**Rights & Security International’s Response to the Office of the High Commissioner for Human Rights’ (OHCHR) Call for Input - Use of Administrative Measures in Counter Terrorism – Report to the Human Rights Council on Terrorism and Human Rights**

1. **About Rights & Security International (RSI)**

Rights & Security International (RSI) is a London-based human rights charity working to end human rights abuses that states commit in the name of national security. We aim to hold governments accountable for human rights violations and strive to remove biases, discrimination, and stereotyping from national security policies. We also advocate for access to justice for victims of human rights abuses and their families.

1. **Expansive use of citizenship deprivation powers across Europe**

Many states, and particularly across Europe, have expanded powers to deprive people of citizenship on national security grounds with the aim of countering terrorism.[[1]](#footnote-1) The use of such administrative powers enables states to carry out deprivation orders when the individual is outside of their country of nationality, and are often used to prevent them from re-entering or returning.[[2]](#footnote-2) In some cases, administrative deprivation orders also become effective immediately and before the affected individual has lodged an appeal.[[3]](#footnote-3) The expansive use of these powers means that some states are also empowered to deprive people of their citizenship, even if it could result in statelessness.[[4]](#footnote-4)

For example, in Denmark, newly-enacted legislation allows for administrative deprivations to take place if the individual affected is a dual national and has been identified to pose a risk to national security.[[5]](#footnote-5) Administrative deprivations can also occur without formal criminal charges or a conviction, enabling them to be carried out on suspicions of alleged terrorism-related behaviour or activities.[[6]](#footnote-6) Further changes in legislation have allowed administrative decisions to be taken on people who were found to have travelled to or were present in designated “exclusionary zones,” leading to administrative decisions potentially affecting both children and victims of trafficking.

Similarly, in the United Kingdom (UK), the Home Secretary has the power to deprive someone of their British citizenship if satisfied that doing so would be “conducive to the public good.”[[7]](#footnote-7) Deprivations can happen without a criminal conviction, and more recent legislative changes in 2022 have since enabled deprivations to be carried out without providing written notice beforehand, meaning that people can be stripped of their citizenship and unaware of the decision.[[8]](#footnote-8) Unlike Denmark, however, the UK Home Secretary does not need to prove that the individual affected has another nationality before issuing a deprivation order, but must rather be satisfied that the individual could obtain another nationality – a policy that, in practice, has the power to leave people stateless if they are unable to secure a second nationality.[[9]](#footnote-9)

Despite UK law guaranteeing the right to appeal, reviews of deprivations on national security grounds often only assess the reasonableness of the administrative decision, instead of providing a comprehensive review of the merits of the decision. The review, conducted by the UK’s Special Immigration Appeals Commission (SIAC), lacks transparency where they rely on secret evidence presented in closed material proceedings, that exclude the deprivee and their lawyers.[[10]](#footnote-10)

Other states, such as France, require a terrorism conviction before a citizenship deprivation can occur, and the order must be reviewed by the court.[[11]](#footnote-11) In contrast, and with the exception of deprivation orders that result in statelessness, the UK Home Secretary’s citizenship deprivation powers are not within the Independent Reviewer of Terrorism Legislation’s remit, nor are deprivation orders required to be certified by a court.

1. *Terrorism Prevention and Investigative Measures (TPIMs) in the UK*

People in the UK who are suspected of involvement in terrorism-related activities may be subjected to other administrative powers, known as Terrorism Prevention and Investigative Measures (TPIMs). When implemented, these powers enable authorities to closely monitor and restrict movement of people they deem to pose a potential threat to national security.[[12]](#footnote-12) The imposition of a TPIM requires the prior permission of the court, except in cases of urgency. TPIMs may be secured via secret evidence, information that the state does not wish to disclose in public or is inadmissible in normal open criminal proceedings. This information is withheld from the controlee and their legal counsel through the use of closed material proceedings. As breaches of any TPIM conditions is a criminal offence, prosecutions for violation of TPIM conditions indirectly enable material otherwise inadmissible or insufficient for criminal proceedings to underpin a criminal conviction.[[13]](#footnote-13)

1. *Impact of citizenship deprivation powers on nationals abroad*

Since 2019, thousands of third-country nationals have been detained in camps in northeast Syria on basis that they are associated with the so-called Islamic State. Many of the detainees are women and children that were trafficked to the region and have been arbitrarily detained, without trial, in conditions that -- as RSI and the Committee Against Torture have concluded – amount to inhuman and degrading treatment.[[14]](#footnote-14) Various reports and research shows that deprivation of citizenship powers have been used against third-country nationals detained in these facilities in an attempt to prevent them from returning to their country of nationality. In some cases, administrative deprivation powers have left people in the camps stateless, unable to return to any country, in indefinite detention and exile.[[15]](#footnote-15)

