laws on immigration in Britain in order to comply with the Convention on the Rights of the Child (Syrian Arab Republic).

<sup>5</sup> 134.53 Implement the 1954 Convention on statelessness to ensure that stateless persons in Britain access British nationality (Kenya); 134.225 Categorize statelessness as a protection status and provide stateless persons expedited and affordable access to British nationality (Hungary).

<sup>6</sup> UN Human Rights Committee, 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' CCPR/C/GBR/CO/7 (17 August 2015), para 15.

<sup>7</sup> UN Human Rights Committee, 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' CCPR/C/GBR/CO/7 (17 August 2015), para 15.

all persons.<sup>8</sup> The experts also expressed concern about deprivation having discriminatory effects.

### C. The UK's international obligations

9. We are deeply concerned about prior UK government statements to the effect that 'citizenship is a privilege, not a right'.<sup>9</sup> Such sweeping statements are misleading and potentially harmful. The Universal Declaration on Human Rights ('UDHR') recognises that 'everyone has the right to a nationality'.<sup>10</sup> While this does not mean that everyone has the right to *acquire* any *specific* nationality, once nationality has been obtained, it is protected against arbitrary deprivation by international law. Further, while States have discretion to set the rules and criteria for the acquisition of nationality, such rules should not contravene basic international standards.<sup>11</sup>

#### 1961 Convention on the Reduction of Statelessness ('1961 Convention')

10. The UK is party to the 1961 Convention, which prohibits nationality deprivation if it renders a person stateless<sup>12</sup> or is based on racial, ethnic, religious or political grounds.<sup>13</sup> The 1961 Convention also requires that a person deprived of nationality be afforded a fair hearing by a court or other independent body.<sup>14</sup>
11. The *UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality*<sup>15</sup> provide important guidance on the 1961 Convention.

#### International Covenant on Civil and Political Rights ('ICCPR')

12. The UK is a party to the ICCPR, Article 24 (3) of which protects every child's right to acquire a nationality (although the UK entered a reservation which remains concerning).<sup>16</sup> The ICCPR also entitles everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of his or her rights and obligations<sup>17</sup> and to an effective remedy where his or her rights have been violated.<sup>18</sup> The ICCPR also prohibits discrimination in the enjoyment of rights on grounds such as race, sex, religion and political or other opinion,<sup>19</sup> and

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<sup>8</sup> Letter by the 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 to the UK government, (11 February 2022), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27073>.

<sup>9</sup> New bill quietly gives powers to remove british citizenship without notice' *The Guardian* (17 Nov 2021), available at: <https://www.theguardian.com/politics/2021/nov/17/new-bill-quietly-gives-powers-to-remove-british-citizenship-without-notice>.

<sup>10</sup> Article 15 UDHR.

<sup>11</sup> See Paras 7 & 8 of the Commentary to the Principles on Deprivation of Nationality as a National Security Measure, available at: [https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf).

<sup>12</sup> Article 8 (1) 1961 Convention.

<sup>13</sup> Article 9 1961 Convention.

<sup>14</sup> Article 8 (4) 1961 Convention.

<sup>15</sup> 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>.

<sup>16</sup> The United Kingdom has entered reservations to Article 24(3) of the ICCPR regarding the right of every child to acquire a nationality: 'The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of article 24 (3) and of the other provisions of the Covenant is subject to the provisions of any such legislation.' See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en).

<sup>17</sup> Article 14 ICCPR.

<sup>18</sup> Article 2 ICCPR.

<sup>19</sup> Article 26 ICCPR.

explicitly states that the prohibition of discrimination applies even in time of public emergency threatening the life of the nation.<sup>20</sup>

### Other international standards

13. The UK has ratified a number of other international treaties, which contain provisions protecting the right to a nationality and prohibit arbitrary deprivation of nationality.<sup>21</sup> The UK is not party to the European Convention on Nationality.<sup>22</sup>
14. The **Principles on Deprivation of Nationality as a National Security Measure** provide important guidance on the question of deprivation of nationality.<sup>23</sup> They consolidate international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, and regional and national law and practice. They restate and reflect the international law obligations of States when taking or considering taking steps to deprive nationality as a national security measure.<sup>24</sup> The Principles were developed with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and related areas. At the time of submission, they have been endorsed by over 110 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats.
15. According to the analysis of international law standards presented in the **Principles**, state discretion in relation to deprivation of nationality is subject to the individual right to nationality,<sup>25</sup> the prohibition of arbitrary deprivation of nationality,<sup>26</sup> the prohibition of discrimination<sup>27</sup> and the obligation to avoid statelessness.<sup>28</sup> Furthermore, the impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include the right to enter and remain in one's own country, the prohibition of *refoulement*, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person the right to private and family life, legal personhood and the rights of the child.<sup>29</sup> Any measures to deprive nationality must also comply with due process safeguards.<sup>30</sup>

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<sup>20</sup> Article 4 ICCPR.

<sup>21</sup> Article 18 Convention on the Rights of Persons with Disabilities, subject to a reservation; Article 7 Convention on the Rights of the Child ('CRC'); Article 5 (d) (iii) Convention on the Elimination of All Forms of Racial Discrimination ('CERD'); Article 9 Convention on the Elimination of All Forms of Discrimination against Women.

