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# Statelessness: Deprivation of Nationality

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## ABSTRACT

*This research explores the critical issue of statelessness resulting from the deprivation of nationality, a phenomenon that affects millions globally and raises significant human rights concerns. Despite the existence of legal frameworks intended to protect individuals from arbitrary deprivation of nationality, comprehensive data on the prevalence and consequences of such actions remains elusive. This study identifies key research gaps in understanding the legal, political, and social factors leading to nationality deprivation, as well as the socio-economic and psychological impacts on stateless individuals. The objectives of this research include examining the protection of individual rights in the absence of nationality, analyzing the status of stateless persons upon expulsion, and assessing the conflicts between national laws and international conventions. Through a doctrinal legal research methodology, the study systematically analyzes existing legal instruments, national legislation, and relevant case law to evaluate compliance with human rights standards and identify gaps in protections for stateless individuals. Key research questions focus on the causes and consequences of nationality deprivation, the effectiveness of procedural safeguards, and the arbitrary abuse of state authority in revoking nationality. Comparative analyses of different jurisdictions will highlight best practices and potential pitfalls in nationality laws. The findings aim to provide insights into the legal barriers faced by stateless individuals and propose actionable recommendations for legal reforms at both national and international levels. Ultimately, this research seeks to contribute to the discourse on statelessness, advocating for enhanced protections against arbitrary deprivation of nationality and the promotion of individual rights in a global context.*

**Keywords:** *Statelessness, Nationality deprivation, Human rights, Legal frameworks, Arbitrary deprivation, National security.*

## I. INTRODUCTION

Statelessness is one of the significant problem affecting millions worldwide. Statelessness, defined as the condition of an individual not being recognized as a citizen by any state, poses significant human rights challenges. In the international sphere, there is an ongoing trend of states stripping individuals of their nationality due to certain behaviors deemed unacceptable.

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One of the primary causes of statelessness is the deprivation of nationality, which can occur under various legal and political circumstances. The Universal Declaration of Human Rights and several other international treaties recognize the right to a nationality and aim to prevent or reduce statelessness. However, States revoke citizenship as a form of punishment or to protect national interests. This research design aims to explore the implications of deprivation of nationality, particularly focusing on how such actions contribute to statelessness. It will analyze legislative frameworks, historical contexts, and the intersection of national security with human rights.

### **A. Literature Review:**

The Literature review identifies numerous paths to statelessness, including conflicts of laws, changes in nationality laws, and administrative practices.<sup>2</sup> It highlights the risk of statelessness and the arbitrary exercise of state power without due process of law. It underscores the importance of continued scrutiny of denationalization powers in liberal states to ensure they do not undermine the values they purport to uphold. Furthermore, it examines the legal, theoretical, and practical aspects of statelessness and its impact on human rights.<sup>3</sup> The legitimacy and compliance of these declarations must align with the high thresholds established by Article 8(3) and international legal standards, ensuring that they do not undermine the fundamental objectives of the Convention.<sup>4</sup>

### **Current Legal Framework of Statelessness**

Nationality defines the legal relationship or legal bond between the citizen/national and her state, based on social facts of attachment, and which gives rise to rights and duties on the part of both sides of that relationship. This chapter examines the regulation of nationality: how is nationality determined, who decides, and what are the limits on states' discretion in conferring or removing one's nationality.<sup>5</sup> International law generally recognises that states have the right to define such nationals who belongs and who does not, although human rights law imposes limitations on this right. Statelessness, defined as the lack of legal citizenship, is a significant problem affecting millions worldwide. The Universal Declaration of Human Rights and several other international treaties recognize the right to a nationality and aim to prevent or reduce statelessness. However, the authors argue that the current legal framework is

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<sup>2</sup>Weissbrodt, David, and Clay Collins. "The Human Rights of Stateless Persons."

<sup>3</sup> *Ibid*

<sup>4</sup>Bücken, L. & de Groot, R., *Deprivation of Nationality Under Article 8(3) of the 1961 Convention on the Reduction of Statelessness* (2018).

<sup>5</sup> Brandvoll, J., *Deprivation of Nationality: Limitations on Rendering Persons Stateless Under International Law*, in Edwards, A. & van Waas, L. (eds.), *Nationality and Statelessness Under International Law*.

insufficient, as it primarily addresses de jure statelessness (having no nationality under the law) and overlooks de facto statelessness (having a nationality that is not effective).<sup>6</sup> The article identifies numerous paths to statelessness, including conflicts of laws, changes in nationality laws, and administrative practices.<sup>7</sup>

### **Denationalisation**

Deprivation of citizenship or “denationalization” is the process through which a state moves to deprive a citizen of their right to nationality and citizenship. Macklin was right to observe that practices of deprivation have increasingly been used by governments. The proliferation of deprivation reflects an increasing authoritarianism structuring citizenship (Choudhury 2017) and border regimes, where for example, as in Britain, a citizen can be deprived of citizenship if deemed in the interest of the “public good.” The expansion of deprivation has gained increasing scrutiny, in line with a broader interdisciplinary focus on citizenship (Mau 2010; Sassen 2014) amid what Catherine Besteman (2020) has called the “militarized global apartheid” of borders. While illuminating, the existing academic work on deprivation of citizenship remains limited due to its Eurocentric focus and the erasure of colonialism and race in structuring patterns and practices of deprivation (although, see Kapoor 2018). We challenge the idea that banishment “is back” by arguing that for many communities globally, banishment, deprivation, and dispossession never went “away.” We argue that deprivation is not only a global practice, but also a colonial one.<sup>8</sup>