1. **Terrorism listing during states of emergencies and gendered impact of administrative detention**

States in Latin America are increasingly listing criminal gangs as terrorist groups to justify extended periods of state of emergency. Through executive decrees and legislative reforms,[[16]](#footnote-16) states’ vague definitions of terrorism cast a net beyond the range of activities of criminal gangs, reaching individuals and organisations in the civic society space. In this scenario, law enforcement officers often employ racial profiling to target historically marginalised group, leading to discriminatory practices and rights abuses. For example, during the two years of the state of emergency in El Salvador, the government’s widespread policy of mass detention, many of which under terrorism charges, primarily affects racialised young men embodying the stereotypes associated with members of the criminal gangs.[[17]](#footnote-17)

Terrorism listing also impacts the work of human rights defenders and political dissents who expose rights abuses committed under the guise of counter-terrorism. In contexts of crisis and precarious institutional frameworks, few avenues to ensure due process exist for civil society actors falling into the governments’ terrorist profile. According to the most recent statistics published by the Ecuadorian government, the Armed Forces have conducted 254 operations against terrorist groups, resulting in 280 detentions and 16 executions of alleged terrorists.[[18]](#footnote-18) Our in-country partners have pointed out that the lack of a clear definition of terrorism calls into question these numbers, and highlights the concerns raised about the racist and biased performance of law enforcement officers.[[19]](#footnote-19)

The ongoing internal armed conflict in Ecuador shows how the practice of terrorism listing also impact the right to protest on environmental-related issues. In recent events of the Palo Quemado municipality, police officers severely repressed farmer unions challenging the government’s mining project in the region, resulting in the detention of 75 individuals under terrorism charges.[[20]](#footnote-20) Similar to other contexts of the Global South, the government’s economic policies prioritise the interest of private corporations, which also benefit from the practice of terrorism listing of the environmental rights defenders.

Finally, organisations consulted during the scoping study pointed out the discriminatory gender-related impacts of administrative detention during counter-terrorism efforts. In addition to leaving women and families without income and exposed to abuse, the detentions of men highlight governments’ focus on certain gender and age groups.[[21]](#footnote-21) Organisations based in countries of Eastern and West Africa stated that members of women-led organisations are subject to arrest and detention under counter-terrorism measures as a means of intimidation, regardless of their likelihood to be charged or convicted.

1. **Lack of agreed definition of ‘terrorism’**

Despite the significant growth of UN Security Council resolutions and member states laws that define terrorist-related acts, member states are yet to agree on a binding definition of “terrorism” and “violent extremism.” In consultation with civil society organisations across the Global South, RSI found an overwhelming consensus that this absence is one of the main factors allowing governments’ widespread misapplication of counter-terrorism laws to violate human rights and restrict civic space. Furthermore, the lack of a binding definition undermines civil society’s meaningful contribution to counter-terrorism efforts, as it exacerbates the barriers arising from the technical and specialised language member states and UN agencies use in counter-terrorism efforts.

Recent examples in various of the consulted locations show how the wide scope of interpretation of terrorism enjoyed by national courts[[22]](#footnote-22) is leading to unlawful acts of persecution[[23]](#footnote-23) and administrative detention.[[24]](#footnote-24) This growing practice also enables governments’ use of counter-terrorism powers such as secret surveillance, which foster the securitisation of public and private life and can further discriminate against historically marginalised groups, such as racialised and religious communities.[[25]](#footnote-25) In many cases, governments commission private entities to implement communications surveillance and other potentially repressive technologies through undisclosed contracts, reducing accountability and obscuring the role of non-state actors in violations of human rights.

