CHILDREN AT RISK OF STATELESSNESS IN THE FIGHT AGAINST TERRORISM

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The departure of 'foreign terrorist fighters' ('FTFs') to join terrorist groups in armed conflicts abroad has led many countries to adopt a policy of citizenship deprivation. This paper demonstrates that citizenship deprivation measures do not have the desired effect for national security, while increasing the risk of statelessness for the children of FTFs. Citizenship deprivation laws in Australia, Austria, Belgium, Canada, Denmark, Germany, France, the Netherlands and the UK are discussed, in order to view them against international obligations. It concludes that citizenship deprivation measures aimed at FTFs are primarily problematic regarding the prohibition of arbitrary citizenship deprivation, the principle of non-discrimination and relevant children's rights.

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I INTRODUCTION

Armed conflicts involving non-state armed groups are creating a vast number of refugees and displaced people,[1] and many of these protracted crises attract foreign fighters from all over the globe.[2] States have responded to some citizens leaving their countries in order to join a terrorist or proscribed group abroad by depriving those individuals of their citizenship. Instead of repatriating their citizens or allowing them to return, governments strip them of their citizenship and thereby obstruct their journey home. Through this instrument of citizenship deprivation, states want to ensure that foreign terrorist fighters ('FTFs')[3] are not able to carry out terrorist attacks when returning back home, as well as deter others, including naturalised citizens, from joining such groups. In addition, there have been examples of the use of deprivation of nationality as a punishment for other crimes in the UK.[4] However, a number of studies have shown that in regard to terrorism cases this seems to be an unfounded security concern, as the rate of terrorist-related recidivism for those that commit acts of terrorism is relatively low when compared to other crimes.[5]

Although official numbers on citizenship deprivation imposed due to affiliation with terrorist groups are difficult to obtain in almost every country, it is estimated that, in recent years, more than 300 persons were deprived of their nationality in just the following seven countries: at least 209 in the UK between 2010 and 2020;[6]

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1 For example, the civil war in Syria has already led to 6.6 million Syrian refugees and 6.7 million internally displaced people: see 'Syria Emergency', *UNHCR* (Web Page, 15 March 2021) <https://www.unhcr.org/uk/syria-emergency.html>.

2 This article uses the term 'foreign fighter' in accordance with the following definition by the Geneva Academy of International Humanitarian Law and Human Rights:

> [a] foreign fighter is an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship.

See Geneva Academy of International Humanitarian Law and Human Rights, *Foreign Fighters under International Law* (Academy Briefing No 7, October 2014) 5–6 <https://www.geneva-academy.ch/joomlatools-files/docmanfiles/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf>.

3 For the purpose of defining terms, we will refer to this group as foreign terrorist fighters ('FTFs') throughout this paper. These fighters were defined as such due to the rising phenomenon in Iraq and Syria in 2014 outlined in UN Security Council, *Resolution 2178 (2014)*, UN Doc S/RES/2178 (24 September 2014).

4 See, eg, *Ahmed & Others (Deprivation of Citizenship)* [2017] UKUT 00118 (IAC); *Aziz & Others v Secretary of State for the Home Department* [2018] EWCA Civ 1884.

5 See, eg, Andrew Silke and John Morrison, 'Re-Offending by Released Terrorist Prisoners: Separating Hype from Reality' (Policy Brief, ICCT, September 2020) <https://icct.nl/app/uploads/2020/09/Re-Offending-by-Released-Terrorist-Prisoners.pdf>; Thomas Renard, 'Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence' (2020) 13(4) *CTC Sentinel* 19; Mia Bloom and John Horgan, *Small Arms: Children and Terrorism* (Cornell University Press 2019).

6 Secretary of State for the Home Department ('SSHD'), *HM Government Transparency Report: Disruptive and Investigatory Powers 2015* (Report No Cm 9151, November 2015) 25; SSHD, *HM Government Transparency Report: Disruptive and Investigatory Powers 2017* (Report No Cm 9420, February 2017) 26; SSHD, *HM Government Transparency Report: Disruptive and Investigatory Powers 2018* (Report No Cm 9609, July 2018) 27; SSHD, *HM Government Transparency Report: Disruptive Powers 2018/19* (Report No CP 212, March 2020) 22 ('*Transparency Report 2018/19*'); SSHD, *HM Government Transparency Report: Disruptive Powers 2020* (Report No CP 621, March 2022) 27.

22 in the Netherlands from 2017 to mid-2021;[7] at least 21 in Belgium from 2009 to January 2020;[8] 17 in Australia from 2015 to mid-2019;[9] 16 in France from 2002 to October 2019;[10] nine in Austria between 2017 and mid-2021;[11] and at least 13 in Denmark between 2016 and 2021.[12] Considering that this counter-terrorism method risks potentially creating statelessness for the concerned FTFs, this inevitably also affects the legal status of their minor children, who might end up stateless in a conflict zone.

Stateless children are already one of the most vulnerable groups but become even more so if they are trapped in situations of armed conflict. Children affected

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7 *Decisions of K1-35772087474, K1-2786497685, K1-35603812755* and *K1-35536731957, 'Withdrawal of Dutch Citizenship'* (13 September 2017) Staatscourant No 5244 (the Netherlands); *Decision of K1-48233579119, 'Withdrawal of Dutch Citizenship'* (11 July 2018) Staatscourant No 39597 (the Netherlands); *Decision of K1-48233579119, 'Withdrawal of Dutch Citizenship'* (7 November 2018) Staatscourant No 63407 (the Netherlands); *Decision of K1-48246388487, 'Withdrawal of Dutch Citizenship'* (21 January 2019) Staatscourant No 3532 (the Netherlands); *Decision of K1-2830921892, 'Withdrawal of Dutch Citizenship'* (27 February 2019) Staatscourant No 11642 (the Netherlands); *Decision of K1-70787658859, 'Withdrawal of Dutch Citizenship'* (17 April 2019) Staatscourant No 22177 (the Netherlands); *Decision of K1-72370525831, 'Withdrawal of Dutch Citizenship'* (13 May 2019) Staatscourant No 27574 (the Netherlands); *Decision of K1-77203137030, 'Withdrawal of Dutch Citizenship'* (10 September 2019) Staatscourant No 50454 (the Netherlands); *Decision of K1-55061891549, 'Withdrawal of Dutch Citizenship'* (23 September 2019) Staatscourant No 52809 (the Netherlands); *Decision of K1-55061891548, 'Withdrawal of Dutch Citizenship'* (31 October 2019) Staatscourant No 60309 (the Netherlands*); Decision of K1-73609514694, 'Withdrawal of Dutch Citizenship'* (4 December 2019) Staatscourant No 67223 (the Netherlands); *Decision of K1-2787913283, 'Withdrawal of Dutch Citizenship'* (13 December 2019) Staatscourant No 67227, (the Netherlands); *Decision of K1-2787913283, 'Withdrawal of Dutch Citizenship'* (13 December 2019) Staatscourant No 69330 (the Netherlands); *Decision of K1-89234841187, 'Withdrawal of Dutch Citizenship'* (21 January 2020) Staatscourant No 4746 (the Netherlands); *Decision of K1-882219203, 'Withdrawal of Dutch Citizenship'* (24 January 2020) Staatscourant No 5678 (the Netherlands); *Decision of K1-1613462860, 'Withdrawal of Dutch Citizenship'* (28 January 2020) Staatscourant No 6215 (the Netherlands); *Decision of K1-1096996460, 'Withdrawal of Dutch Citizenship'* (6 May 2020) Staatscourant No 25604 (the Netherlands); *Decision of K1-2641193062, 'Withdrawal of Dutch Citizenship'* (16 June 2020) Staatscourant No 32757 (the Netherlands); *Decision of K1-42499828897, 'Withdrawal of Dutch Citizenship'* (27 July 2020) Staatscourant No 40542 (the Netherlands); *Decision of K1-1622786811, 'Withdrawal of Dutch Citizenship'* (3 September 2020) Staatscourant No 46489 (the Netherlands).

8 Maarten P Bolhuis and Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe: Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism' (2020) 22(3) *European Journal of Migration and Law* 338, 342.

9 Ben Doherty, 'Stripping People of Citizenship Makes the World Less Safe, Not More', *The Guardian* (online, 13 October 2019) <https://www.theguardian.com/commentisfree/2019/oct/12/stripping-people-of-citizenship-makes-the-world-less-safe-not-more>.

10 Matthieu Mondoloni, 'La France a procédé à sa seizième déchéance de nationalité en dix-sept ans', *france,info* (online, 25 October 2019) <https://www.francetvinfo.fr/monde/terrorisme-djihadistes/la-france-a-procede-a-sa-seizieme-decheance-de-nationalite-en-17ans_3673879.html>.

11 Bernhard Ichner, 'IS-Mann muss österreichischen Pass abgeben', *Kurier* (online, 27 March 2017) <https://kurier.at/chronik/wien/is-mann-muss-oesterreichischen-pass-abgeben/254.487.417>;| 'Wiener IS-Kämpfer verliert österreichische Staatsbürgerschaft' *Die Presse* (online, 5 December 2019) <https://www.diepresse.com/5733680/wiener-is-kampfer-verliert-osterreichische-staatsburgerschaft>; 'Debatte über Staatsbürgerschafts-Aberkennung', *ORF Wien* (online, 5 November 2020) <https://wien.orf.at/stories/3074338/>; 'Neun IS-Kämpfer verloren Staatsbürgerschaft', *ORF Wien* (online, 10 June 2021) <https://wien.orf.at/stories/3107549/>.

12 'Denmark Strips Man of Citizenship After Terrorism Conviction', *Reuters* (Web Page, 8 June 2016) <https://www.reuters.com/article/us-denmark-citizenship-idUSKCN0YU1G5?il=0>; Mehmet Ümit Necef, 'Categorizing Islamic State Supporters in Denmark: The Cases of Enes Ciftci and Natascha Colding-Olsen' (Research Paper, Center for Mellemøststudier, June 2017) <https://www.sdu.dk/-/media/files/om_sdu/centre/c_mellemoest/videncenter/artikler/2017/necef+article+june+2017.pdf>; 'Freedom in the World 2022: Denmark', *Freedom House* (Web Page, 2022) <https://freedomhouse.org/country/denmark/freedom-world/2022>.

by armed conflicts experience social disruption by being displaced and are often separated from their family, have limited access to education and healthcare and are exposed to violence and exploitation.[13] Armed conflicts are proven to have serious long-term effects on the physical, mental, developmental and behavioural health of children.[14] Additionally, stateless children risk arbitrary and lengthy immigration detention, are limited in their freedom of movement and struggle to access medical treatment, as some states do not even provide vaccinations to stateless children.[15] Furthermore, stateless children are often excluded from social welfare leading to marginalisation and impoverishment.[16]

According to Save the Children, an estimated 27,500 foreign children, 90% of whom are under 12 years old, are waiting for repatriation from Syria as of February 2021.[17] UNICEF's evaluation of the foreign children in Syria reveals that almost 70% of those children are from Iraq and the remaining 30% are from around 60 other countries.[18] As of March 2022, Save the Children still reports that about 18,000 Iraqi children and 7,300 children from other countries are trapped in North East Syrian camps.[19] These numbers demonstrate that there are possibly thousands of children currently at risk of being forgotten in Syrian camps and falling victim to human rights abuses. The Egmont Institute estimates that between 610 and 680 European children were being detained in Syria and Iraq as of October 2020.[20] It should be noted though that keeping track of the number of foreign children being born in the conflict zones is 'virtually impossible'.[21] Hence, this article will examine how the deprivation of citizenship of FTFs risks creating stateless children; this will be addressed in Part III. Furthermore, it will explore how this practice might contradict international human rights law and how its

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13 See Part III(B). See, eg, Jo Boyden et al, 'Children Affected by Armed Conflict in South Asia: A Review of Trends and Issues Identified through Secondary Research' (Discussion Paper, UNICEF Regional Office South Asia, February 2002) 36–58 <https://www.rsc.ox.ac.uk/files/files-1/dp-children-armed-conflict-south-asia.pdf>.

14 Sherry Shenoda et al, 'The Effects of Armed Conflict on Children' (2018) 142(6) *Official Journal of the American Academy of Pediatrics* 1.

15 Human Rights Council, *Impact of the Arbitrary Deprivation of Nationality on the Enjoyment of the Rights of Children Concerned, and Existing Laws and Practices on Accessibility for Children to Acquire Nationality, Inter Alia, of the Country in Which They Are Born, if They Otherwise Would Be Stateless: Report of the Secretary-General*, UN Doc A/HRC/31/29 (16 December 2015) 11 [35], 12 [37], 13–14 [41].

16 ibid 12–13 [38]–[39].

17 'Repatriation of Foreign Children in Syria Slowed by COVID-19, as New Footage Emerges of Life in Camps', *Save the Children* (online, 1 February 2021) <https://www.savethechildren.net/news/repatriation-foreign-children-syria-slowed-covid-19-new-footage-emerges-life-camps>.