<sup>22</sup> Significant provisions of the European Convention of Nationality: Article 4 - (a) everyone has the right to a nationality; (b) statelessness shall be avoided; (c) no one shall be arbitrarily deprived of his or her nationality; Article 5: rules on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national of ethnic origin; Article 7: State Party may not provide in its internal law for the loss of nationality except where 'conduct seriously prejudicial to the vital interests of the State Party'.

<sup>23</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at:

<https://files.institutesi.org/PRINCIPLES.pdf>.

<sup>24</sup> A detailed Commentary to the Principles provides an in-depth analysis and overview of the international law norms and standards, which underlie the Principles. This Commentary can be found here: [https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf).

<sup>25</sup> *Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/7/10 (27 March 2008); *Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/10/13 (26 March 2009); *Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/13/2 (24 April 2010); *Human Rights Council Resolution 20/4, The right to a nationality: women and children*, UN Doc A/HRC/RES/20/4 (16 July 2012); *Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/20/5 (16 July 2012); *Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/26/14 (11 July 2014); *Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/32/5 (15 July 2016).

<sup>26</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at:

<https://files.institutesi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles, available at:

[https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf).

<sup>27</sup> *Ibid* Principle 6.

<sup>28</sup> *Ibid* Principle 5.

<sup>29</sup> *Ibid* Principle 9.

<sup>30</sup> *Ibid* Principle 8

16. This submission draws heavily on the Principles, which are annexed to this submission, and the Commentary to the Principles.

## D. Impact of nationality deprivation

17. Depriving someone of nationality can have devastating permanent consequences for them, their family and their community, and can disproportionately impact the enjoyment of a range of other human rights. Without nationality, it can be difficult or impossible to access the rights, entitlements and sense of belonging that come with being a national of a particular State. For example, people deprived of nationality may lose the right to live in and travel freely into and within the State – including living with their families – as well as access to healthcare, education or employment opportunities.
18. In January 2022, ten people who were deprived of British nationality or whose family members were deprived of British nationality wrote an open letter detailing some of the consequences they and others have suffered as a result.<sup>31</sup> These alleged consequences include being stranded outside the UK; suffering detention, imprisonment, and torture; and summary execution. The letter also alleged that many of the affected individuals' children have been denied nationality and passports in a practice they say amounts to 'collective punishment'.
19. In a separate article, a person whose British nationality has now been reinstated after the Home Office wrongfully deprived him of citizenship described being separated from his family for three and a half years and being denied medical treatment.<sup>32</sup>
20. We are particularly concerned about the UK's use of nationality deprivation powers against British women detained in dire humanitarian conditions in camps in northeast Syria, often with their young children. A 2021 report by RSI found that conditions in the camps cumulatively create pain and suffering rising to the level of torture<sup>33</sup> – a finding which has been supported by UN human rights experts who refer to torture or cruel, inhuman or degrading treatment or punishment.<sup>34</sup> Instead of removing British and former British nationals from the camps, the UK government has maintained that it owes no obligation to repatriate those detained there. Instead, UK charity Reprieve recently found that the UK has made nationality deprivation orders in respect of at least 19 of 25 British adults located in northeast Syria, including British women now detained in the camps.<sup>35</sup> This makes it extremely difficult – and in some cases impossible – for the women to challenge the government's decisions to deprive them of nationality and not to repatriate them and their children. Thus, by depriving British women of their nationality, the UK is abandoning them and their children in torturous and life-threatening conditions.

## E. National law on nationality deprivation

### Current state of the law

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<sup>31</sup> 'Joint Letter by Exiled Britons: Law allows Government to be judge, jury and executioner' *CAGE* (12 Jan 2022), available at: <https://www.cage.ngo/joint-letter-by-exiled-brits-law-allows-government-to-be-judge-jury-and-executioner>.

<sup>32</sup> 'Maximum Suffering.' A Man Stripped of His Citizenship Sheds Light on the Potential Impact of the U.K.'s Nationality Bill' *TIME* (27 Jan 2022), available at: <https://time.com/6146655/uk-citizenship-nationality-immigration-bill/>.

<sup>33</sup> Abandoned to Torture: Dehumanising rights violations against children and women in north east Syria' *Rights and Security International* (13 October 2021), available at: <https://www.rightsandsecurity.org/action/research/entry/abandoned-to-torture-dehumanising-rights-violations-against-children-and-women-in-northeast-syria>.

<sup>34</sup> 'Canada: UN experts call for urgent repatriation of seriously ill woman from Syria camp' *OHCHR* (10 February 2022), available at: <https://www.ohchr.org/en/press-releases/2022/02/canada-un-experts-call-urgent-repatriation-seriously-ill-woman-syria-camp>.

<sup>35</sup> 'Trafficked to ISIS' *Reprieve* (April 2021), available at: [https://reprieve.org/wp-content/uploads/sites/2/2021/04/2021\\_04\\_30\\_PUB-Reprieve-Report-Trafficked-to-Syria-British-families-detained-in-Syria-after-being-trafficked-to-Islamic-State-1.pdf](https://reprieve.org/wp-content/uploads/sites/2/2021/04/2021_04_30_PUB-Reprieve-Report-Trafficked-to-Syria-British-families-detained-in-Syria-after-being-trafficked-to-Islamic-State-1.pdf).

