

**Position of the United Nations Special Rapporteur
on the promotion and protection of human rights and fundamental freedoms while countering terrorism on**

**The human rights consequences of citizenship stripping**

**in the context of counter-terrorism with a particular application to North-East Syria**

**February, 2022**

1. **Introduction**

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, observes a clear and regressive trend in State practices of citizenship stripping justified by policy arguments related to counter-terrorism and security.[[1]](#footnote-1) In the course of her work, the Special Rapporteur has been made aware of numerous cases and situations where this occurs, although given the nature of such measures, comprehensive statistics remain elusive. The prevalence of the phenomenon is nonetheless illustrated by the clear and identified trend of States adapting their legislation to lower the legal threshold for deprivation of nationality with the express intent of targeting those perceived to be associated with designated terrorist groups. She warns against the adoption and use of legislation which undermine the right to a nationality and destabilise the status of citizenship around the world to address a threat of terrorism.

Citizenship stripping, or deprivation of nationality**,** are both used interchangeably to describe situations where the withdrawal is initiated by the authorities of the State,[[2]](#footnote-2) and is an extreme measure facilitated variously and cumulatively by legislative measures, administrative means, policy decisions and institutional practices at the national level in multiple countries. The Special Rapporteur is well aware that in countering terrorism and addressing security threats, States activate far-reaching and wide-ranging exceptional national security powers premised on elevated public security risks, operated and reviewed through the administrative law system.[[3]](#footnote-3) Such administrative measures, implemented directly by the executive power without any judicial oversight engage significant limitations and restrictions to a number of rights, including to the rights to fair trial, freedom of movement, work and the right to private and family life.[[4]](#footnote-4) She notes that, in many States, citizenship stripping measures fall under this category.

The Special Rapporteur views citizenship as a gateway right enabling the ‘right to have rights’,[[5]](#footnote-5) to claim and secure a collection of other basic human rights, in national legal systems. The weakening of the right to a nationality and practices of arbitrary deprivation of citizenship which at its core prohibits deprivation of nationality that is not prescribed by law, that is not the least intrusive means proportionate to achieving a legitimate purpose and that does not comply with due process, undermine the holistic and equal access to human rights for citizens and non-citizens alike. She accepts that while States have a legitimate right to take measures to address the national security threat posed by terrorism, States remain bound by international law and, in particular, by the absolute prohibition of arbitrary deprivation of nationality, which should be avoided to achieve this purpose.

Citizenship stripping has monumental consequences for those left stateless *de facto* or *de jure*. While acknowledging that international law provides for certain exceptions to the prohibition of statelessness,[[6]](#footnote-6) the Special Rapporteur is concerned that she is increasingly seeing situations where individuals are deprived of their nationality outside of these limited exceptions, while the requirements that should ensure that the individual will not be left stateless have not been met. Even where individuals are not left stateless, citizenship stripping has economic, social, cultural, and familial after-effects with particularly deleterious effects on children whose parents are deprived of their nationality. The Special Rapporteur is particularly troubled about observed patterns of gender inequality and gendered exceptionalities in current counter-terrorism citizenship stripping practices. She also identifies targeting of religious and ethnic minorities with increased selective application of citizenship stripping. These practices in effect create second-class citizenship for minority groups whose lived experience of citizenship functions as less stable than it does for majority or dominant populations in society.

1. **General observations pertaining to citizenship deprivation directed at persons detained in North-East Syria**

This position paper has, as its primary focus, the deprivation of nationality for individuals who are or have been deprived of their liberty in various camps and detention centres in North-East Syria. The Special Rapporteur is expressly concerned about the practice of citizenship stripping for foreign nationals held without due process or any valid form of legal adjudication in these camps and detention centres*.* The conditions in the camps of Al Hol and Roj have been the subject of multiple communications by her mandate.[[7]](#footnote-7) She has found the camp conditions to reach the legal threshold of torture, cruel, inhuman, and degrading treatment or punishment under international law.

* Persons subject to citizenship deprivation are foreign nationals arbitrarily detained in detention centres and closed camps by a non-State actor often with the consent or acquiescence of their government of nationality.
* Persons subject to citizenship deprivation in North-East Syria include large numbers of women deprived of their liberty in the camps, who have dependent children.
* Persons subject to citizenship deprivation in North-East Syria particularly comprise single-parent female households. There are over 18,000 single-headed female households in these camps.
* 61% of the population in the camps is under the age of 18; 47% is under the age of 12 and 24% is under the age of 5.
* 97% of the inhabitants of the camps live in family-sized tent structures.
* Persons subject to citizenship deprivation in North-East Syria are being held without legal process, lacking legal representation, in dire conditions that meet the threshold for torture, cruel, inhuman, and degrading treatment under international law.
* Persons subject to citizenship deprivation in North-East Syria may have been victims of trafficking and/or recruitment and use as children by armed groups, grooming on-line and/or coercion and/or forced marriage and/or sexual and other forms of violence before, during and currently in their detention.

The Special Rapporteur is concerned that in this context, multiple States have invoked the power to strip their detained nationals of their citizenship premised on safeguarding national security. The Special Rapporteur is aware that the 1961 Convention on the Reduction of Statelessness provides that conduct seriously prejudicial to the vital interests of the State[[8]](#footnote-8) is one of the limited exceptions to the general prohibition allows for of Statelessness.[[9]](#footnote-9) She notes that the Convention in this context establishes a very high threshold for deprivation of nationality resulting in statelessness. The ordinary meaning of the terms “seriously prejudicial” and “vital interests” indicate that the conduct covered by this exception must threaten the foundations and organization of the State whose nationality is at issue. The term “seriously prejudicial” requires that the individual in question has the capacity to profoundly and negatively impact the State. The conduct triggering deprivation of nationality under Article 8(3)(a)(ii) must not be incidental to the harm to be caused but rather fundamentally related to it. Conduct that involves remote support that does not materially affect whether or not the harm in question would occur is not “seriously prejudicial.” The term “vital interests” is to be interpreted as imposing a higher threshold than offences against “national interests”. The essential function of the State is to is to safeguard its integrity and external security and protect its constitutional foundations. Only acts which are seriously prejudicial to safeguarding a State’s integrity and external security and protecting its constitutional foundations warrant deprivation of nationality that may lead to statelessness. Deprivation of nationality for an individual who commits such acts should only be used where protecting a State’s vital interests cannot be achieved through other less intrusive means. The relevant acts must already have been committed at the time a decision to deprive them of their nationality is taken; they cannot consist of acts potentially occurring in the future.[[10]](#footnote-10) While terrorist acts *may* fall within this exception, “mere membership in a terrorist group or the fact of receiving training from a terrorist group does not constitute a terrorist act.”[[11]](#footnote-11)