1. Institute on Statelessness and Inclusion, ‘Instrumentalising Citizenship in the Fight Against Terrorism’ (March 2022): <https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf>, p. 27. [↑](#footnote-ref-1)
2. Rights & Security International’s Roundtable on Citizenship Deprivation Practices in Council of Europe Jurisdictions (April 2023): <https://www.rightsandsecurity.org/assets/downloads/Rights_and_Security_International%E2%80%99s_Roundtable_on_Citizenship_Deprivation_Practices_in_Council_of_Europe_Jurisdictions.pdf;> See also Special Immigration Appeals Commission (SIAC), ’Shamima Begum v Secretary of State for the Home Department,’ Judgement Summary (22 February 2023), para. 16, available at http://siac.decisions.tribunals.gov.uk/Documents/Shamima%20Begum%20Judgment%20Summary%20- %2022.02.2023%20(003).pdf . [↑](#footnote-ref-2)
3. Rights & Security International and the Institute on Statelessness and Inclusion Joint Submission to the Human Rights Council, Universal Periodic Review, 41st Session, ‘Deprivation of Nationality on National Security Grounds’ (November 2022): <https://www.rightsandsecurity.org/assets/downloads/FINAL_Joint_Submission_UPR_UK_Nationality_Deprivation.pdf,> para. 43. For further details, see the UK’s Asylum and Immigration Act (2004), available at: <https://www.legislation.gov.uk/ukpga/2004/19/schedule/2> [↑](#footnote-ref-3)
4. Rights & Security International and the Institute on Statelessness and Inclusion Joint Submission to the Human Rights Council, Universal Periodic Review, 41st Session, ‘Deprivation of Nationality on National Security Grounds’ (November 2022): <https://www.rightsandsecurity.org/assets/downloads/FINAL_Joint_Submission_UPR_UK_Nationality_Deprivation.pdf,> [↑](#footnote-ref-4)
5. Rights & Security International’s Roundtable on Citizenship Deprivation Practices in Council of Europe Jurisdictions (April 2023): <https://www.rightsandsecurity.org/assets/downloads/Rights_and_Security_International%E2%80%99s_Roundtable_on_Citizenship_Deprivation_Practices_in_Council_of_Europe_Jurisdictions.pdf>; See also Ministry of Foreign Affairs of Denmark, ‘Consolidation Act No. 422 of 7 June 2004: Consolidated Act on Danish Nationality,’ (2004), Section 7 – 9, available at <https://ungarn.um.dk/en/-/media/country-sites/ungarn-en/travel-and-residence/consolidated-act-on-danish-nationality.ashx>; Ministry of Foreign Affairs of Denmark, ‘Appendix A - Response by the Government of the Kingdom of Denmark to questions two and three from the United Nations Special Rapporteur on extrajudicial, summary of arbitrary executions on foreign fighters,’ available at <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35114>, retrieved 3 April 2024. [↑](#footnote-ref-5)
6. Ibid., retrieved 3 April 2024. [↑](#footnote-ref-6)
7. British Nationality Act 1981, section 40(2). [↑](#footnote-ref-7)
8. Nationality and Borders Act 2022, clause 10. See also Rights & Security International ‘Letter to UN Human Rights Experts Re: UK Nationality and Borders Bill’ (21 January 2022): <https://www.rightsandsecurity.org/assets/downloads/FOA_UNSR_trafficking_-_RSI.pdf>. [↑](#footnote-ref-8)
9. Rights & Security International, ‘Court of Appeal’s Decision on Shamima Begum’s Appeal Sets Troubling Precedent on UK’s Citizenship Stripping’ (23 February 2024): <https://www.rightsandsecurity.org/impact/entry/court-of-appeals-decision-on-shamima-begums-appeal-sets-troubling-precedent-on-uks-citizenship-stripping> [↑](#footnote-ref-9)
10. British Nationality Act 1981, section 40A. See also Ayesha Riaz, ‘Increasing the Powers of the Secretary of State for the Home Department to Strip Individuals of their British Citizenship: R (on the application of Begum) v SSHD’ (2023). [↑](#footnote-ref-10)
11. Rights & Security International’s Roundtable on Citizenship Deprivation Practices in Council of Europe Jurisdictions (April 2023): <https://www.rightsandsecurity.org/assets/downloads/Rights_and_Security_International%E2%80%99s_Roundtable_on_Citizenship_Deprivation_Practices_in_Council_of_Europe_Jurisdictions.pdf>; For further details on deprivation powers in Fance, see Patrick R. Wautelet, University of Lie ge, ‘Deprivation of Citizenship for ‘Jihadists’ Analysis of Belgium and French Practice and Policy in Light of the Principle of Equal Treatment’ (11 January 2016), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713742>; Maartin P. Bolhuis and Joris van Wijk, European Journal of Migration and Law, ’Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism’ (7 October 2020), available at <https://brill.com/view/journals/emil/22/3/article-p338_2.xml?language=en#d93338718e261>; and rfi, ’France strips citizenship of two people convicted of terrorist offences’ (24 February 2023), available at <https://www.rfi.fr/en/france/20230224-france-strips-citizenship-of-two-people-convicted-of-terrorist-offenses>. [↑](#footnote-ref-11)