21. Under Section 40 of the British Nationality Act 1981 ('BNA'), the Home Secretary ('HS') has the power to deprive a person of their British nationality where the HS 'is satisfied that deprivation is conducive to the public good'.<sup>36</sup> 'Conduciveness to the public good' is defined by reference to 'involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours'.<sup>37</sup> However, the law itself remains vague, and phrases in the guidance such as 'unacceptable behaviours' are also vague.
22. Although the Home Office has made statements that it deprives people of nationality only 'sparingly',<sup>38</sup> no such restriction is built into the legislation, and statistics previously published by the Home Office point in a different direction.
23. There has been a large increase in the UK government's use of nationality deprivation powers in the 21<sup>st</sup> century. Between 1973 and 2006, it appears no one was stripped of their nationality.<sup>39</sup> In the ten years between 2006 and 2015, 36 people were deprived of their nationality on grounds that it was 'conducive to the public good'.<sup>40</sup> In the five years between 2016 and 2020, this surged to 176 people – with 104 people deprived in 2017 alone.<sup>41</sup>
24. The figures for 2019 and 2020 were not released until March 2022, after several freedom of information requests by RSI were refused. We are concerned that the lack of timely disclosure has limited proper assessment and oversight by civil society, parliamentarians and the public. This exacerbates preexisting concerns regarding the lack of safeguards.

### Historical development of the law

25. The history of the UK's nationality-stripping powers raises serious concerns about the possible arbitrariness of the government's *current* powers. In the last 20 years, the UK has expanded its nationality-stripping powers mainly in direct response to large-scale violent attacks, including 9/11 and the 2005 London bombings, or high-profile litigation against terrorism suspects – including cases in which the courts found that the Home Office acted unlawfully.

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<sup>36</sup> The HS also has the power under Section 40 (3) BNA to deprive a person who acquired their British citizenship by registration or naturalisation if they did so by fraud, false representation, or concealment of a material fact. Available at: [https://www.legislation.gov.uk/ukpga/1981/61/pdfs/ukpga\\_19810061\\_en.pdf](https://www.legislation.gov.uk/ukpga/1981/61/pdfs/ukpga_19810061_en.pdf).

<sup>37</sup> See [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631643/deprivation-nullity-Chapter-55.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631643/deprivation-nullity-Chapter-55.pdf).

<sup>38</sup> 'Nationality and Borders Bill: Deprivation of citizenship factsheet' UK Government, available at: <https://www.gov.uk/government/publications/nationality-and-borders-bill-deprivation-of-citizenship-factsheet/nationality-and-borders-bill-deprivation-of-citizenship-factsheet>.

<sup>39</sup> 'How many people have been stripped of their British Citizenship' *Free movement*, available at: <https://freemovement.org.uk/how-many-people-have-been-stripped-of-their-british-citizenship-home-office-deprivation/>.

<sup>40</sup> 'Freedom of information request to the UK Home Office' (2016), available at: [https://www.whatdotheyknow.com/request/318785/response/827666/attach/3/CCWD%20FOI%2038734%20Final%20Response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/318785/response/827666/attach/3/CCWD%20FOI%2038734%20Final%20Response.pdf?cookie_passthrough=1).

<sup>41</sup> HM Government Transparency Report 2015: Disruptive and Investigatory Powers' (2015), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/473603/51973\\_Cm\\_9151\\_Transparency\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/473603/51973_Cm_9151_Transparency_Accessible.pdf); 'HM Government Transparency Report 2017: Disruptive and Investigatory Powers' (2017), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593668/58597\\_Cm\\_9420\\_Transparency\\_report\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593668/58597_Cm_9420_Transparency_report_web.pdf); 'HM Government Transparency Report 2018: Disruptive and Investigatory Powers' (2018), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727961/CCS207\\_CCS0418538240-1\\_Transparency\\_Report\\_2018\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727961/CCS207_CCS0418538240-1_Transparency_Report_2018_Web_Accessible.pdf); 'HM Government Transparency Report 2017: Disruptive and Investigatory Powers' (2018/19), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919625/CCS0320317274-001\\_HM\\_Government\\_Transparency\\_Report\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919625/CCS0320317274-001_HM_Government_Transparency_Report_Web_Accessible.pdf); 'HM Government Transparency Report: Disruptive Powers 2020' (2020), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1058164/E02724471\\_CP\\_621\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058164/E02724471_CP_621_Web_Accessible.pdf).