The Special Rapporteur notes that according to the fourth Principles on Deprivation of Nationality as a National Security Measure developed by the Institute on Statelessness and Inclusion, developed on the basis of the principle of harmonization, [[12]](#footnote-12) States shall not deprive persons of nationality for the purpose of safeguarding national security.[[13]](#footnote-13) For the numerous reasons developed further on in this position paper, notably given the absence of any meaningful capacity for those who are the subject of such proceedings to have adequate legal representation, meaningfully participate in proceedings, provide adequate consent to legal process that implicates their fundamental human rights, and be free from coercion as their legal rights are determined. It is her position that the current use of citizenship stripping in the name of countering terrorism for national security purposes works against the spirit and intention of the International Covenant on Civil and Political Rights and the 1961 Convention on the Reduction of Statelessness.

1. **The prohibition of arbitrary deprivation of citizenship in the context of persons deprived of their liberty in North-East Syria**
2. **General principles**

The right to nationality, enshrined in Article 15(1) of the UDHR, has been recognised as a “fundamental principle of international law.”[[14]](#footnote-14) International law has a well-established role in limiting States’ regulation of nationality. International courts and tribunals have long recognised that international law imposes express limits on States’ powers in nationality matters, both through customary international law and treaty obligations.[[15]](#footnote-15) This includes in particular the prohibition of its arbitrary deprivation, enshrined in article 15(2) UDHR, and implicitly recognised by all the principal international[[16]](#footnote-16) and regional[[17]](#footnote-17) human rights treaties through the proscription of discrimination on various grounds in respect of the right to nationality. The 1961 Convention on the Reduction of Statelessness explicitly prohibits a State from exercising powers of deprivation causing statelessness, unless certain strict conditions are met.[[18]](#footnote-18) The Special Rapporteur highlights the sustained attention and continued reaffirmation of the prohibition of arbitrary deprivation of nationality, including by way of UN resolutions of the General Assembly, the Human Rights Council and its predecessor the UN Commission on Human Rights,[[19]](#footnote-19) and multiple reports dedicated to the subject by the UN Secretary General.[[20]](#footnote-20) 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 all their associated human rights.[[21]](#footnote-21) Arbitrary deprivation of citizenship is therefore a violation of international law. In light of the substantial body of treaty law, pronouncements by international organizations, and judicial consensus[[22]](#footnote-22) on the prohibition against the arbitrary deprivation of nationality, the Special Rapporteur considers that the prohibition has risen to the status of customary international law.[[23]](#footnote-23)

Arbitrariness, under international human rights law[[24]](#footnote-24) 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*”.[[25]](#footnote-25) In the human rights context, this standard aims to ensure that even ‘lawful’ interference with rights is consistent with the provisions, aims and objectives of the relevant law, and above all, is reasonable.[[26]](#footnote-26) Arbitrariness thus contains both substantive and procedural aspects.

1. **Key aspects of arbitrariness in the context of the prohibition against the arbitrary deprivation of nationality relevant to the context of North-East Syria**

To avoid arbitrariness, deprivations of nationality must: 1) conform to domestic and international law; 2) serve a legitimate purpose consistent with international law; 3) be proportionate to the interest the State seeks to protect; and 4) occur with sufficient procedural guarantees and safeguards.[[27]](#footnote-27) The Special Rapporteur notes significant deficiencies under each of these criteria concerning the deprivations of nationality occurring in North-east Syria, leading her to conclude they are arbitrary under international law.

**Conformity to the law: Principle of legality**

Deprivations of nationality must conform with both international law and the depriving State’s own domestic law. Through national proceedings, the Special Rapporteur has already articulated concerns that the domestic legal basis for deprivation of nationality does not meet the principle of legality.[[28]](#footnote-28) She recalls that any deprivation of nationality must conform both to letter of the law and to its object to avoid an outcome that is unjust, illegitimate or unpredictable.[[29]](#footnote-29) Any withdrawal of nationality by a State must have a clear basis in law and be sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality.[[30]](#footnote-30)

Further, where States introduce new grounds for loss or deprivation of nationality, the principle of non-retroactivity must be respected. States should include transitional provisions to prevent an individual from losing their nationally due to acts or facts which would not have resulted in loss or deprivation of nationality before the introduction of a new ground.[[31]](#footnote-31) States should safeguard against the adverse consequences of withdrawal of nationality and not artificially prolong offences or draw adverse consequences from previous acts, in line with the general principle that a person may not be tried for conduct that was not an offence at the time the conduct occurred.

The Special Rapporteur recalls that under the 1961 Convention on the Reduction of Statelessness States are explicitly prohibited from exercising powers of deprivation causing Statelessness, although it provides narrow, explicit exceptions to the general prohibition of Statelessness.[[32]](#footnote-32) Beyond the Convention itself, the prohibition against statelessness is recognized as a corollary to the right to a nationality, and as such States “must make every effort to avoid statelessness through legislative, administrative, and other measures.”[[33]](#footnote-33) States may not deprive a citizen of nationality based on their own assessment that the individual holds another nationality where the other implicated State refuses to recognize the individual as a national.[[34]](#footnote-34) The question relevant to whether an individual will be rendered stateless through withdrawal of nationality is whether the individual currently possessesand has proof of another nationality. This assessment should not be made on the basis of one State’s interpretation of another State’s nationality law but rather should be informed by consultations with and written confirmation from the State in question.[[35]](#footnote-35) The Special Rapporteur is aware of several instances where an individual detained in North-East Syria has been deprived of one nationality only to have the State of their second nationality disclaim their citizenship, rendering the individual stateless and stranded in the camps in a legal limbo from which there is virtually no positive resolution possible.