### **Human Rights of Stateless Persons in Various International Instruments**

The author David Weissbrodt and Clay Collins, examines the legal, theoretical, and practical aspects of statelessness and its impact on human rights. The authors discuss the rights of stateless individuals as outlined in various international human rights instruments, the mechanisms leading to statelessness, the struggles faced by stateless populations, and the international efforts to address the issue.<sup>9</sup> The authors detail the hardships faced by stateless individuals, such as difficulties in accessing political and judicial processes, social services, and basic rights like education and healthcare. They also discuss the challenges in obtaining asylum and the risk of prolonged detention due to the inability to prove nationality.<sup>10</sup> Furthermore, the paper discuss about the remedies for Statelessness namely preventative

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<sup>6</sup> Weissbrodt, David, and Clay Collins. “The Human Rights of Stateless Persons.”

<sup>7</sup> *Ibid*

<sup>8</sup> Shahid, Rudabeh & Turner, Joe, Deprivation of Citizenship as Colonial Violence: Deracination and Dispossession in Assam.

<sup>9</sup> Weissbrodt, David, and Clay Collins. “The Human Rights of Stateless Persons.”

<sup>10</sup> *Ibid*

remedies, minimization remedies, Naturalizing remedies, International law and the implementation of remedies for statelessness.<sup>11</sup>

### **Conditions for Deprivation in accordance with Convention for the Reduction of Statelessness**

In order to retain the right to deprive a person of his nationality as per Art 8 (3) of the Convention, state needs to submit declaration at the time of ratification of the Convention. There are certain conditions which has to be fulfilled in the declaration to conform in the Convention such as: (1) The declaration must be explicitly limited to the grounds mentioned in Article 8(3); (2) These grounds must exist already in national law at the time of submission of the declaration; and (3) The power of deprivation permitted by Article 8 (2) and (3) shall only be exercised in accordance with the law and under the judicial safeguards of the right to a fair hearing by a court or other independent body.<sup>12</sup>

### **Declaration and Ratification of their own National Laws in respect to Deprivation of Nationality**

Article 8(3) of the 1961 Convention allows States to make declarations regarding their nationality laws, particularly concerning the conditions under which they may deprive individuals of their citizenship. Initially, only the three countries namely United Kingdom, Austria, and Ireland submitted declaration under Art 8(3) based upon the specific interest in the provision. As of the latest data, the many states that have submitted declarations under Article 8(3) which includes United Kingdom, Austria, Ireland, Tunisia, New Zealand, Brazil, Jamaica, Lithuania, Belgium, Georgia.<sup>13</sup>

The analysis highlights a nuanced understanding of the use of Article 8(3) declarations. Initially embraced by a small group of early ratifiers, the provision saw decreased proportional usage over time but experienced a revival in recent years, particularly in the context of contemporary security challenges. The legitimacy and compliance of these declarations must align with the high thresholds established by Article 8(3) and international legal standards, ensuring that they do not undermine the fundamental objectives of the Convention.<sup>14</sup>

In this research, this paper will cover about various state's national laws and their ratification in respect to the deprivation of nationality such as Ireland, Austria, Brazil, New Zealand,

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<sup>11</sup> *Ibid*

<sup>12</sup> Shearer I, Opeskin B. Nationality and statelessness.

<sup>13</sup> *Supra* 3

<sup>14</sup> *Supra* 3

United Kingdom, Tunisia and many other countries in relevance to the violation of the international norms.

### **B. Research Gap**

Comprehensive data on the exact number of individuals have been deprived of their nationality by their own states due to actions considered seriously prejudicial to the vital interests of the state remains elusive and often varies by jurisdiction. While exact numbers are often not disclosed publicly, reports suggest that 70% of countries currently have provisions in their laws that allow for deprivation of nationality due to reasons related to national security or disloyalty. However, many of these laws lack sufficient safeguards against arbitrary deprivation and statelessness.<sup>15</sup> There are some lacuna concerning nationality deprivation, particularly those related to national security. Many existing frameworks emphasize the prohibition of arbitrary deprivation and the avoidance of statelessness, but empirical research is lacking in assessing compliance and variations in implementation across jurisdictions. The effectiveness of procedural safeguards in preventing arbitrary deprivation remains underexplored. Research could focus on how these safeguards are applied in practice, including access to legal representation and the ability to appeal decisions, which are critical for ensuring fair treatment.