26. In such contexts, there is a risk that legal changes will be driven by anxiety or frustration, public and media pressure on government, and longstanding racist and other stereotypes. Legislation introduced in such contexts may be triggered by the need to show symbolic strength, the pursuit of administrative convenience, or an embrace of racist and populist narratives. There is a danger that the human rights impacts will be disregarded.<sup>42</sup> This raises significant concern, particularly when considering the permanent nature of nationality deprivation and the fundamental way in which this impacts a wide range of human rights.
27. Originally under the BNA, the HS was empowered to deprive only *naturalised* British citizens of their nationality if satisfied that the person had been disloyal to the UK, had assisted the enemy during war, or had been sentenced in any country to imprisonment for a term not less than twelve months.<sup>43</sup>
28. In 2002, the government introduced the Nationality, Immigration and Asylum Act 2002, empowering the HS to deprive a person of nationality if they had done something ‘seriously prejudicial to the vital interests of the UK or a British overseas territory’. This dramatically widened the criteria for deprivation and increased the HS’s discretion.<sup>44</sup> In addition, deprivation powers were permitted to be used against British nationals by birth (i.e. not just against *naturalised* British citizens), though – crucially – the HS could not make a deprivation order which would render a person stateless.<sup>45</sup>
29. In 2004, the government introduced the Asylum and Immigration Act 2004, which removed the suspensive right of appeal for deprivation of nationality decisions.<sup>46</sup> This means that the decision to deprive someone of nationality takes immediate effect, making it more difficult for the former citizen to appeal, particularly if they were outside the country at the time.
30. In 2006, following the 2005 London bombings, the government introduced the Immigration, Asylum and Nationality Act 2006. The 2006 Act lowered the threshold for deprivation from ‘conduct seriously prejudicial to the vital interests of the UK’ to circumstances in which it would be ‘conducive to the public good’, further broadening the discretion of the HS.<sup>47</sup>
31. The Immigration Act 2014 enabled the HS to deprive a naturalised British citizen of their nationality *even where this rendered them stateless* if they acted in a manner ‘seriously prejudicial to the vital interests of the UK’. Then-HS Theresa May explicitly acknowledged that this amendment was ‘a consequence of a specific case’: Al-Jedda,<sup>48</sup> where, despite the HS considering it in the ‘public good to deprive’ Al-Jedda of nationality, she had been prevented from doing so on the basis that he would have been rendered stateless.
32. Finally, in November 2021, the government introduced a new provision – Clause 9 – into the Nationality and Borders Bill. If adopted, Clause 9 will empower the HS to deprive people of British

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<sup>42</sup> ‘Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year’ *The Independent* (2019), available at <https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html>.

<sup>43</sup> Sangeetha Pillai & George Williams, ‘The utility of Citizenship Stripping Laws in the UK, Canada and Australia’ (2017) 41 *Melbourne University Law Review* 845, available at: <http://www5.austlii.edu.au/au/journals/MelbULawRw/2017/40.html>; Hundreds stripped of citizenship in the last 15 year, study finds (21 Jan 2022), available at: <https://www.theguardian.com/uk-news/2022/jan/21/hundreds-stripped-british-citizenship-last-15-years-study-finds>.

<sup>44</sup> ‘How many people have been stripped of their British Citizenship’ *Free movement*, available at: <https://freemovement.org.uk/how-many-people-have-been-stripped-of-their-british-citizenship-home-office-deprivation/>.

<sup>45</sup> New subsection 40(2).

<sup>46</sup> Nationality, Immigration & Asylum Act (2002), available at: <https://www.legislation.gov.uk/ukpga/2002/41/section/4>.

<sup>47</sup> Asylum and Immigration Act (2004), available at: <https://www.legislation.gov.uk/ukpga/2004/19/schedule/2>.

<sup>48</sup> <https://www.legislation.gov.uk/ukpga/2006/13/section/56>

<sup>48</sup> *Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 62, available at: <https://www.supremecourt.uk/cases/docs/uksc-2012-0129-judgment.pdf>.



nationality without giving them notice in certain circumstances (at present, written notice is required under Section 40 (5) BNA).

## F. Key concerns

33. Having looked at the impact of depriving someone of nationality and the evolution of the UK's legislative powers to deprive people of nationality, this section turns to four fundamental ways in which the UK's nationality deprivation powers and their implementation violate international law.<sup>49</sup>

### **Prohibition of arbitrary deprivation of nationality**

34. It is our view that international law prohibits arbitrary deprivation of nationality (see Article 17 ICCPR, which prohibits arbitrary interference with private life; see also Article 15 (2) UDHR; and Article 18 (1) CRPD among others). As articulated by the UN Secretary General: 'deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality. These conditions include serving a legitimate purpose, being the least intrusive instrument to achieve the desired result and being proportional to the interest to be protected.'<sup>50</sup> A thorough analysis of international standards confirms that any deprivation of nationality must be (a) provided for by a law which is sufficiently clear and precise so that people can reasonably foresee the consequences of actions that could trigger a loss of nationality<sup>51</sup>; (b) carried out in pursuance of a legitimate purpose; (c) necessary; (d) proportionate<sup>52</sup>; and (e) in accordance with procedural safeguards.<sup>53</sup>

#### *Principle of legality*

35. We are concerned that the UK's existing nationality deprivation legislation is insufficiently clear and precise, contrary to the principle of legality.
36. In particular, we are concerned that the 'conducive to the public good' criterion gives the HS a strikingly broad and subjective discretion to determine whether, when and why to deprive a person of nationality. The UK's Joint Committee on Human Rights has expressed concern about the absence of a 'requirement for the Secretary of State to show that there [are] objectively reasonable grounds' for the deprivation decision and stated that the 'conducive to the public good' test contains 'insufficient guarantees against arbitrariness'.<sup>54</sup>

#### *Legitimate aim, necessity and proportionality*

37. We are also concerned that the UK's existing legislation permitting nationality deprivation on national security grounds, is not necessary or proportionate to a legitimate aim.
38. Principle 7.2 of the Deprivation Principles identifies the following purposes as illegitimate: (a) administering sanction or punishment, (b) facilitating expulsion or preventing entry, (c) exporting

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<sup>49</sup> Those who wish to study the international law basis of each of these areas are encouraged to look at the Commentary to the Principles on Deprivation of Nationality as a National Security Measure, available at: [https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf).