The Special Rapporteur emphasizes States’ specific obligation to bring suspected terrorists to justice and to develop and implement comprehensive prosecution, rehabilitation, and reintegration strategies, including with respect to spouses and children accompanying returning foreign terrorist fighters, consistent with Security Council Resolutions 1373, 2178, 2396.[[36]](#footnote-36) States may not circumvent or be relieved of this responsibility through the deprivation of nationality in contravention of international law. Here the Special Rapporteur stresses the importance her mandate places on accountability for international crimes committed in Syria and Iraq. Return to country of nationality may be the only means in which meaningful accountability for such crimes can be realized and the rights of victims of terrorism redeemed.The Special Rapporteur notes the insidious practice of States revoking the citizenship of dual nationals with the effect of casting responsibility for allegedly dangerous individuals onto States with fewer resources or capacity to deal with them. This practice undermines accountability, the fight against impunity for commission of terrorist offenses, efforts at international cooperation to combat terrorism, as well as the security of the international community as a whole.[[37]](#footnote-37)

**Purpose of citizenship stripping as applied in North-East Syria**

Citizenship deprivation must serve a legitimate purpose consistent with international law and must be necessary and proportionate to the well-articulated interest that the State seeks to protect.[[38]](#footnote-38) The Special Rapporteur questions whether citizenship deprivation of women and children held in detention camps serves a legitimate purpose under international law.

As set out by the International Law Commission, the State is not justified in depriving a person of nationality for the sole purpose of expelling him or her[[39]](#footnote-39) 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.[[40]](#footnote-40) The Special Rapporteur finds that multiple States have engaged in citizenship stripping on a basis that appears primarily to involve the prevention of return, or because of their travel to a conflict zone in the first place. She has been particularly concerned to learn of cases of citizenship stripping for citizens located within an Embassy in a third country and being served with a withdrawal decision. Such circumstances lead to the conclusion that the sole purpose is to prevent the authorities from returning the individual (and possibly their children) to their country of citizenship. In such circumstances, the withdrawal of citizenship appears distinctly punitive. Discouraging and preventing individuals detained in North-East Syria from returning to their country of origin exposes them to a state of extreme vulnerability, which may in fact weaken State security regimes, failing to effectively serve any legitimate national security purpose.

Deprivations of nationality are often coupled with measures aimed at the removal of the individual to another State, such as entry bans, declarations that the individual is an “undesirable alien”, and expulsion measures. This impacts the right to family life of the person deprived of his or her nationality,[[41]](#footnote-41) and also the right to family life of their family members, which has a particularly serious impact on minor children. The Special Rapporteur also notes that such removal measures may contravene the absolute prohibition of refoulement, enshrined in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. She stresses that the risk of being subjected to torture and other ill-treatment increases in cases where there have been allegations that the individual has been linked to terrorism or seen as a security threat, even where this lacks any factual and evidence-based grounding.

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*, particularly where the deprivation accompanies other, criminal sanctions, such a prison sentences. The Special Rapporteur is particularly mindful of the long-term human rights consequences of extended prison sentences for terrorism and cumulative administrative measures after criminal sentences are completed, which will have a substantial impact on family relationships and the human rights of individuals within families.

**Necessity and proportionality**

If an individual is to be stripped of their citizenship, both a necessity and proportionality assessment must be applied. For withdrawal of nationality to be proportionate, measures leading to the withdrawal of nationality should serve a legitimate purpose that is consistent with the objectives of international human rights law and be the least intrusive means necessary to achieve the aim pursued by the State. Therefore, the consequences of loss or deprivation of nationality must be weighed against the aim pursued. The impact of withdrawal of nationality on the individual’s ability to access and enjoy other human rights should be taken into consideration.[[42]](#footnote-42) A proportionality assessment also 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 taken into account.[[43]](#footnote-43) A human rights compliant proportionality assessment must be read in conjunction with the right to a family life, as protected by Article 17 ICCPR and Article 8 ECHR, as well as with article 3(1) of the Convention of the Rights of the Child, which enshrines the principle that in all actions concerning children, the best interest of the child shall be a primary consideration.

The Special Rapporteur stresses that citizenship stripping has monumental and intersectional consequences. Because the right to nationality is a right that enables the practical affirmation of other rights, citizenship deprivation should never be the first option pursued and should instead only be used as a last resort when other less weighty rights-negating avenues have been sought first. Less intrusive alternatives — such as domestic immigration proceedings and criminal law measures — must be favoured and exhausted before turning to deprivation of nationality.

When citizenship stripping is undertaken in response to the alleged commission of criminal offences, the seriousness of the crimes concerned,[[44]](#footnote-44) the degree of proof and evidence available in respect of allegations made must be closely assessed by an independent judicial process in which the impugned rights of the citizen can be fully protected.

Specifically, in the context of detention in North-East Syria, given the absence of any meaningful legal process pertaining to determining the legality or basis for indefinite detention and the dire conditions of confinement, citizenship deprivation cannot be viewed as the least rights-negating means to address any international crimes or violations of domestic law allegedly carried out by individuals whose deprivation of citizenship is sought. For individuals detained in North-East Syria, deprivation prolongs their detention under conditions which themselves may amount to cruel, degrading, and inhuman treatment,[[45]](#footnote-45) leaving them exposed to sexual violence, exploitation, trafficking, harassment, and the risk of indoctrination.[[46]](#footnote-46) Leaving children in the inhumane detention camps in North-east Syria is definitively contrary to their best interests.[[47]](#footnote-47) Mere association for women as wives, mothers, sisters, or daughters of alleged foreign fighters, and for boys upon reaching an age threshold, is not a human rights compliant basis for deprivation of citizenship. The Special Rapporteur is clear that the possibility of other solutions, including particularly criminal proceedings, place a significantly higher threshold to the proportionality test.

