

ARTICLE

Jihadi Bride or Imperfect Victim? Assessing Responses to Returning ISIL Members through a Feminist Lens

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When Shamima Begum was 15, members of the Islamic State of Iraq and the Levant (ISIL) radicalised her online. She left the United Kingdom for Syria and disappeared for four years. When she reappeared, she was nine months pregnant in a refugee camp. The United Kingdom deprived her of her citizenship under s 40 of the British Nationality Act 1981, citing national security concerns. Begum's son died, as did her previous two children, aged two months from a lung infection. Begum's appeal of the citizenship deprivation decision shines a light on a broader problem in the law. This article approaches the issue through a feminist lens. Through this lens, it becomes clear that blanket citizenship deprivations ignore the different experiences of women with violent extremism as compared to men. Deprivations work to reinforce patriarchal values which operate to exclude women like Begum from the "privileges" of citizenship. Finally, the impacts of deprivation decisions are exacerbated for women who have fewer resources through which to challenge these life-altering decisions. This article argues that New Zealand should learn from these mistakes, and that a more appropriate way of addressing returning ISIL members would be to allow them to return and then conduct a domestic trial, rather than depriving them of their citizenship.

I Introduction

Shamima Begum became infamous in February 2019 when she was deprived of her British citizenship for being what is colloquially known as a "jihadi bride"—a wife to an Islamic State of Iraq and the Levant (ISIL) fighter.¹ Begum's appeal of that deprivation decision and

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subsequent judgments from the United Kingdom Court of Appeal and Supreme Court make her case an ideal case study through which New Zealand can assess its response to citizens returning from joining ISIL.² This article uses a feminist lens to argue that the United Kingdom's current process for dealing with foreign extremism is one New Zealand should avoid. This is because citizenship deprivations in the United Kingdom are used to punish returnees, rather than protect citizens. The Begum judgments demonstrate these deprivation decisions are subject to political pressures that produce blanket outcomes. The decisions fail to consider the unique experiences of women within extremist organisations, and that the consequences of deprivation decisions impact women more severely than they do men. In this light, an alternative response to ISIL members wishing to return home emerges: allowing their return and then conducting a trial.

II Shamima Begum

Begum was one of the three “Bethnal Green girls” who in 2015, at age 15, left London for Syria to join ISIL after being radicalised online.³ While Begum's disappearance garnered significant international attention, information about her activities in Syria is still sparse.⁴ On arrival in Syria, Begum was married to an ISIL fighter.⁵ In February 2019, she was found by a British journalist at the al-Hawl refugee camp in northern Syria. Alone, nine months pregnant with her third child and living in unsafe conditions, Begum expressed her desire to return to the United Kingdom to raise her son.⁶ The day after Begum's interview aired in the United Kingdom, then-Secretary of State for the Home Department (Home Secretary) Sajid Javid announced an order stripping Begum of her British citizenship. Javid cited “public safety concerns” if Begum returned.⁷ Begum's son subsequently died aged two months, like her two previous children, of a lung infection.⁸

As a case study, Begum's appeal of the deprivation decision sheds light on a broader problem in the law. Her case is unique because of the considerable access to written

legal theory, and for inspiring the author to bring a feminist lens to every legal issue. The author would also like to thank her family for the heated dinner-time debates that have shaped all her arguments, but particularly the ones in this article.

- 1 This group has many names, but this article will use ISIL as it is the name with most international recognition.
- 2 This is not a defence of Begum; her case is just an ideal demonstration of the multi-faceted issues at play.
- 3 Anthony Loyd “How I found Shamima Begum” *The Times* (online ed, London, 14 February 2019).
- 4 Gregory Walton “Isil defector girls' families go to Turkey to probe disappearance” *The Telegraph* (online ed, London, 23 March 2015).
- 5 *Regina (Begum) v Special Immigration Appeals Commission (UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism intervening)* [2020] EWCA Civ 918, [2020] 1 WLR 4267 [*Begum* (CA)] at [9]. ISIL uses the prospect of being given a wife to ensure foreign fighters will not leave the caliphate. While ISIL members report that women will not be forced to marry, Begum's marriage was likely facilitated by ISIL. See Anita Perešin “Fatal Attraction: Western Muslimas and ISIS” (2015) 9(3) *Perspectives on Terrorism* 21 at 27 and 29. As Begum was 15 years old at the time, she could not have legally consented, as any marriage she entered would have been declared void in the United Kingdom. See Marriage Act 1949 (UK), s 2.
- 6 Loyd, above n 3.
- 7 *Begum* (CA), above n 5, at [12].
- 8 “Shamima Begum: IS teenager's baby son has died, SDF confirms” (8 March 2019) BBC News <www.bbc.com>.

decisions from the Special Immigration Appeals Commission (SIAC), the United Kingdom Court of Appeal and the United Kingdom Supreme Court. Section 40A(1) of the British Nationality Act 1981 allows a person who is notified of a deprivation decision to appeal that decision to the SIAC. However, if the Home Secretary relied on information which “should not be made public ... in the interests of national security”,⁹ then an appellant must apply under the Special Immigration Appeals Commission Act 1997, which contains further powers to redact or classify orders.¹⁰ While theoretically the SIAC is an open court, the “vast majority” of cases are held in closed court, limiting their public oversight.¹¹ Furthermore, appeals from the SIAC are limited as they are only allowed on a question of law.¹² These two factors make the longevity and public nature of Begum’s case both rare and worthy of further consideration.