<sup>50</sup> UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the SecretaryGeneral', A/HRC/25/28 (2013), para 4.

<sup>51</sup> UNHCHR Guidelines [92], available at: <https://www.refworld.org/docid/5ec5640c4.html>.

<sup>52</sup> *Pham v UK* ([2015] UKSC 19, available at: <https://www.supremecourt.uk/cases/docs/uksc-2013-0150-judgment.pdf>).

<sup>53</sup> See pages 51 – 76 of the Commentary to the Principles on Deprivation of Nationality as a National Security Measure, for a detailed overview of the different standards at play. available at: [https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf).

<sup>54</sup> Joint Committee on Human Rights, Third report of 2005-06, available at: <https://publications.parliament.uk/pa/it200506/itselect/itrights/75/7507.htm#n153>, paras 161, 164.

the function and responsibility of administering justice to another State. Further, administrative convenience is not a legitimate purpose.<sup>55</sup> However, UK government ministers have made clear that the UK uses its nationality-stripping power for the purpose of protecting national security by preventing entry of the person deprived into the UK.<sup>56</sup>

39. To be necessary, deprivation of nationality must be the *least intrusive means* of achieving the stated purpose.<sup>57</sup> In a February 2022 letter to the UK, five UN experts explained how the existence of possible alternative solutions to alleged national security concerns, such as criminal proceedings pursuant to fair trial procedures, sheds doubt on the necessity of deprivation of nationality as a national security measure. Further, the fact that British born citizens with no other nationality cannot be deprived of their nationality shows that the UK has other effective methods of resolving national security concerns, without resorting to nationality deprivation. This raises the question of how nationality deprivation can be necessary for one class of citizens, but not another.
40. In their February 2022 letter, the five UN experts also explained how the severity of the consequences of a deprivation decision on the individual and their family – including their children – makes it very unlikely that deprivation of nationality could be a proportionate response to alleged national security concerns.

#### **Procedural rights**

41. International law requires that a person deprived of nationality is afforded the right to a fair and public hearing by a court or other independent body (Article 8 (4) of the 1961 Convention and Articles 2 and 14 of the ICCPR, among others).<sup>58</sup>

#### *Existing legislation*

42. We are concerned that, contrary to international law, the HS has almost unfettered discretion to deprive people of nationality.
43. First, a UK nationality deprivation decision does not have to be ordered or reviewed by a court before it takes effect, nor is any prior conviction – let alone a proportionately serious one – required before the HS may make a deprivation order. Although Section 40A BNA provides for a right to appeal against a deprivation order, making an appeal does not suspend the order. As a result, the HS can make a binding order (with all the consequences that entails) even whilst an appeal against her decision is pending. The removal of the suspensive right of appeal also means that deprivation and deportation decisions can be made contemporaneously and that an individual may be deported immediately upon deprivation. This is likely to substantially affect that person’s ability to enforce their right to appeal.

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<sup>55</sup> See guideline 27vi in the context of detention, which encapsulates the standard principle related to arbitrariness, available at: <https://www.equalrightstrust.org/ertdocumentbank/guidelines%20complete.pdf>.

<sup>56</sup> see: <https://twitter.com/sajidjavid/status/1283753115049693184>; ‘CONTEST The United Kingdom’s Strategy for Countering Terrorism’ (June 2018), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/716907/140618\\_CCS207\\_CCS02189\\_29798-1\\_CONTEST\\_3.0\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS02189_29798-1_CONTEST_3.0_WEB.pdf); ‘UK Nationals returning from Syria’ Hansard UK Parliament (18 February 2018), available at: <https://hansard.parliament.uk/commons/2019-02-18/debates/69E286BB-03A2-4467-AB65-B3059436CD53/UKNationalsReturningFromSyria>.

<sup>57</sup> See for example, HRC General Comment No. 27 on Art. 12 ICCPR.; according to which, “[R]estrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instruments amongst those, which might achieve the desired result.” For a discussion of this and other standards, see pages 67 – 71 of the Commentary to the Principles.

<sup>58</sup> For a detailed overview, see pages 72 – 82 of the Commentary to the Principles.

44. Second, most appeals against deprivations taken on grounds of national security will be heard by the Special Immigration Appeals Commission ('SIAC'), which can hear secret evidence in closed proceedings. This means the appellant does not have to be given the full reasons for the deprivation decision and the case can be heard in the absence of the appellant or any legal representative appointed by the appellant.<sup>59</sup> This is a significant deviation from international legal provisions, including Article 6 of the European Convention on Human Rights and Article 14 of the ICCPR. Legal experts indicate that, in practice, this secrecy makes it very difficult to challenge deprivation decisions.<sup>60</sup> In addition, SIAC's ability to review deprivation decisions is limited. The UK Supreme Court confirmed in *R (Begum) v. SIAC* that SIAC can only review the reasonableness of the HS's decision and may not assess for itself whether deprivation was 'conducive to the public good'.
45. Third, we are concerned that, in practice, the right to appeal is often not enforceable as many deprivation decisions are taken when the person has travelled outside of the UK.<sup>61</sup> It is much more difficult for those outside the UK to access legal representation and provide evidence to challenge a deprivation decision before UK courts. As a result of the Supreme Court's judgment in *Begum*, a person deprived of nationality does not necessarily have a right to return to the UK to challenge the deprivation. This is so even where the person deprived cannot mount an effective appeal from outside of the UK. As a result, we are deeply concerned that the right to appeal against a deprivation decision is rendered purely illusory in many cases.