The Special Rapporteur also notes that deprivation of nationality in the context of detention in North-East Syria likely runs afoul of the principles of equality and non-discrimination, codified in all core human rights treaties.[[48]](#footnote-48) The Special Rapporteur is aware that many domestic citizenship stripping laws apply only to citizens with dual nationality in an attempt to evade violation of the prohibition against statelessness. However, the ostensibly neutral differentiation between mono and dual nationals belies the *de facto* application of deprivation of nationality on the racialized bases of national origin and descent.[[49]](#footnote-49) The Committee on the Elimination of Racial Discrimination has emphasized that the deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin violates States’ Parties obligation to ensure the non-discriminatory enjoyment of the right to nationality.[[50]](#footnote-50) There is no exception to this obligation in the context of measures taken to counter terrorism.[[51]](#footnote-51) The Committee has expressed concerns specifically about distinctions on the basis of dual nationality or citizenship status because of their tendency to result in impermissible discriminatory practices.[[52]](#footnote-52) The Special Rapporteur decries State laws which create multiple tiers of citizenship, with the right to nationality less secure for some than for others. She recognises that the 1961 Convention on the Reduction of Statelessness distinguishes between mono-and dual nationals,[[53]](#footnote-53) but stresses that because mono-nationals can be treated with less rights limiting measures than dual-nationals, citizenship deprivation for dual nationals is difficultto reconcile with the principles of necessity and proportionality.

Additionally, the Special Rapporteur notes a significant concern that while the alleged basis of depriving individuals detained in North-East Syria of their nationality is an association with a designated terrorist group, such deprivations may in fact be motivated by, and result in, religious discrimination. Given that the allegations against these individuals largely are not proven in an official, fair procedure prior to the deprivation, impermissible discrimination is all the more likely. The Committee on the Elimination of Racial Discrimination has emphasized that States should eliminate laws, and notably counter terrorism legislation, that indirectly discriminate by penalizing certain groups without legitimate grounds.[[54]](#footnote-54)

States should also take into consideration the time factor in carrying out their proportionality test, including the amount of time elapsed between the commission of an act and the withdrawal of nationality.[[55]](#footnote-55) This is particularly relevant to persons detained in North-East Syria, as many have already been detained for several years, while others may have been minors at the time when the alleged offences leading to citizenship stripping occurred. Considering the temporal remoteness of any acts committed prior to detention, that most women are accused of mere association with foreign terrorist fighters, and that many children are accused of no criminal offense at all, at this point instituting any new deprivation procedures or continuing to pursue deprivation against detained individuals under these circumstances may lack proportionality.

Lastly, the Special Rapporteur would seriously warn against the notion that even where the security risk is demonstrated, its displacement to their countries would positively benefit either national security or international security. Risk displacement to other countries that do not have the means to prosecute or reintegrate an individual pose broader international security challenges and run counter to the principle of solidarity and cooperation among States on security issues.

**Procedural guarantees and safeguards**

Due process must always be respected as a matter of international law.[[56]](#footnote-56) 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 can 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 decision.[[57]](#footnote-57) Consequently, reliance on closed material, secret evidence and confidential information provided by the intelligence and security services in proceedings seriously undermines any effective exercise of the right to a fair trial and limit the typical challenges that individuals might make when their most fundamental rights are being adjudicated.[[58]](#footnote-58) The Special Rapporteur has observed in particular that proceedings do not pay sufficient or granular attention to the complexities of women’s association with terrorist groups, including the potential for coercion, co-option, trafficking, enslavement, sexual exploitation, harm on joining or being associated with non-state armed groups, on-line grooming and recruitment for marriage, and sexual or household services or labour for the organization.[[59]](#footnote-59)

The United Nations has frequently stressed States’ obligation to observe what it terms “minimum procedural standards”.[[60]](#footnote-60) Those standards are “essential to prevent abuse of the law”.[[61]](#footnote-61) They apply in all cases, whether or not statelessness is involved.[[62]](#footnote-62) In practice, the individual concerned must be meaningfully notified of the intent to deprive nationality prior to the actual decision to do so,[[63]](#footnote-63) 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. The Special Rapporteur particularly cautions against the use of so-called ‘battlefield evidence’ in such proceedings.[[64]](#footnote-64)

The right to appeal must have a suspensive effect, and the individual must continue to enjoy nationality until such time as the appeal has been settled. Access to the appeals process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien, is expelled.[[65]](#footnote-65) The Special Rapporteur recalls States’ obligations vis-à-vis the principle of non-refoulement, as outlined above.

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

The Special Rapporteur condemns the flagrant lack of procedural safeguards for the men, women and children deprived of citizenship while in North-East Syria. The withdrawal of citizenship often takes place without any judicial process at all. Where judicial process is engaged the men in detention centres and the women detained in these camps have no meaningful or legally sound way to fully participate in those proceedings. This is first because the individuals concerned are detained in locations where communication with the outside world and access to legal assistance and information is severely restricted. Punishment may follow from unauthorized communication including with legal representatives. In particular, the women in these camps are living in a situation of coercion, ongoing harm and direct as well as structural violence. Their capacity to engage in any legal process is entirely circumscribed by the conditions they are forced to endure.

The Special Rapporteur emphasizes the practical barrier of simply being detained in North-East Syria poses to pursuing an effective appeal, let alone attending proceedings in person. The Special Rapporteur highlights that the practice of stripping individuals *in abstentia* poses numerous complex issues, particularly those relating to preventing individuals from returning to their State of (former) nationality, thereby not only displacing the security risks, but also thwarting efforts for increased cooperation amongst states in countering terrorism,[[66]](#footnote-66) as requested inter alia by UN Security Council resolutions 2396 (2017)[[67]](#footnote-67) and 2322 (2016).[[68]](#footnote-68)

She observes that States often simply ‘inform’ an individual of a deprivation decision through the placement of a physical notice within an individual’s file in the State’s localized administrative filing system or by sending the decision to their last known address. Such practices render the notice requirement effectively meaningless as the individual has no way of knowing they have been deprived of their nationality.

The Special Rapporteur also calls out practices in which statements made by the men in detention and the women and children in these camps to the media are used to ‘justify’ citizenship stripping for national security purposes. Any position expressed by individuals under such circumstances of duress cannot replace fair and clear procedures in which these individuals are given a meaningful opportunity to challenge allegations through a fair hearing.

