GLOBALIZING *ANUDO V. TANZANIA*: Applying the African Court's Arbitrariness Test to the UK's Denationalization of Shamima Begum

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Abstract

Under international law, every individual has the right to a nationality. States reserve a sovereign right to deny or revoke citizenship, but only insofar as these practices respect their international legal obligations, including the prohibition of arbitrary deprivation of nationality. In the 2018 case of *Anudo v. United Republic of Tanzania*, the African Court on Human and Peoples' Rights applied an arbitrariness test based on, inter alia, an interpretation of the Universal Declaration of Human Rights to determine whether or not Tanzania had arbitrarily deprived the petitioner of his nationality. This Comment considers the potential of applying *Anudo*'s interpretation of the UDHR in other regional and national contexts. Specifically, the Comment applies the four elements of the *Anudo* arbitrariness test to the case of Shamima Begum, who joined Daesh (also known as ISIL, ISIS and IS) in Syria as a teenager, and whose British citizenship was subsequently stripped in 2019. Under the *Anudo* test, deprivation of nationality will be arbitrary under international law unless it: (i) is founded on a clear legal basis; (ii) serves a legitimate purpose that conforms with international law; (iii) is proportionate to the interest protected; and (iv) installs procedural guarantees which must be respected, allowing the concerned to defend themselves before an independent body. The Comment determines that the United Kingdom's decision to deprive Begum of her nationality for national security purposes fails to satisfy the test outlined in *Anudo* for nonarbitrary denationalization, thus rendering the Home Office's decision unlawful under international law. This analysis leads to wider implications for the arbitrariness of deprivation of nationality as a counterterrorism strategy within and beyond the UK, warning that if states continue to conduct arbitrary deprivations of nationality for purported national security purposes, they could continue to exile individuals based on unconfirmed allegations, perpetuate a system of racial exclusion, violate universal standards for human rights protection, and potentially exacerbate the exact threats the State purports to be fighting.

About the Author

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Introduction

International law provisions every individual the right to a nationality, of which they may not be arbitrarily deprived.[1] States reserve the sovereign right to deny or revoke citizenship, as long as doing so respects their international legal obligations.[2] These obligations include to respect the prohibition of arbitrary deprivation of nationality, the prohibition of discrimination,[3] and

1. G.A. Res. 217 A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights]; G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(iii) (Dec. 21, 1965) [hereinafter International Convention on the Elimination of All Forms of Racial Discrimination]; G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 24(3) (Dec. 16, 1966) [hereinafter International Covenant on Civil and Political Rights]; G.A. Res. 44/25, Convention on the Rights of the Child, arts. 7 and 8 (Nov. 20, 1989) [hereinafter Convention on the Rights of the Child]; G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art. 9 (Dec. 18, 1979) [hereinafter Convention on the Elimination of All Forms of Discrimination Against Women]; G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, art. 18 (Dec. 13, 2006) [hereinafter Convention on the Rights of Persons with Disabilities]; G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 29 (Dec. 18, 1990) [hereinafter International Convention on the Protection of the Rights of All Migrant Worker and Members of Their Families]. Regional instruments also guarantee the right to nationality and the prohibition of arbitrary deprivation. *See* the African Charter on the Rights and Welfare of the Child, art. 6; the American Convention on Human Rights, art. 20; the Arab Charter on Human Rights, art. 29; the European Convention on Nationality, art. 4; and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, art. 24. For more on this international and regional legal framework, *see* U.N. Secretary-General, *Human rights and arbitrary deprivation of nationality*, ¶ 21, U.N. Doc. A/HRC/13/34 (Dec. 14, 2009), https://www.refworld.org/docid/4b83a9cb2.html.

2. *See* U.N. Int'l Law Comm'n, Yearbook of the International Law Commission, at 24, U.N. Doc. A/CN.4/SER.A/1999/Add.1 (Part 2), U.N. Sales No. 02.V.10 Pt2 (2004).

3. *See* International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 1; Convention on the Elimination of All Forms of Discrimination

the prohibition of statelessness.[4] These prohibitions have risen to the level of customary international law and thereby apply to all states.[5]

As such, in the context of deprivation of nationality—also known as citizenship stripping or, more broadly, denationalization—states are required to examine whether the person possesses another nationality at the time of loss or deprivation.[6] Further, a State's decision to strip the citizenship of one of its nationals will only be lawful if it is nonarbitrary, if it is not discriminatory, and if it adequately respects the State's other international human rights law obligations.[7]

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against Women, *supra* note 1; Universal Declaration of Human Rights, *supra* note 1, art. 2; International Covenant on Civil and Political Rights, *supra* note 1, arts. 2 and 26; International Covenant on Economic, Social and Cultural Rights, art. 2(2); Convention on the Rights of the Child, *supra* note 1, art. 2; Convention on the Rights of Persons with Disabilities, *supra* note 1, art. 5; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *supra* note 1, art. 7.

4. *See* G.A. Res. 896 (IX), Convention on the Reduction of Statelessness (Dec. 4, 1954) [hereinafter the 1961 Convention]; G.A. Res. 526A (XVII), Convention relating to the Status of Stateless Persons (Sept. 28, 1954) [hereinafter the 1954 Convention]; Convention on the Rights of the Child, *supra* note 1, art. 8; European Convention on Nationality, *supra* note 1, art. 4(b). *See also* U.N. Secretary-General, *Human rights and arbitrary deprivation of nationality*, U.N. Doc. A/HRC/25/28 (Dec. 19, 2013), https://undocs.org/en/A/HRC/25/28 ("As a corollary to this right [to a nationality], States must make every effort to avoid statelessness through legislative, administrative and other measures"); UNHCR, *Handbook on the Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014), para. 50 ("An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question.").

5. *See, for example*, European Convention on Nationality Explanatory Report para. 33, Nov. 6, 1997, E.T.S. 166, https://rm.coe.int/16800ccde7; Int'l Law Comm'n, Fourth rep. on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, U.N. Doc. A/CN.4/727 (2019), https://undocs.org/pdf?symbol=en/A/CN.4/727.

6. U.N. High Comm'r for Refugees (UNHCR), *Expert Meeting—Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")* (2014), ¶ 5 [hereinafter *Tunis Conclusions*], https://www.refworld.org/docid/533a754b4.html. This Comment uses *deprivation of nationality (deprivation), citizenship stripping* and *denationalization* synonymously. All three terms are used to describe the legal and administrative measures taken to facilitate the involuntary loss of citizenship or nationality. While the terms do have technically distinct meanings, they are often used interchangeably in practice. *For a deeper discussion of the terms and their definitions, see, for example, the Tunis Conclusions.*

7. *See* Inst. on Statelessness and Inclusion, Principles on Deprivation of Nationality as a National Security Measure (2020), https://files.institutesi.org/PRINCIPLES.pdf.

Australia,[8] Canada,[9] The Netherlands,[10] the United Kingdom,[11] the United States,[12] and various other countries have increasingly utilized their powers of deprivation of nationality as a counterterrorism strategy to expel nationals who are accused of posing a risk to national security. The United Kingdom in particular has broadened its deprivation powers to such an extent that in the most extreme conditions, the Home Office may strip both British-born and naturalized citizens of British citizenship, if the Secretary of State concludes that the individual may be able to acquire the nationality of another State—*even if* they do not possess another nationality at that time.[13] While all denationalization practices deserve to be interrogated, the breadth of the UK's deprivation power and the direct risk it poses for statelessness sets the UK apart from others. This practice and its severe consequences have been brought into the international spotlight with the case of 19-year-old Shamima Begum,[14] who has been rendered effectively stateless as she appeals the UK's decision to strip her of citizenship after joining Daesh.[15]

This Comment applies the arbitrariness test from the groundbreaking 2018 case *Anudo v. United Republic of Tanzania* to the situation of Shamima Begum, whose British citizenship was stripped in February 2019. In *Anudo v.*

8. *See, for example*, David J. Trimbach & Nicole Reiz, Ctr. for Migration Studies, Unmaking Citizens: The Expansion of Citizenship Revocation in Response to Terrorism (2018), https://cmsny.org/publications/unmaking-citizens.

9. *See, for example*, Audrey Macklin, *Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien*, 40 Queen's L.J. 31 (2014), https://www.queensu.ca/lawjournal/sites/webpublish.queensu.ca.qljwww/files/files/issues/pastissues/Volume40-1/03-Macklin.pdf.

10. *See, for example*, Migration Law Clinic, University of Amsterdam, The legality of revocation of Dutch nationality of dual nationals involved in terrorist organizations (2018), https://migrationlawclinic.files.wordpress.com/2018/09/mlc-nationality-case-final-version.pdf.

11. *See, for example*, Amanda Weston, *Deprivation of Citizenship in the UK: A Litigator's Perspective*, *in* The World's Stateless 2020: Deprivation of Nationality (Inst. on Statelessness and Inclusion ed., 2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf.

12. *See*, *for example*, Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, N.Y. Times (Feb. 26, 2020), https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html.

13. This contradicts the Tunis Conclusions' interpretation of the requirements set out in the 1961 Convention. *See Tunis Conclusions*, *supra* note 6.

14. *New Blog: The Shamima Begum Case: 'Revoking Citizenship is ineffective and counterproductive*, Asser Inst. (Feb. 22, 2019), https://www.asser.nl/about-the-institute/asser-today/new-blog-the-shamima-begum-case-revoking-citizenship-is-ineffective-and-counterproductive.

15. Daesh is also known as Islamic State of Iraq and Syria (ISIS), Islamic State of Iraq and the Levant (ISIL) and the Islamic State (IS). The Comment uses this term to align with the chosen language of the UK, as well as other states, in recognition that Daesh does not meet the requirements of statehood or represent Islam. *See, for example*, Faisal Irshaid, *Isis, Isil, IS or Daesh? One group, many names*, BBC (Dec. 2, 2015), https://www.bbc.com/news/world-middle-east-27994277.

United Republic of Tanzania, the African Court on Human and Peoples' Rights held, inter alia, that Tanzania's deprivation of Anudo Ochieng Anudo's nationality failed to comply with international legal obligations and constituted arbitrary deprivation contrary to Article 15(2) of the Universal Declaration on Human Rights (UDHR).[16] The Court also importantly established that the burden of proof falls on states, rather than on the individual, to determine that an individual has or lacks the nationality of the State.[17]

While the *Anudo* case did not examine deprivation of nationality in the context of national security, and as such cannot provide a direct analogy, the case offers an important analytical framework under which Begum's case and all other deprivation decisions may be scrutinized. Of course, jurisprudence from the African Court cannot create binding precedent on other jurisdictions. However, the arbitrariness test that the African Court on Human and Peoples' Rights applied in *Anudo* drew from the Human Rights Council's interpretation of human rights and arbitrary deprivation of nationality under international law.[18] The Tribunal's interpretation of the UDHR thus offers guidance to be considered in other regional and national contexts, and as one of the main three regional mechanisms for human rights law, its decisions can be persuasive around the world. As such, this Comment examines the potential of applying this African interpretation of international law beyond the African continent, questioning what the application of this test would look like in the context of Begum's denationalization under British law. This analysis then leads to wider implications for the arbitrariness of deprivation of nationality as a counterterrorism strategy within and beyond the UK.

The Comment begins with a brief discussion in Part I on the phenomenon of "foreign terrorist fighters," in order to introduce the individuals who are usually targeted by deprivation powers when employed as a counterterrorism

16. Anudo v. United Republic of Tanzania, App. No. 012/2015, African Court on Human and People's Rights [Afr. Ct. H.P.R.], (Mar. 22, 2018). *See also* Inst. on Statelessness and Inclusion, *supra* note 7, at 6 ("Recalling Article 15 of the Universal Declaration of Human Rights, according to which everyone has the right to a nationality and no one shall be arbitrarily deprived of his or her nationality, and asserting that States should 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."). *See also* Ndjodi Ndeunyema, *Anudo v Tanzania: The African Court Recognises the Right to Nationality under Customary International Law*, Oxford Hum. Rts. Hub (Apr. 19, 2018), https://ohrh.law.ox.ac.uk/anudo-v-tanzania-the-african-court-recognises-the-right-to-nationality-under-customary-international-law.

17. Anudo v. United Republic of Tanzania, *supra* note 16, ¶ 80: "It is the opinion of the Court that, since the Respondent State is contesting the Applicant's nationalify held since his birth on the basis of legal documents established by the Respondent State itself, the burden is on the Respondent state to prove the contrary."

18. *Human rights and arbitrary deprivation of nationality*, *supra* note 4. For analysis of the *Anudo* decision, *see* Brownen Manby, *Case Note: Anudo Ochieng Anudo v. Tanzania (Judgment)*, 1 Statelessness and Citizenship Review 170 (2018), https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/75.

strategy. Part II discusses the global landscape of citizenship stripping for national security purposes, and then summarizes the United Kingdom's relevant legislative history and recent trends of denationalization. Next, Part III introduces the case of Shamima Begum, the UK's 2019 decision to strip her citizenship, and her ongoing process of appeal.

The crux of the Comment is reached in Part IV, where the *Anudo* arbitrariness test is applied to the case of Shamima Begum. This Part first introduces *Anudo v. Tanzania* and the test it deployed to assess whether deprivation of the applicant's nationality was arbitrary. The Part then walks through each of the four elements of the test as they relate to Begum's case, taking into account other guiding interpretations of international law: primarily, the Global Counterterrorism Forum's Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context[19] and the Institute on Statelessness and Inclusion's Principles on Deprivation of Nationality as a National Security Measure.[20] This Part's analysis leads to the assessment that Begum's denationalization is arbitrary under international law, as it fails to establish at least three of the four required elements of nonarbitrary deprivation.

Part V then situates this analysis in a larger context, discussing the presumptive arbitrariness of citizenship stripping for national security, the framework of racial discrimination implicated by denationalization, additional human rights obligations that must be respected for lawful denationalization, and the extent to which denationalization for national security purposes is effective or counterproductive. The Comment concludes by presenting the broader applicability of this analysis to cases outside the UK, advising that the *Anudo* test offers an important interpretation of international law which regional and national fora should take into consideration. If the UK and other states continue to conduct arbitrary deprivations of nationality for purported national security purposes, they will continue to exile individuals based on unconfirmed assumptions, perpetuate a system of racial exclusion, violate universal human rights standards, and potentially fuel the exact security threats the State purports to be fighting.

I. The Phenomenon of "Foreign Terrorist Fighters"

Following the start of the Syrian Civil War in 2011, thousands of individuals left their countries to join Daesh.[21] An increasing number have since

19. Global Counterterrorism Forum, Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context (2019), https://toolkit.thegctf.org/Portals/1/Documents/En/Glion_Recommendations_on_the_Use_of_Rule_of_Law-Based_Administrative_Measures_in_a_Counterterrorism_Context_25_September_2019.pdf.