18 'Protect the Rights of Children of Foreign Fighters Stranded in Syria and Iraq: Statement by UNICEF Executive Director Henrietta Fore', *UNICEF* (Web Page, 21 May 2019) <https://www.unicef.org/press-releases/protect-rights-children-foreign-fighters-stranded-syria-and-iraq>.

19 Save the Children, 'Speed up Repatriations or Foreign Children Could Be Stuck in North East Syria Camps for up to 30 Years, Warns Save the Children' (Press Release, 23 March 2022) <https://www.savethechildren.net/news/speed-repatriations-or-foreign-children-could-be-stuck-north-east-syria-camps-30-years-warns>.

20 Thomas Renard and Risk Coolsaet, 'From Bad to Worse: The Fate of European Foreign Fighters and Families Detained in Syria, One Year After the Turkish Offensive' (Security Policy Brief No 130, Egmont Royal Institute for International Relations, October 2020) 5 <https://www.egmontinstitute.be/content/uploads/2020/10/SPB130_final.pdf?type=pdf>.

21 European Parliamentary Research Service, *The Return of Foreign Fighters to EU Soil: Ex-Post Evaluation* (Report, May 2018) 34 <https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU(2018)621811_EN.pdf>.

justifications, in the interests of national security, are questionable, according to a growing body of political and sociological scholarship.[22]

The first part of the paper explores citizenship stripping as a counter-terrorism measure in Australia, Austria, Belgium, Canada, Denmark, Germany, France, the Netherlands and the UK. Next, it compares the application of the legal frameworks of citizenship deprivation in these countries, before discussing why security-based citizenship stripping does not have the desired effect of combatting terrorism but, on the contrary, increases the risk of radicalisation by escalating drivers and also risks exporting security threats to other countries. The second part demonstrates the impact of citizenship revocation on the children of FTFs. It outlines the various ways children themselves might end up stateless due to this policy and how this negatively impacts their wellbeing. It includes the brief presentation of two case studies. The subsequent analysis of international obligations to protect children's rights and to avoid statelessness will show how the current practice might be in contradiction with international human rights law. The paper concludes that citizenship stripping of FTFs for security reasons has limited relevance but, on the contrary, violates the prohibition of arbitrary citizenship deprivation, the principles of the best interest of the child and of non-discrimination and unnecessarily risks statelessness for children born in conflict zones.

II CITIZENSHIP STRIPPING AS A COUNTER-TERRORISM MEASURE

A *National Laws on Deprivation of Citizenship*

Many countries around the world, particularly states in Europe, have enacted legislation on citizenship deprivation as a counter-terrorism measure in recent years. While the concept of citizenship stripping per se is not new, expanding the legislation and increasingly denaturalising nationals who join terrorist groups abroad is an emerging phenomenon of the last 10 years.[23] This major trend started in 2014, when the high numbers of FTFs participating in the prolonged Syrian conflict became a concern for many countries.[24]

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22 See, eg, Marc Sageman, 'On Recidivism: A Commentary on Altier, Boyle, and Horgan' (2021) 33(4) *Terrorism and Political Violence* 861; Omi Hodwitz, 'The Terrorism Recidivism Study (TRS): An Update on Data Collection and Results' (2021) 15(4) *Perspectives on Terrorism* 27. On the alleged dangers of FTF-associated women see Antonia Ward, 'It's Complicated: Not All Returning "Jihadi Brides" Are Dangerous', *The National Interest* (online, 28 February 2018) <https://nationalinterest.org/feature/its-complicated-not-all-returning-jihadi-brides-are-24677?nopaging=1>.

23 For example, the UK did not use its citizenship stripping powers even once between 1974 and February 2002: SSHD, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Report No Cm 5387, February 2002) 35 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250926/cm5387.pdf>. Only at the end of 2012 did Belgium introduce art 23(1) in the *Code of Belgian Nationality*, allowing the deprivation of citizenship if the person was sentenced to at least five years of imprisonment for a terrorist crime: see *Loi modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration* [*Law amending the Code of Belgian Nationality*] (2012) 393 Moniteur Belge/Belgisch Staatsblad [Official Gazette of Belgium] 79998, art 20.

24 In January 2015, it was estimated that nearly 4,000 Europeans had joined armed groups in Syria and Iraq and that, overall, the conflict had attracted 20,730 foreign fighters worldwide: see Peter Neumann, 'Foreign Fighter Total in Syria/Iraq Now Exceeds 20,000; Surpasses Afghanistan Conflict in the 1980s', *ICSR* (Web Page, 26 January 2015) <https://icsr.info/2015/01/26/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

1 *Discretionary Ministerial Powers of Deprivation*

The UK has been at the forefront of this discussion, not only because it has been a pioneer of citizenship deprivation on security grounds,[25] but also because it has one of the harshest deprivation regimes. Currently, the *British Nationality Act 1981* ('*BNA*') allows for the Secretary of State to deprive a person of his or her citizenship if the Secretary is 'satisfied that deprivation is conducive to the public good'.[26] The exercise of this power can result in statelessness, provided that the deprived person is a naturalised citizen, has 'conducted him or herself in a manner which is seriously prejudicial to the vital interests' of the UK and the Secretary of State 'has reasonable grounds for believing' that the person could obtain another citizenship.[27] The law therefore clearly distinguishes between citizens depending on how they obtained the citizenship: persons who were not born as British citizens risk statelessness for the same conduct for which British-born citizens do not lose their citizenship. Moreover, as neither 'conducive to the public good' nor 'seriously prejudicial to the vital interests' are clearly defined in the *BNA*, the Secretary of State has wide latitude in deciding what kind of behaviour is so threatening to the UK that citizenship deprivation should be the consequence. According to the Explanatory Notes, this should cover 'the most serious cases — such as those involving national security, terrorism, espionage or taking up arms against British or allied forces',[28] but the Government also includes 'unacceptable behaviour', such as the 'glorification of terrorism' abroad or in the UK.[29] A criminal conviction is not required to exercise the power and even behaviour prior to 2014 — when the amendment was enacted — can be taken into account.[30] Besides, the standard of proof required for the Secretary of State to believe 'that the person is able … to become a national' of another country, namely to have 'reasonable grounds for believing', is lower than 'beyond a reasonable doubt', which is the general criminal standard of proof.[31] Lucia Zedner highlights the fact that there is 'no legal requirement for the individual to have acquired or been promised citizenship of another country before denaturalisation is ordered, nor is there any requirement of timely acquisition'.[32]

Thus, the initial decision to revoke citizenship is at the discretion of the Secretary of State, but the person concerned has a right to appeal against it.[33] However, the appeal process only offers limited protection. Since the appeal

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25 The *British Nationality Act 1948* already gave the Secretary of State the power to deprive a naturalised citizen of his or her citizenship if he or she was convinced that the person, inter alia, was 'disloyal or disaffected towards His Majesty' and that it was 'not conducive to the public good that that person should continue to be a citizen': *British Nationality Act Cap 56 1948* (1948) 11–12 Geo 6, ss 20(3)(a), (5) (United Kingdom). In 2002, the power was expanded to also cover native-born British citizens for the first time: *Nationality, Immigration and Asylum Act Cap 41 2002*, s 4(1) (United Kingdom) inserting s 40(2) into the *British Nationality Act Cap 61 1981* (United Kingdom) ('*BNA 1981*').

26 *BNA 1981* (n 25) s 40(2).

27 ibid s 40(4), (4A).

28 Explanatory Notes, *Immigration Act Cap 22 2014* (United Kingdom) s 66 [405].

29 *Transparency Report 2018/19* (n 6) 21.

30 *Immigration Act Cap 22 2014* (United Kingdom) cl 66(2) allows exercise of the power retroactively.

31 ibid s 66(1).

32 Lucia Zedner, 'Citizenship Deprivation, Security and Human Rights' (2016) 18(2) *European Journal of Migration and Law* 1, 10–11.

33 *BNA 1981* (n 25) s 40A; *Special Immigration Appeals Commission Act Cap 68 1997*, s 2B (United Kingdom).

against the deprivation order is non-suspensive, the appeal does not stop the negative consequence of the deprivation.[34] Furthermore, if the Secretary of State determines that the deprivation decision was taken 'wholly or partly in reliance on information which in his opinion should not be made public', the appeal is to the Special Immigration Appeals Commission ('SIAC'), which must be made within 28 days of the order.[35] This appeal to SIAC includes the use of secret evidence that is made available to a Special Advocate, which means that the full details of the case are not disclosed to the appellant in question and their legal representative.[36] Consequently, the UK law has one of the most far-reaching consequences and operates with very limited transparency.

Similarly, Australia, Denmark and the Netherlands do not necessarily require a criminal conviction or any other kind of judicial approval before depriving an individual of his or her citizenship. However, all three countries do have provisions for citizenship deprivation based on a prior criminal conviction.[37] In other regards, the Australian, Danish and Dutch approaches follow the British law by introducing broad ministerial powers to revoke citizenship, although they have some safeguards against statelessness in place.[38] Furthermore, these countries require certain conditions to be met, thereby limiting the discretionary power of citizenship stripping to some degree.

In Australia, the Minister for Home Affairs has the power to decide that a person over 14 years of age can 'cease to be an Australian citizen' if he or she is satisfied that the person either engaged in certain specified conduct which 'demonstrates that the person has repudiated their allegiance to Australia', such as fighting for or serving a declared terrorist organisation, or financing terrorism, if 'it would be contrary to the public interest for the person to remain an Australian citizen'.[39] Although the law sets out certain matters that the Minister has to take into account for his or her decision, such as the severity of the conduct, the degree of threat posed to the Australian community or the age of the person, the provision does not completely protect against statelessness,[40] as the Minister only has to be 'satisfied that the person' would not become stateless after his decision.[41] Since the Minister determines a person's foreign citizenship status without needing definite proof of dual citizenship, this provision creates the risk of rendering people stateless. Despite also applying to minors over 14 years, the Minister may

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34 Terry McGuinness and Melanie Gower, 'Deprivation of British Citizenship and Withdrawal of Passport Facilities' (Briefing Paper No 06820, House of Commons Library, 9 June 2017) 16 <https://commonslibrary.parliament.uk/research-briefings/sn06820/>.

35 *BNA 1981* (n 25) s 40A(2).

36 HM Courts & Tribunals Service, 'Guidance: Apply to the Special Immigration Appeals Commission', *UK Government* (Web Page, 27 April 2020) <https://www.gov.uk/guidance/appeal-to-the-special-immigration-appeals-commission>.

37 Australia and the Netherlands have avenues for the Ministers to revoke citizenship if a person has been convicted for an offence related to terrorism: see *Australian Citizenship Act 2007* s 36D (Australia) ('*Australian Citizenship Act*'); *Rijkswet op het Nederlanderschap 2010* [*Netherlands Nationality Act 2010*] (2010) 242 Staatsblaad van het Koninkrijk der Nederlanden, art 14(2) (he Netherlands) ('*Netherlands Citizenship Act*'). Denmark, on the other hand, allows people convicted of terrorist offences to be deprived by judgment: see *Bekendtgørelse af lov om dansk indfødsret LBK Nr 1191 af 05/08/2020* [*Danish Citizenship Act No 1191 of 5 August 2020*] § 8B (1) (Denmark) ('*Danish Citizenship Act*').

38 See *Australian Citizenship Act* (n 37) s 36B(2); *Danish Citizenship Act* (n 37) § 8B(3); *Netherlands Nationality Act* (n 37) art 14(8).

39 *Australian Citizenship Act* (n 37) s 36B.

40 ibid s 36B(2).

41 ibid s 36E(2).

not even decide to notify the affected individual of the citizenship cessation for up to six years, if this could be detrimental to the security, defence or international relations of Australia.[42]

In 2017, the Netherlands introduced an amendment to the *Nationality Act* that removed the condition of a prior criminal conviction.[43] Since then, the Minister of Justice can, 'in the interest of national security', revoke the Dutch citizenship of a person over the age of 16, who is outside the Netherlands, if their 'conduct shows that [they have] joined an organisation' that is listed as participating in an armed conflict and posing a threat to national security.[44] Generally, if citizenship is lost this way, the person cannot regain it, unless five years have elapsed and the Council of Ministers of the Kingdom of the Netherlands agrees.[45] As in other jurisdictions, an appeal against the citizenship deprivation does not suspend the effect of the order.[46]

The latest to join this approach is Denmark, which introduced a discretionary power of citizenship revocation in October 2019.[47] The Minister of Foreign Affairs and Integration now has the discretionary power to decide on the deprivation of citizenship of anyone 'who has acted in a way that is seriously detrimental to the country's vital interests'.[48] This power is limited in many ways: it cannot result in the individual becoming stateless,[49] and it also cannot be used if it is possible to 'instigate proceedings on deprivation of Danish nationality' following a criminal conviction.[50] An example of the type of conduct leading to citizenship deprivation is joining an armed force fighting against the Danish state or training someone to commit a terrorist offence.[51] Furthermore, from 1 February 2020, a child born to a Danish parent who has unlawfully entered or unlawfully stays in a 'conflict zone' will not acquire Danish citizenship by birth unless the child thereby becomes stateless.[52]

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42 ibid s 36G(4).