## **II. CAUSES AND CONSEQUENCES OF DEPRIVATION OF NATIONALITY BY THEIR OWN STATE**

Nationality refers to a legal status of an individual in relation to a State and embodies the legal bond between the individual and State for the purpose of International Law. It is for each state to determine who is considered a national according to its own domestic law, in compliance with International standards.<sup>16</sup> According to the Inter American Court of Human Rights, nationality can be deemed to be the political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that state. At the same time, state revoke their own nationals which results in Statelessness. To prohibit such statelessness, various international instruments namely 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness are implemented. According to 2013 report of the United Nations Secretary General, many States allow deprivation of nationality in response to acts seriously prejudicial to the vital interests of the State, but the way in which this ground is expressed in domestic

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<sup>15</sup>Citizenship Stripping on the Rise: New Study Shows Europe at the Epicentre, European University Institute, <https://www.eui.eu/news-hub?id=citizenship-stripping-on-the-rise-new-study-shows-europe-at-the-epicentre>

<sup>16</sup> 1930 Hague Convention on certain questions relating to the Conflict of Nationality Laws, Art 1

law varies significantly. In accordance with Article 15(2) of the Universal Declaration of Human Rights, individuals should not be arbitrarily deprived of their nationality. The deprivation of nationality by one's own state is a complex issue driven by legal, political, and social factors, including discriminatory laws, national security concerns, and rising ethnic nationalism. This deprivation can lead to significant socio-economic consequences, such as barriers to employment, education, and healthcare, as stateless individuals often lack access to essential services and social welfare programs. Psychologically, statelessness can result in identity crises, mental health challenges, and social isolation due to stigma and exclusion. Moreover, stateless individuals face violations of their rights, including limited legal protections, restricted freedom of movement, and exclusion from political participation, further entrenching their marginalization and vulnerability within society. Addressing these challenges requires comprehensive legal reforms and protective measures to uphold the rights of those at risk of statelessness.

#### **A. Legal, and Political factors leading to the Deprivation of Nationality**

Individuals deprived of nationality under the provisions may become stateless, which can lead to a lack of legal recognition, protection, and rights in any country. This will ultimately make it difficult for individuals to access basic services, such as healthcare, education, and employment etc.

#### **Legal Factor**

The 1961 Convention on the Reduction of Statelessness outlines international obligations for states to prevent statelessness, which can lead to legal challenges and scrutiny. Stateless individuals often face barriers in accessing legal systems due to their lack of recognized nationality, complicating their pursuit of justice. This lack of legal status can result in violations of fundamental human rights, such as the right to a fair trial, freedom of movement, and family life. States are bound by international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which mandate the protection of rights for all individuals, including stateless individuals. Non-compliance can result in international legal repercussions, including condemnation from bodies like the UN Human Rights Council. International organizations may establish monitoring mechanisms to ensure adherence to international standards and set legal precedents. However, the requirement for documentation proving renunciation of former nationality can complicate legal processes and create administrative burdens. Judiciary review is essential to prevent arbitrary actions by the state,

ensuring fair and transparent decisions regarding nationality deprivation.

### **Political Factor**

Citizenship deprivation is often justified by national security concerns, leading to stricter laws and a broadened definition of national security. This can result in widespread deprivation of citizenship, as politicians frame it as essential for protecting national interests, gaining public support. This normalization can contribute to the erosion of civil liberties and political alienation, leading to disenfranchisement, social unrest, and radicalization. Diplomatic tensions can strain international relations and hinder cooperation on trade and security. Repatriation efforts become complicated when countries are reluctant to accept individuals deprived of nationality, leading to an increase in stateless individuals.

Ongoing cases of citizenship deprivation can shift public sentiment, leading to more restrictive policies and fear and suspicion towards certain groups. Public outcry against unjust deprivation can spur advocacy movements promoting inclusive citizenship laws and protections for stateless individuals. Ethnic or political minorities may be disproportionately affected by nationality deprivation, leading to increased marginalization and civil unrest. This can complicate the political landscape and national security concerns, prompting governments to respond with more stringent laws and measures, perpetuating a cycle of deprivation and resistance.

### **B. Socio-Economic and Psychological effects of statelessness resulting from nationality deprivation**

#### **Socio-Economic Effects:**

Statelessness is a complex socio-economic issue that creates a cycle of disadvantage for individuals without legal status. It leads to limited access to employment, often in the informal sector, with lower wages and poor working conditions. Stateless children often face educational barriers, leading to lower educational attainment and limited future opportunities. Healthcare access is another critical area affected by statelessness, with untreated medical conditions and poorer health outcomes. Stateless individuals are often ineligible for social welfare benefits, exacerbated by their economic hardship and reliance on informal support networks. Housing and living conditions are also severely impacted, leading to homelessness or reliance on temporary accommodations. Economic discrimination presents barriers to entrepreneurship, limiting their income generation and contributing to the economy. These factors create a complex web of socio-economic disadvantages for stateless individuals, necessitating comprehensive interventions to address their unique challenges.