20. Inst. on Statelessness and Inclusion, *supra* note 7.

21. U.N. Office on Drugs and Crime, Foreign Terrorist Fighters: Manual for Judicial Training Instutes South-Eastern Europe (2017), https://www.unodc.org/documents/

attempted to return home, and various states have been grappling with the return of these citizens, who they fear pose a threat to national security. The terms *foreign fighter* (FF) and *foreign terrorist fighter* (FTF) are often used interchangeably for these individuals, particularly in the context of Daesh, although their definitions and usage are slightly distinct.[22] While there is no one uniform definition, the Geneva Academy defines a *foreign fighter* as:

> [A]n 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.[23]

When speaking of the individuals who join Daesh, the United Nations instead uses the term *foreign terrorist fighters*, defined as:

> [I]ndividuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.[24]

While European Daesh members may fall into the definitions of both foreign fighter and foreign terrorist fighter, this Comment opts to use the latter term, following the direction of the UN and its specification of Daesh supporters' motivations.[25] Further, because states' denationalization laws and practices often address individuals who engaged or potentially engaged in terrorist activities, this definition's inclusion of terrorist acts and trainings is crucially related to states' assertions that citizenship stripping can bolster counterterrorism efforts and protect national security.[26]

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terrorism/Publications/FTF%20manual/000_Final_Manual_English_Printed_Version_-_no_foreword.pdf.

22. *See, for example*, Thomas Hegghammer, *The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad*, Int'l Sec., Winter 2010, at 53, (defining a *foreign fighter* as "an agent who (1) has joined, operated within the confines of an insurgency, (2) lacks citizenship of the conflict state or kinship links to its warring factions, (3) lacks affiliation to an official military organization, and (4) is unpaid"); Jeff Colgan & Thomas Hegghammer, *Muslim Foreign Fighters 1945–2009*, Working Paper presented at the International Studies Association Annual Convention, Montreal (Mar. 2011) (distinguishing *foreign fighters* from *mercenaries* and *terrorists* by saying, "The distinguishing features of foreign fighters are that (a) they are not overtly state-sponsored; (b) they operate in countries which are not their own; (c) they use insurgent tactics to achieve their ends; (d) their principal objective is to overthrow a single government/occupier within a given territory; and (e) their principal motivation is ideological rather than material reward").

23. Geneva Acad. Int'l Humanitarian Law and Human Rights, Academy Briefing No. 7: Foreign Fighters under International Law 6 (2014), https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf.

24. S.C. Res. 2178 (Sept. 24, 2014).

25. For critical analysis of the term "foreign fighter" and related terminology, *see, for example*, Darryl Li, *A Universal Enemy?: "Foreign Fighters" and Legal Regimes of Exclusion and Exemption under the "Global War On Terror"*, 41 Columbia Hum. Rts. L. Rev. 2 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1436590.

26. Note, however, that there is no universal definition of terrorism. For examples

Individuals have joined foreign conflicts long before Daesh sought to establish a caliphate.[27] That being said, the rate at which foreign terrorist fighters have flocked to Syria is a new development in this history. According to the UN Office of Counter-Terrorism, over 40,000 individuals from more than 110 countries have traveled to Iraq and Syria to join organizations like Daesh and Al-Qaeda since 2011.[28] In fact, Thomas Hegghammer posits that there are more European foreign terrorist fighters who have taken up arms in Syria than all the Western Muslim foreign terrorist fighters who joined armed conflicts between 1990 and 2010 combined.[29] Definitive findings for the reasons behind this increase have not yet been published.

A 2018 study by the International Centre for the Study of Radicalisation (ICSR) reported that of these nationals who joined Daesh, at least 7252 individuals came from Eastern Europe, at least 5904 came from Western Europe, and at least 753 came from the Americas, Australia and New Zealand.[30] Almost all of these countries currently allow for denationalization on relevant grounds, such as terrorism or actions contrary to the public interest.[31] The prevalence

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of states' own definitions of terrorism and their applications, *see, for example, Definition of Terrorism by Country in OECD Countries*, OECD Int'l Platform on Terrorism Risk Ins. (Dec. 1, 2019), https://www.oecd.org/daf/fin/insurance/TerrorismDefinition-Table.pdf.

27. *See, for example*, Geneva Acad. Int'l Humanitarian Law and Human Rights, *supra* note 23, at 3 (discussing examples of the Spanish Civil War in the 1930s, the war in Afghanistan following the 1989 Soviet invasion, and the 1990s conflict in Chechnya and Dagestan, and recalling that as many as 2000 foreign fighters joined the forces in Bosnia and Herzegovina in the 1990s); Hegghammer, *supra* note 22, at 60–61 (estimating that between 1000 and 1500 estimated foreign fighters went to Afghanistan after 2001, and that between 4000 and 5000 went to Iraq following the 2003 invasion); Colgan & Hegghammer, *supra* note 22, at 21 (estimating that at least 200 to 400 foreign fighters have joined al-Shabab since 2006).

28. Press Release, Security Council, Greater Cooperation Needed to Tackle Danger Posed by Returning Foreign Fighters, Head of Counter-Terrorism Office Tells Security Council, U.N. Press Release SC/13097 (Nov. 28, 2017), https://www.un.org/press/en/2017/sc13097.doc.htm; U.N. Office on Drugs and Crime, *supra* note 21; Inst. for Econ. & Peace, Global Terrorism Index 2016: Measuring and UNderstanding the Impact of Terrorism (2016), http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf.

29. Thomas Hegghammer, *Number of foreign fighters from Europe in Syria is historically unprecedented. Who should be worried?*, Wash. Post (Nov. 27, 2013), https://www.washingtonpost.com/news/monkey-cage/wp/2013/11/27/number-of-foreign-fighters-from-europe-in-syria-is-historically-unprecedented-who-should-be-worried/?arc404=true. Note that the term "foreign terrorist fighters" has been used here to maintain consistency with the Comment's choice of language, but Hegghamer's article opts for the term "foreign fighters" instead.

30. *How many IS foreign fighters are left in Iraq and Syria?*, BBC News (Feb. 20, 2019), https://www.bbc.com/news/world-middle-east-47286935. In addition, the researchers found 18,852 came from the Middle East and North Africa, 5,965 from Central Asia, 1,010 from Eastern Asia, 1,063 from Southeast Asia, 447 from Southern Asia, and 224 from Sub-Saharan Africa.

31. *See, for example*, Joana Cook & Gina Vale, Int'l Ctr. for the Study of Radicalisation, From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State

of denationalization laws and practices, described further below, puts many accused foreign terrorist fighters at risk of losing their citizenship—even without any criminal convictions.

II. Deprivation of Nationality

A. *The Increasing Use of Citizenship Stripping for Counterterrorism Objectives*

As thousands of foreign terrorist fighters have attempted to return home, states have found themselves grappling with the decision of how to allow the reentry of their nationals without compromising national security. Although international human rights law provisions the right to return to one's own country and asserts that this right may not be arbitrarily deprived,[32] some states have deviated from their obligations and have limited this right as a means of counterterrorism. In the wake of 9/11 and throughout the War on Terror, states have increasingly used citizenship stripping against known and suspected foreign terrorist fighters to not only denationalize the individual but to also forbid their reentry or authorize their removal.[33] Deprivation of nationality has thus become a part of national security strategy, viewed by states as a way to prevent terrorist attacks and radicalization, both at home and abroad.[34] This approach has become more popular, but its rising use does not mean it is ethical, legal or even effective. In addition to causing serious human rights consequences for the denationalized individuals, scholars have shown that this severe gesture tends to be more symbolic than functional when it comes to actually preventing terrorism.[35]

As Audrey Macklin explains, the post-9/11 era has seen a "securitization of citizenship"[36] and an expansion of criminal law to include more terrorism offenses.[37] By stripping their citizenship, the State can exile individuals it does

(2018), https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report_20180719_web.pdf.

32. Universal Declaration of Human Rights, *supra* note 1, art. 13(2); International Covenant on Civil and Political Rights, *supra* note 1, art. 12(4).

33. *See, for example*, Geneva Acad. Int'l Humanitarian Law and Human Rights, *supra* note 23, at 55; Macklin, *supra* note 9, at 9.

34. Audrey Macklin, *Sticky Citizenship*, *in* The Human Right to Citizenship: A Slippery Concept 223 (Rhoda Howard-Hassman & Margaret Walton-Roberts eds., 2015). *See also* Trimbach & Reiz, *supra* note 8.

35. *See, for example*, Matthew Gibney, *Deprivation Of Citizenship Through A Political Lens: A Political Scientist's Perspective*, *in* The World's Stateless 2020: Deprivation of Nationality (Inst. on Statelessness and Inclusion ed., 2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf; Christophe Paulussen & Martin Scheinin, *Deprivation of Nationality as A Counter-terrorism Measure: A Human Rights and Security Perspective*, *in* The World's Stateless 2020: Deprivation of Nationality 223 (Inst. on Statelessness and Inclusion ed., 2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf.

36. Macklin, *supra* note 9, at 18.

37. *Id.* at 2.

not want inside its borders or as part of its body politic: where "those deemed threats to national security are not actually alien in law, then they must be alienated by law."[38] This framework wrongly regards citizenship as a privilege rather than a right—and not only is citizenship a right itself, but it also provisions access to many others. Macklin explains:

> Citizenship protects a range of important human goods. It provides the basis for residence within a specific territory, a foothold by which to hold governments to account through voting and running for office, and protection from a range of harmful social and economic forces. To take citizenship away is thus an extreme act of the state.[39]

It follows that the issue of citizenship stripping must not be taken lightly. In fact, Macklin has drawn connections between between deprivation of nationality and the death penalty, which she calls "the sovereign's other technique for the permanent elimination of wrongdoers," arguing that denationalizing and expelling individuals can constitute a "political death".[40] Further, banishing denationalized individuals from their own country can directly expose them to imminent threats of death and bodily harm, as they may be returned to places of persecution, subjected to extrajudicial killings in other countries for their accused crimes, deported to nations with which they are entirely unfamiliar, or forced to stay in precarious situations such as prolonged stays in refugee camps. In Macklin's words: "Denationalization is not only a political analogue to death; it may also be a prelude to it."[41]

The increased use of deprivation of nationality as a national security measure has unfortunately been enabled by the international community's increased recognition of dual nationality. As explained by Matthew Gibney:

> One unanticipated result of this change has been that states now find themselves with citizens whom they can deprive of nationality without violating norms on statelessness. Practically, dual nationality also enables countries to deport those who lose their citizenship to a country that is obliged to admit them. Dual nationality has thus provided states with new opportunities to dissolve obligations towards unwanted or undesirable citizens and to set the terms upon which citizenship will be retained.[42]

As the next Subpart will discuss, the United Kingdom is a prime example of a state that has increasingly stripped its dual citizens of their British nationality for purposes including national security. The UK has even expanded its deprivation powers to reach British-born mononationals, where the State deems it presumably possible for the individual to acquire another nationality elsewhere.

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38. *Id.*
39. Gibney, *supra* note 35, at 207.
40. Macklin, *supra* note 9, at 7.
41. *Id.* at 8.
42. Gibney, *supra* note 35, at 208–209.

B. *Denationalization in the United Kingdom: A Brief Legislative History*

The United Kingdom may well be regarded as the "poster child" for broad denationalization powers. As summarized by Bobbie Mills, Britain has the "most developed legal deprivation powers among liberal democracies" and has also "applied these powers much more liberally," thus placing the UK on what she calls "the vanguard of citizenship deprivation."[43] A series of legislative updates to the British Nationality Act, most recently in the form of the Immigration Act of 2014, have significantly strengthened the power and discretion of the Home Office to strip both foreign-born and British-born nationals of their British citizenship, even if they do not presently hold the nationality of another state.[44]

The British Nationality Act of 1981 authorized the Secretary of State to denationalize British citizens who had acquired their nationality through registration or naturalization.[45] This power, enshrined in Section 40 of the Act, was substantially widened by the Nationality, Immigration and Asylum Act of 2002, which amended the law to also allow for the denationalization of citizens born in the UK if the individual was a dual national, holding citizenship from another state. Under this 2002 version of Section 40, an individual could be stripped of their British citizenship on grounds including involvement with foreign enemies, expressed disloyalty to the Crown, or actions that are seriously prejudicial to the vital interests of the State.

The Immigration, Asylum and Nationality Act of 2006 amended Section 40 again, authorizing broader grounds for deprivation. Under this new Section 40, the UK may strip an individual's British nationality where the "Secretary of State is satisfied that deprivation is conducive to the public good."[46] Conduciveness to the public good has a very broad scope under this law, and this change in 2006 paved the way for the State to increasingly use citizenship stripping for national security purposes.[47] According to the Secretary of State's *National-*

43. Bobbie Mills, *Citizenship deprivation: How Britain took the lead on dismantling citizenship*, Eur. Network on Statelessness (Mar. 3, 2016), https://www.statelessness.eu/blog/citizenship-deprivation-how-britain-took-lead-dismantling-citizenship.

44. For more extensive background on deprivation of nationality in the UK, beyond the scope of this Part's brief synopsis, *see, for example*, The Law and Practice of Expulsion and Exclusion from the United Kingdom: Deportation, Removal, Exclusion and Deprivation of Citizenship (Eric Fripp, Rowena Moffatt, & Ellis Wilford eds., 2014); Rayner Thwaites, *The Security of Citizenship?: Finnis in the Context of the United Kingdom's Citizenship Stripping Provisions*, *in* Allegiance and Identity in a Globalised World (Fiona Jenkins, Mark Nolan, & Kim Rubenstein eds., 2014); Colin Yeo, *How is the government using its increased powers to strip British people of their citizenship?*, Free Movement (Aug. 9, 2018), https://www.freemovement.org.uk/british-nationals-citizenship-deprivation.

45. This is true also of the Act's earlier incarnations. *See* British Nationality and Status of Aliens Act 1918, c. 38 (UK); British Nationality Act 1948, 11 & 12 Geo. 6. c. 56 (UK).

46. British Nationality Act 1981, c. 61, § 40(2) (UK). Deprivation also may be authorized in situations of fraud or false representation, under Section 40(3).

47. *See, for example*, Weston, *supra* note 11, at 275.

ity Guidance on Deprivation and Nullity of British Citizenship, deprivation of nationality will be conducive to the public good where it is "in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours."[48] This is a much lower threshold to meet than the aforementioned 2002 grounds for deprivation.

With the Immigration Act of 2014, the UK widened the reach of the deprivation power even further. Under the 2014 Act, the government may strip the citizenship of an individual who holds only British nationality where there are "reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory."[49] This differs from the 2002 requirement that the individual be currently in possession of another nationality. 2014's version of Section 40 thus allows for deprivation of nationality even in certain situations where the decision renders an individual stateless.[50] Macklin notes that the extent to which the 2014 Act complies with the 1961 Convention on the Reduction of Statelessness "remains contentious."[51]

The pre-2014 framework, which allowed for the denationalization of only dual nationals, posed a lower risk for creating statelessness but was still problematic, for reasons including the level of discretion granted to individual political leaders and its explicitly discriminatory treatment of dual nationals versus mononationals. In providing different levels of protection for citizens depending on their nationality, this framework also facilitated indirect racial discrimination against nationals of minority backgrounds, as naturalized citizens are more likely than British-born nationals to be of racial and ethnic minorities.[52] This implicit racial discrimination embedded in the pre-2014 deprivation framework continues today, as the Secretary of State maintains the discretion to strip the citizenship of any British national who they "reasonably" assume can obtain another nationality. This change to the doctrine thus maintains existing concerns about compliance with international law while also raising serious new concerns about risks of statelessness.

In the UK, deprivation of nationality does not require judicial approval. The order for deprivation is left up to the discretion of one Cabinet member, generally the Home Secretary.[53] Once the State has decided to strip an individual's citizenship, the government is required to serve written notice to that

48. *Deprivation and nullity of British citizenship: nationality policy guidance*, UK Visas and Immigration § 55.4.4 (July 27, 2017), https://www.gov.uk/government/publications/deprivation-and-nullity-of-british-citizenship-nationality-policy-guidance.