43 *Rijkswet van 10 februari 2017, houdende wijziging van de Rijkswet op het Nederlanderschap in verband met het intrekken van het Nederlanderschap in het belang van de nationale veiligheid [Kingdom Law of February 10, 2017, amending the Dutch Nationality Act in connection with the Withdrawal of Dutch Citizenship in the Interest of National Security]* (2017) 52 Staatsblad van het Koninkrijk der Nederlanden, art 1B (the Netherlands).

44 *Rijkswet van 19 december 1984, houdende vaststelling van nieuwe, algemene bepalingen omtrent het Nederlanderschap ter vervanging van de Wet van 12 december 1892, Stb. 268 op het Nederlanderschap en het ingezetenschap [Kingdom Act of 19 December 1984, laying down New, General Provisions regarding Dutch Citizenship to Replace the Act of 12 December 1892, Staatsblad 268 on Dutch Citizenship and Residency]* (1984) 638 Staatsblad van het Koninkrijk der Nederlanden, art 14(4) (the Netherlands).

45 ibid art 14(5).

46 *Wet van 4 juni 1992, houdende algemene regels van bestuursrecht (Algemene wet bestuursrecht) [Act of 4 June 1992, containing General Rules of Administrative Law]* (1992) 315 Staatsblad van het Koninkrijk der Nederlanden, art 6:16 (the Netherlands).

47 Ministry of Foreign Affairs of Denmark, 'Appendix A — Response by the Government of the Kingdom of Denmark to Questions Two and Three from the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Foreign Fighters' (Report No AL DNK 3/2019, 15 January 2020) [2] <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35114> ('Danish Ministry of Foreign Affairs Report').

48 *Danish Citizenship Act* (n 37) § 8B(3).

49 ibid.

50 Danish Ministry of Foreign Affairs Report (n 47) [2].

51 ibid [3].

52 *Danish Citizenship Act* (n 37) § 1(2).

2 *Deprivation Ex Officio*

In Austria and Germany, citizenship stripping is not a discretionary power but has to be carried out *ex officio* if all the conditions set out in the law are met.[53] The *Austrian Federal Law on Nationality* dictates a number of specific requirements that have to be fulfilled before a national FTF can be deprived of their citizenship: the person needs to voluntarily and actively participate in hostilities on behalf of an organised armed group during an armed conflict abroad and the deprivation cannot render them stateless.[54] The voluntariness of the behaviour automatically excludes all acts by children or individuals who lack full legal capacity and the requirement of 'active participation in hostilities' excludes all acts that have no close local, temporal and causal link to the fighting, such as training and recruiting FTFs or propaganda activities.[55] Moreover, the conditions of being abroad and fighting on behalf of a group in an armed conflict excludes all acts carried out in Austria, even if they cause violent acts abroad, all acts carried out individually and all acts carried out when there is no armed conflict.[56] Most importantly, deprivation cannot be carried out if it leads to statelessness and hence requires dual citizenship. Since the Government of Austria is obliged to carry out legal proceedings if someone joins a terrorist group, Magistrate Department MA35, which is responsible for revocations, can simply rely on the judgement when depriving someone of his or her Austrian citizenship. The withdrawal is therefore always accompanied by a criminal conviction.[57]

The recent German strategy of citizenship deprivation is very similar: it requires the citizen to 'concretely participate in combat operations of a terrorist organisation abroad', excludes minors, is not applicable if it would result in

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53 The Austrian citizenship deprivation law has to be carried out 'von Amts wegen' (*ex officio*), which means that the authority responsible is required to take the administrative action or the procedural act (in this case the deprivation of citizenship) on its own initiative, without someone else having to file an application for it, merely based on the fact that all conditions as set out in the law are met. In other words, the responsible department — because of its status and the fact that the legal requirements are met — is revoking someone's citizenship, without needing specific authorisation: *Bundesgesetz über die österreichische Staatsbürgerschaft [Federal Law concerning Austrian Nationality] 1985* (1985) 311 Bundesgesetzblatt Für Die Republik Österreich [Federal Law Gazette of the Republic of Austria], s III § 35 (Austria) ('*Austrian Nationality Law*') as amended by *Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 geändert warden 2014* (2014) 104 Bundesgesetzblatt Für Die Republik Österreich [Federal Law Gazette of the Republic of Austria] (Austria) ('*Austrian Nationality Amendment Law'*). Similarly, German citizenship is automatically lost when the conditions as set out in the law are met. The non-existence of German nationality is then determined by the responsible authority upon application but can also be determined 'von Amts wegen' (*ex officio*) if there is a public interest: *Staatsangehörigkeitsgeset in der im BGBl Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 10 des Gesetzes vom 28. März 2021 [German Citizenship Act]* (2021) 1 Bundesgesetzblatt 591, § 28, 30 (Germany) ('*German Citizenship Act*').

54 *Austrian Nationality Law* (n 53) § 33(2), which came into effect on 1 January 2015.

55 *Austrian Nationality Amendment Law* (n 53).

56 See Austria, *Erläuterungen zur Regierungsvorlage (351 d.B): Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 geändert werden (413 d.B.) [Explanatory Notes to the Government Bill: Federal Law Amending the Border Control Act and Citizenship Act 1985]* (10 December 2014) Beilage(-n) zu den Stenographischen Protokollen des Nationalrates der XXV Gesetzgebungsperiode [Supplement(s) to the Shorthand Minutes of the National Council of the 25th Legislative Period], 9.

57 *Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen [Austrian Federal Criminal Code]* (1974) 60 Bundesgesetzblatt Für Die Republik Österreich [Federal Law Gazette of the Republic of Austria] 641, § 287b(2) (Austria).

statelessness and is realised *ex officio*.[58] All acts carried out in Germany or abroad that do not reach the threshold of 'combat operations' do not suffice for the deprivation. However, unlike the Austrian equivalent, a prior criminal conviction is not required. If the person concerned is still abroad, there is no objection to the determination of the loss and an appeal has no suspensive effect.[59] Furthermore, Austria already enacted its provision in 2015,[60] while the German provision only came into force in August 2019 and has no retroactive application.[61] Hence, any acts carried out by FTFs before 2019 cannot be considered when evaluating whether the conditions for citizenship deprivation have been met.

3 *Judicial Involvement Required*

On the other end of the spectrum are countries like Belgium, Canada and France that always require prior convictions or some level of judicial approval, whilst guaranteeing individuals do not end up stateless. In 2015, Belgium broadened the scope of initial citizenship deprivation powers by including ancillary offences, such as recruitment or incitement, to the list of terrorism-offences that can lead to the deprivation of citizenship.[62] Since then, any naturalised Belgian national can be deprived of his or her nationality if they have been sentenced to at least five years of imprisonment for a terrorist offence.[63] This provision does not apply to Belgian citizens by birth, who can never lose their citizenship for committing a terrorist offence, and the court will only order revocation at the request of the Public Prosecution Service.[64] The previous monopoly of the Courts of Appeal in imposing deprivation has been removed and now the court ruling on the terrorist offence can simultaneously deprive the offender of his or her citizenship, as well as any other civil or criminal court.[65] Yet, the deprivation decision only takes effect after all remedies have been exhausted.[66] In other words, an appeal has suspensive effect in Belgium and the individual retains all their citizenship rights during the appeal process.

The French law is almost identical to the Belgian, as it allows citizenship deprivation of a naturalised citizen who was convicted of a terrorist crime, provided the person does not end up stateless and the Conseil d'État, the highest

58 *German Citizenship Act* (n 53) § 28(1) Z2, (2) Z1, (3), § 30(1).

59 *German Citizenship Act* (n 53) § 28(3).

60 *Austrian Nationality Amendment Law* (n 53) art 2 Z2.

61 *Drittes Gesetz zur Änderung des Staatsangehörigkeitsgesetzes vom 4 August 2019 [Third Act amending the German Citizenship Act of 4 August 2019]* (2019) 1Bundesgesetzblatt 1124, art 4.

62 Before the changes in 2015, the deprivation of citizenship after a conviction for a terrorist offence was already possible due to the introduction in 2012 of art 23(1) into the *Wetboek van de Belgische nationaliteit [Belgian Code of Nationality] No 1984-06-28/35* (Belgium) ('*Belgian Nationality Law*'). See Maarten P Bolhuis and Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe: Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism' (2020) 22(3) *European Journal of Migration and Law* 338, 341–42.

63 *Belgian Nationality Law* (n 62) art 23(2) in conjunction with *Strafwetboek 1867 [Belgian Criminal Code] No 1867-06-08/01*, Book II, Title I (Belgium).

64 ibid.

65 Patrick Wautelet, 'Deprivation of Citizenship for "Jihadists": Analysis of Belgian and French Practice and Policy in Light of the Principle of Equal Treatment' (Research Paper, CITÉ, 2016) 3.

66 ibid 7.

Administrative Court in France, approves of it.[67] The most important difference from the Belgian law is that it is not the court that decides upon the deprivation, but a government body, namely the Council of Ministers, after the Minister of the Interior initiates the process and the affected individual has the opportunity to present their arguments.[68] Moreover, the decree adopted by the Ministers has effect from the day it is signed.[69] Additionally, citizenship stripping based on a terrorism offence can only be pronounced if the alleged facts occur before the acquisition of French nationality or within 15 years from the acquisition.[70] Efforts to expand the scope of the citizenship deprivation to French citizens by birth have failed so far.[71]

The Canadian provisions, enacted in 2014, gave the Citizenship and Immigration Minister the power to revoke a person's citizenship if the citizen was either convicted of any of the listed terrorism offences committed in Canada or abroad, or if the Minister had 'reasonable grounds to believe' that the citizen 'served as a member ... of an organized armed group and that ... group was engaged in an armed conflict with Canada'.[72] This discretionary power of citizenship stripping required a judicial declaration that the person in question de facto served an armed group.[73] Moreover, the measure could not be applied if it would have resulted in statelessness, but the burden of proof was on the individual who was claiming single citizenship.[74] After depriving just one person of his citizenship, the new elected government under Justin Trudeau decided to repeal the newly introduced citizenship deprivation provisions in 2016.[75] When the provisions were removed from the *Citizenship Act*, the only deprivation carried out was simultaneously nullified in 2017.[76]

4 *Comparative Analysis*

This overview reveals how differently countries deal with the threat of FTFs. Some provisions set out clearly what kind of behaviour contradicts the duty of allegiance to the state that justifies the revocation of the citizenship, while others give the relevant competent authority a wide discretion, such as the exceptionally large discretion in the UK. Even though the absence of prior judicial authorisation in the UK, Australia and the Netherlands is striking — especially since many other counter-terrorism measures do require the permission of the court to be implemented — it uncovers the underlying reasons for the implementation of

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67 *Loi No 98-170 du 16 mars 1998 relative à la Nationalité [Law No 98-170 of 16 March 1998 relating to Nationality]* (17 March 1998) 64 Journal Officiel, art 25 (France) ('*French Nationality Law*').

68 Wautelet (n 65) 5.

69 ibid 7.

70 *French Nationality Law* (n 67) art 25(1).

71 Bolhuis and van Wijk (n 8) 343–44.

72 *An Act to Amend the Citizenship Act and to Make Consequential Amendments to other Acts 2014* (2014) Statutes of Canada c 22, s 8 (Canada) ('*Canadian Citizenship Amendment Act*'), amending *Citizenship Act 1985* (1985) Revised Statutes of Canada c C-29, s 10.1(2) (Canada) ('*Canadian Citizenship Act*').

73 ibid.

74 *Canadian Citizenship Amendment Act* (n 72) s 8, amending *Canadian Citizenship Act* (n 72) s 10.4.

75 Sangeetha Pillai and George Williams, 'The Utility of Citizenship Stripping Laws in the UK, Canada and Australia' (2017) 41(2) *Melbourne University Law Review* 845, 869–70.

76 ibid 27.

citizenship stripping laws: countries that dispense with the requirement of a conviction can withdraw a citizenship while the individual in question is still abroad, thereby preventing their return.[77] The purpose of the deprivation is to guarantee that the person cannot commit any acts which threaten national security in the future and is hence a preventive measure.[78] Without requiring specific criminal conduct, these laws also bypass the criminal system, since even a non-criminal act can trigger denationalisation. In contrast, citizenship stripping provisions that require a conviction sanction past behaviour, namely the affiliation with an armed terrorist group abroad, and have a punitive nature. Furthermore, states that require citizenship deprivation to be an *ex officio* measure do not evaluate on a case-by-case basis whether the individual deprivation is actually proportionate or even necessary. Specific circumstances cannot be taken into account, which raises issues regarding due process.[79] But even when the relevant authority has discretion when applying citizenship deprivation powers, this often just leads to an overreach of the executive rather than to more proportionate decisions. For example, the UK NGO Reprieve has demonstrated in its latest report that the UK has applied citizenship stripping as a blanket policy and thereby failed to identify women and girls travelling to Syria as victims of human trafficking by ISIS.[80] In the most well-known and highly publicised case, *R (on the application of Begum) v SIAC and SSHD*,[81] 'a high level of deference was afforded to the executive' because Ministers are democratically responsible for their national security decisions.[82] Nevertheless, in practice there are various obstacles to exercise this democratic accountability, such as the secret evidence surrounding the decisions, as emphasised by Daniella Lock.[83]

Nevertheless, all citizenship stripping laws have one common feature: they create different categories of nationals, namely naturalised citizens versus citizens by birth, as well as dual citizenship holders versus sole citizenship holders. States distinguish between these types of categories solely on how the citizenship was acquired or the number of citizenships a person holds, without considering the ties

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77 For example, under s 2 of the *Counter-Terrorism and Security Act Cap 6 2015* (United Kingdom), the Secretary of State generally needs the permission of the court to issue a Temporary Exclusion Order that prevents a suspected terrorist from entering the UK.