*Government proposals to expand powers under Clause 9, Nationality and Borders Bill*

46. If enacted, Clause 9 of the Nationality and Borders Bill<sup>62</sup> would empower the HS to deprive a person of their British nationality without giving them notice in a range of circumstances. This would mean that a person may not even be aware that their nationality has been stripped from them, creating a greater risk that deprivations of nationality resulting in statelessness, or based on discriminatory grounds, will go unchallenged and unremedied.
47. People cannot appeal against decisions they are unaware of and, by the time someone finds out about a decision taken well in advance, it may be far more difficult for them to appeal, for example because crucial evidence has been lost due to the passage of time or because the person is in a more precarious or dangerous situation. With respect to the latter situation, this is exactly the case for women deprived of their British citizenship whilst detained in camps in northeast Syria.
48. On 28 February 2022, the House of Lords voted against the inclusion of Clause 9 in the Nationality and Borders Bill, reflecting the serious concern about its damaging and disproportionate nature among crucial decision makers.<sup>63</sup> However, on 22 March 2022, the House of Commons voted the House of Lords amendment down.<sup>64</sup> Thus, at the time this submission is made, it is unclear whether Clause 9 will be enacted into UK law.

**Avoidance of statelessness**

<sup>59</sup> The Special Immigration Appeals Commission (Procedure) Rules 2003, SI 2003/1034, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/421503/Consolidated\\_text\\_of\\_SIAC\\_Rules\\_2003.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421503/Consolidated_text_of_SIAC_Rules_2003.pdf).

<sup>60</sup> <https://ukhumanrightsblog.com/wp-content/uploads/2021/06/THE-OUSELEY-REVIEW-SAs-Submission-FINAL.pdf>.

<sup>61</sup> Ibid; Alice Ross & Patrick Galey, 'Rise in citizenship-stripping as government cracks down on UK fighters in Syria' *Bureau of Investigative Journalism* (23 December 2013): of the 37 deprivation orders issued between 2010 and 2013, all but two were issued whilst the individual was abroad.

<sup>62</sup> Nationality and Borders Bill' (2021) UK Government, available at: <https://bills.parliament.uk/bills/3023>.

<sup>63</sup> 'Nationality and Borders Bill: Volume 819: debated on Monday 28 February 2022', available at: <https://hansard.parliament.uk/Lords/2022-02-28/debates/DB808D67-CC61-45F1-8D46-B14B42CBB2E9/NationalityAndBordersBill>.

<sup>64</sup> 'Nationality and Borders Bill: Volume 711: debated on Tuesday 22 March 2022, available at: <https://hansard.parliament.uk/commons/2022-03-22/debates/FA4FBF36-5168-4B9B-8C7E-09D2AAC33C39/NationalityAndBordersBill>.

49. International law prohibits deprivation of nationality where such deprivation would render a person stateless.<sup>65</sup> This prohibition is formally incorporated into domestic UK law through Section 40 (4) BNA, which provides that the HS ‘may not make an order under subsection (2) if he is satisfied that the order would make a person stateless’.
50. However, we are concerned about a legal carve-out from this formal rule, which permits the HS to deprive *naturalised* British citizens of their British nationality where the HS has reasonable grounds for believing that the person could *become* a citizen of another state – whether or not they would actually be successful in obtaining such citizenship.<sup>66</sup> This is contrary to the 1961 Convention. The UNHCR Guidelines suggest that the assessment of whether deprivation of nationality will render a person stateless must consider whether, *at the point of deprivation*, the individual is considered a national under the operation of another country's law, rather than speculating as to possible future citizenship acquisition.<sup>67</sup>
51. In addition, UK courts have held that the burden of proof is on the individual deprived of their nationality to establish that they could *not* become a citizen of another State.<sup>68</sup> This runs contrary to UNHCR Guidelines, which establish that deprivation procedures that ‘place the burden of proof solely on the individual to prove statelessness’ are likely to be inconsistent with Article 8 of the 1961 Convention.<sup>69</sup>
52. We are also concerned that the UK has, in practice, rendered people stateless by depriving them of nationality. In the past years, UK courts have decided that some of the HS's orders to deprive people of British nationality were unlawful on the basis that they made the person stateless.<sup>70</sup>
53. Furthermore, even where a deprivation decision does not formally leave a person stateless, the loss of British nationality ‘may nevertheless have a profound effect upon her life, especially where her alternative nationality is one with which she has little real connection’.<sup>71</sup>

### Prohibition of discrimination

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<sup>65</sup> Article 8 (1) 1961 Convention; see also Principle 5, Deprivation Principles, and pages 37 – 40 of the Commentary to the Principles.

<sup>66</sup> Section 40(4A) of the 1981 Act says that statelessness “does not prevent” the Secretary of State from making a deprivation order, if: (a) “the citizenship status results from the person's naturalisation and (b) “the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory”.

<sup>67</sup> UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, (“UNHCR Guidelines No. 5”) (May 2020) available at: <https://www.refworld.org/docid/5ec5640c4.html>, para. 5.