49. Immigration Act 2014, c. 22, § 66(1)(c) (UK).

50. Immigration Act 2014, c. 22, § 40(4A) (UK).

51. Macklin, *supra* note 9, at 17.

52. *See, for example*, Inst. on Statelessness and Inclusion, *supra* note 7, at 6.

53. *See Citizenship Deprivations: What you need to know*, CAGE (Mar. 14, 2019), https://cageuk.org/citizenship-deprivations-what-you-need-to-know. The UK's Home Secretary (also called the Secretary of State for the Home Department) is the head of the Home Office.

individual. The written letter must state: 1) that the Home Office has decided to make this citizenship deprivation order; 2) why the order has been made; and 3) that the individual has the right to appeal the order.[54] However, the law permits the Home Office to simply send this notice to the individual's last known address in the UK, even if the individual is residing outside the country.[55] In other words, the State can check the box of delivering notice without actually ensuring the notice is received.

It is crucial to note in the context of stripping the citizenship of alleged foreign terrorist fighters that many of these individuals are residing outside of the UK, and as such, they will likely not be able to attend their appeal—particularly as the State may deny their Leave to Enter (LTE) requests on national security grounds to keep them outside the country.[56] In fact, according to Amanda Weston, the UK's deprivation power is "almost exclusively used against British people when they are outside the UK."[57] As will be discussed below in the case of Shamima Begum, individuals who cannot reenter the UK will have their appeal take place in absentia, raising important concerns about the extent to which this framework upholds fair trial guarantees. Weston also notes that this practice deviates from the standard that the UK provisions for noncitizens who are issued removal decisions: these individuals are provided the right to appeal their removal decisions within the country and may not be removed until after the appeal is complete.[58] A stark difference exists between this standard and that applied to those who are being stripped of their nationality, even though both individuals could face the same human rights violations if removed.

Not only does holding an appeal in absentia prevent an appellant from fully participating in their appeal, but keeping the individual outside European territory also effectively releases the UK from liability for certain human rights violations. While parties to the European Convention on Human Rights must uphold certain human rights obligations within its jurisdiction, the UK may be able to avoid liability on the grounds of extraterritoriality where the concerned individual is kept outside the Convention's jurisdiction.[59] Begum's case is just one in which the State has tried to argue that the ECHR does not apply.

When an individual is stripped of their British citizenship, they may appeal the decision to the Immigration and Asylum Tribunal, but the decision

54. *Id.*

55. *Id.*

56. Also of importance, but beyond the scope of this Comment, is the 2015 introduction of Temporary Exclusion Orders (TEOs) to limit the reentry of British mononationals whom the UK could not strip of citizenship without rendering stateless. *See* Mills, *supra* note 43.

57. Weston, *supra* note 11, at 276. *See also, for example*, *L1 v. Secretary of State for the Home Department* [2015] EWCA Civ 410.

58. Weston, *supra* note 11, at 276.

59. *Id.* at 275–276.

still takes immediate effect.[60] If the case involves information that the Home Office deems should be kept from the public for national security reasons, the individual's appeal is moved to the Special Immigration Appeals Commission (SIAC), where the appellant may challenge the decision on human rights grounds, such as the decision's creation of a real risk of being returned to torture.[61] The individual may also bring their case to the High Court to challenge the decision on common law grounds.

SIAC appeals are closed to the public and present a variety of obstacles for the appellant's participation, particularly when residing outside the country. The Home Office assigns a security-vetted barrister known as a special advocate to represent the individual in front of SIAC. The hearings are held in secret and special advocates are given access to secret evidence.[62] The individual and their legal counsel, if they are able to acquire any, are not allowed to communicate with the special advocate after the evidence has been presented before the Commission. As such, the appellant is unable to provide continued instruction to their special advocate and is unlikely to ever become fully aware of the case brought against them.[63]

C. *Denationalization in the United Kingdom: Recent Trends*

In the UK, an individual may be stripped of their citizenship even when they have not been convicted of any criminal offense; there is no requirement of prior prosecution or conviction.[64] As described by Audrey Macklin, following 9/11, the UK and other states have attempted to use this power as a preventative national security tactic.[65]

The Home Office estimates that about 900 British foreign terrorist fighters left the UK to join Daesh between 2014 and 2018.[66] It estimates that about 20 percent have been killed and 40 percent have returned to the UK thus far.[67]

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60. Geneva Acad. Int'l Humanitarian Law and Human Rights, *supra* note 23, at 56.

61. British Nationality Act 1981, c. 61, § 40(2) (UK); Special Immigration Appeals Commission Act 1997, c. 68, § 2(B) (UK). *See also* Amnesty Int'l, Left in the Dark: The Use of Secret Evidence in the United Kingdom 15 (2012), https://www.amnesty.org/download/Documents/20000/eur450142012en.pdf.

62. *See, for example*, Weston, *supra* note 11, at 276–277. *See also* Human Rights Joint Committee, Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation, 2009–2010, HL 64/HC 395 (UK), https://publications.parliament.uk/pa/jt200910/jtselect/jtrights/64/6402.htm.

63. *See, for example*, Begum v. Secretary of State for the Home Department [2020] EWCA Civ 918 [hereinafter Court of Appeal judgment], para. 112; *Citizenship Deprivations: What you need to know*, *supra* note 53; Amnesty Int'l, *supra* note 61.

64. *Citizenship Deprivations: What you need to know*, *supra* note 53.

65. Macklin, *supra* note 9, at 18.

66. Secretary of State for the Home Department, HM Government Transparency Report 2018, 2018, Cm. 9609, at 7 (UK), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727961/CCS207_CCS0418538240-1_Transparency_Report_2018_Web_Accessible.pdf.

67. *Id.*

Among the 40 percent still residing outside the UK, an estimated 60 British citizens are detained in Kurdish-controlled camps and prisons in northeastern Syria.[68] The UK has refused to allow these individuals to return to the country, has stripped the British citizenship of several, and has considered allowing their children to enter the UK only under the express condition that their denationalized parents consent to separation and stay behind.[69]

The UK has not made clear its intentions for prosecuting or reintegrating those who have returned home to the UK, but it is important to note that getting back into the country does not make someone safe from denationalization: these individuals are still at risk of having their citizenship stripped and facing exile. This is particularly true if and when the individual decides to travel out of the country. As mentioned above, almost all of the UK's deprivation decisions are made while the individual is outside of the country, which Weston notes has been a deliberate move by the Home Office, who will wait for an individual to leave the country before issuing their deprivation order.[70]

According to Freedom of Information requests submitted by Colin Yeo to the Home Office, the UK stripped 81 individuals of their citizenship between 2006 and 2015.[71] Of these individuals, 36 were denationalized for the 'public good', while the other 45 were denationalized because of fraud, false representation or concealment of a material fact.[72] As Daesh's efforts in Syria escalated, this number of deprivations jumped significantly: in 2017, the Home Office stripped 600 percent more nationals for the 'public good' than it did in 2016.[73] The Home Office refused to explain or give reason for this jump, and it declined to comment on the justification for each case.[74]

The estimated 80 percent of British foreign terrorist fighters who remain alive, whether they are residing within or outside the UK, risk being denationalized if they possess another nationality—or if the Home Office assumes, even incorrectly, that they could attain one. Shamima Begum is one of these individuals who has been added to the growing list of British nationals who are

68. Dan Sabbagh, *Begum verdict emerges from thin arguments of security v humanity*, Guardian (Feb. 7, 2020), https://www.theguardian.com/uk-news/2020/feb/07/begum-verdict-emerges-from-thin-arguments-of-security-v-humanity.

69. *Id.*

70. Weston, *supra* note 11, at 276. Weston notes that SIAC held this "deliberate manipulation of process to be lawful" in UK SIAC, L1 v. Secretary Of State For The Home Department (2014), UKSIAC SC_100_2010.

71. UK Visas and Immigration, *FOI Request 38734* (June 20, 2016), https://www.whatdotheyknow.com/request/318785/response/827666/attach/3/CCWD%20FOI%2038734%20.

72. *Id.* Those denationalized for the 'public good' were denationalized pursuant to Section 40(2). Those denationalized because of fraud, false representation or concealment of a material fact were denationalized pursuant to Section 40(3).

73. Lizzie Dearden, *Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year*, Independent (Feb. 20, 2019), https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html.

74. *Id.*

stripped of citizenship and banished from the UK forever.[75] Begum may also join a smaller subset of denationalized individuals who are rendered stateless, as made possible in the UK through the 2014 Act. The UK has asserted that Begum's denationalization is lawful because she is also a Bangladeshi citizen, but Bangladesh has explicitly denied this, stating that Begum has never been a Bangladeshi citizen and will never be allowed to become one.[76] As a result, the stripping of her British citizenship has rendered Begum stateless while she continues to appeal the decision.

III. The Case of Shamima Begum: Recruited at 15, Stateless at 19, Appealing Today

A. *Begum's Departure to Syria*

Shamima Begum left the UK as a fifteen-year-old child and British citizen, travelling to Syria in February of 2015 to join Daesh. She became a child bride in Syria 10 days later when she married Dutch citizen Yago Riedijk, then 23-years-old. Over the following years they had three children, all of whom died as infants. Begum fled the community in early 2019, as Daesh increasingly lost hold over its territory in Syria, and soon found herself residing in the al-Hawl refugee camp. When she was found in the camp on February 13, 2019 by reporter Anthony Loyd, she was nine months pregnant with her third child. She voiced a strong desire to return to the UK to safely give birth to him there, as her other two children had died from disease and malnutrition in Syria.[77]

Begum has maintained that during her time with Daesh, she only performed domestic duties as a housewife, rather than picking up arms, recruiting members, or engaging in propaganda.[78] Still, she does not dispute that she joined Daesh and, among other controversial statements, she has said that she "was OK with" Daesh's beheadings and executions.[79] The question of whether

75. *See, for example*, M2 v. Secretary of State for the Home Department [2015] UKSIAC SC/124/2014; Pham v. Secretary of State for the Home Department [2015] UKSC 19; S1, T1, U1 & V1 v. Secretary of State for the Home Department, [2016] EWCA Civ 560; and K2 v. the United Kingdom, [2017] App. No. 42387/13 (Mar. 9, 2017). *See also*, David Batty & Poppy Noor, *Who has been stripped of UK citizenship before Shamima Begum?*, Guardian (Feb. 20, 2019), https://www.theguardian.com/uk-news/2019/feb/20/who-has-been-stripped-of-uk-citizenship-before-shamima-begum.

76. *See, for example*, Esther Addley & Redwan Ahmed, *Shamima Begum will not be allowed here, says Bangladesh*, Guardian (Feb. 20, 2019), https://www.theguardian.com/uk-news/2019/feb/20/rights-of-shamima-begums-son-not-affected-says-javid.

77. Anthony Loyd, *Shamima Begum: Bring me home, says Bethnal Green girl who left to join Isis*, Sunday Times (Feb. 13, 2019), https://www.thetimes.co.uk/article/shamima-begum-bring-me-home-says-bethnal-green-girl-who-fled-to-join-isis-hgvqw765d.

78. *Shamima Begum: 'A lot of people should have sympathy for me,' IS bride tells Sky News*, Sky News (Feb. 18, 2019), https://news.sky.com/story/is-bride-shamima-begum-gives-birth-in-syria-11640060.

79. Jonathan Shaub, *Hoda Muthana and Shamima Begum: Citizenship and Expatriation in the U.S. and U.K.*, Lawfare (Feb. 25, 2019), https://www.lawfareblog.com/

Begum fits the UN's definition of a foreign terrorist fighter is a debate beyond the scope of this Comment, but for the purposes of this analysis, it can be recognized that the UK has certainly treated her as such.[80] As Home Secretary, Sajid Javid said that the British nationals like Begum who joined Daesh had "turned their back on the UK", and in condemning these terrorist activities, he grouped together both active fighters and those who went to Syria to raise families in the Daesh community.[81]

When examining Begum's affiliation with Daesh, it is crucial to remember that she was a child when she left the UK for Syria. Conrad Nyamutata argues that states must regard Daesh-affiliated children as child soldiers, affording them the same protections "accorded to all children recruited for purposes of warfare."[82] Nyamutata explains that Daesh became "adept at recruiting children"[83] and specifically recruited teenage girls to undertake support roles for the organization, demonstrating "unprecedented success in attracting women from the West, through radicalisation online."[84] Begum is just one example of a young Western girl who was recruited to support Daesh's forces.[85] Explaining her motivation for joining Daesh, Begum told BBC, "My family wouldn't help me get married in the UK and the way they showed family life in IS was pretty nice. Like the perfect family life, saying they'd take care of you and take care of your family."[86] She added:

> I was hoping that Britain would understand that I made a mistake, a very big mistake and it was because I was young and naive. I was newly practicing, I didn't know what Islam was, and I just saw this big thing on the news, you know, Islamic State, and Islamic law. I got tricked and I was hoping that they'd sympathize with me.[87]

Rather than extending sympathy and repatriating the teenager, the UK decided to strip Begum of her British nationality within a week from when she was found. She gave birth on February 17 in the al-Hawl camp to her son, a

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hoda-muthana-and-shamima-begum-citizenship-and-expatriation-us-and-uk.

80. For one analysis of whether Begum fits this definition, *see* Conrad Nyamutata, *Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood*, J. Conflict & Sec. L. 1 (2020), advance article published Jan. 23, 2020, https://doi.org/10.1093/jcsl/krz034.

81. *New blog: The Shamima Begum case: 'Revoking citizenship is ineffective and counterproductive'*, *supra* note 14.

82. Nyamutata, *supra* note 80.

83. *Id.* at 2.

84. *Id.* at 4. *See also, for example*, Anita Peresin, *Fatal Attraction: Western Muslimas and ISIS*, 9 Perspectives on Terrorism 21 (2015), https://www.jstor.org/stable/26297379.

85. Nyamutata, *supra* note 80, at 5.

86. Quentin Sommerville, *Shamima Begum: What Was Life Like for the IS Couple in Syria?*, BBC News (Mar. 3, 2009), www.bbc.co.uk/news/world-middle-east-47435039.

87. *Id.*

British citizen. He died less than three weeks later, reportedly from pneumonia, due to the unsafe conditions of the camp and lack of medical care.[88]

B. *Home Secretary Javid's Deprivation Decision*

On February 19, 2019, the British government under Home Secretary Javid mailed a letter of notice to Begum's mother in London, expressing their decision to revoke her daughter's citizenship, and asking her to inform her daughter of the order and her rights of appeal.[89] Begum learned of this news when Security Editor Rohit Kachroo of ITV News handed her a printed copy of the letter during a video interview.[90] Begum later described this experience in an interview with ABC News:

> When my citizenship got rejected, I felt like my whole world fell apart right in front of me. You know, especially the way I was told. I wasn't even told by a government official. I had to be told by journalists.[91]

Begum's case has garnered a great deal of attention in the media, where she has been dubbed a "jihadi bride,"[92] an "ISIS bride,"[93] and one of the UK's "Syria schoolgirls,"[94] as well a "Bethnal Green girl," the term she used to first identify herself to Loyd in the al-Hawl camp.[95] She has ignited—or perhaps added fuel to the fire of—debates within and beyond Parliament about whether Javid took the deprivation power too far. This debate is not partisan; Javid's decision has garnered criticism from MPs across party lines, including from MPs who themselves endorsed the 2014 Act.[96] Current Home Secretary Priti Patel, who took over Javid's role in July of 2019, has firmly upheld her predecessor's decision. Patel has maintained that Begum could still apply for

88. Court of Appeal judgment, *supra* note 63, para. 11.

89. Rohit Kachroo, *IS schoolgirl Shamima Begum stripped of UK citizenship*, ITV News (Feb. 19, 2019), https://www.itv.com/news/2019-02-19/shamima-begum-has-uk-citizenship-revoked-by-british-government-itv-news-learns.