12. HM Government, ’Terrorism Prevention and Investigation Measures Act’ (25 October 2016): <https://www.gov.uk/government/collections/terrorism-prevention-and-investigation-measures-act> [↑](#footnote-ref-12)
13. Bindmans, ‘Terrorism Prevention and Investigation Measures (TPIMs) – what you need to know’ (1 February 2022): <https://www.bindmans.com/knowledge-hub/blogs/tpims-what-you-need-to-know/> [↑](#footnote-ref-13)
14. Right & Security International, ‘Abandoned to Torture: Dehumanising Rights Violations Against Children and Women in Northeast Syria’ (13 October 2021): <https://www.rightsandsecurity.org/impact/entry/abandoned-to-torture-dehumanising-rights-violations-against-children-and-women-in-northeast-syria> and Reprieve, ‘Trafficked to ISIS’ (April 2021): <https://reprieve.org/wp-content/uploads/sites/2/2021/04/2021_04_30_PUB-Reprieve-Report-Trafficked-to-Syria-British-families-detained-in-Syria-after-being-trafficked-to-Islamic-State-1.pdf>; See also the Committee Against Torture, ‘Décision adoptée par le Comité au titre de l’article 22 de la Convention, concernant la communication no1045/2020’ (22 January 2023) CAT/C/78/D/1045/2020. [↑](#footnote-ref-14)
15. For more information on how deprivation powers result in a form of exile, see Office of the High Commissioner for Human Rights, ‘Universal Declaration of Human Rights’ Article 9 (1948): <https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf;> and Rights & Security International’s submission to the Human Rights Committee ahead of the 140th session on the UK’s compliance with the International Covenant on Civil and Political Rights (2024): <https://www.rightsandsecurity.org/assets/downloads/RSI_submission_to_HRC.pdf> and *Begum v. Secretary of State for the Home Department* [2021] UKSC 7. [↑](#footnote-ref-15)
16. *Presidencia de la República del Ecuador. Decreto Ejecutivo* No 110 (8 January 2024), No 111 (9 January 2024) and No 135 (23 January 2024). [↑](#footnote-ref-16)
17. Cristosal, ‘One year under the state of exception: a permanent measure of repression and human rights violations’ (March 2023), available at: <https://cristosal.org/ES/informe-un-ano-bajo-el-regimen-de-excepcion-una-medida-permanente-de-represion-y-de-violaciones-a-los-derechos-humanos/> [↑](#footnote-ref-17)
18. Fuerzas Armadas de Ecuador, X post available at: <https://twitter.com/FFAAECUADOR/status/1774057332722323892> [↑](#footnote-ref-18)
19. Alianza por los derechos humanos Ecuador. [↑](#footnote-ref-19)
20. Alianza por los derechos humanos Ecuador, (20 March 2024), available at: <https://alianzaddhh.org/?p=241658> [↑](#footnote-ref-20)
21. WPS and gender virtual consultation in support of the scoping study for independent civil society-UN counter-terrorism engagement. [↑](#footnote-ref-21)
22. Aljazeera, ‘Kenya declares cult an ‘organised criminal group’ after starvation deaths’, (31 January 2024), available at: <https://www.aljazeera.com/news/2024/1/31/kenya-declares-cult-an-organised-criminal-group-after-starvation-deaths#:~:text=Paul%20Mackenzie%2C%20head%20of%20the,to%20death%20on%20his%20instructions>. [↑](#footnote-ref-22)
23. France24, ‘Russia adds 'LGBT movement' to 'terrorists and extremists' blacklist’, (22 March 2024), available at: <https://www.france24.com/en/europe/20240322-russia-adds-lgbt-movement-to-terrorists-and-extremists-blacklist> [↑](#footnote-ref-23)
24. The Guarding, ‘Venezuela arrests YouTuber for ‘terrorism’ amid pre-election crackdown’, (1 April 2024), available at: <https://www.theguardian.com/global-development/2024/apr/01/venezuela-oscar-alejandro-perez-arrest-youtube>. [↑](#footnote-ref-24)
25. Rights & Security International, ‘ *Secret, confused and illegal: How the UK Handles Personal Data under Prevent’* (26 October 2022),pp. 12-17, available at: [https://www.rightsandsecurity.org/impact/entry/uk-government-is-using-illegal-data-handling-practices-new-report-finds](about:blank); See also Tufyal Choudhury, ‘Suspicion, Discrimination and Surveillance: the Impact of Counter-Terrorism Law and Policy on Racialised Groups at Risk of Racism in Europe’ (2021) European Network Against Racism, available at: [https://www.enar-eu.org/suspicion-discrimination-and-surveillance-the-impact-of-counter-terrorism-law-and-policy-on-racialised-groups-at-risk-of-racism-in-europe/](about:blank). [↑](#footnote-ref-25)