78 In 2016, it was reported that most of the individuals that have been stripped of their citizenship in the UK had their citizenship removed while abroad, thereby preventing their return: see Victoria Parsons, 'Theresa May Deprived 33 Individuals of British Citizenship in 2015', *The Bureau of Investigative Journalism* (online, 21 June 2016) <https://www.thebureauinvestigates.com/stories/2016-06-21/citizenship-stripping-new-figures-reveal-theresa-may-has-deprived-33-individuals-of-british-citizenship>. Furthermore, Australian law specifies that if the conduct on which the citizenship cessation is based has been carried out in Australia, the citizenship can only be removed if the person 'has since left Australia and has not been tried for an offence in relation to the conduct': *Australian Citizenship Act* (n 37) s 36B(1)(a)(ii).

79 See Part IV(B).

80 Maya Linstrum-Newman, 'Trafficked to ISIS: British Families Detained in Syria After Being Trafficked to Islamic State' (Research Report, Reprieve, 30 April 2021) <https://reprieve.org/uk/2021/04/30/trafficked-to-syria/> ('Trafficked to ISIS').

81 *R (Begum) v Special Immigration Appeals Commission; R (Begum) v Secretary of State for the Home Department; Begum v R (Begum) v Secretary of State for the Home Department* [2021] UKSC 7, [2021] AC 765.

82 Daniella Lock, 'The Shamima Begum Case: Difficulties with "Democratic Accountability" as a Justification for Judicial Deference in the National Security Context', *UK Constitutional Law Association* (Blog Post, 9 March 2021) <https://ukconstitutionallaw.org/2021/03/09/daniella-lock-the-shamima-begum-case-difficulties-with-democratic-accountability-as-a-justification-for-judicial-deference-in-the-national-security-context/>.

83 ibid.

or links that the individual actually has to the country of which he or she is about to lose citizenship. Although these citizenship deprivation laws appear to be neutral, by only applying to one of the respective categories, states are discriminating between their citizens: only citizens with immigrant backgrounds, who are more likely to either hold two citizenships or to have acquired their citizenship by naturalisation, face an additional sanction for their conduct.[84] This raises issues of indirect ethnic discrimination because 'those of minority and migrant heritage' are disproportionately targeted.[85] Single citizenship holders and citizens by birth are generally protected against the negative consequences resulting from their disloyal behaviour and are not affected by citizenship deprivation measures. By not applying the sanction of citizenship revocation uniformly to all nationals, all states practicing citizenship deprivation for FTFs share the common suspicion that certain categories of citizens, namely those with immigrant backgrounds, are more likely to be a danger to society and that the strength of citizenship is different depending on how citizenship is acquired. However, this bias is not supported by any evidence, which automatically raises the question of why certain states implement this policy of denationalisation. Hence, the following Part will identify the objectives that these states pursue and examine the utility of citizenship deprivation for these objectives.

B *Why Citizenship Deprivation is Not Working*

The effectiveness of citizenship deprivation as a policy is in and of itself questionable. The following outlines some key considerations that demonstrate why citizenship deprivation is counterproductive as a policy. In addition to having questionable legal legitimacy, citizenship deprivation has considerable political, social and psychological impacts in both the individual and group contexts. The deprivation of citizenship creates a conditionality that not only raises questions about the status of an individual's rights but also adds considerable weight to questions around an individual's identity.

Given that, generally speaking, those prosecuted on terrorism charges have demonstrated patterns involving issues with their identity, understanding of self and feeling of belonging in a group context, it is clear to see how state-imposed conditionality around citizenship could play further into these feelings and any potential drivers. The condition for 'good character' against which citizenship is assessed in the UK is 'instrumental in deprivation decisions and feature throughout Britain's racialised history of immigration'.[86] As detailed by Tufyal Choudhury, this racialisation of citizenship was seemingly reintroduced in the *BNA*:[87]

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84 Moreover, the Dutch list of terrorist organisations whose members can be deprived of their citizenship mainly consists of Islamist terrorist groups, such as Al-Qaida or ISIS, which results in ethnic Arab dual citizens being 'more likely targeted than other dual-nationals': see Tom Boekestein, 'Deprivation of Nationality as a Counter-Terrorism Tool: A Comparative Analysis of Canadian and Dutch Legislation' (2018) 5(1) *The Transnational Human Rights Review* 23, 57.

85 Institute on Statelessness Inclusion and Open Society Justice Initiative, *Principles on Deprivation of Nationality as a Security Measure* (Report, February 2020) 2 <https://files.institutesi.org/PRINCIPLES.pdf>.

86 Zainab Batul Naqvi, 'Coloniality, Belonging and Citizenship Deprivation in the UK: Exploring Judicial Responses' (2021) 31(4) *Social & Legal Studies* 515, 527.

87 Tufyal Choudhury, 'The Radicalisation of Citizenship Deprivation' (2017) 37(2) *Critical Social Policy* 225, 231.

> It applied a restrictive approach to British citizens from outside the UK, leaving British citizens in its former colonies, who could not claim an ancestral connection to Britain, exiled with either British Overseas Citizenship or British Dependent Territories Citizenship, both of which amounted to 'virtually worthless second-class citizenships' that gave them nowhere to go.[88]

In 2008, the National Offender Management Service, an agency of the Ministry of Justice, established an interventions programme as part of their counter-terrorism policing called the 'Healthy Identity Intervention'. The intervention was created to prevent extremist offending and examine effective methodologies to assess the risk of extremist offending.[89] It was piloted in 2010 and 2011 at various prisons with extremist offenders and one of its key features concludes that '[i]dentity issues appear to go to the heart of why people commit these types of offence and also why they choose to disengage and desist'.[90]

Therefore, if stripping an individual of their nationality is an act that creates serious indirect consequences on an individual's identity, the use of it as a policy in terrorism cases seems a highly illogical response. Colin Yeo concludes that '[t]o deprive a person of their citizenship on the grounds of their behaviour or opinion is to cast them out of society. It is a power of exile or banishment'.[91]

Maarten P Bolhuis and Joris van Wijk agree that

> … if the ties with a country where someone may have lived all his life are severed, this has serious consequences in all domains of the individual's personal life, in more and less tangible ways: from access to their family, social or professional life, to their identity and sense of belonging.[92]

As mentioned previously, citizenship deprivation creates a two-tier system in which those who have or 'potentially' have access to dual citizenship via family heritage face a level of conditionality around their citizenship not faced by those with access to a single citizenship. In other words, those who are deprived are often from minority groups, further exacerbating any feelings of marginalisation within a given society. The exception to this rule, and also a good comparison which further demonstrates the discriminatory and conditionality of citizenship of the children of immigrants, is the case of Jack Letts or 'Jihadi Jack'.[93] Letts's citizenship was revoked after two years of appeal, despite his admissions of violence. In addition, the Home Office repeatedly declined to comment on Jack's case, stating that '[t]he Home Office does not comment on individual cases,' while publicly commenting

88 ibid quoting Bhikhu Parekh, *The Future of Multi-Ethnic Britain: Report of the Commission on the Future of Multi-Ethnic Britain* (Report, 2000) 206.

89 National Offender Management Service, *Healthy Identity Intervention: Summary and Overview* (Report, 2013) <https://www.whatdotheyknow.com/request/164177/response/403865/attach/4/HII%20Summary%20and%20Overview%20Public%20April%2013.pdf>.

90 ibid 3.

91 Colin Yeo, 'The Rise of Modern Banishment: Deprivation and Nullification of British Citizenship', *freemovement* (Blog Post, 24 November 2017) <https://www.freemovement.org.uk/rise-modern-banishment-deprivation-nullification-british-citizenship/>.

92 Bolhuis and van Wijk (n 8) 352.

93 Dan Sabbagh, 'Jack Letts stripped of British citizenship', *The Guardian* (online, 19 August 2019) <https://www.theguardian.com/world/2019/aug/18/jack-letts-stripped-british-citizenship-isis-canada>.

on Begum's case repeatedly demonstrating 'a stark difference in the treatment received by a white man and a South Asian woman'.[94]

The claim by the UK that Begum was a dual-national entitled to Bangladeshi citizenship was quickly and very publicly denied by Shahriar Alam, Bangladesh's State Minister of Foreign Affairs. Legally, only if established, Begum's Bangladeshi citizenship would remain until she reached the age of 21. Again, such a situation seems only to occur along racialised lines. Reflecting on the Begum case, Fatima Rajna describes the very real concept of how first- and second-generation descendants of immigrants are 'existing outside of the nation'.[95] Rajna says:

> [Begum's] otherness became the centre of discussions, including focusing in on her Bengali and Muslim identity. This case, in addition to the past struggles against the state, illustrates how precarious citizenship status is vis-à-vis the state. The very existence of legislation to monitor and surveil British Muslims functions to entrench their marginality.[96]

Nisha Kapoor examines the extension of citizenship deprivation on the grounds of national security in the UK context in greater detail.[97] Kapoor concludes: '[p]erhaps most effective about the reframing of citizenship through the War on Terror is that it has enabled the state to return certain subjects to their dehumanised or colonised state'.[98]

The marginalisation and isolation that is exacerbated by citizenship deprivation has been shown to be a driver for extremism throughout the literature, as noted by Christophe Paulussen: '[i]n this regard one needs to be mindful that exclusion, marginalisation and (perceived) discrimination can be one of the many factors that can play a role in people radicalising and joining extremist groups in the first place'.[99]

This is demonstrative of how citizenship deprivation can clearly be counterproductive as a policy overall. In addition to this, measures such as deprivation of nationality seem particularly disproportionate when a wealth of literature has demonstrated clearly that the rate of recidivism for terrorist offenders is very low:

> typically far lower than the reconviction rates seen with other types of offenders. This applies both to general re-offending (ie, not politically motivated) as well as terrorism-related offending. Most earlier reviews report re-offending rates of between

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94 Isaac Selwyn, 'Shamima Begum: The UK's Racialised Approach To Citizenship', *Human Rights Pulse* (Blog Post, 9 December 2020) <https://www.humanrightspulse.com/mastercontentblog/shamima-begum-the-uks-racialised-approach-to-citizenship>.

95 Fatima Rajna, 'They Needed Us and Now They are Terrified' in Asim Qureshi (ed), *I Refuse to Condemn: Resisting Racism in Times of National Security* (Manchester University Press 2020) 51.

96 ibid.

97 Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century Extremism* (Verso Books 2018) 93.

98 ibid.

99 See Christophe Paulussen, 'Countering Terrorism Through the Stripping of Citizenship: Ineffective and Counterproductive', *International Centre for Counter-Terrorism* (Commentary, 17 October 2018) <https://icct.nl/publication/countering-terrorism-through-the-stripping-of-citizenship-ineffective-and-counterproductive/>; Christophe Paulussen and Laura van Waas, 'The Counter-Productiveness of Deprivation of Nationality as a National Security Measure', *European Network on Statelessness* (Blog Post, 18 March 2020) <https://www.statelessness.eu/updates/blog/counter-productiveness-deprivation-nationality-national-security-measure>.

> 2–15 percent depending on the samples and contexts, levels which are far lower than those seen for 'ordinary' non-political offenders.[100]

Moreover, the use of citizenship deprivation as a tool to increase national security could be considered to actually work against the initial security purposes of the deprivation, by exporting the risk to other states. This notion was concluded in *Resolution 2263*, adopted by the Parliamentary Assembly of the Council of Europe in 2019. The resolution states that deprivation of nationality may

> lead to the 'exporting of risks', as those persons may move to or remain in terrorist conflict zones outside Europe. Such a practice goes against the principle of international co-operation in combating terrorism, reaffirmed, *inter alia*, in United Nations Security Council *Resolution 2178 (2014)*, which aims at preventing foreign fighters from leaving their State of residence or nationality, and may expose local populations to violations of international human rights and humanitarian law. It also undermines the State's ability to fulfil its obligation to investigate and prosecute terrorist offences. In this context, deprivation of nationality is an ineffective anti-terrorism measure and may even work against the goals of counter-terrorism policy. Moreover, it may have a strong symbolic function but a weak deterrent effect.[101]

III IMPACT OF CITIZENSHIP STRIPPING ON CHILDREN

A *Statelessness*

As a result of the widespread displacement happening during conflicts, children often end up stateless because their births are never registered or their birth certificates are lost during the flight.[102] Moreover, as outlined above, many states have introduced a policy in recent years that denationalises citizens if they participate in hostilities abroad, thereby trapping their children in a legal limbo.[103] The most serious consequence of citizenship deprivation is statelessness, which can occur even if the law regulating the deprivation of citizenship appears to have safeguards against leaving the individual stateless.[104]

Although de jure statelessness, where the child is legally unable to acquire citizenship, is different from de facto statelessness, where the child has the legal right to at least one citizenship but is factually unable to obtain it, both types of statelessness have devastating effects on the lives of children and thus, both types will be addressed in this article. This is in line with Principle 4 of the Council of Europe's *Recommendation 2009/13*, which argues that 'children who, at birth, have the right to acquire the nationality of another state, but who could not

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100 Silke and Morrison (n 5) 2 (citations omitted).