90. Rohit Kachroo, *Bangladesh denies Islamic State schoolgirl Shamima Begum has dual nationality*, ITV News (Feb. 20, 2019), https://www.itv.com/news/2019-02-20/shamima-begum-shocked-as-itv-news-informs-her-home-office-has-revoked-her-british-citizenship.

91. Sabbagh, *supra* note 68.

92. *See, for example*, Dipesh Gadher & Louise Callaghan, *Handcuffs await jihadi brides sent back from Syria*, Sunday Times (Sept. 15, 2019), https://www.thetimes.co.uk/article/handcuffs-await-jihadi-brides-sent-back-from-syria-0vxhkzmdh.

93. *See, for example*, Sam Knight, *If Shamima Begum, the ISIS Bride, Is No Longer British, What Does Citizenship Mean?*, New Yorker (Feb. 15, 2020), https://www.newyorker.com/news/letter-from-the-uk/if-shamima-begum-the-isis-bride-is-no-longer-british-what-does-citizenship-mean.

94. *Shamima Begum loses first stage of appeal over citizenship*, BBC (Feb. 7, 2020), https://www.bbc.com/news/uk-51413040.

95. *See, for example*, Knight, *supra* note 93. Recall the warnings of Nyamutata that the appropriate terminology that actually should be used to describe Begum is that of a "child bride". *See* Nyamutata, *supra* note 80.

96. 654 Parl Deb (Hansard) HC (6th ser.) (2019) *Deprivation of Citizenship Status* (UK), https://hansard.parliament.uk/commons/2019-02-20/debates/4DEC2589-7212-48A0-8507-9D38C0DEC42A/DeprivationOfCitizenshipStatus.

citizenship from Bangladesh,[97] and she has stated that Begum will never be allowed to reenter the UK.[98]

C. *An Ongoing Process of Appeals*

After learning of Javid's decision to strip her of her citizenship, Begum challenged the order with representation from the London-based firm Birnberg Peirce.[99] Begum applied for Leave to Enter (LTE) on May 3, 2019 in order to attend and effectively participate in her appeal, but she was denied by the Secretary of State on June 13, 2019 on the bases that she had failed to provide required biometric data and that she had not experienced a breach of the European Convention on Human Rights (ECHR).[100] She was permitted by the lower court to appeal this LTE denial, but by orders of the Administrative Court and SIAC, "the deprivation appeal and LTE appeal together with a rolled-up hearing of the judicial review were ordered to be heard together."[101] SIAC held these linked, closed hearings on October 22 and 25 of 2019.[102] SIAC released their judgment on February 7, 2020, ruling unanimously against Begum on the three preliminary grounds examined.

First, SIAC held that Begum's denationalization did not render her stateless, as she has a right to the citizenship of Bangladesh through Section 5 of the Bangladesh Citizenship Act 1951. They maintained Javid's view that "it is clear from provisions of Bangladeshi legislation that [Begum], who is not yet 21, is a citizen of Bangladesh by descent."[103] Second, they concluded that the

97. Aina Khan, *Shamima Begum is a product of Britain. She should face justice here*, Guardian (Feb. 7, 2020), https://www.theguardian.com/commentisfree/2020/feb/07/shamima-begum-britain-british-ethnic-minorities.

98. Anish Kapoor, *This government has failed Shamima Begum*, Guardian (Feb. 11, 2020), https://www.theguardian.com/uk-news/2020/feb/11/this-government-has-failed-shamima-begum. Note that this violates the right under international law to return to one's own country. *See, for example,* Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999), paras. 19–21, https://www.refworld.org/pdfid/45139c394.pdf (stating: "In no case may a person be arbitrarily deprived of the right to enter his or her own country," including by stripping the individual of nationality or expelling them to a third country). *See also* Inst. on Statelessness and Inclusion, *supra* note 7, at 13–15.

99. *See, for example, Shamima Begum Loses Appeal Against Removal Of Citizenship*, Matrix Chambers (Feb. 7, 2020), https://www.matrixlaw.co.uk/judgments/shamima-begum-loses-appeal-against-removal-of-citizenship.

100. Begum v. Secretary of State for the Home Department [2020] SC/163/2019 (SIAC), para. 18 (hereinafter SIAC judgment), https://www.judiciary.uk/wp-content/uploads/2020/02/begum-v-home-secretary-siac-judgment.pdf.

101. Court of Appeal, *supra* note 63, para. 3.

102. SIAC judgment, *supra* note 100, para. 193.

103. *Id.* para. 27. *See also id.*, para. 121, stating: "Our conclusion, based on the evidence which we have accepted, is that article 2B(1) of the BCTP Order does not override section 14(1A) of the 1951 Act. When [the denationalization decision] was made, [Begum] was a citizen of Bangladesh by descent, by virtue of section 5 of the 1951 Act. She held that citizenship as of right. That citizenship was not in the gift of the Government, and could not

conditions Begum faces in her camp in Syria would constitute inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights, *if* Article 3 applied to her case—which they determined it does not.[104] Under the Secretary of State's policy regarding extraterritorial human rights, the Secretary is "only obliged to consider risks which are foreseeable and which are a direct consequence of the decision to deprive a person of his nationality."[105] Here, SIAC determined, Javid's decision "would not breach the Policy, because a change in the relevant risks was not a foreseeable and direct consequence" of Begum's denationalization, and Javid was not required to speculate about future possibilities, such as dangers she might face if moved from Syria to Bangladesh or Iraq.[106] Third, SIAC accepted that Begum "cannot have an effective appeal in her current circumstances," but maintained that "it does not follow that her appeal succeeds."[107]

After this decision was released, ruling against Begum on all three preliminary issues, Begum's team announced that they would immediately file a new appeal.[108] Begum continued residing in the al-Roj camp in northern Syria, in what her solicitor Daniel Furner called an "incredibly fragile and dangerous" position,[109] detained by the Syrian Defense Forces in what SIAC itself admitted were "squalid and wretched conditions."[110]

In addition to her SIAC appeal on human rights grounds, Begum also challenged Javid's order on common law grounds. On February 7, 2020, the Administrative Court granted her permission to apply for judicial review of her LTE denial, but dismissed her substantive claim for judicial review.[111] On June 11 and 12, 2020, the Court of Appeal (Civil Division) heard Begum's appeal of the Administrative Court's decision.[112] On July 16, 2020, the Court

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be denied by the Government in any circumstances. As she was under 21, and by virtue of section 14(1A) of the 1951 Act, her Bangladeshi citizenship was not affected by section 14(1) of the 1951 Act."

104. *Id.* para. 130.

105. *Id.* para. 129, citing X2 v. SoS for the Home Department [2017] SIAC SC/132/2016.

106. *Id.* para. 139.

107. *Id.* para. 192.

108. Owen Bowcott, *Shamima Begum loses first stage of appeal against citizenship removal*, Guardian (Feb. 7, 2020), https://www.theguardian.com/uk-news/2020/feb/07/shamima-begum-loses-appeal-against-removal-of-citizenship.

109. *Shamima Begum: Stripping citizenship put her at risk of hanging, court hears*, BBC News (Oct. 22, 2019), https://www.bbc.com/news/uk-50137470.

110. SIAC judgment, *supra* note 100, para. 15.

111. Court of Appeal judgment, *supra* note 63, para. 4.

112. Court of Appeal—Civil Division—Court 71, *Begum v The Secretary of State for the Home Department*, YouTube (June 12, 2020) [hereinafter Court of Appeal—Civil Division—Court 71], https://www.youtube.com/watch?v=4SVfsK8Noww. Due to the COVID-19 pandemic, the appeal was conducted by video conference call between the Justices and counsel and live streamed on the Court of Appeal's YouTube channel. Lady Justice King, Lord Justice Flaux, and Lord Justice Singh heard arguments from Tom Hickman QC on behalf of Begum and Sir James Eadie QC on behalf of the Government.

decided that Begum may return to the UK in order to appeal her deprivation order.[113] As of September 2020, her appeal process remains ongoing.

Conservative former minister George Freeman has criticized the stripping of Begum's citizenship as a "mistake" that will set a "dangerous precedent."[114] Indeed, if Begum's denationalization is upheld, it could pave the way for further arbitrary deprivations of nationality under the veil of a bold national security campaign. While states do have authority to establish their own counterterrorism stategies, as well as to decide how to attribute nationality,[115] a State may not deprive an individual of nationality if such deprivation is arbitrary.[116] This prohibition of arbitrary denationalization is rooted in the right to have and retain a nationality, which is enshrined in the Universal Declaration of Human Rights (UDHR) and various other international and regional legal instruments.[117] Where deprivation of nationality fails to satisfy even one of the elements of the test outlined in *Anudo v. Tanzania*, the deprivation will be arbitrary under international law, and will therefore be an unlawful exercise of the State's sovereign powers.

IV. Applying *Anudo* to the Case of Shamima Begum: Was the UK's Denationalization of Begum Arbitrary?

A. Anudo v. Tanzania*: A New Interpretation of Arbitrary Denationalization*

In the 2018 case of *Anudo v. United Republic of Tanzania*, the African Court on Human and Peoples' Rights held that Tanzania's deprivation of Mr. Anudo's nationality constituted arbitrary deprivation, violating Article 15(2) of the Universal Declaration of Human Rights (UDHR).[118] The Court also established that the burden of proof falls on states, rather than on the individual, to determine that an individual has or lacks the nationality of the State.[119] The Court's reasoning drew, inter alia, from the Human Rights Coun-

113. Court of Appeal judgment, *supra* note 63.

114. Dearden, *supra* note 73.

115. *See* Nottebohm Case (Leich.v. Guat), Judgment, at 20 (Apr. 6, 1955), https://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf.

116. *See, for example*, the 1961 Convention, *supra* note 4, art. 8; European Convention on Nationality, *supra* note 1, arts. 7 and 12. This principle has also been upheld by the European Court of Human Rights. *See* Karassev v. Finland, App. No. 31414/96 (Jan. 12, 1999), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-4592%22]}; Genovese v Malta, App. No. 53124/09, ¶ 30 (Oct. 11, 2011), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-106785%22]}; Ramadan v Malta, Ap.. No. 76136/12, ¶ 85 (June 21, 2016), https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-163820%22]}.

117. *See* U.N. Secretary-General, *supra* note 1.

118. Ndjodi Ndeunyema, *Anudo v Tanzania: The African Court Recognises the Right to Nationality under Customary International Law*, Oxford Hum. Rts. Hub (Apr. 19, 2018), https://ohrh.law.ox.ac.uk/anudo-v-tanzania-the-african-court-recognises-the-right-to-nationality-under-customary-international-law.

119. Anudo v. United Republic of Tanzania, *supra* note 16, ¶ 80: "It is the opinion of the Court that, since the Respondent State is contesting the Applicant's nationalify held since his

cil's interpretation of human rights and arbitrary deprivation of nationality under the UDHR.[120]

With its interpretation of the UDHR, this case has set important new precedent for the protection against arbitrary deprivation of nationality. According to the rule outlined by the Court, deprivation of nationality will be arbitrary under international law unless it:

i. is founded on a clear legal basis;
ii. serves a legitimate purpose that conforms with international law;
iii. is proportionate to the interest protected; and
iv. installs procedural guarantees which must be respected, allowing the concerned to defend themselves before an independent body.[121]

The next Subpart walks through each of the four elements of the *Anudo* test in the context of Begum's deprivation case under UK law. Each of these four elements must be satisfied to establish that a deprivation decision is nonarbitrary.

B. *Applying the* Anudo *Arbitrariness Test to Begum's Case: Four Elements for Lawful Denationalization*

To assess whether the UK's deprivation of Begum's nationality is sufficiently nonarbitrary, this Subpart analyzes the four elements of the *Anudo* test, all of which must be met for the deprivation decision to be lawful. The African Court's interpretation of international law is supplemented in this Subpart by additional guiding interpretations from the Global Counterterrorism Forum's Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context and the Institute on Statelessness and Inclusion's Principles on Deprivation of Nationality as a National Security Measure. While these recommendations and principles are not binding, they are expert interpretations of existing international and regional laws, many of which are indeed binding. These two sets of expert interpretations on the laws of deprivation of nationality both support and add depth to the test set out in *Anudo* for nonarbitrary deprivation.

1. Element 1: Clear Legal Basis

The first element of the *Anudo* test requires that in order for a deprivation decision to be nonarbitrary, it must have a clear legal basis. According to the Glion Recommendations on the Use of Rule of Law-Based Administrative

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birth on the basis of legal documents established by the Respondent State itself, the burden is on the Respondent state to prove the contrary."

120. *Human rights and arbitrary deprivation of nationality*, *supra* note 4. For analysis of the *Anudo* decision, *see* Brownen Manby, *Case Note: Anudo Ochieng Anudo v. Tanzania (Judgment) (African Court on Human and Peoples' Rights, App No 012/2015, 22 March 2018)*, 1 Statelessness and Citizenship Rev. 170, https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/75.

121. Anudo v. United Republic of Tanzania, *supra* note 16, ¶ 79.

Measures in a Counterterrorism Context, a law which allows for deprivation of nationality must be "clear, predictable and accessible to the public," and must serve a "clear purpose that is communicated to all persons subject to the law."[122] The Principles on Deprivation of Nationality as a National Security Measure similarly state that deprivation of nationality must have a "clear and clearly articulated legal basis."[123] This includes, inter alia, that the "powers and criteria for deprivation of nationality are provided in law, publicly accessible, clear, precise, comprehensive and predictable in order to guarantee legal certainty."[124]

Under the British nationality laws described in Part II, the Secretary of State has a legal basis to deprive citizenship of a national like Begum where he is "satisfied that deprivation is conducive to the public good"[125] and where he has reasonable grounds to believe the individual has or is able to obtain another nationality.[126]

An initial question to consider is whether Begum's case fulfills the legal basis for deprivation outlined by domestic law. As Begum has not denied her affiliation with Daesh, her denationalization is likely to be deemed conducive to the public good on "grounds of involvement in terrorism." As there is no set definition of terrorism, the State will likely find that her affiliation with Daesh qualifies as such, despite her assertions that her role was only that of a housewife. Further, under the Home Office's *Nationality Guidance on Deprivation and Nullity of British Citizenship*, the definition of "conducive to the public good" is so broad as to include the vague category of "unacceptable behaviors."[127] As such, it is likely that even if Begum could successfully assert that she was not involved in terrorism, the Secretary could still establish that there is legal basis for her deprivation under Section 40(2) due to "unacceptable behaviors" in the course of her connection with Daesh.

Still, the Secretary must also establish the second requirement under the Act: that the State has "reasonable grounds" to believe Begum has, or is able to acquire, another nationality. This has been a central question in her case. Is Shamima Begum a dual national, or would deprivation of her UK citizenship render her stateless?