**Psychological Effects:**

Statelessness has profound psychological effects, affecting individuals' sense of identity and belonging. It leads to cultural displacement, mental health issues, and trauma, including anxiety and depression. Social isolation is another consequence, with stigma and discrimination causing loneliness and lack of support. Fear of arrest, detention, or deportation adds to the psychological burden, fostering chronic stress and anxiety. Children and youth face unique challenges, as statelessness hinders access to education and healthcare. Intergenerational trauma can occur when children of stateless individuals internalize feelings of worthlessness or exclusion. Despite these challenges, some stateless individuals exhibit resilience and develop coping strategies. Community support and solidarity can foster resilience, while activism and advocacy raise awareness about their plight. Ultimately, resilience and community support can offer pathways to healing and empowerment, despite the deeply damaging psychological effects of statelessness.

**C. Impact of statelessness on individuals' rights and access to services**

**Legal Rights:** Statelessness profoundly impacts individuals' rights and access to services, creating a cascade of challenges that significantly affect their everyday lives and overall well-being. Firstly, the lack of legal identity leaves stateless individuals without essential documentation, such as passports or national IDs, which prevents them from exercising basic rights like voting and accessing justice. This vulnerability often makes them targets for exploitation and abuse, as they struggle to assert their rights in the absence of legal recognition.

**Access to Education:** In terms of education, stateless children face significant barriers to enrollment, as many schools require proof of nationality or residency. This can lead to high dropout rates and limited educational opportunities, further perpetuating cycles of poverty. Even when they manage to enroll, the quality of education may be inferior due to discrimination or lack of resources, hindering their future prospects.

**Healthcare Access:** Healthcare access is another critical area affected by statelessness. Many healthcare systems require identification or proof of residency, making it challenging for stateless individuals to receive medical care. This lack of access can lead to untreated illnesses, posing public health risks not only for them but also for the broader community, especially during health crises.

**Employment Opportunities:** Employment opportunities are severely restricted for stateless individuals, as they often cannot secure formal jobs due to their lack of legal status. Many

employers require identification or work permits, forcing them into informal or exploitative labor conditions, which perpetuates economic marginalization and dependence on social services that may also be inaccessible.

**Social Service Benefits and Civic Participation:** Moreover, stateless individuals frequently find themselves excluded from social protection systems, such as social security and housing assistance, exacerbating their vulnerability and making it difficult to meet basic needs like food and shelter. This exclusion contributes to a sense of disenfranchisement, as stateless individuals are often unable to participate in political processes, including voting and civic life, leading to feelings of alienation from the society in which they live.

### **III. NATIONAL AND INTERNATIONAL LAWS GOVERNING DEPRIVATION OF NATIONALITY AND THEIR COMPLIANCE WITH HUMAN RIGHTS STANDARDS**

#### **A. Primary legal frameworks governing deprivation of nationality**

##### **International Human Rights Standards**

##### **a. Right to a Nationality:**

**Universal Declaration of Human Rights (UDHR):** Article 15 recognizes the right of every individual to a nationality, including the right to change and retain nationality.

**Convention on the Elimination of All Forms of Racial Discrimination (CERD):** Article 5(d)(iii) affirms the right to nationality.

**European Convention on Nationality (ECN):** Article 4 outlines the right to a nationality.

##### **b. Prohibition of Arbitrary Deprivation of Nationality**

**UDHR:** Article 15(2) prohibits arbitrary deprivation of nationality.

**ECN:** Article 4(c) prohibits arbitrary deprivation of nationality.

The UN General Assembly recognizes this prohibition as a fundamental principle of international law. The European Court of Human Rights (ECHR) has also indicated that arbitrary denial or revocation of citizenship can raise issues under Article 8 of the ECHR, which protects private and family life.

##### **c. 1961 Convention on the Reduction of Statelessness:**

Article 8(1): Prohibits deprivation of nationality if it results in statelessness.

Article 8(2): Allows deprivation under specific conditions, including:

(a) Circumstances outlined in Articles 7(4) and 7(5) related to effective connection to the

state.

(b) Misrepresentation or fraud in obtaining nationality.

Article 8(3): Allows states to retain the right to deprive nationality under certain conditions, including:

(a) Conduct inconsistent with loyalty to the state.

(b) Oath or declaration of allegiance to another state.

## **B. Assessing Gaps in the Legal Framework for Safeguarding Individual Rights**

Article 8(3) of the 1961 Convention on the Reduction of Statelessness allows states to deprive individuals of their nationality under certain conditions, even if such deprivation results in statelessness. While this provision aims to balance state sovereignty with the prevention of statelessness, several significant gaps exist that can undermine the protection of individual rights. Below is a detailed examination of these gaps:

### **1. Ambiguity in Grounds for Deprivation**

#### **Vague Terminology:**

**Conduct Inconsistent with Loyalty:** The phrase lacks a precise definition, leaving it open to broad interpretation. This vagueness can lead to arbitrary applications, where individuals may be deprived of nationality for actions that do not genuinely threaten national interests."

**Vital Interests of the State:** The concept of what constitutes a state's "vital interests" can vary greatly between jurisdictions. This subjectivity can lead to inconsistent applications, where some states may interpret this broadly to justify deprivation actions that infringe on individual rights.

States may exploit these vague terms to target political dissidents, activists, or marginalized groups, effectively using nationality deprivation as a tool for political repression rather than a legitimate state interest.