101 *Withdrawing Nationality as a Measure to Combat Terrorism: A Human-Rights Compatible Approach?* (Council of Europe Parliamentary Resolution No 2263, 25 January 2019) 2 [8] ('CoE Resolution No 2263').

102 13,000 children under 12 have no established nationality because they lack birth certificates or other documentation in Iraq alone: UN Security Council, *Eighth Report of the Secretary-General on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat*, UN Doc S/2019/103 (1 February 2019) 4 [21].

103 See Part II(A).

104 According to Reprieve, at least one British child in Northeast Syria may have been rendered stateless because the mother's citizenship was deprived whilst being pregnant with the child: see Linstrum-Newman, 'Trafficked to ISIS' (n 80) 20.

reasonably be expected to acquire that nationality' are not excluded from the protection provided for stateless children.[105]

Children born in conflict zones to at least one foreign parent can end up stateless in different ways, depending on how the various applicable nationality laws of their parents interact with each other. De jure statelessness might result from the fact that one or both parents have been stripped of their citizenship and as a result are left stateless or with a citizenship that they are legally unable to confer on their children due to gaps in nationality laws. For example, only a few European states, such as Austria, France and the Netherlands, ensure that a child born abroad to a national acquires nationality automatically.[106] In other countries, children born abroad obtain their parent's nationality not automatically by birth but only by decision of the relevant authorities or upon fulfilment of other conditions. Besides, some states have restrictions on passing on citizenship, such as a certain age, residency or registration of the child, if the parents themselves were born abroad and only obtained citizenship by descent.[107] In those cases, the child born abroad to a parent with citizenship by descent rather than birth only acquires citizenship if it is registered with a consulate, which can constitute a serious obstacle during armed conflict where travel is dangerous and limited or people might be detained. Consular representation also may not be available in every country, so the registration could require crossing of an international border and hence a travel document.

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105 *The Nationality of Children* (Council of Europe Recommendation CM/Rec(2009)13 and Explanatory Memorandum, 9 December 2009) 9 <https://rm.coe.int/16807096bf>.

106 'Global Database on Modes of Acquisition of Citizenship', *Global Citizenship Observatory* (Web Page, 2016) <https://globalcit.eu/modes-acquisition-citizenship/#:~:text=The%20GLOBALCIT%20Citizenship%20Law%20Dataset%20covers%20information%20on%20laws%20in,country%20you%20are%20interested%20in>.

107 For example, a child born abroad to British parents after 1 July 2006, who were themselves born abroad, does not automatically receive British citizenship. Instead, the child can apply for citizenship if the British parent has lived in the UK for three years before the application and not spent more than 270 days outside of the UK during those three years: 'Apply for Citizenship if You Have a British Parent', *UK Government* (Web Page) <https://www.gov.uk/apply-citizenship-british-parent/born-on-or-after-1-july-2006>. A child born abroad to German parents, who were themselves born abroad after 31 December 1999, only obtains German citizenship if they would otherwise be stateless or if the birth is registered within a year: 'Staatsangehörigkeitsrecht', *Auswärtiges Amt* (Web Page, 26 June 2021) <https://www.auswaertiges-amt.de/de/service/konsularinfo/staatsangehoerigkeitsrecht>. A child born abroad to Belgian parents that have been born abroad obtains Belgian citizenship if the Belgian parent makes a declaration requesting citizenship for the child within five years of the birth 'Born to a Belgian Parent', *Kingdom of Belgium Foreign Affairs, Foreign Trade and Development Cooperation* (Web Page, 2016) <https://diplomatie.belgium.be/en/services/services_abroad/nationality/being_granted_belgian_nationality/born_to_a_belgian_parent>.

Often, the father needs to be married to the mother or officially acknowledge the child as his before a certain age if he wants to pass on his citizenship.[108] These requirements could cause problems if the father died in the hostilities, is imprisoned or went missing before he could acknowledge the child or if there is no official marriage certificate. In those cases, it becomes practically impossible to establish a legal link between the child and the father, which can be needed to obtain the father's nationality. In other words, despite possibly being entitled to a parent's citizenship, the child will most likely face obstacles when trying to establish that nationality while being in a conflict zone. This includes not being able to register the birth in the civil registration system of the country of their nationality, because they are detained abroad or not able to prove the parents' identity because they died or went missing.[109] These circumstances would most likely result in statelessness.

Furthermore, the mother might be unable to obtain citizenship for the child because of discriminating nationality laws. According to UNHCR, there are 25 countries worldwide that do not allow women to pass on their nationality in the same way that men can.[110] If the mother is subjected to citizenship deprivation and left with a citizenship that follows discriminatory laws, she would be unable to confer citizenship to her children by herself. This is especially true for Syrian mothers: if the foreign father has been stripped of his main citizenship, cannot confer his other citizenship or is dead and the Syrian mother is unable to prove the parentage of her child or their birth in Syria, the mother cannot obtain nationality for her child.[111] Women in Iraq encounter similar problems when fathers are absent or unknown, as they require proof of marital status and two witnesses to confirm the birth of the child in order to obtain birth certificates.[112] Sean Lees examined the discrimination

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108 For example, a child only becomes a Dutch citizen by law if the Dutch father was married to the non-Dutch mother on the day of the birth or he acknowledged the child as his before the birth or before the seventh birthday of the child. Purely religious marriages or marriages conducted under the authority of ISIS may constitute obstacles to fulfilling this condition. If the Dutch father acknowledges the child after the seventh birthday, DNA evidence is required to obtain Dutch citizenship: 'Dutch Citizen by Birth or Acknowledgement', *Immigration and Naturalisation Service: Ministry of Justice and Security* (Web Page) <https://ind.nl/en/dutch-citizenship/Pages/by-birth-or-acknowledgement.aspx>. Similar but stricter rules exist in Austria, where the child only obtains Austrian citizenship by descent from their father where the Austrian father is married to the mother or if he acknowledges the child as his within eight weeks after the birth: Bundesministerium für Inneres, 'Erwerb durch Abstammung', *Österreichs digitales Amt* (Web Page, 8 February 2021) <https://www.oesterreich.gv.at/themen/leben_in_oesterreich/staatsbuergerschaft/Seite.260410.html>. The last resort in both countries to obtain citizenship is through a judicial establishment of paternity.

109 Hugh Massey, 'UNHCR and De Facto Statelessness' (Legal and Protection Policy Research Series No LPPR/2010/01, UNHCR, April 2010) 41–43 <https://www.unhcr.org/4bc2ddeb9.pdf>.

110 UNHCR, UNICEF and Global Campaign for Equal Nationality Rights, *Gender Discrimination and Childhood Statelessness* (Report, 2019) 3 <https://www.unhcr.org/ibelong/wp-content/uploads/Gender-discrimination-childhood-statelessness-web.pdf>.

111 According to arts 3A and 3B of the Syrian *Legislative Decree No 276 of 1969* (1969) 55 Official Gazette 903 (Syria) ('*Syrian Legislative Decree No 276*'), anyone born inside or outside of Syria to a Syrian Arab father acquires Syrian citizenship, but only if the child is born in Syria and has no legal relationships with their father is the Syrian Arab mother able to confer her citizenship. Even though there is a legal possibility for the mother to establish citizenship for her child, this is rarely implemented: see Zahra Albarazi, 'Syria's Displacement Crisis, Statelessness and Children' in Institute on Statelessness and Inclusion (ed), *The World's Stateless Children* (Wolf Legal Publishers 2017) 233, 234.

112 United Nations Assistance Mission for Iraq (UNAMI) and UNHCR, '*Human Rights, Every Day, for All Iraqis': Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL/or in Areas Controlled by ISIL in Iraq* (Report, 22 August 2017) 13 [48] <https://www.ohchr.org/Documents/Countries/IQ/UNAMIReport22Aug2017_EN.pdf>.

in Iraq nationality law that makes it virtually impossible for women to independently obtain birth registration and citizenship for their children and demonstrated the risk of statelessness for children born of ISIS-perpetrated sexual violence in Iraq.[113] Moreover, in some countries, the child themselves can be directly a victim of citizenship stripping and possibly left stateless.[114]

Finally, even children holding a citizenship because they were born before their parents left the country to join a terrorist group or before their parents were stripped of their citizenship, might experience 'ineffective nationality'.[115] They might lack identity documents to prove their nationality or not receive protection from their national state. This is because states not only deprive FTFs of their citizenship, they also actively prevent the repatriation of detained children affiliated with ISIS and, hence, these children are not able to enjoy the benefits of their citizenships and are left de facto stateless.[116] This is the case for the majority of foreign children currently in detention camps in Syria, as they are unable to return to their home countries.[117] In November 2021, *Le Monde* reported about two detained ISIS-fighters being released after paying off the Syrian Democratic Forces,[118] while 200 French children continue to be trapped in Syrian camps without education, psychological care or any prospect of escaping detainment.[119]

Consequently, citizenship stripping by itself or in combination with certain practicalities of nationality laws, such as laws discriminating against mothers or requiring the fulfilment of registration processes that are unfeasible during situations of armed conflict, can lead to de facto and de jure statelessness of children.

B *Limited Access to Human Rights*

Citizenship stripping laws impede children's ability to access documentation and other rights, which in turn increases their exposure to risks during armed conflicts. Citizenship stripping prevents the child born after citizenship removal from obtaining their parent's previous nationality and might result in needing to fulfil registration processes in order to obtain citizenship. However, some states refuse to register the birth of children of non-nationals or have preconditions of residency

113 Sean Lees, 'Born of the Islamic State: Addressing Discrimination in Nationality Provision through a Rule of Law Framework' (Working Paper No 2016/08, Institution on Statelessness and Inclusion, December 2016) <https://files.institutesi.org/WP2016_08.pdf>.

114 For example, in the UK, Australia and the Netherlands, people under the age of 18 can be deprived of their citizenship: see Part IIA.

115 The term 'ineffective nationality' is used here instead of 'de facto statelessness': see Laura van Waas and Amal de Chickera 'Unpacking Statelessness' in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2017) 54.

116 De facto stateless persons are described as 'individuals who technically possess a nationality but are unable to enjoy its benefits because ... the State of their nationality is not able or willing to offer them protection': Brian Opeskin, Richard Perruchoiud and Jillyanne Redpath-Cross (eds), *Foundations of International Migration Law* (Cambridge University Press 2012) 103.

117 Ana Luquerna, 'The Children of ISIS: Statelessness and Eligibility for Asylum under International Law' (2020) 21(1) *Chicago Journal of International Law* 148, 174–75.

118 Jean-Pierre Filiu, 'Mieux vaut être un jihadiste arabe qu'un enfant français pour quitter les prisons kurdes de Syrie', *Le Monde* (online, 28 November 2021) <https://www.lemonde.fr/blog/filiu/2021/11/28/mieux-vaut-etre-un-jihadiste-arabe-quun-enfant-francais-pour-quitter-les-prisons-kurdes-de-syrie/>.