The UK has continuously asserted that Begum is or could become a national of Bangladesh, as her parents were born there and have Bangladeshi

122. Global Counterterrorism Forum, *supra* note 19, at 8.

123. Inst. on Statelessness and Inclusion, *supra* note 7, at 11.

124. *Id.*

125. British Nationality Act 1981, c. 61, § 40(2) (UK).

126. Lizzie Dearden, *UK blocked from making alleged extremists stateless by secret court in ruling that will set precedent*, Independent (Nov. 21, 2018), https://www.independent.co.uk/news/uk/crime/british-citizenship-removal-isis-terrorists-extremists-stateless-illegal-blocked-court-bangladesh-a8645241.html.

127. *Deprivation and nullity of British citizenship: nationality policy guidance*, *supra* note 48.

citizenship. SIAC upheld this stance in the judgment released in February 2020.[128] However, while she may have been once eligible to apply for Bangladeshi citizenship through her *jus sanguinis* ties to the country, the conferral of Bangladeshi nationality is not automatic, and Begum herself never acquired Bangladeshi citizenship.[129]

Bangladesh has explicitly stated that Begum is *not* a Bangladeshi citizen. For example, Bangladesh Foreign Minister Abdul Momen announced in May 2019 that Begum has "nothing to do" with Bangladesh and would not be allowed to enter the country.[130] This view has been continually upheld by Bangladesh. Despite the UK's arguments that she could potentially still have or acquire Bangladeshi citizenship, the explicit refusal of her citizenship by Bangladesh legally triumphs over British hopes or assertions. The deprivation of her sole British nationality thereby renders Begum stateless, and her denationalization thus fails to fulfill the criteria of Section 40 of the British Nationality Act, the domestic legal basis required for the deprivation order. The SIAC judgment reflects a continued refusal of the UK to recognize the State's lack of authority to interpret and implement the laws of other states.[131] As explained by statelessness expert Amal de Chickera, "it is only the competent authority of the concerned state which can declare someone to be a citizen or not."[132]

Further, even if a deprivation decision does not render the individual stateless, the UK's deprivation law itself does not satisfy the required international standards for a clear legal basis. Simply having *a* law in place that permits deprivation does not suffice: there must be a *clear* legal basis which must entail predictability, accessibility, and a clearly communicated purpose, as described above. Although the deprivation power enshrined in Section 40 is accessible to the public, it is not clear or predictable. The breadth of accepted grounds for deprivation is not specifically articulated. Moreover, considering the reach of the deprivation power to British-born mononationals who are only *assumed* to access another nationality, the deprivation power is too unpredictable to guarantee the level of legal certainty required by international law. Begum, a British-born citizen who had never sought Bangladeshi citizenship, had never visited Bangladesh, and does not speak Bengali,[133] had no reason-

128. SIAC judgment, *supra* note 100.

129. For more on acquisition of nationality and automatic conferral, *see, for example*, Gerard-Rene de Groot & Olivier Vonk, *Acquisition of Nationality by Birth on a Particular Territory or Establishment of Parentage: Global Trends Regarding Jus Sanguinis and Jus Soli*, 65 Neth. Int. L. Rev. 319 (2018), https://link.springer.com/article/10.1007/s40802-018-0118-5.

130. Knight, *supra* note 93.

131. *See, for example*, Pham v. Secretary of State for the Home Department [2015] UKSC 19, http://www.bailii.org/uk/cases/UKSC/2015/19.html.

132. *Revoking Shamima Begum's citizenship breaches her human rights say MRG and ISI*, Minority Rts. Group Int'l (Feb. 21, 2019), https://minorityrights.org/2019/02/21/revoking-shamima-begums-citizenship-breaches-her-human-rights-say-mrg-and-isi.

133. *Shamima Begum: Stripping citizenship put her at risk of hanging, court hears*, *supra* note 109.

able cause to predict that the UK would strip her of her only nationality and render her stateless under the false assumption that she was a Bangladeshi national. Accordingly, a clear legal basis for her deprivation cannot be established under international standards.

2. Element 2: Legitimate Purpose

In order to satisfy the second element of the arbitrariness test, deprivation of nationality must be conducted for a legitimate purpose. According to the Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context, the legitimate purpose must be clearly defined, with a clear rationale for how the measure will reach its desired aim.[134] The Principles on Deprivation of Nationality as a National Security Measure highlight examples of aims which do not constitute legitimate purposes for deprivation of nationality, including: to administer sanction or punishment; to facilitate expulsion or prevent entry; or to export the function and responsibility of administering justice to another State.[135] Further, the Principles also maintain that "[r]egardless of the stated purpose, any punitive impact incurred by deprivation of nationality is likely to render this measure incompatible with international law."[136] In addition, the 1961 Convention on the Reduction of Statelessness requires that deprivation of nationality serves a legitimate purpose consistent with international law, particularly international human rights law.[137]

Further, according to the International Law Commission (ILC), deprivation of nationality will be arbitrary if the "sole purpose" of stripping an individual's citizenship is to expel them.[138] Lawful deprivation of nationality may result in the removal of that individual from the country, but expulsion may not be the *only* purpose of the deprivation. The ILC has expressed concern that the purpose underlying the UK's widening deprivation powers might be this objective of removal.[139]

The British government has made explicitly clear that Begum's denationalization is motivated by national security concerns.[140] The Home Office has asserted that it is utilizing its deprivation power to protect public safety, including by preventing radicalization and terrorist attacks. While discussing

134. Global Counterterrorism Forum, *supra* note 19, at 9.

135. Inst. on Statelessness and Inclusion, *supra* note 7, at 10–11.

136. *Id.*

137. *Tunis Conclusions*, *supra* note 6, ¶ 19.

138. Int'l Law Comm'n, Commentary to Article 8 of the Draft Articles on the Expulsion of Aliens: ILC Report of the 66th session, U.N. Doc. A/69/10 (2014), at 32.

139. *Id.*

140. *See, for example*, Court of Appeal judgment, *supra* note 63, para. 18: "The Security Service (MI5) assesses that [Begum] travelled to Syria and aligned with ISIL . . . The Security Service considers that an individual assessed to have travelled to Syria and to have aligned with ISIL poses a threat to national security."

the practice of citizenship stripping for national security purposes, then Home Secretary Javid stated:

> When someone turns their back on fundamental values and supports terror, they do not have an automatic right to return to the UK. We must put the safety and the security of our country first, and I will not hesitate to act to protect it.[141]

In the same House of Commons debate, he detailed specific national security concerns regarding the readmission of nationals suspected of terrorism:

> Let us imagine a hypothetical case where there is the possibility to keep a terrorist out of the country, but the Home Secretary decides not to, for some reason, and that that individual returns, continues to preach extremism and radicalise others, and potentially even carries out terrorist attacks. It is worth thinking about the impact of that on communities and how it could radicalise people.[142]

Although refusing in the discussion to address Begum's case specifically, Javid noted that it is "ultimately [his] responsibility" to keep the British public safe and that that "must be paramount in [his] mind when making decisions" regarding deprivation orders.[143]

These objectives of national security, the safety of citizens, the reduction of radicalization and the prevention of terrorist attacks can all be legitimate purposes for the government to pursue. But, the State has failed to articulate how exactly Begum's deprivation fulfills the purpose of protecting national security. As explained below in Part V, experts have warned that there is no evidence to suggest that citizenship stripping is an effective method of counterterrorism—and, in fact, they warn it can be counterproductive. Thus far, the UK has failed to clearly define the specific national security objective behind Begum's denationalization and has failed to provide a clear rationale for how the deprivation measure will reach that desired aim. All we have is the Home Office's assurances that denationalizing and exiling Begum will protect the public—without any demonstration as to why or how this deprivation order actually advances the purpose of protecting national security.

Beyond the aim of national security, which the decision purports to but does not necessarily meet, what other purposes does Begum's deprivation order seek to fulfill? Is it to punish her for joining Daesh? Punishment does not constitute a legitimate purpose, and punitive impact undermines the legitimacy of the measure.[144] Is her denationalization then meant to export the perceived national security threat for Bangladesh to deal with? That would fail to establish a legitimate purpose as well.[145] Is it to prevent her from return-

141. 654 Parl Deb (Hansard) HC (6th ser.) (2019) *Deprivation of Citizenship Status* (UK).

142. *Id.*

143. *Id.*

144. Inst. on Statelessness and Inclusion, *supra* note 7, at 11.

145. *Id.* at 10–11.

ing to the UK? This seems explicitly likely: the government has stated that stripping citizenship is "particularly important in helping prevent the return to the UK of dual-national British citizens involved in terrorism-related activity in Syria or Iraq."[146] Javid has also stated that the British nationals who have "joined Islamic State in Syria to fight or raise families in the so-called caliphate" have "turned their back on the UK," and that he was "resolute" to use his power to prevent their return to the UK.[147] Preventing entry to the State is not a legitimate purpose of deprivation.[148] In fact, violating the right to return to one's own country is also inconsistent with international human rights law.[149] In any combination of the above possibilities, the State fails to establish a legitimate purpose for stripping Begum's citizenship.

3. Element 3: Proportionate to the Interest Protected

Even if a legitimate purpose for Begum's denationalization could be established, the State must fulfill criteria of proportionality by showing that the deprivation of her nationality is the least intrusive, effective means of achieving that purpose.[150] The Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context and the Principles on Deprivation of Nationality as a National Security Measure both interpret international law to say that the impact of the deprivation decision on the individual must be balanced with the interests of the State.[151] If the impact of stripping Begum's citizenship is disproportionate to the State's purpose it serves, her denationalization will fail to satisfy the third element of the *Anudo* test and will therefore be arbitrary.

This Subpart will examine three key factors contributing to the severity of the impact of Begum's denationalization: 1) its consequences related to statelessness; 2) its consequences related to death, torture and other human rights abuses; and 3) Begum's age. It will then weigh the consequences of the deprivation decision against the State's interest in safeguarding national security.

a. Consequences Related to Statelessness

Begum has become effectively stateless under the Home Office's order while she continues to appeal her denationalization. In SIAC's February 2020 decision, they concluded that Begum was not *de jure* stateless, because she has

146. Dearden, *supra* note 126.

147. *New blog: The Shamima Begum case: 'Revoking citizenship is ineffective and counterproductive'*, *supra* note 14.

148. Inst. on Statelessness and Inclusion, *supra* note 7, at 10–11.

149. Universal Declaration of Human Rights, *supra* note 1, art. 13(2); International Covenant on Civil and Political Rights, *supra* note 1, art. 12(4). Recall the 1961 Convention's warning that deprivation of nationality must have a legitimate purpose which respects international human rights law.

150. *Human rights and arbitrary deprivation of nationality*, *supra* note 4. *See also* Tunis Conclusions, *supra* note 6, ¶ 19.

151. Inst. on Statelessness and Inclusion, *supra* note 7, 11–12; Global Counterterrorism Forum, *supra* note 19, at 8–10. *See also Tunis Conclusions*, *supra* note 6, ¶ 20.

a right to Bangladeshi citizenship.[152] However, as explained above, Bangladesh has maintained that she is *not* a citizen and that she will not be permitted to acquire Bangladeshi nationality. SIAC has no jurisdiction to interpret Bangladeshi law; this is up to Bangladesh, and their statement on Begum's noncitizen status is enough to confirm that she lacks Bangladeshi nationality.[153] As such, no matter what interpretation SIAC expresses about Bangladeshi law, the reality of the situation is that if the UK upholds her deprivation decision, she will indeed be left *de jure* stateless. This makes the consequences of her denationalization extremely dire.

The UN has warned that due to the "severity of the consequences where statelessness results, it may be difficult to justify loss or deprivation resulting in statelessness in terms of proportionality."[154] Stateless persons can face significant barriers to education, healthcare and other basic rights and public services, and may become significantly more exposed to risks of violence, trafficking, homelessness, and institutionalized discrimination. Rendering someone stateless also cuts off the individual's access to cross-border travel and many formal labor markets, thereby restricting their freedom of physical, social and economic movement. A deprivation decision that leaves someone stateless can be seen to violate the right to legal personhood,[155] making them invisible in the eyes of the law. In addition to legal and material repercussions, statelessness can cause serious psychological and emotional harms, as it places an individual into a precarious state of living and may severely impact an individual's sense of identity and access to dignity. Overall, statelessness leaves individuals vulnerable to a multitude of human rights abuses, and is indeed regarded as a serious human rights violation in itself.[156]

Begum has already begun to suffer from the effects of statelessness while she awaits her appeal. The decision has denied her access to fundamental human rights, including legal protections, basic healthcare, and the right to

152. SIAC judgment, *supra* note 100, para. 123.

153. *Revoking Shamima Begum's citizenship breaches her human rights, say MRG and ISI*, *supra* note 132.

154. *Human rights and arbitrary deprivation of nationality*, *supra* note 4, citing to Case C-135/08, Rottman v. Freistaat Bayern, 2010 E.C.R. I-01449.

155. *See, for example*, Universal Declaration of Human Rights, *supra* note 1, art. 6; International Covenant on Civil and Political Rights, *supra* note 1, art. 16; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 1, art. 5; Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 1, art. 15(1); Charter of Fundamental Rights of the European Union, Oct. 2, 2000, 2000 O.J. (C 326) 391, art. 20. *See also* Inst. on Statelessness and Inclusion, [Draft] Commentary To the Principles on Deprivation of Nationality as a National Security Measure 80 (2020), https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

156. *See, for example*, Erica Qualliotine, *Statelessness is a Human Rights Violation*, Hum. Rts. First (Mar. 30, 2015), https://www.humanrightsfirst.org/blog/statelessness-human-rights-violation; *Right to a Nationality and Statelessness*, U.N. Hum. Rts. Off. High Comm'r (n.d.), https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx.

return to her own country.[157] Should the Home Office's decision be upheld, she will continue to experience these violations of her human rights for the remainder of her life.

The fact that Begum's denationalization will render her stateless is a significant contributing factor to the severity of the act. That being said, it is not a required factor for determining that a deprivation order is disproportionate and arbitrary. Even where deprivation of nationality does not lead to statelessness, states must weigh the consequences of the individual's denationalization against the interest that it is seeking to protect, and consider alternative measures that could be imposed.

b. Consequences Related to Death, Torture, and Other Human Rights Abuses

Without any nation of her own to which she can return, Shamima Begum has been forced to remain in Syria. As recognized by SIAC, the conditions of her detention are so severe that they would amount to torture or inhuman or degrading treatment or punishment, as defined by Article 3 of the ECHR.[158] Begum also faces serious risks of torture and death if she were to be removed by the Syrian Democratic Forces (SDF) to Iraq or Bangladesh.

The SDF has previously transferred accused foreign terrorist fighters to Iraq, where they have been sentenced to death or life in prison. Those moved to Iraq have reported coerced and fabricated confessions, the creation of false evidence, and the prosecution of children as young as 12.[159] Begum's defense that she was only a housewife in the Daesh community, rather than an active fighter, would not save her in Baghdad—as evidenced by the fate of Amina Hassan, a Turkish woman whose 10-minute trial sentenced her to death by hanging for supporting Daesh.[160] Without access to adequate procedural safeguards, the accused are left to await execution or fulfill long sentences in the Iraqi prison system, which is notorious for torture and unlawfully substandard detention conditions. In addition to its procedural concerns, Iraq has raised jurisdictional concerns by placing transferred detainees on trial, and on death row, without requiring that the individual had any prior presence or involvement in the country.[161]

157. *New blog: The Shamima Begum case: 'Revoking citizenship is ineffective and counterproductive'*, *supra* note 14.