1. **Specific Human Rights Impacts of Citizenship Stripping**

**Impact on families and on children**

The fact that citizenship stripping can control and define on security grounds who may legally benefit from family membership reveals the profound connection being forged between family regulation and contemporary 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.

The protection of the rights of the family in all its diverse forms constitutes a distinct and complex agenda within the international legal framework for the protection and promotion of human rights. The Special Rapporteur is particularly concerned that the construction of and entitlement to family life is being shaped and distorted by counter-terrorism law and practice. Her 2021 Report to the Human Rights Council directly addresses the impact of counter-terrorism law and practice on family life.[[69]](#footnote-69)

The effects on family life implicate human rights beyond the usual scope of analysis regarding national security policies, requiring attention to States’ obligations, such as those not to interfere with family life, and to protect and assist the family, and the rights of children as rights holders.[[70]](#footnote-70) The essential ingredient of family life is the right to live together so that family relationships may develop normally and members of the family may enjoy each other’s company.[[71]](#footnote-71) The child’s interests dictate that the child’s ties with the family must be maintained, that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations.[[72]](#footnote-72)

Deprivation of citizenship for a family member has profound consequences for the integrity, functionality, and vulnerability of the entire family. 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.[[73]](#footnote-73) Those vulnerabilities for children apply through the entirety of childhood including for children on the threshold of adulthood (up to their late teenage years) and is experienced both by girls and boys.

Children are particularly negatively affected by citizenship stripping. The social ostracism resulting from deprivation of nationality causes sadness, anger, low self-esteem, and can inhibit children’s sense of belonging and ability to connect with others.[[74]](#footnote-74) The despair and disillusionment of this marginalization from such a tender age has a lifelong impact on the child’s mental health and social functioning. Stateless children face a lifetime of barriers to fulfilling their potential and achieving their ambitions.[[75]](#footnote-75) While citizenship formally functions as an independent right, for children there is a co-dependency between the exercise of their citizenship rights and those of their parents. In assessing what is in the best interests of the child, the potential negative long-term consequences of losing contact with the child’s parents and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible have to be sufficiently weighed in the balance. The burden that a parent’s deprivation of her nationality will inevitably have on underage children, even if their right to a nationality is not formally affected, must 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 national proceedings. Furthermore, security sector information cannot be a reasonable basis to professionally assess physical, emotional, social and welfare costs for children of the consequences of citizenship stripping. The Special Rapporteur observes a worrying pattern of elision in national proceedings where intelligence information functions as a substitute for medical or psycho-social child assessment in national security related citizenship stripping cases.

Citizenship stripping of mothers deprives children of access to human rights on an equal footing with other children. The stigma of citizenship stripping has an intergenerational component and is not confined to the individual who has been deprived of citizenship. The harm of citizenship stripping is layered affecting multiple individuals in the family unit, and can in some circumstances, specifically where the deprivation is arbitrary be viewed as a form of collective punishment for a family unit.

It is also imperative to consider the long-term effects which a permanent separation of a child from their natural mother might have.[[76]](#footnote-76) In cases of expulsion, the best interests and wellbeing of the children, in particular the seriousness of the difficulties which any children are likely to encounter in the country to which the parent is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination must be taken into account, including the best interests of minor children and the hardship of returning to the country of origin of the parent.[[77]](#footnote-77)

The Special Rapporteur forcefully condemns the alternative to deprivation of nationality offered by some States of allowing detained children to return to their home country **on the condition** they consent to separation from their mothers and/or vice versa. The Special Rapporteur is clear that this amounts to forced separation in a context where meaningful consent cannot be procured. For children, this is a horrendous choice that places them in a no-win situation, likely to result in life-long trauma and loss, which absolutely undermines their dignity. The Special Rapporteur has seen first-hand the challenges faced by orphaned and single children on return to countries of origin and affirms the finding of experts[[78]](#footnote-78) that in all circumstances family return is the best option for the child. This includes circumstances in which the parent should serve a prison sentence for crimes committed.

The Special Rapporteur thus finds *de facto* deprivation of citizenships for children whose parents are stripped of their citizenship in counter-terrorism contexts. The Special Rapporteur notes particularly that given the centrality of the mother-child bond, and the emotional, social, cultural, and economic realities that in general children thrive when they are supported by their mothers, a mother’s loss of citizenship fundamentally affects her child’s subsequent ability to access her citizenship and return to the country of the parent’s nationality. Her expert and practical assessment of return and reintegration by third country nationals to countries of citizenship makes clear that children will thrive when their mothers return with them. When they do not — reintegration, with emotional distress, traumatic experience, and other harms — are more difficult to resolve.[[79]](#footnote-79)

**Impact on women**

The counter-terrorism arena is often viewed as gender-neutral, both in its practices and consequences. The Special Rapporteur is of the opinion that that view is mistaken. She stresses that counter-terrorism law and policy, particularly in formal and elite settings, national and international, occur in spaces which are dominated by male actors and informed by gendered stereotypes. The upsurge in preventing and countering violent extremism programming and practices by States has accelerated the intrusive thrust of security into private life and placed institutions onto the enforcement edge of national security policies with multigenerational effects. Notably, those intrusions, harms and human rights violations do not fall equally 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.[[80]](#footnote-80)

States have specific binding obligations UN Security Council resolutions, most notably 2178 (2014)[[81]](#footnote-81) and 2396 (2017),[[82]](#footnote-82) which impose a legal obligation under Chapter VII of the UN Charter to *inter alia* bring terrorists to justice and to develop and implement appropriate prosecution, rehabilitation, and reintegration strategies for returning foreign fighters and their families,[[83]](#footnote-83) highlighting the potential vulnerability of women and children who can also be victims of terrorism.[[84]](#footnote-84)

These counter-terrorism resolutions echo Security Council resolutions on women in armed conflict which express “deep concern at the full range of threats and human rights violations and abuses experienced by women and girls in armed conflict and post-conflict situations and recognising that women and girls are particularly at risk and are often specifically targeted and at an increased risk of violence in conflict and post-conflict situations.”[[85]](#footnote-85)