119 'Cinq pédopsychiatres alertent: "La France persiste à laisser dépérir les enfants français dans les camps syriens"', *Le Monde* (online, 17 November 2021) <https://www.lemonde.fr/idees/article/2021/11/17/cinq-pedopsychiatres-alertent-la-france-persiste-a-laisser-deperir-les-enfants-francais-dans-les-camps-syriens_6102335_3232.html>.

for registrations.[120] Therefore, children born to foreign nationals can encounter difficulties in the registration process and might end up without any documentation. The UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict demonstrated in their Working Paper that the lack of documentation has serious negative consequences for children displaced in armed conflicts: they are unlikely to be able to enrol in school, have troubles accessing health care and basic social services or are prevented from claiming their inheritance.[121] Furthermore, it is widely documented that displaced stateless children are at risk of being trafficked, recruited into armed forces, economically exploited, arbitrarily detained or forced into child marriages.[122] This partly results from the fact that it is difficult to determine the child's age if they have no birth certificate.[123] Moreover, the lack of citizenship and documentation creates barriers for family reunification and accessing schools and medical services. Closely linked to statelessness is also a violation of the right to identity, as guaranteed by art 8 of the *Convention on the Rights of the Child* ('*CRC*').[124] Without access to the nationality of their parents, children are deprived of an important part of their identity.[125] This could also mean that they are unable to enter the country of origin of their parents, where their grandparents or other relatives live. As a result, stateless children's human rights to health, education, welfare, family and to freedom of movement are restricted.[126]

Moreover, without citizenship, these children are very likely not eligible for repatriation, but instead remain in refugee camps in Syria and Iraq. The dire conditions in these camps are well-evidenced and violate children's rights to be free from torture and inhumane or degrading treatment, the right to life and the right to development.[127]

C *Case Studies*

To illustrate the potential risks citizenship deprivation of FTFs can have on their children, two case studies are briefly presented. In January 2020, a woman was deprived of her Australian citizenship while being detained in Al-Hol, the Syrian

120 Jyothi Kanics, 'Migration, Forced Displacement, and Childhood Statelessness' in Institute on Statelessness and Inclusion (ed), *The World's Stateless Children* (Wolf Legal Publishers 2017) 209, 213–15; UN Doc A/HRC/31/29 (n 15) 8–9 [21]–[24].

121 Kanics (n 120); UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict, 'The Rights and Guarantees of Internally Displaced Children in Armed Conflict' (Working Paper No 2, September 2010) 40 ('SRSG CAAC Working Paper'). See also Lillian Gill, 'Children Born of the ISIL Conflict in Iraq' (MA Thesis, Columbia University, 2019) 43–56.

122 See, eg, Jyothi Kanics (n 120); UN Doc A/HRC/31/29 (n 15) 12 [37], 13–14 [39]–[41].

123 SRSG CAAC Working Paper (n 121) 40.

124 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*CRC*').

125 See also UN Doc A/HRC/31/29 (n 15) 10–11 [31].

126 ibid 11–12 [34]–[37].

127 See, eg, Duru Yavan and Georgiana Epure, 'European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria' (Legal Briefing Paper, Open Society Justice Initiative, July 2021) 66–79 <https://www.justiceinitiative.org/uploads/d9762590-424c-4cb6-9112-5fedd0d959d1/european-states'-obligations-to-repatriate-the-children-detained-in-camps-in-northeast-syria-20210722.pdf> ('OSJI Briefing Paper'); Save the Children, *When Am I going to Start to Live? The Urgent Need to Repatriate Children Trapped in Al Hol and Roj Camps* (Report, 2021) <https://resourcecentre.savethechildren.net/document/when-am-i-going-start-live-urgent-need-repatriate-foreign-children-trapped-al-hol-and-roj>.

refugee camp.[128] The deprivation decision was retroactive by three years, meaning that her two youngest children were born after she had been stripped of her Australian citizenship. Although the mother was not left stateless, she is unable to confer her Lebanese citizenship to her children because only the father is able to pass on Lebanese citizenship.[129] The father of the children, who was also stripped of his Australian citizenship, but retained his Lebanese citizenship, is believed to be imprisoned. Although the children are technically entitled to Lebanese citizenship through their father, their birth would have needed to be registered within 30 days of their birth, accompanied by a birth certificate in order to obtain citizenship by birth.[130] According to *The Guardian*, the children do not have any documents proving their birth or parentage.[131] If the registration is not completed within the first year of birth, a judicial order is needed in order to declare the birth in the father's personal status record.[132] Without the administrative or judicial declaration of birth, the children do not hold Lebanese citizenship.[133] Their last option to avoid statelessness would be the country of birth, namely Syria. Syrian nationality law does offer children born on Syrian territory citizenship if they are not entitled to another foreign nationality at birth.[134] However, the provision does not appear to be implemented in practice.[135] Besides, the children's entitlement to Lebanese citizenship through their father might prevent this provision applying in the first place. Consequently, they are not able to obtain Syrian citizenship either. In any case, contrary to their siblings born earlier in Australia, the two youngest children are not entitled to Australian citizenship, which could potentially break up the family unit. As a result, the two youngest children are most likely stateless because their mother was stripped of her Australian citizenship before they were born.

But even children born before their parents joined the terrorist group are not immune from the harsh treatment FTFs receive once they are trapped in conflict zones. Two young boys, who were kidnapped by their father and taken to Syria in 2014, found themselves helpless after their father had presumably died in hostilities, and their stepmother was detained in a different camp.[136] Only four years later they were reunited with their Trinidadian mother following combined efforts from *The Guardian*, human rights lawyer Clive Stafford Smith and Roger Waters.[137] Until their repatriation, they had been de facto stateless, despite legally holding citizenships. Many other children face a similar fate and end up effectively stateless in Syrian camps, as states deny them repatriation or any other kind of assistance.

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128 Ben Doherty, 'Australian Mother of Five Stripped of Citizenship, Leaving Two Children Potentially Stateless', *The Guardian* (online, 17 January 2020) <https://www.theguardian.com/world/2020/jan/18/australian-mother-of-five-stripped-of-citizenship-leaving-two-children-potentially-stateless>.

129 'Lebanon: Discriminatory Nationality Law', *Human Rights Watch* (Web Page, 3 October 2018) <https://www.hrw.org/news/2018/10/03/lebanon-discriminatory-nationality-law>.

130 *Civil Status Records Law 1951* (1951) 50 Official Gazette, art 11 (Lebanon).

131 Doherty (n 128).

132 Samira Trad and Abbas Shiblack, *Invisible Citizens: Humiliation and a Life in the Shadows, A Legal and Policy Study on Statelessness in Lebanon* (Frontiers Ruwad Association 2011) 65.

133 ibid 66.

134 *Syrian Legislative Decree No 276* (n 111) art 3(D).

135 See, eg, Stateless Journeys, *Statelessness in Syria* (Country Position Paper, August 2019) 5–6 <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf>.

136 Bethan McKernan and Joshua Surtees, '"At Last, I Can Sleep": Brothers Kidnapped by ISIS Reunited with Mother in Syria', *The Guardian* (online, 22 January 2019) <https://www.theguardian.com/world/2019/jan/22/at-last-i-can-sleep-brothers-kidnapped-by-isis-reunited-with-mother-in-syria>.

137 ibid.

Despite continuous positive instances of children being repatriated from Syria, the living reality of hundreds of children of FTFs that continue to be held in detention camps without any prospect of repatriation looms large.[138]

IV CITIZENSHIP STRIPPING UNDER INTERNATIONAL HUMAN RIGHTS LAW

Although states are generally free to decide whom to grant nationality under domestic laws, they are limited to some extent by international human rights law ('IHRL') in their abilities to regulate citizenship.[139] IHRL does not generally prohibit the revocation of citizenship, but primarily aims to avoid statelessness and prohibits the *arbitrary* deprivation of citizenship. Furthermore, children enjoy special protection under IHRL that requires states to take the child's best interest into account when making decisions. In particular, during armed conflicts, states have a heightened responsibility to uphold children's rights,[140] and to ensure that they can register their parentage to subsequently obtain citizenship.[141] The following sets out the principles of international law regarding the protection against citizenship deprivation, namely the right to a nationality, the prohibition of statelessness and the prohibition of arbitrary citizenship deprivation, as well as applicable children's rights. National citizenship stripping measures will be assessed against these international obligations designed to protect children against the loss of citizenship. This will highlight possible violations of IHRL and emphasises why states should refrain from applying citizenship deprivations to FTFs.

A *Right to Nationality and Prohibition of Statelessness*

First of all, the right to a nationality is guaranteed in art 15 of the *Universal Declaration of Human Rights* ('*UDHR*'),[142] which includes the right of everyone to acquire, change and retain a nationality. However, it does not include a right to keep all the nationalities someone might have, and not even the current nationality, as it simply states that everyone should have one nationality, irrespective of which country.[143] The right to a nationality itself is not controversial but it is difficult to identify which states have the correlating responsibility to grant nationality to an

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138 See, eg, Helen Davidson, 'Children of ISIS Terrorist Khaled Sharrouf Removed from Syria, Set to Return to Australia', *The Guardian* (online, 23 June 2019) <https://www.theguardian.com/australia-news/2019/jun/24/children-isis-terrorist-khaled-sharrouf-return-australia-removed-syria>; Seth Farsides, 'France Repatriates 10 Children of ISIS Jihadists from Syrian Refugee Camps', *International Observatory of Human Rights* (online, 22 June 2020) <https://observatoryihr.org/news/france-repatriates-10-children-of-isis-jihadists-from-syrian-refugee-camps/>.

139 See Carol Batchelor and Philippe LeClerc, *Nationality and Statelessness: A Handbook for Parliamentarians* (UNHCR, 2005) 8–9.

140 See arts 38 and 39 of the *CRC* (n 124) which require states to protect children affected by armed conflict and promote their recovery and social reintegration. See also Jean-Marie Henckaerts et al, 'Rule 135: Children' in *Customary International Humanitarian Law* (Cambridge University Press 2005) vol 1, 479–81.

141 *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) art 50 ('*Geneva Convention IV*').

142 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) ('*UDHR*').

143 Shiva Jayaraman, 'International Terrorism and Statelessness: Revoking the Citizenship of ISIL Foreign Fighters' (2016) 17(1) *Chicago Journal of International Law* 178, 200.

individual.[144] Moreover, the right to a nationality primarily serves to avoid statelessness, not to protect a specific nationality. Hence, in the case of dual citizens, neither art 15 of the *UDHR* nor any of the other international human rights instruments recognising the right to a nationality provide protection against citizenship revoking.[145]

A child's right to a nationality enjoys special protections under international law, as enshrined in art 24(3) of the *International Covenant on Civil and Political Rights* ('*ICCPR*')[146] and further regional instruments.[147] Article 24(3) of the *ICCPR* and art 7 of the *CRC*[148] also guarantee the right of children to be registered immediately after birth, so that they can acquire a nationality. As international treaties, their applicability naturally depends on ratification by the respective countries. All nine countries discussed in this article — Australia, Austria, Belgium, Canada, Denmark, France, Germany, the Netherlands and the UK — have ratified both the *ICCPR* and the *CRC*.[149] Despite not always being directly justiciable in national courts, the *CRC* influences and complements national laws.[150] For example, in the UK, the 'domestic legislation has to be construed so far as possible so as to comply with the international obligations' even if an international treaty, such as the *CRC*, has not been incorporated into the domestic law.[151] Furthermore, Belgium, Denmark, France and Germany also allow individuals to raise a violation of the *CRC* with the UN Committee on the Rights

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144 William Thomas Worster, 'The Obligation to Grant Nationality to Stateless Children under Customary International Law' (2019) 27(3) *Michigan State International Law Review* 441, 480.

145 Examples of the right to a nationality being enshrined in other human rights treaties are: *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature, 660 UNTS 195 (entered into force 4 January 1969) art 5(d)(iii); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 24(3) ('*ICCPR*'); *CRC* (n 124) arts 7–8; *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9; *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 18(2); *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 29. Regional treaties which protect the right to a nationality include the *European Convention on Nationality*, opened for signature 6 November 1997, CETS No 166 (entered into force 1 March 2000) art 4 ('*European Convention on Nationality*'); *Arab Charter on Human Rights*, opened for signature 22 May 2004 (entered into force 15 March 2008) art 29; *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 144 (entered into force 18 July 1978) art 20 ('*American Convention on Human Rights*'); *Human Rights Declaration of the Association of Southeast Asian Nations*, signed 18 November 2012; *Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms*, signed 26 May 1995 (entered into force 11 August 1998) art 24.

146 *ICCPR* (n 145) art 24(3): '[e]very child has the right to acquire a nationality'.

147 See, eg, *European Convention on Nationality* (n 145) art 4; *African Charter on the Right and Welfare of the Child*, opened for signature 1 July 1990, OAU Doc CAB/LEG/153/Rev.2 (entered into force 29 November 1999) art 6; *American Convention on Human Rights* (n 145) art 20; *Covenant on the Rights of the Child in Islam*, signed 30 June 2005, art 7.

148 *CRC* (n 124).

149 '4. International Covenant on Civil and Political Rights', *UN Treaty Collection* (Web Page) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en>; '11. Convention on the Rights of the Child', *UN Treaty Collection* (Web Page) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en>.

150 For the use of the *CRC* in national courts, see 'Realising Rights? The UN Convention on the Rights of the Child in Court' (Research Report, Child Rights International Network, January 2018) <https://archive.crin.org/sites/default/files/uncrc_in_court.pdf>.