158. SIAC judgment, *supra* note 100, para. 130.

159. Pilar Cebrián, *They Left to Join ISIS. Now Europe Is Leaving Their Citizens to Die in Iraq*, Foreign Pol'y (Sept. 15, 2019), https://foreignpolicy.com/2019/09/15/they-left-to-join-isis-now-europe-is-leaving-their-citizens-to-die-in-iraq.

160. Margaret Coker & Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, N.Y. Times (Apr. 17, 2018), https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html.

161. Cebrián, *supra* note 159.

Iraq is not the only place where Begum is likely to face death by hanging if transferred by the SDF. Bangladeshi foreign minister Abdul Momen has explicitly stated that this will be her fate if Begum is sent to Bangladesh.

> If anyone is found to be involved with terrorism, we have a simple rule: there will be capital punishment. And nothing else. She would be put in prison and immediately the rule is she should be hanged.[162]

Begum's denationalization thus severly threatens her right to life and her right to freedom from torture and inhuman or degrading treatment. Both of these rights are clearly established principles of both international and regional law.[163] The European Court of Human Rights has held that even in the context of national security, because "the prohibition of torture or inhuman or degrading treatment or punishment is absolute, the conduct of applicants, however undesirable or dangerous, cannot be taken into account."[164]

While the UK has acknowledged the intensity of the human rights violations to which Begum is subjected by residing in Syria, the State has maintained that this is neither their fault nor their problem to solve. The Secretary of State is only required to consider foreseeable risks of harm which would violate Articles 2 and 3 of the ECHR, if the ECHR applied, and which are a direct consequence of the deprivation order.[165] Before stripping Begum's citizenship, Javid decided that the deprivation would not cause direct and foreseeable harm, and as such, the ECHR would not take extraterritorial effect.[166] SIAC later considered this issue in Begum's appeal but only as a question of judicial review, weighing whether or not the Secretary of State was entitled to have made this risk assessment. The Court of Appeal held that SIAC should have examined the issue as a full merits appeal instead, and remitted Begum's

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162. Mattha Busby, *Shamima Begum would face death penalty in Bangladesh, says minister*, Guardian (May 4, 2019), https://www.theguardian.com/uknews/2019/may/04/shamima-begum-would-face-death-penalty-in-bangladesh-says-minister.

163. *See* Universal Declaration of Human Rights, *supra* note 1, arts. 3 and 15; International Covenant on Civil and Political Rights, *supra* note 1, arts. 6 and 7; Convention Against Torture, *supra* note 1; Convention on the Rights of the Child, *supra* note 1, arts. 6 and 37(a).

164. *See* Inst. on Statelessness and Inclusion, *supra* note 155, at 160, citing Al Husin v. Bosnia and Herzegovina, ECtHR, Al Husin v Bosnia and Herzegovina (No. 2), Application No. 3727/08 (Sept. 25, 2019), http://hudoc.echr.coe.int/spa?i=001-194065.

165. *See* X2 v Secretary of State for the Home Department [2017] SC/132/2016; SIAC judgment, *supra* note 100, para. 129; Court of Appeal judgment, *supra* note 63, para. 19. To determine if human right consequences are direct and foreseeable, SIAC has applied a two-pronged test borrowed from the European Court of Human Rights: "(i) a test of 'direct consequence' as the criterion for establishing state responsibility, liability being incurred if a state takes action which as a direct consequence exposes the individual to the relevant risk; and (ii) a test of 'foreseeability' as the criterion for establishing whether there are substantial grounds for believing the individual would be exposed to the relevant risk." Court of Appeal judgment, *supra* note 63, para. 14.

166. Court of Appeal judgment, *supra* note 63, para 12. This decision was informed by submissions including from the Special Cases Unit.

case to SIAC to decide whether the decision exposes Begum to a direct and foreseeable risk of violations of Article 2 and 3 of the ECHR.[167]

Another key human rights implication of the deprivation decision has been largely missing from the discussion throughout Begum's appeal: the death of her baby, a UK citizen himself. In addition to the future impacts of Begum's statelessness, the effects of the UK's decision have already left severe consequences by leading to the untimely death of Begum's infant son Jarrah.[168] Begum had requested to return home to the UK before giving birth to her third child, as to protect his health and keep him from suffering the same infant mortality risks that had claimed the lives of her prior two children. When the UK denied her right of reentry to her own country, Begum gave birth to Jarrah in the al-Hawl refugee camp in northern Syria. He passed away from pneumonia less than three weeks later.[169]

As Begum had not yet been officially deprived of her citizenship when she delivered her son, Jarrah was born as a British citizen. Home Secretary Javid had also maintained in February that Begum's denationalization would not extend to her newborn, asserting: "Children should not suffer, so if a parent does lose their British citizenship it does not affect the rights of their child.[170] However, Jarrah's rights were indeed affected by his mother's deprivation order, and he suffered the ultimate consequence of an untimely death, because the State forbade her from reentering the UK where he could have received lifesaving medical care. In knowing that Begum was about to give birth to a child who would face serious health risks and still barring her return, the UK violated its obligations under Articles 2, 3 and 6 of the Convention on the Rights of the Child.[171] Javid had recognized that the protection of Jarrah's rights should not be contingent upon his mother's citizenship status or behavior, and yet he acted contrary to the best interests of the child when he exiled Shamima from the UK, locking out Jarrah by extension and compromising his chance at survival. MP and former Shadow Home Secretary Diane Abbott

167. *Id.* para. 129.

168. Begum named this child Jarrah after her first-born son, who had died from malnutrition as an infant. In this Comment, the name Jarrah refers to her third, child born in February 2019.

169. *Shamima Begum: IS teenager's baby son has died, SDF confirms*, BBC (Mar. 8, 2019), https://www.bbc.com/news/uk-47500387.

170. Flora Drury, *Islamic State: Thousands of foreign children in Syrian camps*, BBC (Feb. 21, 2019), https://www.bbc.com/news/world-middle-east-47304399.

171. Convention on the Rights of the Child, *supra* note 1, art. 2(2) ("States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."); art. 3(1) ("In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"); art. 6(1) ("States Parties recognize that every child has the inherent right to life") and art. 6(2) ("States Parties shall ensure to the maximum extent possible the survival and development of the child").

condemned this unfolding of events, calling it "callous and inhumane" that "an innocent child has died as a result of a British woman being stripped of her citizenship."[172] Former Metropolitan Police chief superintendent Dal Babu commented that the UK had "failed, as a country, to safeguard the child" and that this "was an entirely avoidable death of a British citizen."[173]

It remains to be seen what SIAC will decide regarding the direct and foreseeable risks posed by Begum's deprivation order and its violation of Articles 2 and 3 of the ECHR. However, even if her deprivation is not overturned on these grounds, the real human rights implications of the decision remain evident. These violations can and must be taken into consideration when assessing the proportionality of the decision.

c. Begum's Age

Begum was 15 years old when she left London and traveled to Syria to join Daesh. Conrad Nyamutata argues that "the role of manipulation, grooming or coercion should also be taken into account in their affiliation" with Daesh, maintaining that "[i]rrespective of association with a group infamous for its gruesome acts, the children remain victims."[174] Further, he notes that these recruited youth should still be regarded as victims after age 18, as they had been "conscripted, enlisted to participate actively in various activities and are potential targets."[175] As such, Nyamutata asserts, these individuals must be protected by law, rather than having their citizenship stripped and having their entry home denied, both of which "appear starkly in conflict with norms of natural justice."[176]

The balance between Begum's free will and her vulnerability as a conscripted child has been a key discussion in her appeal process. Emphasizing that Begum was only 15 years old at the time she traveled to Syria, Tom Hickman QC told the Court of Appeal, "The only things that are clear are that Shamima Begum was a child when she left the UK and had been influenced to do so."[177] On behalf of the State, Sir James Eadie QC maintained that Begum's decisions to leave the UK, to marry a Daesh fighter, and to stay in Syria for years were decisions she made out of free will. As such, he asserted that it would be "entirely wrong to approach this case on the basis that she is to be regarded properly at this stage as a victim."[178] In its judgment, the Court of Appeal summarized the opinion of the Special Cases Unit, which manages

172. *UK home secretary criticised over death of Shamima Begum's baby*, Al Jazeera (Mar. 9, 2019), https://www.aljazeera.com/news/2019/02/shamima-begum-british-claim-bangladesh-minister-190221075011986.html.

173. *Id.*

174. Nyamutata, *supra* note 80, at 22.

175. *Id.* at 21.

176. *Id.* at 1.

177. Court of Appeal—Civil Division—Court 71, *supra* note 112.

178. *Id.*

high-profile immigration and citizenship cases within the Office for Security and Counter Terrorism:

> SCU [the Special Cases Unit] notes that individuals such as [Begum] who were radicalised whilst minors may be considered victims. This does not change the threat the Security Service assesses that [Begum] poses to the UK. Whilst accepting that [Begum] may well have been a victim of radicalisation as a minor, SCU does not consider this justifies putting the UK's national security at risk by not depriving her of her citizenship, for this reason.[179]

However, in the same judgment, Lord Justice Flaux wrote:

> I would be uneasy taking a course which, in effect, involved deciding that Ms Begum had left the UK as a 15 year old schoolgirl of her own free will in circumstances where one of the principal reasons why she cannot have a fair and effective appeal is her inability to give proper instructions or provide evidence. One of the topics that could be explored on her appeal before SIAC is precisely what were the circumstances in which she left the UK in 2015, but that could only properly be determined after a fair and effective appeal.[180]

Lord Justice Flaux's apprehension highlights the need for further consideration of Begum's age and the extent to which Begum was able to exercise free will. The State must take into account the influence of her young age and pursue further understanding of the context of the contested behaviors justifying her denationalization.

d. The Interest of the State: Preventing Terrorism

The UK has asserted that Begum's deprivation is necessary for the purpose of maintaining national security. In the Court of Appeal, Eadie argued on behalf of the Home Secretary that allowing Begum to enter the country and imposing an order under the Terrorism Prevention and Investigation Measures (TPIM) Act would not be sufficient for containing the security threat she poses. He cited the 2017 attacks on London Bridge to uphold his claim: "There was considerable monitoring of the individuals in the UK and yet they were able to . . . drive along the pavement at London Bridge, killing the individuals that they did."[181]

As MP Diane Abbott has argued, "fundamental freedoms do not need to be compromised" for public safety.[182] The same aim of preventing Begum from radicalizing others in the UK or conducting terrorist acts herself could be avoided through other means which would not have caused such detrimental consequences to Begum and her child. In addition, as Part V will further examine, experts posit that deprivation may not even be an effective

179. Court of Appeal judgment, *supra* note 63, para. 12.
180. *Id.* para. 94.
181. Court of Appeal—Civil Division—Court 71, *supra* note 112.
182. Dearden, *supra* note 73.

tool for preventing radicalization or extremist acts, and it might in fact be counterproductive.

Begum's solicitor Daniel Furner of Birnberg Peirce has noted that other states, "dealing with similar cases, in particular of very young women, have found safe, sensible and humane ways of returning and reintegrating their citizens quietly, and with expert advice, into a normal existence."[183] It must be noted that the existence of alternative means to achieve a legitimate purpose, like national security, does not automatically render an act disproportionate.[184] But, it can be seen that the deprivation of Begum's nationality is not the least intrusive means of achieving that stated purpose.

Regarding the possibility of alternative measures, Lord Justice Flaux wrote on behalf of the Court of Appeal:

> It seems to me that . . . the national security concerns about her could be addressed and managed if she returns to the United Kingdom. If the Security Service and the Director of Public Prosecutions consider that the evidence and public interest tests for a prosecution for terrorist offences are met, she could be arrested and charged upon her arrival in the United Kingdom and remanded in custody pending trial. If that were not feasible, she could be made the subject of a TPIM [Terrorism Prevention and Investigation Measures notice].[185]

The Court acknowledged that there are measures allowing Begum's reentry that would be acceptable in the context of the appeal process, and that in this context, "fairness and justice must, on the facts of this case, outweigh the national security concerns."[186] Why, then, could Begum not be brought home in this way and subjected to domestic accountability procedures accordingly, rather than exiled? Lord Justice Flaux, in his recommendation above, concluded that there are measures in which Begum can return to the UK without outweighing the State interest in protecting national security. It follows, then, that there are less invasive ways to achieve the State's overall national security aims than denationalizing and banishing Begum forever.

With all of the above considered, it can be seen that the decision to strip Begum of her citizenship is not proportionate to the interest protected. Her effective ban from the country has already incurred serious consequences, amounting to the death of her infant son, who was himself a British citizen. Begum has and will continue to face severe dangers by being locked out of the UK and rendered stateless. It is reasonable to expect that she will face the death penalty or other serious human rights abuses in Bangladesh or Iraq if left denationalized and exiled. The gravity of these impacts on her life is

183. Sabbagh, *supra* note 68.

184. Note that the principle of necessity specifically inquires about the availability of less intrusive means to achieve the same aim. While necessity is often regarded as intertwined with proportionality, they are two distinct principles.

185. Court of Appeal judgment, *supra* note 63, para. 120.

186. *Id.* para. 121.

amplified by the fact that she was merely a child when she made the decisions upon which the State later justified her deprivation. The severity of these consequences of her deprivation order, when considered alongside the Court of Appeal's opinion that her reentry to the UK would not outweigh the State's national security aims, suggests that Begum's denationalization is not sufficiently proportionate to the State interests pursued. The State thereby fails to establish this third element of the *Anudo* test, rendering Begum's deprivation order unlawfully arbitrary.

4. Element 4: Procedural Guarantees

In order to fulfill the fourth element of the *Anudo* arbitrariness test, deprivation of nationality must respect procedural guarantees that allow the individual to defend themselves before an independent body.[187] The Principles on Deprivation of Nationality as a National Security Measure state that the decision "must be open to effective judicial review and appeal to a court, in compliance with the right to a fair trial."[188] Specifically, the "right to equal access to a competent, independent and impartial judicial body established by law and to equal treatment before the law must be respected, protected and fulfilled."[189] In addition, the Principles highlight that the denationalized individual always retains the "right to enter and remain in that country in order to participate in person in legal proceedings related to that decision."[190] Lastly, the Principles note that international law enshrines the right to an effective remedy and reparation for victims of violations, which States must respect, through means including "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."[191]

As solicitor Fahad Ansari has argued, the UK has "a lack of due process in the whole system [of deprivation of nationality] . . . [I]t's the worst possible sanction to place on somebody, and trying to challenge it in this format is incredibly difficult."[192] Members of Parliament such as Chi Onwurah have condemned the Home Secretary's rejection of due process, but the Home Office maintains that this system of appeal is adequate.[193] In fact, the Court of Appeal in its conclusions of Begum's case maintained that the standards for procedural safeguards set out in customary international law, including those that protect against arbitrariness, are indeed enshrined in English public law.[194]

187. Anudo v. United Republic of Tanzania, *supra* note 16, ¶ 79.
188. Inst. on Statelessness and Inclusion, *supra* note 7, at 12.
189. *Id.* at 12–13.
190. *Id.* at 12.
191. *Id.* at 13.
192. Dearden, *supra* note 126.
193. 654 Parl Deb (Hansard) HC (6th ser.) (2019) *Deprivation of Citizenship Status* (UK).
194. Court of Appeal judgment, *supra* note 63, para. 108.