These State obligations have been further developed and contextualized through soft law guidance and initiatives. These include:

* United Nations, Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups (April 2019)
* CTED, Trend report on the Gender Dimensions of the Response to returning Foreign Terrorist Fighters (February 2019)
* CTED, Trend Report on the Challenge of Returning and Relocating Foreign Terrorist fighters (March 2018)
* The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, “Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters” (2018)
* The Security Council Counter-Terrorism Committee Madrid Guiding Principles on stemming the flow of foreign terrorist fighters (S/2015/939) and the 2018 Addendum to the 2015 Guiding Principles on Foreign Terrorist Fighters (S/2018/1177)

In order to understand the complexities of the links between women and girls and terrorist groups, States must always undertake individualised assessments pertaining to the specific situation of women and girls, [[86]](#footnote-86) taking into consideration the various traumas that they can experience, as well as the various human rights violations that they are subjected to in their current situation. Maternal responsibilities should on their own never qualify as ‘material support’ to terrorism. The Special Rapporteur recalls that such assessments can never replace meaningful and rule of law compliant hearings by independent and impartial judicial authorities.

1. **Conclusions**

The Special Rapporteur urges a moratorium on citizenship stripping practices by States for their nationals detained in North-East Syria. The conditions of these detention sites lead to the unavoidable conclusion that any proceeding to strip citizenship from third country nationals is presumptively arbitrary. She urges review and consideration of cases from North-East Syria in which citizenship stripping decisions have already been made premised on the arbitrariness of the proceedings and their fundamental incompatibility with the international law obligations of States. She continues to press for a holistic political and legal solution to detentions of thousands of men, women and children in that territory, whose plight shocks the conscience. A human rights-based solution is essential both as a matter of international human rights law and for the long-term stability and security of the region.

1. [AL BHR 2/2019](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24887), [OL ARE 6/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25663), [UA NLD 4/2021](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26814); Interventions in the case of Shamima Begum: https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020\_05\_29\_FINAL\_Begum\_Intervention.pdf and https://www.ohchr.org/Documents/Issues/Terrorism/SR/Submissions26Oct2020.pdf ;

Special Rapporteur Visit to Belgium A/HRC/40/52.Add.5; Special Rapporteur Visit to France A/HRC/40/52.Add.4; and Special Rapporteur Visit to Kazakhstan A/HRC/43/46/Add.1. *See also* Press release, “United Kingdom Nationality and Borders undermines rights of trafficked persons, UN experts say”, 14 January 2022. [↑](#footnote-ref-1)
2. *See* Articles 8 and 9 of the Convention on the Reduction of Statelessness, 989 UNTS 175. [↑](#footnote-ref-2)
3. [A/HRC/37/52, 1 March 2018.](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=dtYoAzPhJ4NMy4Lu1TOebHzSh%2F038YrpetjhM0DSmOCD8VbCoPogLTXkuBpwQOn2O3mOZHT%2Fekkiz%2BY47e3JjxHZSFClvzBIxDOhr%2BJridZIKsnxkeRKhZskT%2BqqkC7k) [↑](#footnote-ref-3)
4. Implementation of Security Council Resolution 2178 (2014) by States affected by foreign terrorist fighters, S/2015/975 Annex – Third report - 29 December 2015, para 2 & 155 e), [www.un.org/en/sc/ctc/docs/2015/N1545987\_EN.pdf](http://www.un.org/en/sc/ctc/docs/2015/N1545987_EN.pdf) (“According to the United Nations Security Council Committee established pursuant to Resolution 1373 (2001), administrative measures should be utilized “[...] as preventive alternatives to prosecution [only] in cases in which it would not be appropriate to bring terrorism-related charges, while ensuring that such measures are employed in a manner compliant with applicable international human rights law and national legislation and are subject to effective review.”). [↑](#footnote-ref-4)
5. *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064, [2019] 1 WLR 2070, paras 30 and 49; see also *Trop v Dulles* 356 US 86 (1958), pp. 101-102. [↑](#footnote-ref-5)
6. Articles 8(2) and 8(3) of the 1961 Convention on the Reduction of Statelessness. [↑](#footnote-ref-6)
7. See the communication sent to 57 countries (e.g. JAL [AFG 3/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25692)) and JUA [TUN 6/2021](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26360) , JUA [CHE 4/2021](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26340) , JUA [CAN 2/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25246), JUA [FRA 1/2021](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26010), JUA [FRA 8/2019](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24993), JUA [TUR 12/2019](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24994). [↑](#footnote-ref-7)
8. Convention on the Reduction of Statelessness 989 U.N.T.S. 175 (1961), art. 8(3(a)(ii)). [↑](#footnote-ref-8)
9. Convention on the Reduction of Statelessness 989 U.N.T.S. 175 (1961), art. 8(1)-(4). [↑](#footnote-ref-9)
10. UNHCR Guidelines on Statelessness No. 5, HCR/GS/20/05 (May 2020), paras 61-63 [↑](#footnote-ref-10)
11. UNHCR, Guidelines on Statelessness No. 5, para. 64, 66. [↑](#footnote-ref-11)
12. The principle of harmonization stands for the proposition that “when several norms bear on a single issue, they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations.” ILC, ‘Conclusions of the Work of the Study Group on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law’ (2006) 2 Yearbook of the International Law Commission, Part Two, 178; UN Doc A/61/10, para 251. This holistic approach requires application of the highest protective standard of human rights law. [↑](#footnote-ref-12)
13. “Where a State, in exception to this basic rule, provides for the deprivation of nationality for the purpose of safeguarding national security, the exercise of this exception should be interpreted and applied narrowly, only in situations in which it has been determined by a lawful conviction that meets international fair trial standards, that the person has conducted themselves in a manner seriously prejudicial to the vital interests of the state. The exercise of this narrow exception to deprive a person of nationality is further limited by other standards of international law. Such limitations include: The avoidance of statelessness; The prohibition of discrimination; The prohibition of arbitrary deprivation of nationality; The right to a fair trial, remedy and reparation; and other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law.This basic rule also applies to the deprivation of nationality for other purposes, which serve as proxies to the purpose of safeguarding national security, as well proxy measures, which do not amount to deprivation of nationality but are likely to have a similarly adverse impact on individual rights.” Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 4, 7 February 2020, <https://files.institutesi.org/PRINCIPLES.pdf>. See also UN Secretary-General, Human Rights and Arbitrary Deprivation of Nationality, A/HRC/25/28 (Dec. 19, 2013), para. 12. [↑](#footnote-ref-13)
14. UN General Assembly, Resolution 50/152: Office of the United Nations High Commissioner for Refugees (9