151 *Smith v Secretary of State for Work and Pensions* [2006] UKHL 35, [2006] 1 WLR 2024 [78].

of the Child in accordance with the *Optional Protocol to the Convention on the Rights of the Child* from 2011.[152] However, in the same manner as the *UDHR*, the *ICCPR* and *CRC* do not protect the child's nationality of a specific state but rather ensure that no child is without nationality. Hence, children have the right to acquire a nationality before they reach the age of majority. This is further underpinned by the 1961 *Convention on the Reduction of Statelessness* ('*1961 Convention*'), which obligates its member states to ensure that childhood statelessness is avoided.[153]

Similarly, the main instrument on statelessness, namely the *1961 Convention*, only prohibits citizenship deprivation if it leads to statelessness (art 8)[154] and, consequently, provides no protection for dual citizens. Yet, this prohibition is not universal since the *1961 Convention* has only 76 state parties and the treaty also contains numerous exceptions to this general rule.[155] One of these exceptions can be found in art 8(3)(ii) *leg cit*, which allows a state party to deprive a person of their sole nationality if the person has committed one of the behaviours listed, which includes conducting him- or herself 'in a manner seriously prejudicial to the vital interests of the State', and the respective national law stipulates this. To date, 10 countries, including Austria (1972), Belgium (2014) and the UK (1966), have made declarations under art 8(3) *leg cit* and retained the right to deprive people of their citizenship for various reasons, such as conduct 'seriously prejudicial' to the state's interest.[156] However, 'vital interests of the State' sets a very high threshold that cannot be reached by common criminal offences, but only by acts negatively impacting the state and contradicting the duty of loyalty, such as treason or espionage.[157] According to the *Tunis Conclusions*, conduct of this kind has to 'threaten the foundations and organization of the State whose nationality is at issue'.[158] It is questionable whether joining a terrorist group abroad, which is neither carrying out terrorist attacks in the state of nationality nor engaged in an armed conflict with that state, could reach the high threshold of threatening the foundations of the state. This is even more the case if the person concerned does not directly participate in hostilities abroad but supports the terrorist group through other means. Joining a terrorist group abroad likely violates national interests to some degree, especially if that terrorist group is active in an allied state; however, the threshold of 'vital interests' is difficult to reach. In this regard, many national denaturalisation laws refer to conduct that is undoubtedly reprehensible, but probably not inherently prejudicing the 'vital interests' of the state.

Furthermore, it must be noted here that art 8(3) of the *1961 Convention* only allows citizenship deprivation resulting in statelessness if the person concerned

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152 *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 19 December 2011, 2983 UNTS 131 (entered into force 14 April 2014).

153 See *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 185 (entered into force 13 December 1975) arts 1–4 ('*1961 Convention*').

154 ibid art 8(1): '[a] Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless'.

155 '4. Convention on the Reduction of Statelessness', *UN Treaty Collection* (Web Page) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5>.

156 See ibid for the declarations made by Austria, Belgium, Brazil, France, Georgia, Ireland, Italy, Jamaica, Lithuanian, New Zealand, Spain, Tunisia and the UK.

157 UNHCR, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality* (Summary Conclusions, March 2014) 14 [68] ('*Tunis Conclusions*').

158 ibid.

has conducted a specific act. William Thomas Worster rightly acknowledges that the 'common element in these scenarios that permit exceptions to the deprivation of nationality is a voluntary act'.[159] Nevertheless, not only the FTF but also his or her children — despite not having committed any crimes — might end up stateless.

At a regional level, the 1997 *European Convention on Nationality* ('*ECN*')[160] allows for the loss of nationality under similar, but stricter conditions: art 7(1) in conjunction with art 7(3) *leg cit* regulates that state parties can provide for the loss of nationality in the case of 'conduct seriously prejudicial to the vital interests of the State Party' only if it does not lead to statelessness. Further procedural rules stipulated by the *ECN* are that the decision must be issued in writing (art 11) and open to judicial review (art 12). However, from the countries mentioned in this article, the *ECN* was only ratified by Austria, Denmark, Germany and the Netherlands,[161] and hence, is not binding for the UK, Belgium or France.

Both the *1961 Convention* and the *ECN* aim at avoiding statelessness but they do not generally prohibit the revocation of citizenship. While the *ECN* ensures that state parties do not render persons stateless even if they commit acts 'seriously prejudicial to the vital interests' of the state, the *1961 Convention* obliges states not to revoke someone's citizenship for other reasons than the aforementioned if it would render the person stateless — which means that not every act of disloyalty qualifies for citizenship stripping resulting in statelessness.

B *Arbitrary Deprivation of Citizenship*

Since the 'avoidance of statelessness is a general principle of international law',[162] any deprivation of citizenship that leads to statelessness will be generally arbitrary, unless it fulfils the strict requirements of art 8(3) of the *1961 Convention* where applicable.[163] However, even if a citizenship deprivation does not lead to statelessness, it still might violate the right to a nationality as art 15(2) of the *UDHR* declares that no one 'shall be arbitrarily deprived of his nationality'. Citizenship deprivations are arbitrary if they are not provided by law, have no legitimate purpose, are disproportionate, are not the least intrusive method or disrespect procedural standards.[164] Equally, the European Court of Human Rights ('ECtHR') has confirmed that in order to determine the arbitrariness of a citizenship deprivation, it has to be considered

> whether the revocation was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision

159 Worster (n 144) 486.

160 *European Convention on Nationality* (n 145).

161 'Chart of Signatures and Ratifications of Treaty 166', *Council of Europe Treaty Office* (Web Page) <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/99933815?module=signatures-by-treaty&treatynum=166>.

162 Human Rights Council, *Arbitrary Deprivation of Nationality: Report of the Secretary-General*, UN Doc A/HRC/10/34 (26 January 2009) 14 [51].

163 ibid.

164 ibid 14 [49]; *European Convention on Nationality* (n 145) art 4(c); CoE Resolution No 2263 (n 101) 7; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary*-General, UN Doc A/HRC/25/28 (19 December 2013) 4 [4].

> before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly.[165]

Furthermore, the Council of Europe's Parliamentary Assembly takes the non-binding view that nationality deprivation can only be applied in compliance with the *European Convention on Human Rights* ('*ECHR*')[166] if it is necessary and proportionate and that the deprivation should be decided or reviewed by a criminal court, cannot result in statelessness and, if applied to a parent, cannot result in the deprivation of the nationality of the children.[167]

According to the International Law Commission, a deprivation of nationality for the 'sole purpose' of expulsion is 'abusive, indeed arbitrary within the meaning' of art 15(2) of the *UDHR* because expulsion is not a legitimate aim of citizenship deprivation.[168] Nevertheless, the UK Secretary of State explained in 2014 that the purpose of s 40 of the *BNA* is expulsion.[169] The legitimate purposes for citizenship deprivation are listed in art 8 of the *1961 Convention*, as well as art 7 of the *ECN*. Although the previously discussed national laws generally base citizenship deprivation on the legitimate ground of committing acts of disloyalty, not every person deemed a 'foreign fighter' will in fact act 'in a manner seriously prejudicial to the vital interests of the State'.[170]

It is also highly questionable whether deprivation of citizenship as such is proportionate or the least intrusive method because there are other measures, such as travel bans, confiscation of IDs or expanded security and intelligence powers to first, prevent citizens from leaving the country to join a terrorist group abroad and second, to ensure they are not committing terrorist crimes upon return.[171] This is of particular importance if citizenship deprivation leads to statelessness because it must be evidenced that it is the only adequate measure available in light of the severe impact statelessness has on an individual. Moreover, nationality laws that prescribe citizenship deprivation automatically upon fulfilling the conditions set out in law do not leave room for a proportionality assessment in the individual case. For example, the Austrian law implies that deprivation is necessary as soon as the citizen becomes a foreign fighter, without assessing whether it is the least intrusive method for the relevant individual.[172] Although nationality laws that give wide discretion in applying citizenship deprivation would hence be able to comply with the requirement of proportionality, the case of the UK depriving their citizens of nationality without properly assessing whether the women and girls travelling

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165 *K2 v The United Kingdom* (European Court of Human Rights, First Section, Application No 42387/13, 7 February 2017) 11–12 [50].

166 *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS No 5 (entered into force 3 September 1953) as amended by *Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 11 May 1994, ETS No 155 (entered into force 1 November 1998) and *Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention*, opened for signature 13 May 2004, CETS No 194 (entered into force 1 June 2010).

167 CoE Resolution No 2263 (n 101) 2 [7].

168 *Report of the International Law Commission*, UN Doc A/69/10 (5 May–6 June and 7 July–8 August 2014) 32.

169 Mattia Pinto, 'The Denationalisation of Foreign Fighters: How European States Expel Unwanted Citizens' (2018) 9 *King's Student Law Review* 67, 74.

170 See Part IV(A).

171 UN Doc A/HRC/25/28 (n 164) 16 [40].

172 This implication arises from the fact that the Austrian law applies *ex officio*: as soon as the requirements set out in the law are met, the individual loses their citizenship. The law does not allow for discretion.

to Syria have been victims of human trafficking indicates that the available discretion is not being used to appropriately assess individual cases.[173]

Besides, an arbitrary deprivation of citizenship possibly runs counter to the right to family and private life, as guaranteed by art 17 of the *ICCPR* and art 8 of the *ECHR*. The ECtHR has declared that the arbitrary denial of citizenship infringes art 8 of the *ECHR*, hence also the arbitrary revocation of citizenship has to be assessed under art 8.[174] Elke Cloots provides a convincing prediction of how the ECtHR would assess the deprivation of citizenship against art 8 after thoroughly examining existing case law about access to citizenship: she argues that the deprivation is not per se contradicting art 8, but rather there has to be a case-by-case assessment to find a balance between the offence committed and the individual's private life.[175] In other words, the more insignificant the terrorist offence and the stronger the individual's bond with the country, the more likely it is that the deprivation will violate art 8.[176] This is applicable whether the person has one or more citizenships, as the deprivation can possibly violate the right to private life in one country, even if the person still maintains the citizenship of another country.

Finally, some of the nationality laws also do not comply with the necessary procedural rights. Minimal procedural safeguards, like citizenship deprivation decisions being issued in writing or open to appeal, are generally respected. However, laws that deprive people of their nationality with immediate effect while they are still abroad, ignore the right to be present during the proceeding for an effective defence and the requirement of issuing orders without immediate effect so that access to a judicial authority is guaranteed.[177] An immediate effect without a suspensive appeal implies that the person concerned can either be deported before the appeal process, if they are in the country, or might not be able to re-enter the country for the appeal process if they are abroad. The culmination of a short time period for appeal and the fact that the person is not present during the administrative decision-making and might not be able to defend themselves raises serious questions about the right to an effective remedy and a fair trial. An absence of judicial process in this manner violates the prohibition of arbitrary deprivation of citizenship. In the case of *Begum*, she was denied a cross-appeal and the

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173 According to Reprieve, the UK Government has failed in protecting suspected victims of human trafficking currently detained in Northeast Syria and instead has applied a blanket policy of citizenship stripping: see Linstrum-Newman, 'Trafficked to ISIS' (n 80) 41–54.

174 *Ramadan v Malta (Judgment)* (European Court of Human Rights, Fourth Section, Application No 76136/12, 21 June 2016) 21 [85].

175 Elke Cloots, 'The Legal Limits of Citizenship Deprivation as a Counterterror Strategy' (2017) 23 *European Public Law* 72–75.

176 It must be noted that in March 2022 the European Court of Human Rights ('ECtHR') ruled in *Johansen v Denmark (Decision)* (European Court of Human Rights, Second Section, Application No 27801/19) that the applicant's complaint of an infringement of article 8 of the *ECHR* was inadmissible. In this case, the applicant had been deprived of his Danish citizenship after joining ISIS in Syria and was left with his Tunisian citizenship, despite being born, raised, and educated in Denmark, being married to a Danish woman with a son, and his mother and sibling also living in Denmark. Nevertheless, the ECtHR decided that the deprivation of citizenship was not arbitrary. For a discussion of the ruling see, for example, Maria Martha Gerdes and Samuel Hartwig, 'Anything Goes? The Permissive Approach of the ECtHR towards Deprivation of Nationality and Subsequent Expulsion in the Fight against Terrorism', *Electronic Immigration Network* (Blog Post, 12 April 2022) <https://www.ein.org.uk/blog/anything-goes-permissive-approach-ecthr-towards-deprivation-nationality-and-subsequent>.

177 UN Doc A/HRC/25/28 (n 164) 14 [33]. See also Pinto (n 169) 76.

judgement of 26 February 2021 means that she would not be allowed back into the UK to play a part in her appeal.

C *Children's Rights*

The *CRC* is of particular importance for the children of FTFs.[178] It sets out the key principles for the treatment of children in international law, namely the principle of non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development.[179] Generally, statelessness violates all these principles because stateless children face serious human rights violations.