### **2. Lack of Clear Procedural Safeguards**

#### **Due Process Rights:**

Article 8(3) does not mandate specific procedural safeguards for individuals facing deprivation of nationality. This absence raises concerns about:

**Right to a Fair Hearing:** Individuals may not be given an opportunity to contest the deprivation in a fair and impartial setting.

**Notification of Grounds:** There may be insufficient requirements for states to inform individuals of the reasons for deprivation, hindering their ability to prepare a defense.

**Access to Legal Representation:** The lack of guaranteed access to legal counsel can leave individuals vulnerable and unable to navigate complex legal processes.

**Transparency in Decision-Making:** Many states do not provide clear guidelines or transparency in how decisions regarding deprivation of nationality are made. This lack of clarity can result in arbitrary or discriminatory practices, further eroding trust in the legal system.

### **3. Disproportionate Impact on Vulnerable Groups**

**Targeting of Minority Groups:** Certain ethnic, religious, or political minorities may face disproportionate risks of deprivation under Article 8(3). For instance, individuals from marginalized communities may be more likely to be accused of disloyalty or actions against the state.

**Systemic Discrimination:** The application of Article 8(3) can exacerbate existing inequalities, as vulnerable groups may lack the resources or support to contest deprivation actions effectively.

**Misuse of Provisions:** States may misuse the provisions of Article 8(3) to suppress dissent, targeting individuals for their political beliefs or activism rather than legitimate concerns about national loyalty.

### **4. Inconsistent Implementation Across States**

**Variability in National Laws:** Different countries interpret and implement Article 8(3) in varied ways, leading to inconsistent protections for individuals. Some states may adopt more stringent criteria for deprivation, while others may have more lenient policies.

**Case Law Divergence:** National courts may interpret the grounds for deprivation differently, leading to a lack of uniformity in legal outcomes for similar cases.

**Lack of Monitoring Mechanisms:** There is often insufficient oversight of how states apply Article 8(3). National human rights institutions may lack the authority or resources to effectively monitor cases of deprivation, allowing abuses to go unchecked.

### **5. Challenges in Balancing State Interests with Individual Rights National Security Justifications**

States frequently invoke national security as a justification for deprivation of nationality under

Article 8(3)(a). However, this can lead to overreach, where individuals are deprived of nationality based on vague or unfounded allegations.

**Risk of Arbitrary Actions:** The broad application of national security concerns can result in individuals being deprived of nationality without adequate evidence or due process.

**Counter-Terrorism Measures:** Laws related to counter-terrorism may incorporate provisions for nationality deprivation, often without sufficient safeguards. This can lead to wrongful deprivation based on mere suspicion or association, disproportionately affecting specific communities.

#### **6. Legal Gaps for Stateless Individuals Inadequate Protections for Stateless Persons**

Individuals deprived of nationality under Article 8(3) may find themselves in a legal vacuum, particularly if they become stateless. The lack of clear legal pathways to regain nationality or acquire a new one exacerbates their vulnerability.

**Failure to Address Statelessness:** The focus on state sovereignty and national security in the application of Article 8(3) may overshadow the need to protect individuals from becoming stateless, contravening the overarching goals of the 1961 Convention.

**Lack of Support Mechanisms:** Stateless individuals often face significant barriers in accessing basic rights, such as education, healthcare, and employment. The absence of legal recognition can lead to social exclusion and marginalization, further entrenching their vulnerable status.

#### **C. Contrasting the impact of state expulsion on an individual's freedom of speech**

State expulsion refers to the act of a government removing an individual from its territory, often based on their political beliefs, speech, or actions that are deemed undesirable by the state. This can occur in various contexts, including political dissent, activism, social movements or even disloyal to the state. Article 19 of UDHR, 1948 deals with the right to freedom of opinion and expression and it includes the right to hold it without any interference. On the authority of Article 9 of the 1961 Convention, no one should be deprived of their nationality for exercising their right to freedom of speech and expression on political grounds. It can't be used to delegitimize the points of view that are different from those of the Government in power. Nationality laws which allow deprivation on the basis of disloyalty by the virtue of an act or speech should be avoided, as it would infringe their human rights such as freedom of speech and expression. Freedom of speech and expression covers ideas and expressions that offends, shocks or disturbs the Government. Freedom of expression

constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self fulfilment. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.<sup>17</sup> However, the threat of expulsion can lead individuals to self-censor their speech, fearing repercussions for expressing dissenting opinions. This creates an environment where open dialogue is stifled. When individuals are expelled for their views, it sends a message to others that dissent will not be tolerated, further discouraging free expression. Historical examples, such as the expulsion of legislators during the Reconstruction era or the Red Scare, illustrate how state expulsion has been used to suppress political opposition and dissent. Cases like *Bond v. Floyd* highlight the constitutional protections against expulsion based on political speech, reinforcing the idea that legislative bodies cannot silence dissenting voices without violating First Amendment rights.