<sup>68</sup> In *Hashi v SSHD*, the question of whether Hashi would be stateless rested on the question of whether he had Somali citizenship at the time of deprivation, which depended on whether a particular Charter was or was not in force (which was unclear). SIAC ruled that it was the “*preferable view*” that he had not lost his Somali citizenship upon acquiring UK nationality, and that it was “*probable*” that he regained it. The requirement that the individual prove that he is stateless is a much higher bar than the standard for the HS to be satisfied on reasonable grounds. Furthermore, in *Pham v SSHD*, the Supreme Court again ruled that Pham had the possibility of Vietnamese nationality at the date of the deprivation. This was despite the fact that the Vietnamese legislation on dual-citizenship is deliberately ambiguous (so as to allow the executive to make whatever decisions it wishes) and the government subsequently declined to accept him as a Vietnamese citizen. Nonetheless, at the time of the deprivation, the government had not made any decision, and so the HS was satisfied that they had reasonable grounds that Pham could become a national. *Hashi v SSHD* [2016] EWCA Civ 1136; *Pham v UK* ([2015] UKSC 19, available at: <https://www.supremecourt.uk/cases/docs/uksc-2013-0150-judgment.pdf>).

<sup>69</sup> 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>.

<sup>70</sup> *C3, C4, C7 v. SSHD* (appeals nos. SC/167/2020; SC/168/2020; SC/171/2020).

<sup>71</sup> *R (Begum) v. Special Immigration Appeals Commission and Secretary of State for the Home Department* [2021] UKSC 7 [94].

54. International law prohibits deprivation of nationality based on discriminatory grounds, including race, colour, ethnicity, social origin, religion, sex or language (Article 9 1961 Convention, Article 26 ICCPR, and Article 5 Convention on the Elimination of Racial Discrimination, among others).
55. We are concerned about the inherent discriminatory potential of the UK's nationality-stripping powers, given their vagueness and the lack of independent authorisation, as well as the disproportionate impact of the powers, in practice, on people from non-white racial and ethnic backgrounds – especially people from Muslim and migrant communities. The dangers of inbuilt discrimination in deprivation powers has been recognised by other states such as Chile<sup>72</sup> and Canada.<sup>73</sup> Both countries have recently repealed legislation allowing deprivation of nationality of dual citizens due to concerns that such provisions violate anti-discrimination norms.
56. We are concerned that the difference in treatment between *naturalised* British citizens (who can be rendered stateless under Section 40 (4A) BNA), and *British-born* citizens (who cannot be rendered stateless, according to Section 40 (4) BNA) amounts to *direct* discrimination on the basis of national or social origin, and *indirect* discrimination on the basis of racial, ethnic or religious grounds.
57. In addition, we are concerned that the difference in treatment between British-born nationals with potential *dual nationality* (who may be deprived of their British nationality on the basis that to do so would not leave them stateless) and British-born nationals *without another potential nationality* (who may not be deprived of their British nationality as doing so would leave them stateless) amounts to indirect discrimination.
58. In effect, domestic legislation creates three tiers of nationality: (1) British-born mono-nationals, who have the most secure citizenship, (2) British-born and naturalised dual-nationals, who may be deprived of citizenship on the basis that they will not be rendered stateless, and (3) naturalised British citizens who have no other nationality, who may be rendered stateless through nationality deprivation.
59. As a result, nationality deprivation is likely to disproportionately affect people from non-white racial and ethnic backgrounds, as they are more likely to have or be eligible for another nationality based on their parents' or grandparents' country of origin.<sup>74</sup> A statistical analysis by the New Statesman of data released by the Office for National Statistics found that two in five people from a non-white ethnic background (41%) are likely to be eligible for nationality deprivation under the UK's current laws and policies, compared with only one in 20 people the government classifies as white (5%).<sup>75</sup>
60. In addition, although the government has never published deprivation figures disaggregated by ethnicity or religion, the Bureau of Investigative Journalism found in February 2013 that 16 of the

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<sup>72</sup> Institute on Statelessness and Inclusion & Global Citizenship Observatory (2022), available at: [https://files.institutesi.org/Instrumentalising\\_Citizenship\\_Global\\_Trends\\_Report.pdf](https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf), p. 25.

<sup>73</sup> Benton and Bonaescu-Bogdan, 'Foreign fighters: Will revoking citizenship mitigate the threat?' (April 2019) Migration Policy Institute, available at: <https://www.migrationpolicy.org/article/foreign-fighters-will-revoking-citizenship-mitigate-threat>; Forcese, 'A tale of two citizenships: citizenship revocation for "traitors and terrorists"' (2019), *Queens Law Journal* 39:2, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434594](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434594).

<sup>74</sup> JCHR 24th report of 2005-06, Appendix 4, available at: <https://publications.parliament.uk/pa/it200506/itselect/itrights/240/24013.htm>, para 68.

<sup>75</sup> 'British Citizenship of six million people could be jeopardised by Home Office Plans' *New Statesman* (1 December 2021), available at: [https://www.newstatesman.com/politics/2021/12/exclusive-british-citizenship-of-six-million-people-could-be-jeopardised-by-home-office-plans?mc\\_cid=d501f0a75a&mc\\_eid=UNIQID](https://www.newstatesman.com/politics/2021/12/exclusive-british-citizenship-of-six-million-people-could-be-jeopardised-by-home-office-plans?mc_cid=d501f0a75a&mc_eid=UNIQID).