Begum’s case has already been recognised as exposing that the Home Secretary’s power to deprive people of their citizenship is exercisable without meaningful oversight.¹³ However, there is a research gap for the uniquely feminist implications of these decisions. The need for a feminist approach has become more pressing since 2014, when women began to play a more significant role in ISIL’s self-proclaimed caliphate.¹⁴

Begum’s case is an excellent example of how s 40(2) of the British Nationality Act, a gender-neutral piece of legislation on its surface, has the more severe implications for women than it does for men. There are three elements to the Begum litigation that reveal the United Kingdom’s approach to citizenship deprivation to be inadequate when viewed through a feminist lens. First, the public security justification behind citizenship deprivation ignores women’s different lived experiences of violent extremism. Rather, citizenship deprivation is used to reinforce British values, which historically align with patriarchal values that can have the effect of excluding women and other minorities from political society.¹⁵ Secondly, citizenship deprivation is a form of punishment, not public protection, which is applied most readily and severely to women and minorities. Finally, the impact of the decision is exacerbated for women because they generally have fewer resources (such as wealth, time or social capital) to conduct an effective appeal.¹⁶ When viewed in combination, these factors reveal that deprivation decisions are an unsatisfactory way of dealing with returning ISIL members. This article will argue that

9 British Nationality Act 1981 (UK), s 40A(2)(a).

10 Special Immigration Appeals Commission Act 1997 (UK), s 2B.

11 House of Commons Constitutional Affairs Committee *The operation of the Special Immigration Appeals Commission (SIAC) and the use of Special Advocates* (HC323-1, 3 April 2005) at [20].

12 Special Immigration Appeals Commission Act, s 7(1).

13 Julie Coleman and Joana Cook “Shamima Begum, citizenship revocation and the question of due process” (17 July 2020) International Centre for Counter-Terrorism – the Hague <www.icct.nl>. Furthermore, the proposed Nationality and Borders Act 2022 (UK), section 4F gives the Home Secretary the power to make a citizenship deprivation order without notice, further shielding the process from external scrutiny. Whether the Special Immigration Appeals Commission reviews of this power in the Bill as it currently stands is a sufficient safeguard is beyond the scope of this article.

14 Caliphate means an institution governing a territory under Islamic rule. ISIL’s self-proclaimed caliphate refers to the period from June 2014 where they claimed to govern large parts of Iraq and Syria. Despite proclaiming to be a caliphate, this has not been recognised or supported by any prominent Muslim scholar or imam (leader). See Shafik Mandhai “Muslim leaders reject Baghdadi’s caliphate” (7 July 2014) Al Jazeera <www.aljazeera.com>.

15 See Susan Moller Okin *Women in Western Political Thought* (revised ed, Princeton University Press, Princeton, 2013).

16 Mary Connerley and Atul Mitra “The gender resource gap: An alternative perspective of global pay inequity” [2020] *Journal of Total Rewards* 12 at 16–17.

allowing members to return and then prosecuting them criminally for their role in ISIL is the most appropriate approach because it can take into account the above factors that are ignored by a deprivation decision.

III Relevant Legal Issues in the *Begum* Judgments

The Home Secretary deprived Begum of her citizenship under s 40(2) of the British Nationality Act. Section 40(2) allows the Home Secretary to: “by order deprive a person of a citizenship status if the [Home Secretary] is satisfied that deprivation is conducive to the public good” because the person acted in a way that is “seriously prejudicial to the vital interests of the United Kingdom”.¹⁷ This provision gives the Home Secretary the ability to deprive someone of their citizenship if that person presents a danger to the public.¹⁸

Begum appealed that decision to the SIAC on two grounds. First, Begum claimed the decision to deny her of citizenship was wrong because the Home Secretary did not give due consideration to whether the deprivation decision would either leave her stateless, and/or expose her to a foreseeable and real risk of mistreatment in breach of the European Convention on Human Rights.¹⁹ In the alternative, Begum argued that she should be granted leave to enter the United Kingdom to pursue a substantive appeal.²⁰ The SIAC, in deciding against Begum, held that there was no procedural impropriety or illegality in the Home Secretary’s decision and that, while Begum’s appeal would not be fair if she were to pursue it from overseas, it was a justifiable limitation that Parliament intended when drafting the British Nationality Act.²¹ Begum appealed further to the Court of Appeal,²² arguing that she should be allowed to return to conduct her substantive appeal and, if that was not possible, the appeal should automatically be granted on the grounds of unfairness.²³

The Court of Appeal held that Begum’s appeal could not be fair and effective while she was in the Syrian refugee camp, and the Home Secretary could not deny that fact by constructing artificial future scenarios such as Begum potentially accessing a telephone to give instructions.²⁴ However, although her appeal against the deprivation decision could not be effectively conducted from Syria, this did not mean it should automatically be granted.²⁵ Instead, Begum was granted leave to enter the United Kingdom to conduct her appeal as this was the only way to ensure fairness.²⁶ This decision was later overturned

17 British Nationality Act, ss 40(2) and 40(4A)(b).

18 *U2 v The Secretary of State for the Home Department* [2019] SC/130/2016 (SIAC) at [144].