#### **IV. ARBITRARY ABUSE OF NATIONALITY DEPRIVATION BY THE STATE: EXPLORING MISUSE OF AUTHORITY AND LACK OF DUE PROCESS**

##### **A. Overview of Article 8(3) in the 1961 Convention on the Reduction of Statelessness**

According to Secretary General Report, deprivation of nationality must meet certain conditions in order to comply with international law, in particular the prohibition of arbitrary deprivation of nationality. These conditions include serving a legitimate purpose, being the least intrusive instrument to achieve the desired result and being proportional to the interest to be protected.<sup>18</sup> In determining arbitrariness, the Court has had regard to whether the revocation was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly.<sup>19</sup> Based upon the above content, five test has been laid down to prohibit arbitrary deprivation of nationality such as:

**Legitimate Purpose:** The deprivation must serve a legitimate purpose, narrowly interpreted. The conduct must threaten the foundations of the state, and the individual must have the capacity to negatively impact the state. General criminal offenses do not meet this threshold.

**Legal Certainty:** National laws must clearly define the actions that could lead to deprivation

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<sup>17</sup> *Mouvement raëlien suisse vs. Switzerland*, App. No. 16354/06 (Eur. Ct. H.R. 2012).

<sup>18</sup> UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the Secretary General', A/HRC/25/28 (2013), para 4.

<sup>19</sup> ECtHR, *K2 v United Kingdom* (2017), Application no. 42387/13, para 50. Similar reasoning can be found in consecutive cases, such as *Johansen v Denmark* (2022), Application no. 27801/19.

of nationality, ensuring that individuals are aware of the consequences of their actions. Ambiguity in the law can lead to arbitrary applications.

**Necessity:** The necessity of deprivation must be evaluated against less intrusive measures. The state must demonstrate that deprivation is the least harmful option to address the perceived threat. Alternatives such as dialogue or legal prosecution should be considered before resorting to deprivation of nationality.

**Proportionality:** The consequences of deprivation must be proportionate to the alleged offense. The loss of nationality must be justified concerning the gravity of the alleged disloyalty. A careful assessment of the situation is necessary to ensure that the response is appropriate and not excessively punitive.

**Procedural Safeguards:** Article 14(3)(a) of the ICCPR mandates that individuals must receive written notice of deprivation decisions, including reasons for such actions. Adequate justification and the opportunity to contest the decision are essential components of due process.

#### **B. Whether the State compliance with the grounds under Article 8(3) at the time of signature, ratification or accession.**

In recent years, there has been a growing academic and political discourse in many States regarding the deprivation of nationality on the grounds of behavior considered seriously prejudicial to the State. While the 1961 Convention on the Reduction of Statelessness does not prohibit such measures, it requires that legislative safeguards are in place to prevent statelessness. Article 8(3) of the Convention allows States to submit a declaration at the time of ratification to retain the right to deprive individuals of their nationality under certain conditions. For this declaration to comply with the Convention, it must meet three criteria: first, it must explicitly limit the grounds for deprivation to those specified in Article 8(3); second, these grounds must already exist in national law at the time the declaration is submitted; and third, any exercise of deprivation must adhere to legal standards and include judicial safeguards, ensuring the right to a fair hearing by an independent body.

The United Nations Conference on the Elimination or Reduction of Future Statelessness, held in 1959, chose a more moderate draft that focused on the reduction, rather than the complete elimination, of statelessness. This approach allowed for some discretion among Contracting States on contentious aspects of nationality regulation, yet many States were hesitant to ratify the Convention. By 2001, four decades after its adoption, only 17 States had ratified it, a significantly low number for a UN-initiated international treaty. The situation improved in

1995 when the United Nations High Commissioner for Refugees (UNHCR) began promoting accession to the 1961 Convention, leading to an additional 53 States ratifying the Convention by 2017.

An analysis of the use of declarations under Article 8(3) reveals that among the first six States to ratify the Convention, three—The United Kingdom, Austria, and Ireland—made such declarations. However, for over twenty years after the Convention came into force in 1975, there was little increase in the number of declarations until Tunisia ratified the Convention in 2000, also submitting a declaration under Article 8(3). As the number of ratifications grew, the submission of Article 8(3) declarations became more common. Between 2006 and 2010, two additional declarations were submitted, followed by four more between 2011 and 2015. To date, the following States have submitted declarations in accordance with Article 8(3): The United Kingdom (1966), Austria (1972), Ireland (1973), Tunisia (2000), New Zealand (2006), Brazil (2007), Jamaica (2013), Lithuania (2013), Belgium (2014), and Georgia (2014).

This section analyzes the legality of declarations submitted under Article 8(3) of the 1961 Convention, focusing on their compliance with the specified grounds and corresponding national laws. Article 8(3) allows States to retain the right to deprive individuals of nationality based on specific grounds that must exist in national law at the time of ratification. The grounds for deprivation include actions that undermine loyalty to the State or conduct seriously prejudicial to its vital interests, as well as allegiance to another State.

The introductory part of Article 8(3) necessitates that the grounds for deprivation included in the declarations must be present in national law at the time of accession. Consequently, vague or overly broad declarations may be limited by existing national provisions. These limitations must also align with international law, which mandates that declarations should not conflict with the treaty's object and purpose or reduce the protections it affords.

The Tunis Conclusions, established by UNHCR experts in 2013, emphasize that the term "seriously prejudicial" sets a high threshold, indicating that such conduct must significantly threaten the State's foundations. Ordinary criminal offenses do not qualify under this exception, which is more applicable to severe acts like treason or espionage.