The principle of putting the best interest of the child at the core of all decisions concerning the child is codified in art 3 of the *CRC*. States practicing deprivation of nationality need to assess the best interests of children affected and safeguard these interests when depriving them or their parents of their citizenship. Furthermore, all states are obliged to 'adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born'.[180] This has led to countries being compelled to grant every child born on their territory nationality, if they would otherwise be stateless.[181] While this might be a feasible solution in the case of refugee families, minority groups or other migrants that plan to build their lives in that new country, the situation of FTFs waiting to be repatriated and having an opportunity to come back home is different. Furthermore, the obligation to ensure nationality for every child is not only directed at the child's country of birth but to all countries with which the child has a link, for example, by parentage.[182]

While the current practice of eradicating statelessness focuses on the obligation of countries of birth, it could be a better practice for states to refrain from citizenship deprivations of FTFs that might result in the statelessness of their children in the first place and to acknowledge the children's citizenship and repatriate them. This would not only relieve the burden of states affected by armed conflicts but also protect the best interest of the child.[183] Hence, it could be argued that for those cases, the obligation to avoid statelessness among children should not necessarily start with the country where the children were born but with the countries depriving their parents of citizenship and creating a legal vacuum for their children. Instead of countries of birth filling in the gaps by granting children born on their territory citizenship to avoid statelessness, the countries of origin could avoid putting children in this situation in the first place. This is further underpinned by the obligation of states to ensure that 'nationality is not denied to persons with relevant links to that State who would otherwise be stateless,'[184] which clarifies that not only children born on the territory of a state or children born to a national but also children with other relevant links can qualify for

178 *CRC* (n 124).
179 ibid arts 2–3, 6, 13.
180 UN Doc A/HRC/31/29 (n 15) 4 [10].
181 *1961 Convention* (n 153) art 1.
182 UNHCR, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children* (Summary Conclusions, May 2011) 2–3 [5] <https://www.unhcr.org/en-au/protection/expert/4e847ecf9/interpreting-1961-statelessness-convention-preventing-statelessness-among.html>.
183 *Children and Armed Conflict: Report of the Secretary-General*, UN Docs A/74/845 and S/2020/525 (9 June 2020) 12 [79].
184 UN Doc A/HRC/13/34 (n 171) 9 [36].

citizenship. This might be the case if the child of a FTF has grandparents or relatives in the country of origin, but also if older siblings retained the citizenship because they were born before the parent was deprived of the citizenship of that country. Worster also affirms that the territorial state can avoid its obligation to grant the child nationality, if it can secure a de jure nationality for the child from another state.[185] Preventing the creation of statelessness for children of FTFs is also the focus of the UN Secretary-General, as he urged states to 'accept their nationals and children born to their nationals', 'grant those children nationality' and 'take actions to prevent them from becoming stateless'.[186]

Moreover, the general obligation of states to afford nationality to children born on their territory that otherwise would be stateless does not offer complete protection to children born stateless.[187] According to UNHCR, in 2014, 29% of states did not have national provisions which implemented this obligation and at least 28% did not have adequate provisions.[188] Only 12 out of 55 states in Africa and two of 17 states in the Middle East and North Africa were found to have full safeguards by conferring nationality to children born stateless on their territory.[189] Therefore, it is vital that all countries with which the child has a link — which, in the case of children born to FTFs, mainly means the country that has deprived the parents of their citizenship — recognise their obligation to offer the child citizenship. The responsibility to avoid statelessness among children born to FTFs should not solely lie with the state in which the child was born, especially when the country of parentage has purposefully contributed to the statelessness of the child in the first place by depriving the parents of their nationality.

D *Non-Discrimination*

The principle of non-discrimination is a firmly anchored principle in international human rights law when applying and interpreting human rights.[190] With the right of nationality, it generally ensures that the right to a nationality can be enjoyed without any discrimination on the basis of various grounds, such as race, colour, descent, national or ethnic origin or sex.[191] With a view to the special rights of children, it also protects children from being deprived of a nationality based on their parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[192] In particular, the Human Rights Council has recognised that the

185 Worster (n 144) 537.

186 António Guterres, UN Secretary-General, 'Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups' (Discussion Paper, United Nations, April 2019) 4 <https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf>.

187 UN Doc A/HRC/13/34 (n 171) 9 [36].

188 UNHCR, *Global Action Plan to End Statelessness 2014–2024* (Report, 2014) 10 <https://www.unhcr.org/54621bf49.html>.

189 UN Doc A/HRC/31/29 (n 15) 7 [18].

190 *UDHR* (n 142) art 2; *ICCPR* (n 145) art 2; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 5; *ICERD* (n 145) art 3; *CRPD* (n 145), art 2; *CRC* (n 124) art 2–3, 9; *CEDAW* (n 145); *ICMW* (n 145) art 1.

191 See *ICERD* (n 145) art 5(d)(iii); *ICCPR* (n 145) art 24(3); *CRC* (n 124) arts 7–8; *CEDAW* (n 145) art 9; *CRPD* (n 145) art 18(2); *ICMW* (n 145) art 29.

192 *CRC* (n 124) art 2(1).

deprivation of nationality should not extend to a person's children.[193] Further, art 2 of the *CRC* expressly requires a state to protect children against discrimination or punishment on the basis of the 'activities, expressed opinions, or beliefs' of their parents, family members or legal guardians. In other words, a child should enjoy a nationality irrespective of the parent's behaviour or past actions, including joining a terrorist group. Otherwise, the deprivation of citizenship runs the risk of being discriminatory, thereby violating the child's rights. The Committee on the Rights of the Child went even further and recommended that states may not deprive a child of his or her nationality on any ground, regardless of the status of his or her parents.[194] Nevertheless, some citizenship deprivation laws, for example in Australia and the Netherlands, also apply to minors.

Further, many of the citizenship deprivation laws discussed previously are discriminatory and violate the principle of equality before the law. By distinguishing between naturalised citizens and citizens by birth, as well as between citizens with only one nationality and those with multiple, the law is applied unequally. This potentially violates the principle of equality of citizenship as it creates second class citizens.[195] Sanctioning predominantly nationals who have ancestors from another country or who immigrated to the country might also violate the prohibition of discrimination embodied in art 14 of the *ECHR*.[196] As Zedner correctly states, there are no objective reasons to treat citizens differently based on the method of citizenship acquisition, as naturalised citizens are not more likely to commit terrorist attacks than born citizens.[197]

E *Recommendations*

Instead of depriving FTFs of their citizenship and refusing to confer citizenship on their children, states should acknowledge their responsibility under IHRL and provide protection for these children trapped in armed conflicts. Although the *Convention relating to the Status of Stateless Persons* ('*1954 Convention*') sets out minimum standards for the treatment of stateless persons and therefore offers some protection to stateless children, only about half of the countries in the world are parties to the *1954 Convention*.[198] Notable exceptions include Syria and Iraq, where the majority of children of FTFs are trapped in camps. Promoting the ratification of the *1954 Convention* among those countries might increase the safety of some children but does not provide a solution for all of them. The limited protection offered by the *1954 Convention* is based on two reasons. Firstly, the *Convention* only covers de jure stateless persons, thereby excluding

193 UN Doc A/HRC/25/28 (n 164) 11 [24].

194 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention*, UN Doc CRC/C/UKR/CO/3-4 (21 April 2011) 8 [38].

195 *1961 Convention* (n 153) art 9.

196 Elke Cloots (n 175) 76. See also Louise Reyntjens, 'Citizenship Deprivation under the European Convention-System: A Case Study of Belgium' (2019) 1(2) *Statelessness & Citizenship Review* 263.

197 Lucia Zedner (n 32) 238–39.

198 '3. Convention relating to the Status of Stateless Persons', *UN Treaty Collection* (Web Page) <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en>.

all de facto stateless children from its application.[199] In other words, children who are not being repatriated and hence are unable to seek the protection of the state whose nationality they are entitled to due to their parentage do not benefit from the *1954 Convention*. Secondly, although the *1954 Convention* ensures certain rights for children who do fall under the de jure statelessness definition, the *Convention* does not change the legal status of stateless children. Consequently, it leaves vulnerable children in conflict-affected regions without the possibility of being repatriated, which should be avoided.

Possible solutions to the crisis of foreign children detained abroad include offering stateless children refugee status and asylum or repatriating families. Moreover, states should be encouraged to apply their nationality laws in a more flexible way in order to provide children born in conflict zones with citizenships.[200] In this regard, the approach taken by France is a good example: authorities rely on a variety of evidence, such as photos, messages and testimonies, when establishing nationality rather than insisting on DNA proof while the children are still abroad.[201] Another leading example is Kosovo, which has been proactive in repatriations, criminal prosecution of FTFs and reintegration of children.[202] Additionally, it would facilitate the use of international mechanisms, particularly in repatriation processes, if children are viewed as victims in armed conflicts.[203] Encouraging UN agencies such as the United Nations Office of Counter-Terrorism to take such an approach, for example, by clarifying the definition of 'association' with FTFs and their associated groups, could also be a way to assist such mechanisms to pursue policies with a human rights-based approach.

Regarding the issue of children of FTFs being eligible for refugee status, Ana Luquerna argued that 'children who lived in the ISIS regime and who do not have the ability to be repatriated to their home country'[204] represent a particular social group that enjoys protection from persecution under the *Convention relating to the Status of Refugees* ('*1951 Refugee Convention*').[205] This is convincing because these children fulfil the criteria of being outside their country of origin, having a well-founded fear of persecution on a ground listed in art 1A(2) of the *1951 Refugee Convention* and have no internal flight or relocation alternative: the children of FTFs are either born abroad or in the conflict territories but are mainly entitled to their parent's nationality and, therefore, are outside of their country of origin. As clearly demonstrated by Luquerna in her

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199 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 1: '[f]or the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law'.

200 See also OSJI Briefing Paper (n 127) 43–46 [75]–[78].

201 René DeGroot et al, 'Expert Opinion: How the Netherlands, France and the UK are Leaving Children Stranded at Risk of Statelessness in Iraq and Syria', *European Network on Statelessness* (Blog Post, 29 October 2021) <https://www.statelessness.eu/updates/blog/expert-opinion-how-netherlands-france-and-uk-are-leaving-children-stranded-risk>.

202 Teuta Avdimetaj and Julie Coleman, 'What EU Member States Can Learn from Kosovo's Experience in Repatriating Former Foreign Fighters and their Families' (Policy Brief, Clingendael Institute, May 2020) <https://www.clingendael.org/sites/default/files/2020-06/Policy_Brief_Kosovo_experience_repatriating_former_foreign_fighters_May_2020.pdf>.

203 In accordance with UN Security Council, *Resolution 2427 (2018)*, UN Doc S/RES/2427 (9 July 2018) 5 [20].

204 Ana Luquerna (n 117) 153.

205 *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

article, the children have a well-founded fear of persecution by their own home countries, who refuse to repatriate them and effectively deprive them of their citizenships. They also have a well-founded fear of persecution by local authorities who indefinitely and unlawfully detain them without access to basic resources.[206] Finally, the children of FTFs form a distinct social group and, hence, fulfil the 'nexus' requirement of the *1951 Refugee Convention* since they are being persecuted for having lived in the ISIS regime.[207] Thus, children of FTFs who are trapped in camps and are not being repatriated by their home countries should be entitled to the protection of third states through asylum.

V CONCLUSION

Being born or brought up during armed conflict is already an incredibly difficult situation to be in, even if the child is in possession of a citizenship. If children are stripped of their citizenship due to their parents' behaviour or unable to inherit citizenship because their parents have been deprived of their citizenship, this exacerbates the difficult life circumstances of that child unnecessarily. Statelessness is a gateway to the loss of many other basic rights, such as the right to healthcare, education, housing, family and social security. Nevertheless, states still view citizenship deprivation as an adequate measure to fight global terrorism. As this article has shown, the inadequacy and inappropriateness of this measure is evident. Citizenship deprivation is not only ineffective but counterproductive as a measure and leads to further marginalisation of individuals and groups whose identity may already be somewhat fragile. In the name of an overreach of executive powers, this unwarranted narrative prioritises securitisation over human security.

While states generally have the right to decide who their nationals are, this right is not absolute, as confirmed by the International Law Commission Special Rapporteur on Nationality in Relation to the Succession of States and the Inter-American Court of Human Rights.[208] Instead, states need to ensure 'that they exercise their discretionary powers concerning nationality issues in a manner that is consistent with their international obligations in the field of human rights'.[209]

Many anti-terrorism denaturalisation laws are already in conflict with the prohibition on discrimination, the requirements of art 8(3) of the *1961 Convention* or the prohibition of arbitrary deprivation of citizenship by violating the requirements of being proportionate, necessary and in accordance with procedural rights. Moreover, the resulting stateless of children clearly violates the best interests of the child. As demonstrated, depriving FTFs of their nationality seriously increases the risk of their children born abroad of becoming de jure or de facto stateless. Moreover, the way in which citizenship deprivation powers are currently applied in various countries does not guarantee that individual circumstances are taken into account when determining whether a person should be deprived of their citizenship or not. Ultimately, citizenship stripping measures for the act of joining or supporting terrorist or proscribed groups can create more problems than it solves and should be reconsidered.

206 Luquerna (n 117) 182–86.
207 ibid 186–88.
208 UN Doc A/HRC/13/34 (n 163) 6 [20] citing *Yearbook of the International Law Commission*, UN Doc A/CN.4/SER.A/1997/Add.1 (Part 1) (28 February 1997) 20.
209 ibid.

Children born in conflict zones to foreign parents need to receive adequate protection and not be punished. They should be seen as victims in armed conflicts and greater importance should be given to them and their family's reintegration into society.