18 individuals deprived between 2003 and 2013 were Muslims.<sup>76</sup> It is of potential legal significance that the UK did not use nationality-stripping as a national security measure in the context of the serious and deadly conflict in Northern Ireland, even at the height of the ‘Troubles’, but has increasingly used it as a counter-terrorism measure since 9/11 – and particularly against British nationals seeking to return from Syria. This difference in treatment prompts concern that the deprivation of citizenship of British Muslims is motivated by political and/or discriminatory factors.

61. In their February 2022 letter to the UK government, the five UN experts expressed their concern that the UK’s nationality deprivation powers may be used disproportionately against people from Muslim communities on the basis that the UK’s counter-terrorism laws and policies have ‘created an atmosphere of suspicion towards members of Muslim communities’ and have encouraged ‘impermissible racial, ethnic or religious profiling’.<sup>77</sup> Following her visit to the UK in April and May 2018, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported that she had received information indicating that sustained and pervasive discourses vilifying Islam and Muslims persists in the British media and even among the political leadership, and that recent counter-terrorism laws and policies have vastly exacerbated Islamophobic sentiment.<sup>78</sup>

## G. Recommendations

62. On the basis of the evidence and analysis presented above, we call on reviewing States to recommend that the UK:

- I. Protect everyone’s right to a nationality, and ensure that national laws comply with international obligations as consolidated in the Principles on Deprivation of Nationality in a National Security Context, which prohibit the arbitrary and discriminatory deprivation of nationality, require the avoidance of statelessness and adherence to procedural safeguards and fair procedure rights.
- II. Reform its laws on nationality deprivation to bring them in line with international standards and principles of natural justice, including:
  - A. By repealing the ‘conducive to the public good’ criterion and replacing it with a criterion which is clear and precise, which has a purpose considered legitimate under international law, and which complies with the requirements of necessity and proportionality;
  - B. By requiring that a court must review the Home Secretary’s decision to deprive someone of nationality before that decision can take effect, by only permitting deprivation of nationality pursuant to a sufficiently serious criminal conviction, and by reinstating the suspensive right of appeal;
  - C. By ensuring that appeal proceedings meet the international standards required of fair procedures, including having full powers to review deprivation decisions;

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<sup>76</sup> “‘Medieval exile’: the 42 Britons stripped of their citizenship”, *Bureau of Investigative Journalism* (26 February 2013), available at: <https://www.thebureauinvestigates.com/stories/2013-02-26/medieval-exile-the-42-britons-stripped-of-their-citizenship>. These numbers derive from the cases for which the Bureau of Investigative Journalism has information on. Furthermore, the 2018 government transparency report contained the statement ‘Deprivation is particularly important in helping prevent the return to the UK of certain dual-national British citizens involved in terrorism-related activity in Syria or Iraq’, indicating that most if not all of the comparatively large number of deprivations in 2016 and the very large number in 2017 were of Muslims.

<sup>77</sup> Letter by the 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 to the UK government, (11 February 2022), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27073>.

<sup>78</sup> ‘Visit to the United Kingdom of Great Britain and Northern Ireland Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/41/54/Add.2 (27 May 2019), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/21/PDF/G1914821.pdf?OpenElement>.

- D. By ensuring that people already deprived of nationality while abroad have equal access to their right to appeal that decision – by automatically granting them leave to enter the UK, and suspending the deprivation decision until they are in a position to effectively challenge it;
  - E. By repealing what has in effect become a ‘tiered citizenship structure’, and ensuring that all UK citizens are equal before the law, and face the same consequences for the same actions, instead of being treated differently based on their heritage and access to other nationalities;
  - F. By stipulating that a deprivation decision can *never* be made if it will leave a person stateless – whether they are a British-born or naturalised British citizen – and that an assessment of statelessness based on UNHCR guidance (on criteria of whether the person has another nationality at the time of deprivation), must be made at the time of the deprivation.
- III. Ensure that there is no further regression in UK law, including by removing Clause 9 of the Nationality and Borders Bill.
- IV. Impose a moratorium on the practice of nationality deprivations, or in the very least, reform its practice to bring it in line with international standards and principles of natural justice, including:
- A. By ceasing the practice of depriving nationality of people when they are abroad, or instigating deportation proceedings against those who have been deprived of their nationality; or not notifying individuals of deprivation decisions, in order to ensure access to justice, fair procedure rights and equality before the law for all impacted persons;
  - B. By taking positive steps to remedy the racialised and Islamophobic impact and consequences of the UK’s counter-terrorism measures, including its nationality deprivation practice, and build trust with affected communities;
  - C. By taking all necessary steps to ensure that the children of people deprived of nationality have full access to UK citizenship, are not left stranded abroad in torturous conditions and are not separated from their parents unless it is proven that it is in their best interest to do so.
- V. Ensure that it does not instrumentalise nationality deprivation in order to evade its human rights responsibilities, or attempt to shift its responsibilities onto other members of the international community, including by leaving former UK nationals stranded on the territories of other states.
- VI. Publish, in a timely manner, information on how many people have had their British nationality removed, broken down according to protected characteristics, including race and ethnicity, gender, age, alleged second nationality, and reasons given for deprivation.
- VII. Conduct an independent review into the possible discriminatory impact of nationality deprivation powers and practice.