A. Ireland and Jamaica: The declarations from Ireland and Jamaica align generally with Article 8(3), though they contain vague language that complicates assessments of legality. Ireland's declaration does not specify which grounds it intends to retain, although it likely refers to loyalty issues as outlined in its Nationality and Citizenship Act. Jamaica's declaration is similarly unclear, potentially encompassing broader grounds than allowed by Article 8(3),



particularly concerning disloyalty and sentencing to imprisonment.

B. Austria, Brazil, and New Zealand: The declarations from Austria, Brazil, and New Zealand largely comply with Article 8(3) but feature broad definitions of conduct that is "seriously prejudicial." Austria's declaration includes conduct that undermines the State's prestige, while Brazil's retains the right to deprive nationality for conduct harmful to its vital interests, aligning with its constitutional provisions. New Zealand's declaration follows its Citizenship Act but should specify that actions must be contrary to its vital interests to meet Convention requirements.

C. The United Kingdom: The UK's declaration, like Ireland's, is limited to naturalized citizens and cites Article 8(3) grounds verbatim. The British Nationality Act of 1948 allowed for deprivation based on disloyalty and collaboration with enemies, but these provisions have since been repealed. The UK's current legislation, amended in 2003 and 2005, aligns with Article 8(3) but raises questions about the legality of reintroducing grounds that could lead to statelessness. The government argues that returning to the 1961 Convention's standards is legally sound, but critics contend that this undermines the Convention's goal of minimizing statelessness.

D. Tunisia: Tunisia's declaration is detailed but has faced objections from several States for being inconsistent with Article 8(3). While some grounds align with the Convention, others, such as evasion of military service and certain criminal convictions, exceed the limitations set by Article 8(3). These objections highlight the need for declarations to stay within the scope of the Convention's provisions.

E. Belgium: Belgium's recent declaration reserves the right to deprive naturalized citizens under current national law. While it aligns with Article 8(2)(b), concerns arise regarding provisions that allow deprivation for serious offenses without linking them to conduct that is "seriously prejudicial" to the State's interests. Notably, Belgium's declaration did not attract objections, contrasting with Tunisia's, raising questions about geopolitical biases in the scrutiny of compliance with international law.

### **C. Comparative Study of Nationality Deprivation: Lessons from Global Approaches and Challenges**

Countries around the world have developed distinct legal frameworks to govern the deprivation of nationality, often influenced by their historical backgrounds, cultural values, and political climates. Here is a detailed examination of the approaches taken by various countries:

**a. United Kingdom:** In the UK, nationality deprivation is primarily governed by the British Nationality Act 1981, which allows the Home Secretary to revoke citizenship under specific circumstances. The grounds for deprivation include:

- **National Security Concerns:** The UK can deprive citizenship if an individual is deemed to pose a threat to national security. This includes involvement in terrorism or other serious criminal activities.
- **Serious Criminal Offenses:** Individuals who have been convicted of serious crimes can also face deprivation of citizenship, particularly if their actions are deemed incompatible with the duties of loyalty owed to the UK.

The UK legal framework emphasizes the importance of justice and fairness, particularly regarding the potential for statelessness. In 2003, amendments were made to ensure that no individual could be rendered stateless as a result of deprivation. However, the introduction of the Immigration Act 2014 reintroduced grounds for deprivation that could lead to statelessness, raising concerns about compliance with international obligations.

**b. France:** France has a long-standing practice of using nationality deprivation as a means to combat terrorism and serious crime. The legal framework includes provisions that allow for:

- **Deprivation of Nationality for Dual Nationals:** Individuals who hold dual nationality can be stripped of their French citizenship if they are convicted of terrorism-related offenses or other serious crimes. This approach reflects a prioritization of national security over individual rights in certain contexts.
- **Judicial Oversight:** While the government has the authority to initiate deprivation, individuals have the right to appeal such decisions in court, ensuring a degree of judicial oversight and protection of rights. France's approach seeks to balance national security needs with the protection of individual rights, although it has faced criticism for potential discrimination against specific communities, particularly those with immigrant backgrounds.

**c. Australia:** Australia's nationality deprivation laws are primarily outlined in the Australian Citizenship Act 2007. Key features include:

- **Focus on Terrorism-Related Activities:** The law allows for the deprivation of citizenship for individuals who engage in acts that are considered to undermine

national security, particularly those related to terrorism. This includes participation in terrorist organizations or actions that pose a threat to the Australian community.

- **Prevention of Statelessness:** The legal framework includes safeguards to prevent statelessness, stipulating that an individual cannot be deprived of citizenship if it would result in them being stateless. However, critics argue that the criteria for deprivation can be overly broad and may lead to arbitrary decisions. Australia's approach reflects a commitment to national security while attempting to adhere to international standards regarding the prevention of statelessness.