As of September 2020, Begum remains entrenched in an ongoing process of appeal, in which the question of procedural safeguards has taken particular prominence. On its face, the UK has provided some safeguards by allowing Begum to appeal her treatment to the Special Immigration Appeals Commission, the Administrative Court and the Court of Appeal. Of key concern has been the UK's initial denial of her application for Leave to Enter (LTE) in order to participate in her appeal, violating Principle 7.6.7 of the Principles on Deprivation of Nationality as a National Security Measure. This has only very recently been amended, by the July 2020 decision of the Court of Appeal, to finally allow Begum to enter the UK to participate in her appeal process.

Begum's case was the first case in which SIAC held that the appellant could not have a fair and effective appeal.[195] In their February 2020 judgment, SIAC concluded that "in her current circumstances, [Begum] cannot play any meaningful part in her appeal, and that, to that extent, the appeal will not be fair and effective."[196] However, the Commission refused her team's argument that the appeal must succeed for that reason. A key issue examined in the Court of Appeal thus became whether SIAC should allow an appeal where they are unable effectively and fairly to determine the issue.

When an individual is denationalized while outside the country and forbidden reentry, they are unlikely to even be aware of the evidence upon which their accusations are founded.[197] They are unlikely to have access to legal representation, and even if they do retain counsel, it will likely be difficult to communicate with their lawyers about the case.[198] Begum was able to retain counsel from Birnberg Peirce, but they have only been able to sustain minimal contact due to the conditions of the camp where she is residing. Commenting on these challenges and their interference with a fair trial, Hickman has stated:

> It is not possible to take instructions on her intentions, the circumstances in which she left, what she has been doing, family relations and so forth. It is fairly obvious there are exceptionally severe restrictions on her ability to give instructions and it is frankly remarkable that she has been able to get this case into this court at all.[199]

In the Court of Appeal, the State asserted that Begum's limited legal access is adequate to constitute fair proceedings, as she has been in contact with her legal team. Though it "might not be possible to mirror the level of access to legal advice that would be available if someone were at liberty in the UK," Eadie argued, "it does not mean the proceedings are unfair."[200] Begum's team, on the other hand, maintains that it has been made *impossible* for her to access a fair and effective trial—not simply *suboptimal*, as the State has

195. Court of Appeal—Civil Division—Court 71, *supra* note 112.
196. SIAC judgment, *supra* note 100, para. 143.
197. *Citizenship Deprivations: What you need to know*, *supra* note 53.
198. *Id.*
199. *UK home secretary criticised over death of Shamima Begum's baby*, *supra* note 172.
200. Court of Appeal—Civil Division—Court 71, *supra* note 112.

suggested—and that there are "certain minimum requirements that cannot be dispensed with."[201] In the Court's judgment, Lord Justice Flaux concluded:

> Notwithstanding the national security concerns about Ms Begum, I have reached the firm conclusion that given that the only way in which she can have a fair and effective appeal is to be permitted to come into the United Kingdom to pursue her appeal, fairness and justice must, on the facts of this case, outweigh the national security concerns, so that the LTE appeals should be allowed the uncontested evidence of Mr Furner was that, if Ms Begum were granted LTE and had access to UFF travel documents, he had no reason to believe she would be unable to return. As he said, the Kurdish authorities have repeatedly made clear, in public, their determination to facilitate such returns.[202]

The judgment also referenced Lord Justice Singh's comment during the appeal that "it is difficult to conceive of any case where a court or tribunal has said we cannot hold a fair trial, but we are going to go on anyway."[203] Accordingly, the Court of Appeal decided to allow Begum to reenter the UK to participate in the upcoming stages of her continued appeal.

This update in Begum's appeal process is extremely significant in terms of procedural safeguards. If the Court of Appeal had upheld the LTE denial, Begum could not have meaningfully participated in her appeal in a fair and effective way. By allowing her access to an in-person appeal, the State has improved its compliance with the international standards for procedural safeguards required for nonarbitrary deprivation. Still, what remains to be seen is the extent to which the UK continues to offer and protect procedural safeguards throughout the remaining duration of Begum's appeal. It is too soon to discern whether the State will offer complete, comprehensive access to fair and effective judicial review and equal treatment before the law.

If the State follows this precedent in future deprivation cases and continues to allow the appellant to participate in an in-person appeal, this will reflect positively upon the UK's adherence to this particular element of nonarbitrary deprivation. The Court of Appeal's decision suggests that it would be inconceivable to deny another applicant in a similar situation to Begum the chance to participate meaningfully and effectively in their appeal:

> With due respect to SIAC, it is unthinkable that, having concluded that Ms Begum could not take any meaningful part in her appeal so that it could not be fair and effective, she should have to continue with her appeal nonetheless. On this hypothesis, the Secretary of State would be able to present her case justifying the deprivation decision and the national security case in particular, without Ms Begum and her legal advisers being able to mount an effective challenge to that case.[204]

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201. *Id.*
202. Court of Appeal judgment, *supra* note 63, para. 121.
203. *Id.*
204. *Id.* para. 116.

In addition, the Court of Appeal importantly decided that issuing a stay on Begum's case would not fix the problem of her access to an unfair and ineffective appeal.[205] Instead, the Court decided that "the only way in which there can be a fair and effective appeal is to allow the appeals in respect of the refusal of LTE."[206]

It must be remembered that there may be other applicants who are deemed to have better capacity than Begum did to participate in their appeal remotely; as such, the State might determine that the individual should not be granted LTE because they could still participate effectively from their location via, for example, video calling. The Court of Appeal's favorable verdict for Begum's LTE application cannot be read to imply that all appellants will automatically be granted LTE in the future. The extent to which those individuals can participate fairly and effectively in an appeal without LTE will raise an important question of procedural safeguards in any such case.

Further, the consistent closed-door nature of the SIAC process raises serious due process concerns for a system that is meant to serve as a procedural safeguard. In a case like Begum's, it meant that after her legal team presented their side of her story, to whatever capacity they were able under their extreme communication restraints, Begum and her team were shut out of the decisionmaking process. They were not given access to the secret evidence that the State shared with her appointed special advocate, and they were not allowed to witness or participate in the Committee's full analysis of the case brought against her.

While Begum may be able to effectively participate in her appeal process now that she may enter the country, the UK's overall deprivation appeal process itself is not designed in accordance with procedural safeguards. The Court of Appeal confirmed in its judgment that there is no general common law right to be present at an in-country appeal, and that such a guarantee could only be created by legislation, noting that Parliament has not demonstrated any interest in provisioning this.[207] Parliament's reluctance to improve the deprivation

205. Court of Appeal judgment, *supra* note 63, paras. 116–117, noting that the proposal that Begum's "appeal should be stayed indefinitely in circumstances where she is being detained . . . does nothing to address the foreseeable risk if she is transferred to Iraq or Bangladesh, which is that in either of those countries she could be unlawfully killed or suffer mistreatment," and to "stay her appeal indefinitely is wrong in principle. It would in effect render her appeal against an executive decision to deprive her of her British nationality meaningless for an unlimited period of time."

206. Court of Appeal judgment, *supra* note 63, para. 118.

207. Court of Appeal judgment, *supra* note 63, paras. 32 and 96 ("Parliament must have contemplated that a number of appellants would be required to conduct their appeals from abroad"); para. 30 ("Parliament has not stipulated that the Secretary of State should take any steps to make it easier for such appellants to exercise their right of appeal. Nor has Parliament stipulated that the ability of an appellant effectively to exercise her right of appeal should have any bearing on the fate of the appeal"). *See also* G1 v Secretary of State for the Home Department [2012] EWCA Civ 867.

framework highlights the State's ongoing refusal to systematically protect procedural safeguards.

The recent judgment of the Court of Appeal that Begum must be allowed to reenter the UK in order to access a fair and effective appeal is a significant step forward in the State's respect of procedural safeguards. Still, it is too soon in Begum's ongoing appeal process to discern the extent to which her deprivation order may satisfy this element. Moreover, the structure of the UK's deprivation framework overall does not conform to international standards of procedural fairness, particularly considering the extensive secrecy of the SIAC process to the ad hoc basis for allowing an in-person appeal. It does not seem likely to fulfill this element of the *Anudo* test in Begum's case or in others.

C. *Concluding Assessment*

This Subpart has applied the analysis from *Anudo v. Tanzania* to the case of Shamima Begum, examining each of the four elements of the *Anudo* test for nonarbitrary deprivation of nationality. According to the *Anudo* test's interpretation of the UDHR, a deprivation order that fails to satisfy one or more of the four elements will be arbitrary under international law. This analytical framework is supported by, and benefits from the nuanced interpretations of international law provided by, the Global Counterterrorism Forum's Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context and the Institute on Statelessness and Inclusion's Principles on Deprivation of Nationality as a National Security Measure.

Should a court or commission examine the precedent of the *Anudo* test as it relates to Begum's deprivation case, they would likely find that the deprivation of her nationality violates at least three elements of the test: (1) a clear legal basis, (2) a legitimate purpose, and (3) proportionality to the interest protected. Fulfillment of fourth element, procedural safeguards, remains to be seen as her appeal process remains ongoing.

Firstly, the State's decision to strip Begum of her citizenship for national security purposes lacks a clear legal basis under both domestic and international standards. Secondly, the State has not established a legitimate purpose of her deprivation, as it has failed to provide a clear rationale for how the deprivation measure will reach its purported aim of protecting national security. Thirdly, the deprivation is not proportionate to the interest protected. The severe consequences of rendering Begum stateless, the direct risks of torture and other human rights violations including death, and the fact that Begum was only a child when was recruited to travel to Syria all make the decision extremely severe. It is not clear that the decision significantly or even at all advances the State interest of protecting national security. As such, it cannot be said that Begum's denationalization, with all of the serious impacts described above, could be the least intrusive, effective means of achieving the purported aim of protecting national security. Lastly, although Begum's appeal

process is still ongoing, the UK has thus far failed to provide strong procedural safeguards. Even if the UK were to satisfy this fourth element in the upcoming stages of Begum's appeal, it will still have failed to establish all of the other elements. As such, it must be maintained that Begum's deprivation order was arbitrary under international law, and that upholding the decision will violate the UK's international legal obligations.

V. Contextualizing Begum's Denationalization: The Implications of Citizenship Stripping as a 'Counterterrorism' Practice in the UK and Beyond

Begum's case has been harrowing—and so is the fact that her case may not be unique. The dangers of unlawfully stripping citizenship extend not only beyond Begum's case but also beyond the UK, as various countries are increasingly weaponizing this power against their nationals. Deprivation laws like the UK's continue to exile accused foreign terrorist fighters without requiring any criminal convictions, keeping unprosecuted individuals from ever returning home and subjecting them to myriad human rights abuses. The Geneva Academy posits that the British denationalization laws have "largely inspired" the newer laws and proposals in other European states, as other states are considering ramping up their laws and practices to match or surpass the broad executive powers of the British legal system.[208]

In addition to the wider geographical context of the case study, the wider legal context of Begum's case must also be recognized. Arbitrariness is only one of a set of international legal standards implicated by deprivation of nationality, which must be examined collectively. This Part will first address the question of whether citizenship stripping for national security purposes may be considered presumptively arbitrary. It will then explore the question of the use of deprivation as a tool of racial discrimination and exclusion, other human rights concerns implicated by this practice, and the extent to which deprivation of nationality for national security purposes is effective.

A. *The Growing Threat of Arbitrary Deprivation of Nationality*

Applying the *Anudo* arbitrariness test reveals the illegality of Begum's denationalization under international legal standards, and it is likely to yield the same results when applied to other denationalization cases that are conducted for the purported aim of national security, both within and outside the UK. Further discussion beyond the scope of this Comment should be undertaken to detail with greater specificity the reasons why citizenship stripping for national security purposes is presumptively arbitrary, both at the global level and in individual domestic contexts.[209] Still, the analysis put forth above

208. Geneva Acad., *supra* note 23, at 55.

209. For a deeper dive into the global and regional legal foundations underlying this presumption of arbitrariness, *see* Inst. on Statelessness and Inclusion, *supra* note 155.

regarding Begum's case sheds important light on the general likelihood that deprivation of nationality, when conducted for purported national security aims against accused foreign terrorist fighters like Begum, will be presumptively arbitrary. It follows from the analysis of Begum's case study that it will be extremely difficult for a state to satisfy all four of the required elements of the *Anudo* test for nonarbitrary deprivation.

First, even where a State may assert that it has a clear domestic legal basis for a deprivation order, it will only fulfill international standards where its clear legal basis is precise, predictable, comprehensive, and publicly accessible. The British deprivation power lacks this requisite clear predictability, and as such, any deprivation orders carried out under this current law—or similar laws of other states—will fail to establish a clear legal basis.

Regarding the second element of the *Anudo* test, the State will only establish a legitimate purpose for its deprivation of accused foreign terrorist fighters where it provides a clear rationale for how the measure will reach its aim of protecting national security. The expert warnings cited in Part IV, regarding the lack of evidence indicating the efficacy of denationalization, suggest that it will be difficult for any State to establish this element of the test. Further, as discussed in Part III, the denationalization of an accused foreign terrorist fighter will be unlawfully arbitrary where the purpose is to punish or expel the individual. Where the State's broader objective of national security boils down to these aims more specifically, the denationalization of that individual may be presumed to be arbitrary due to lack of legitimate purpose.

Third, denationalization for national security purposes will only be nonarbitrary where it is proportionate to the interest protected. Here, the State must acknowledge the severe consequences of citizenship stripping—especially, but not solely, where it causes statelessness—and the direct risks of torture, death and other human rights violations, including the inherent violation of the right to return to one's own country. The decision is further unlikely to be proportionate if the alleged foreign terrorist fighter was recruited as a child, as their vulnerability to conscription and their restricted free will contribute to the weight of their denationalization. A State is also unlikely to fulfill this element where it is not clear that the decision significantly or even at all advances the government interest of protecting national security, and if it is not the least intrusive, effective means of achieving the purported aim of protecting national security.

Lastly, the State must make adequate procedural safeguards accessible for the denationalized individual. In the UK, the denationalization process is structurally not set up for this, from the fact that the written notice is not required to reach the individual abroad, to the embedded secrecy and inaccessibility of the SIAC process. Allowing Leave to Enter is a positive step forward for compliance with international standards, but it is not adequate by itself, especially as it is currently granted on an ad hoc basis rather than

systemically. Any state will fail to establish this element if it does not allow for effective review of the deprivation decision before an independent and impartial judicial body, with comprehensive and effective remedies and reparations for victims of violations.

Overall, it can be seen that deprivation of nationality conducted for national security purposes is unlikely to ever fulfill the four elements required under the *Anudo* test, in the UK or otherwise. It may therefore be considered presumptively arbitrary under international law.