February 1996), para. 16. [↑](#footnote-ref-14)
15. *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. [↑](#footnote-ref-15)
16. Convention on the Nationality of Married Women (1957) 309 UNTS 65, Articles 1-2; International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195, Article 5(d)(iii); Convention on the Elimination of All Forms of Discrimination Against Women (1979) 1249 UNTS 13, Article 9(1); Convention on the Rights of the Child (1989) 1577 UNTS 3, Article 8(1). See also International Covenant on Civil and Political Rights (1966) 999 UNTS 171, Article 24(3), Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3, Article 18(1). [↑](#footnote-ref-16)
17. 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. [↑](#footnote-ref-17)
18. Convention on the Reduction of Statelessness (1961) 989 UNTS 175, Article 8(1)-(4). Note that the UK made a declaration under both Article 8(3)(a)(i) and (ii) of the Convention, which does not, for the avoidance of doubt, qualify its due process obligations under Article 8(4): see UNHCR Guidelines on Statelessness No. 5, para. 73. [↑](#footnote-ref-18)
19. 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. [↑](#footnote-ref-19)
20. 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. [↑](#footnote-ref-20)
21. See, e.g., UN HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 6. [↑](#footnote-ref-21)
22. See, e.g., Eritrea-Ethiopia Claims Commission, Partial Award (Civilian Claims – Eritrea’s Claims 15, 16, 23 and 27-32) (2004) 26 UNRIAA 195, para. 57 (the Commission accepted that the rules cited, including Article 15.2 of the UDHR, were customary); *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Inter-American Court of Human Rights, Advisory Opinion OC-4/84, 19 January 1984, Ser. A, No. 4, paras 33-34 (the Court referred to Article 15 of the UDHR in its recitation of “international law” on the right to nationality); *Case of Expelled Dominicans and Haitians v Dominican Republic*, Inter-American Court of Human Rights, Judgment, 28 August 2014, Ser. C, No. 282, para. 253 (referencing the “fundamental right of the human person” established by instruments including the UDHR); *see also* *Anudo Ochieng Naudo v United Republic of Tanzania*, African Court on Human and Peoples’ Rights, Judgment, 22 March 2018, para. 76 (regarding the status of the UDHR as customary generally, in the context of considering Article 15(2)). [↑](#footnote-ref-22)
23. Several leading academics agree. *See e.g.,* T. Molnár, ‘The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives’ (2015) *Hungarian Yearbook of International Law and European Law* 67, p. 74; M. Manly and L. van Waas, ‘The Value of the Human Security Framework in Addressing Statelessness’, in *Human Security and Non-Citizens* (A. Edwards & C. Ferstman, eds., 2010), p. 63.; see also A. Edwards, ‘The Meaning of Nationality’ in A. Edwards and L. van Waas (eds), *Nationality and Statelessness under International Law* (2014), pp. 25-26. [↑](#footnote-ref-23)
24. 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. [↑](#footnote-ref-24)
25. *Elettronica 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. [↑](#footnote-ref-25)
26. 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. [↑](#footnote-ref-26)
27. Report of the Secretary-General, Human Rights and Arbitrary Deprivation of Nationality, A/HRC/25/28 (2013), para. 4. *See also* Council of Europe, Explanatory Report to the European Convention on Nationality (Nov. 6, 1997), para. 36 (explaining that Art. 4(c) states that “the deprivation must in general be foreseeable, proportional and prescribed by law” to avoid arbitrariness). [↑](#footnote-ref-27)
28. [UA NLD 4/2021](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26814); Interventions in the case of Shamima Begum: https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020\_05\_29\_FINAL\_Begum\_Intervention.pdf and https://www.ohchr.org/Documents/Issues/Terrorism/SR/Submissions26Oct2020.pdf [↑](#footnote-ref-28)
29. *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. [↑](#footnote-ref-29)
30. UNHCR Guidelines on Statelessness No. 5, para.92. [↑](#footnote-ref-30)
31. UNHCR Guidelines on Statelessness No. 5, para. 93. [↑](#footnote-ref-31)
32. Convention on the Reduction of Statelessness 989 U.N.T.S. 175 (1961), art. 8(1)-(4). [↑](#footnote-ref-32)
33. Guidance Note of the Secretary-General, The United Nations and Statelessness (June 2018), p. 4. [↑](#footnote-ref-33)
34. UN Human Rights Council, Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation of Nationality: Summary Conclusions (2014), para. 6. [↑](#footnote-ref-34)
35. See UNHCR Guidelines on Statelessness No.5, para. 81. [↑](#footnote-ref-35)
36. UN Security Council Resolution 1373 (2001); UN Security Council Resolution 2178, paras. 4­-6 (2014); UN Security Council Resolution 2396, paras. 29-41 (2017). [↑](#footnote-ref-36)
37. Council of Europe, Parliamentary Assembly Resolution 2263 (Jan. 25, 2019), para. 8. [↑](#footnote-ref-37)
38. ‘Arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/10/34, 26 January 2009, para. 49; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 25. Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5. [↑](#footnote-ref-38)
39. 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. [↑](#footnote-ref-39)
40. 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 [↑](#footnote-ref-40)
41. 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. [↑](#footnote-ref-41)
42. UNHCR Guidelines on Statelessness No. 5, para. 94. [↑](#footnote-ref-42)
43. Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.5.1. [↑](#footnote-ref-43)
44. The Special Rapporteur recalls the section concerning the seriousness of the crimes outlined above. [↑](#footnote-ref-44)
45. Human Rights Watch, *Thousands of Foreigners Unlawfully Held in NE Syria*, Mar. 23, 2021. [↑](#footnote-ref-45)
46. Council of Europe, Parliamentary Resolution 2321 (Jan. 30, 2020), para. 1. [↑](#footnote-ref-46)