**d. Germany:** Germany's legal framework for nationality deprivation is governed by the Nationality Act, which provides for:

- **Deprivation Based on Disloyalty:** German law allows for the deprivation of citizenship if an individual acts in a manner that is disloyal to the German state, including engaging in terrorist activities or supporting organizations that threaten national security.
- **Judicial Review:** Individuals facing deprivation have the right to challenge such decisions in court, which provides a level of protection against arbitrary actions. Germany's approach emphasizes due process and the need for a clear connection between the conduct of the individual and the grounds for deprivation.

**e. Netherlands:** The Netherlands has a comprehensive legal framework for nationality deprivation, particularly concerning dual nationals:

- **Grounds for Deprivation:** Dutch law allows for deprivation if an individual is convicted of terrorism-related offenses or if they have acted against the interests of the Netherlands. This applies primarily to dual nationals, as the law prohibits rendering individuals stateless.
- **Proportionality and Judicial Oversight:** The Dutch system emphasizes proportionality, requiring that deprivation measures be necessary and appropriate in relation to the offense committed. Judicial oversight is also a critical component, allowing individuals to appeal deprivation decisions. The Dutch approach aims to balance national security concerns with the protection of individual rights, particularly regarding the implications of statelessness.

**f. Canada:** Canada's Citizenship Act provides a framework for nationality deprivation that includes:

- **Serious Criminal Offenses and National Security:** Canadian law allows for deprivation of citizenship for individuals convicted of serious crimes or those who engage in activities that threaten national security.
- **No Statelessness:** Similar to other countries, Canadian law prohibits deprivation that would render an individual stateless, aligning with international norms. Individuals facing deprivation have the right to appeal decisions, ensuring judicial oversight. Canada's approach reflects a commitment to human rights while addressing national security concerns.

The diverse legal frameworks governing nationality deprivation across different countries reveal a complex interplay between national security, individual rights, and international obligations. While many nations have established safeguards to prevent statelessness and ensure judicial oversight.

## **V. RECOMMENDATION & CONCLUSION**

### **1. Clarification of Terminology:**

**Define Key Terms:** States should provide clear definitions for ambiguous terms such as "conduct inconsistent with loyalty" and "vital interests." This would reduce the risk of arbitrary applications and ensure that individuals are aware of the specific behaviors that could lead to deprivation of nationality.

**Legislative Revisions:** National laws should be revised to eliminate vague language and to specify the conduct that constitutes grounds for deprivation, ensuring that only actions that genuinely threaten national interests are considered.

### **2. Establishment of Procedural Safeguards:**

**Right to a Fair Hearing:** Legal frameworks should mandate that individuals facing deprivation of nationality are guaranteed the right to a fair and impartial hearing. This includes the opportunity to contest the decision in a court of law.

**Notification Requirements:** States should be required to inform individuals of the specific grounds for deprivation and provide them with sufficient time to prepare a defense.

**Access to Legal Representation:** Governments must ensure that individuals have access to legal counsel throughout the deprivation process, allowing them to effectively navigate complex legal proceedings.

**Transparency in Decision-Making:** Clear guidelines and transparent processes should be

implemented to foster trust in the legal system and prevent arbitrary or discriminatory practices.

### **3. Protection of Vulnerable Groups:**

**Targeted Protections:** Legal frameworks should include specific protections for minority groups that are disproportionately affected by nationality deprivation. This includes measures to prevent systemic discrimination and to ensure equitable treatment under the law.

**Monitoring Mechanisms:** Establish independent bodies to monitor the application of nationality deprivation laws, ensuring compliance with international human rights standards and addressing any potential abuses.

### **4. International Cooperation and Standards:**

**Harmonization of Laws:** Encourage states to harmonize their laws concerning nationality deprivation with international standards, particularly the principles outlined in the 1961 Convention and the International Covenant on Civil and Political Rights (ICCPR).

**Best Practices Sharing:** Facilitate platforms for states to share best practices and lessons learned regarding the implementation of nationality laws, focusing on the protection of individual rights and the prevention of statelessness.

### **5. Support Mechanisms for Stateless Individuals:**

**Legal Pathways for Stateless Persons:** Develop clear legal pathways for individuals who become stateless as a result of deprivation to regain their nationality or acquire a new one.

**Access to Basic Rights:** Ensure that stateless individuals have access to essential services, including education, healthcare, and employment, to mitigate the social exclusion and marginalization they face.

## **VI. CONCLUSION**

The gaps in the legal framework surrounding nationality deprivation, particularly under Article 8(3) of the 1961 Convention on the Reduction of Statelessness, pose significant challenges to the protection of individual rights. Ambiguity in the grounds for deprivation, lack of procedural safeguards, and the disproportionate impact on vulnerable groups create an environment ripe for abuse and arbitrary actions by states. To address these challenges, it is crucial for states to clarify their laws, establish robust procedural safeguards, and ensure that vulnerable populations are protected from discrimination. Furthermore, international cooperation and adherence to global standards are essential for creating a consistent and fair

approach to nationality deprivation that respects human rights and minimizes the risk of statelessness.

Ultimately, safeguarding individual rights in the context of nationality deprivation requires a commitment to transparency, fairness, and the rule of law. By implementing the recommended reforms, states can better align their practices with international human rights standards, ensuring that the principles of justice and equity are upheld in matters of nationality.

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