B. *Denationalization as a Tool of Racial Discrimination and Exclusion*

While the scope of this Comment focuses on arbitrariness, the same attention is deserved on another key international legal standard at play: discrimination. The prohibition of racial discrimination is a peremptory norm of international law.[210] Even if a case were to satisfy the *Anudo* arbitrariness test, it will still be unlawful if it is discriminatory.[211]

As explained by Tendayi Achiume, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, "one way to understand denationalisation is as a tool that governments have long used to ethnically purify their nation states. It is a very convenient and easy way to do so, sometimes by explicitly identifying groups that are understood to be foreign or outside of the nation."[212]

A 2013 Report of the UN Secretary-General found that "new cases of large-scale and discriminatory deprivation of nationality continue to be reported."[213] Denationalization laws like the UK's pose an inherent risk of discrimination as they only apply to individuals with actual or assumed dual nationality. Experts have warned of a "two-tier system" of belonging that this framework creates, as individuals with access to another state's citizenship are "effectively being told their 'Britishness' is contingent upon continued good behaviour."[214] The framework disproportionately affects citizens from non-European ethnic and national backgrounds, and may be used as a tool of racial discrimination to target expel racialized groups from the State.[215]

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210. *See, for example*, Int'l Law Comm'n, *supra* note 5.

211. *See, for example*, the 1961 Convention, *supra* note 4; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 1; Inst. on Statelessness and Inclusion, *supra* note 7.

212. Amanda Brown, *Interview With Tendayi Achiume*, *in* The World's Stateless: Deprivation of Nationality 155 (Inst. on Statelessness and Inclusion ed., 2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf.

213. *Human rights and arbitrary deprivation of nationality*, *supra* note 4.

214. @ShirazMaher, Twitter (Feb. 10, 2020, 4:21 AM), https://twitter.com/ShirazMaher/status/1226843672957812736. *See also* Kenan Malik, *Deportations to Jamaica, the Shamima Begum case and Windrush betray a woeful regard for the notion of citizenship*, Guardian (Feb. 16, 2020), https://www.theguardian.com/commentisfree/2020/feb/16/citizenship-precious-right-not-to-be-arbitrarily-revoked-by-the-state.

215. *See*, *for example*, *New blog: The Shamima Begum case: 'Revoking citizenship is*

The UK is not alone in building a discriminatory hierarchy of citizenship, where dual nationals face a precarious state of belonging and mononationals enjoy an infinite protection of their inclusion. The Netherlands stands out as another example, where dual nationals of non-Western migrant backgrounds have been disproportionately affected by deprivation of nationality measures—in particular, Dutch nationals of Moroccan descent. As explained by Achiume:

> Significantly, in most of these places, another EU nationality does not count as an additional nationality that makes an individual eligible for nationality stripping. Rather, it is North African and other so-called "non-western" nationalities that are targeted. These measures predictably and disproportionately target racial and ethnic minority communities in a way that means an EU citizen with North African ancestry suspected of Islamic extremism is subject to nationality stripping, whereas an EU citizen with European ancestry and who engages in extreme rightwing terrorism can be fully guaranteed to be shielded from nationality stripping.[216]

The pattern of what Achiume calls the "use of denationalisation as a tool to achieve ethnonationalist ends"[217] is not a new phenomenon. As summarized by Matthew Gibney:

> In many countries, there is a belief that citizens of Muslim background are nationals in law only and are not true members of society. . . . There is nothing new about this. Historically, as the experience of Germans during WWI in the US and the Japanese in Canada during WWII show, denationalisation's targets have been a tracer for ethnic, religious and national groups who—citizenship notwithstanding—are already considered foreign in the societies in which they live.[218]

It is crucial to acknowledge how the denationalization of Shamima Begum, a British-born Muslim woman of Bangladeshi descent, is situated in this larger context of discriminatory citizenship stripping. The deprivation power, with the extensive discretion it allocates to the executive, has been and continues to be weaponized against individuals from whom the State seeks to cleanse itself and who the State says do not deserve to belong in the national body politic.

C. *Violations of International Human Rights Law*

In addition to the standards of nonarbitrariness and nondiscrimination, there are also other standards of international human rights law that must be respected by all denationalization measures. According to the Principles on Deprivation of Nationality for National Security Purposes, an act of deprivation of nationality that is nonarbitrary and nondiscriminatory will still be

ineffective and counterproductive', *supra* note 14; *Citizenship Deprivations: What you need to know*, *supra* note 53; Inst. on Statelessness and Inclusion, *supra* note 7, at 6; Brown, *supra* note 212, at 155.

216. Brown, *supra* note 212, at 157.

217. Brown, *supra* note 212, at 155.

218. Gibney, *supra* note 35, at 208.

unlawful if it violates the State's other legal obligations under international human rights law, international humanitarian law and international refugee law.[219] This includes, inter alia: the right to enter and remain in one's own country; the prohibition of refoulement; the prohibition against torture and cruel, inhuman or degrading treatment or punishment; the right to liberty and security of the person; the right to legal personhood; the right to private and family life; the rights of the child; and the prohibition of derivative loss of nationality.[220]

These and all other human rights concerns are factors that can be assessed in the proportionality analysis of the *Anudo* test, but which should also garner their own attention in further discussions about the use of denationalization and the shaping of international norms. It is theoretically possible that a State may be able to establish the element of proportionality and subsequently fulfill the *Anudo* test even in the face of human rights abuses, if the impact of the deprivation is not disproportionate to the legitimate interest pursued, and if the other components are satisfied. Therefore, it is important to conduct a separate human rights analysis of the deprivation order beyond the arbitrariness test, to discern whether the measure unlawfully violates the State's other international human rights obligations.

D. *Is Denationalization for "National Security" Effective?*

In addition to these arguments regarding the *legality* of denationalization as a counterterrorism measure, there are also further discussions to be had regarding the *effectiveness* of denationalization in this context. Contrary to assertations from state leaders like Javid, experts have warned that denationalization is not a strong deterrent of terrorism.

The Home Office argued in Begum's appeal that the UK's deprivation power is "a highly valuable weapon in the national security armoury" to protect the public from those who have been radicalised and those who support Daesh.[221] However, experts have warned that there is no evidence suggesting that denationalization deters terrorist acts more strongly than other counterterrorism efforts.[222] The Institute on Statelessness and Inclusion maintains

219. Inst. on Statelessness and Inclusion, *supra* note 7, at 9.

220. Inst. on Statelessness and Inclusion, *supra* note 155, at 70–86.

221. Court of Appeal—Civil Division—Court 71, *supra* note 112.

222. *Citizenship Stripping As A Security Measure—Policy Issues and the "Effectiveness" Question*, *in* The World's Stateless 2020: Deprivation of Nationality 227, 234 (Inst. on Statelessness and Inclusion eds., 2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf; *See also* Elke Cloots, *The Legal Limits of Citizenship Deprivation as a Counterterror Strategy*, 23 Eur. Pub. L. 57 (2017), https://kluwerlawonline.com/journalarticle/European+Public+Law/23.1/EURO2017005;

Elizabeth F. Cohen, *When Democracies Denationalize: The Epistemological Case against Revoking Citizenship*, 30 Ethics & Int'l Aff. 253 (2016); Gerard-Rene de Groot & Maarten Peter Vink, Ctr. for Eur. Pol'y Stud., Best Practices in Involuntary Loss of Nationality in the EU (2015), https://www.ceps.eu/ceps-publications/best-practices-involuntary-loss-nationality-eu.

that where "threats of self-destruction, criminal prosecution, and capital punishment do not deter a terrorist, possible loss of nationality certainly won't either."[223] It may even be counterproductive.

Experts warn that deprivation of nationality may create feelings of resentment and may further radicalization efforts against states like the UK.[224] Denationalized individuals, especially if banished to areas of conflict and instability, may become more susceptible to recruitment efforts.[225] Having been abandoned by their country, and left without alternative means for personal security and belonging, they may be compelled to join or rejoin terrorist organizations whether or not they ideologically align with the group's mission. In addition to potentially fueling radicalization abroad, stripping the citizenship of accused foreign terrorist fighters also removes the State's access to inside information that could help advance these exact national security goals.[226] As solicitor Clare Collier warns, "[deprivation of nationality] has nothing to do with making the public safe. In fact, this leaves us less safe as services are unable to conduct proper investigations that could help prevent young people, like Shamima, from entering terrorist circles in the future."[227]

Denationalizating and exiling individuals accused of threatening national security threatens counterterrorism efforts not only in the domestic realm but also on the transnational level. When states effectively export their alleged terrorists for other countries to handle instead, they place an unfair and unwelcomed burden on the international community.[228] The Principles on Deprivation of Nationality for National Security Purposes warn that this practice may violate states' obligations to "cooperate and to act responsibly and in accordance with international law to maintain international peace and security."[229] Principle 11 explains that states are in fact "obligated to take responsibility for their own citizens and to investigate and prosecute crimes

223. *Citizenship Stripping As A Security Measure—Policy Issues and the "Effectiveness" Question*, *supra* note 222, at 234.

224. *See*, *for example*, *New blog: The Shamima Begum case: 'Revoking citizenship is ineffective and counterproductive'*, *supra* note 14; *Revoking Shamima Begum's citizenship breaches her human rights say MRG and ISI*, *supra* note 132; Paulussen & Scheinin, *supra* note 35, at 224.

225. *Citizenship Stripping As A Security Measure—Policy Issues and the "Effectiveness" Question*, *supra* note 222, at 234–235.

226. *Citizenship Stripping As A Security Measure—Policy Issues and the "Effectiveness" Question*, *supra* note 222, at 233; *See also* Audrey Macklin, *Kick-off Contribution*, *in* The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship? 1 (Audrey Macklin & Rainer Bauböck eds., 2015), https://cadmus.eui.eu/bitstream/handle/1814/34617/RSCAS_2015_14.pdf?sequence=1.

227. Bowcott, *supra* note 108.

228. *See*, for example, *Revoking Shamima Begum's citizenship breaches her human rights say MRG and ISI*, *supra* note 132; MP Chi Onwurah in 654 Parl Deb (Hansard) HC (6th ser.) (2019) *Deprivation of Citizenship Status* (UK); Paulussen & Scheinin, *supra* note 35, at 225.

229. Inst. on Statelessness and Inclusion, *supra* note 7, at 16.

and threats to national security through their national criminal justice frameworks in accordance with international standards."[230] If the purpose behind denationalizing accused foreign terrorist fighters is actually to reduce terrorism in an effective way, leaders must recognize that this goal cannot be met without working together and supporting other states' counterterrorism efforts. The "highly valuable weapon in the national security armoury" is not actually the deprivation power—it is international cooperation.

Further, stripping the citizenship of individuals who have actually committed terrorist acts significantly reduces the chances for meaningful accountability. For survivors of terrorist attacks and the loved ones of victims, holding a trial may help them feel satisfied that justice has been served, rather than that the problem has been ignored or exported.[231] Allowing accused terrorists, including foreign terrorist fighters, to remain in their country of nationality and stand trial accordingly opens the door for justice through court proceedings and rehabilitation. Their presence in the country also allows for initiating routes of restorative justice outside of the court system. While it is difficult to prosecute individuals accused of joining Daesh due to complications of evidence, the option of prosecution still stands, and is a much more effective alternative for accountability than exile.[232]

While deprivation of nationality may appeal to states seeking to take a symbolic stance against terrorism, the practice must be recognized as that: a symbolic action, rather than an effective national security policy. The use of citizenship striping as a signaling mechanism for governments to showcase their tough stance on terrorism is problematic and dangerous, as it prioritizes public perception and electoral success over thoughtfully addressing the root causes of radicalization. As seen by Clare Collier, the reason that governments "use these archaic banishments . . . is to score political points and look tough on terrorism."[233] Though the measure might help political leaders appeal to their electorate, and communicate to citizens what behavior is and is not acceptable in the eyes of the State,[234] it has not been demonstrated that deprivation of nationality has achieved or will achieve any real security benefits, domestically or internationally.[235] In the context of counterterrorism, citizenship stripping is at best an empty political gesture, and at worst a reckless security strategy.

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230. *Id.*

231. *See New blog: The Shamima Begum case: 'Revoking citizenship is ineffective and counterproductive'*, *supra* note 14.

232. *See, for example*, Megan Specia, *ISIS Cases Raise a Question: What Does It Mean to Be Stateless?*, N.Y. Times (Feb. 22, 2019), https://www.nytimes.com/2019/02/22/world/middleeast/isis-shamima-begum-citizenship-stateless.html.

233. Bowcott, *supra* note 108.

234. Paulussen & Scheinin, *supra* note 35, at 225.

235. *Citizenship Stripping As A Security Measure—Policy Issues and the "Effectiveness" Question*, *supra* note 222, at 234.

Conclusions

The United Kingdom has denied that British citizenship stripping protocols allow for arbitrary deprivation, and Sajid Javid has asserted that he would never render someone stateless.[236] However, Javid's 2019 decision to strip Shamima Begum of her citizenship has done exactly this. Begum remains entrenched in an ongoing appeal process, attempting to reclaim her British nationality and escape the precarious human rights situation in which her denationalization has stranded her.

By applying the analysis from *Anudo v. Tanzania* to Begum's case, this Comment has sought to assess whether or not the deprivation of Begum's nationality is arbitrary under international law. The *Anudo* case from the African Court on Human and People's Rights offers a guiding interpretation of the Universal Declaration of Human Rights (UDHR) and the relevant legal standards governing deprivation of nationality. Following the rule set out by the *Anudo* court, deprivation of nationality will be arbitrary under international law unless it: (i) is founded on a clear legal basis; (ii) serves a legitimate purpose that conforms with international law; (iii) is proportionate to the interest protected; and (iv) installs procedural guarantees which must be respected, allowing the concerned to defend themselves before an independent body.[237] This analytical framework is further elucidated by the expert interpretations of international law provided by the Global Counterterrorism Forum's Glion Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context and the Institute on Statelessness and Inclusion's Principles on Deprivation of Nationality as a National Security Measure.

If a deprivation order fails to satisfy even one element of the *Anudo* test, it will be rendered unlawfully arbitrary. Should a court or commission examine the precedent of the *Anudo* test as it relates to Begum's deprivation case, they would likely find that the deprivation of her nationality violates at least three elements of the test: a clear legal basis, a legitimate purpose, and proportionality to the interest protected. Fulfillment of the fourth element, procedural safeguards, remains to be determined as her appeal process continues.

Applying the *Anudo* arbitrariness standard reveals the illegality of Begum's denationalization under international legal standards, and it is likely to reach the same conclusion when applied to other denationalization cases that are conducted for the purported aim of national security, within or outside the UK. Deprivation of nationality conducted for national security purposes is unlikely to ever fulfill the four elements required under the *Anudo* test, and it may therefore be considered presumptively arbitrary. In addition, stripping the citizenship of accused foreign terrorist fighters like Shamima Begum may be not only arbitrary but also racially discriminatory, ineffective and

236. 654 Parl Deb (Hansard) HC (6th ser.) (2019) *Deprivation of Citizenship Status* (UK).

237. Anudo v. United Republic of Tanzania, *supra* note 16, ¶ 79.

dangerously counterproductive. Further analysis should assess the role of discrimination and the human rights concerns of Begum's case and all others, to ensure that any instance of citizenship stripping abides by international legal standards. This is a very difficult legal standard to satisfy, and as such, it should be presumed that deprivation of nationality will never be the best method of counterterrorism. Moreover, when tempted to revoke anyone's nationality on grounds of national security, states must keep in mind the often-cited warning put forth by the U.S. Supreme Court in *Trop v. Dulles*, regarding denationalization as punishment: "Citizenship is not a license that expires upon misbehavior."[238]

238. Trop v. Dulles, 356 U.S. 86 (1958). *See also, for example*, Specia, *supra* note 232; Audrey Macklin, *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?*, Debating Transformations of National Citizenship 165 (Rainer Bauböck ed., 2018).