47. Council of Europe, Parliamentary Resolution 2321 (Jan. 30, 2020), paras. 4, 8.1; European Parliament, Resolution of 26 November 2019 on Children’s Rights on the Occasion of the 30th Anniversary of the UN Convention on the Rights of the Child, 2019/2876 (RSP), para. 61. *See also* UN General Assembly, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/73/278 (July 30, 2018), para. 13 “[D]enying children the opportunity to return to their countries of origin, rescinding their nationality or detaining them solely for their alleged association with armed groups runs counter to the best interests of the child and international protection standards.”. [↑](#footnote-ref-47)
48. *See* Universal Declaration of Human Rights, arts. 1, 2; International Covenant on the Elimination of All Forms of Racial Discrimination (1965) 660 U.N.T.S. 195 arts. 1, 2; International Covenant on Civil and Political Rights (1966) 999 U.N.T.S. 171, arts. 2(1), 26; International Covenant on Economic, Social, and Cultural Rights (1966) 993 U.N.T.S. 3, art. 2(2); Convention on the Elimination of Discrimination Against Women (1979) 1249 U.N.T.S. 13, art. 1; Convention on the Rights of the Child (1989) 1577 U.N.T.S. 3, art. 2(1)-(2). Note that the 1961 Convention on the Reduction of Statelessness 989 U.N.T.S. 175 (1961), art. 9, also contains this prohibition. See also UNHCR Guidelines on Statelessness No. 5, para. 77. [↑](#footnote-ref-48)
49. *See* Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/38/52 (2018). [↑](#footnote-ref-49)
50. Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, para. 14 (2004); Committee on the Elimination of Racial Discrimination, General Recommendation No. 34, CERD/C/GC/34, para. 48 (Oct. 3, 2011). *See also* UN Human Rights Council, Resolution 20/4, A/HRC/RES/20/4 (2012); UN Human Rights Council, A/HRC/RES/32/5 (2016), paras. 2 and 4. [↑](#footnote-ref-50)
51. Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, para. 10 (2004). [↑](#footnote-ref-51)
52. *See, e.g.*, Committee on the Elimination of Racial Discrimination, Communication No. 42/2008, CERD/C/75/D/42/2008 (Sept. 15, 2009); Committee on the Elimination of Racial Discrimination, Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Rwanda, CERD/C/RWA/CO/18-20, paras. 8-9 (June 10, 2016). [↑](#footnote-ref-52)
53. UNHCR Guidelines No. 5, paras 111-112. [↑](#footnote-ref-53)
54. Committee on the Elimination of Racial Discrimination General Recommendation No. 31 (2005), para. 4(b). [↑](#footnote-ref-54)
55. UNHC Guidelines on Statelessness No. 5, para. 96. [↑](#footnote-ref-55)
56. Article 14 ICCPR, UNHCR, Guidelines on Statelessness No. 5’, para. 98. [↑](#footnote-ref-56)
57. European Court of Human Rights, McGinley and Egan v. The United Kingdom, 21825/93 and 23414/94, 9 June 1998. [↑](#footnote-ref-57)
58. *See* the views of the Special Rapporteur ECHR intervention Adeel Muhammad and Ramzan Muhammad v. Romania, Application No. 80982/12 found here: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/AmicusBriefsExpertTestimony.aspx> [↑](#footnote-ref-58)
59. Noting also the Report of the Special Rapporteur on trafficking in persons, especially women and children, A/76/263examines the intersections between trafficking by proscribed groups and terrorism, and in particular the continuing failures in terms of identification of and assistance to the victims of trafficking and in terms of the protection of their human rights. [↑](#footnote-ref-59)
60. ‘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. [↑](#footnote-ref-60)
61. ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 43. [↑](#footnote-ref-61)
62. UNHCR, ‘Guidelines on Statelessness No. 5, para. 97. [↑](#footnote-ref-62)
63. Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.6.2. [↑](#footnote-ref-63)
64. [Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the use of "Battlefield" or military produced evidence in the context of investigations or trials involving terrorism offences](https://www.ohchr.org/Documents/Issues/Terrorism/SR/UNSRCT_Position_Battlefield-evidence-2021.pdf)  [↑](#footnote-ref-64)
65. ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary General’, A/HRC/25/28 (2013), para. 33. [↑](#footnote-ref-65)
66. UNHCR, Guidelines on Statelessness No. 5, para. 67. [↑](#footnote-ref-66)
67. Preambular paragraph 17: “Underlining the importance of strengthening international cooperation to
address the threat posed by foreign terrorist fighters, including on information sharing, border security, investigations, judicial processes, extradition, improving prevention and addressing conditions conducive to the spread of terrorism, preventing and countering incitement to commit terrorist acts, preventing radicalization to terrorism and recruitment of foreign terrorist fighters, disrupting, preventing financial support to foreign terrorist fighters, developing and implementing risks assessment on returning and relocating foreign terrorist fighters and their families, and prosecution, rehabilitation and reintegration efforts, consistent with applicable international law”. [↑](#footnote-ref-67)
68. Preambular paragraph 12: “Underlining the importance of strengthening international cooperation, including by investigators, prosecutors and judges, in order to prevent, investigate and prosecute terrorist acts, and recognizing the persisting challenges associated with strengthening international cooperation in combating terrorism including in stemming the flow of FTFs to and returning from conflict zones, in particular due to the cross-border nature of the activity”. [↑](#footnote-ref-68)
69. A/HRC/46/36. [↑](#footnote-ref-69)
70. UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/46/36, paras. 18 and 21. [↑](#footnote-ref-70)
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83. UN Security Council resolution 2396 (2017), Preamble: “*foreign terrorist fighters may be travelling with family members they brought with them to conflict zones, with families they have formed or family members who were born while in conflict zones*”. [↑](#footnote-ref-83)
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