19 *Begum v The Secretary of State for the Home Department* [2019] SC/163/2019 (SIAC) [*Begum* (SIAC)] at [1].

20 At [1].

21 At [130].

22 Begum did not appeal the decision that the deprivation would not leave her stateless, so that issue has not been considered in this article. Statelessness may exacerbate concerns, but, being deprived of citizenship for her only country of residence and belonging still engages the same concerns about the process, justification and consequences of deprivation decisions.

23 *Begum* (CA), above n 5, at [56] and [61]-[62].

24 At [93]; and as affirmed in *Regina (Begum) v Special Immigration Appeals Commission (UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism intervening)* [2021] UKSC 7, [2021] AC 765 [*Begum* (SC)] at [94]-[95].

25 *Begum* (CA), above n 5, at [107].

26 At [118].

through the Home Secretary's appeal to the Supreme Court. The Supreme Court also decided in favour of the Home Secretary, holding that allowing Begum entry into the United Kingdom to conduct the appeal was not the only way to ensure that the appeal was fair. Begum would not be able to return to the United Kingdom to pursue her appeal and would instead have to conduct it from Syria.²⁷

IV Feminist Analysis of Citizenship Deprivation

A Justification for deprivation

The objective cited by the United Kingdom to justify citizenship deprivations is that of public safety. This justification was noted by the Home Secretary in his submission to the Court in *U2 v The Secretary of State for the Home Department*, where he stated "no amount of conditions ... can achieve the assurance of knowing that [the person is] outside the UK permanently".²⁸ The SIAC also placed considerable weight on the importance of public safety, stating that Parliament intended for the power to be exercised in the interests of national security.²⁹ However, this section will argue that Begum's case, and the broader trends in the United Kingdom, suggest that citizenship deprivations are not only being used in the interests of national security and public safety. This is largely because such a justification for citizenship deprivation ignores women's different experiences with extremism as compared to men.³⁰

Arguments that Begum's deprivation is in the interest of public safety are inconsistent with what is known about the role of women within terrorist organisations.³¹ Since the 2015 Paris terrorist attacks that killed 130 people,³² the main threat to public safety is considered to be the risk that "battle-hardened, ideologically fervent combatants would return" and act as sleeper cells, waiting to coordinate an attack on domestic soil.³³ However, this broad definition of a returning ISIL member is unhelpful as it does not accurately consider the role of women within the ISIL caliphate. Women are wives and mothers responsible for producing the next generation of ISIL soldiers.³⁴ This role is no less important than that of an active combatant, and a level of radicalisation is still required to both join the ISIL caliphate in the first place, and to be trusted to stay and raise the next generation of "righteous children" (ISIL militants).³⁵ However, such a role does not present the same threat as that of an active combatant. Begum even referred to herself as a

27 *Begum* (SC), above n 24, at [111] and [134].

28 *U2*, above n 18, at [144].

29 *Begum* (SIAC), above n 19, at [146].

30 See generally Mia Bloom *Bombshell: Women and Terrorism* (University of Pennsylvania Press, Philadelphia, 2011); Mia Bloom *Veiled Threats: Women and Jihad* (Brookings Institution Press, Washington DC, 2022); and Laura Sjoberg and Caron E Gentry (eds) *Women, Gender, and Terrorism* (University of Georgia Press, Athens, 2011).

31 One cannot know for certain because the official reasons are classified, but evidence allows one to speculate. The best place to actually assess her culpability would be at trial.

32 "Paris attacks: What happened on the night" (9 December 2015) BBC News <www.bbc.com>.

33 Amandine Scherrer (ed) *The return of foreign fighters to EU soil: Ex-post evaluation* (European Parliamentary Research Service, May 2018) at 26 as cited in Conrad Nyamutata "Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood" (2020) 25 *Journal of Conflict & Security Law* 237 at 245.

34 Elizabeth Buner "Doing Our Part: Acknowledging and Addressing Women's Contributions to ISIS" (2016) 22 *William & Mary Journal of Women and the Law* 419 at 432.

35 Perešin, above n 5, at 29.

housewife, stating she “stayed at home, took care of [her] husband, took care of [her] kids”.³⁶ When considering the experiences of women with extremism as compared to the experiences of men, and the different levels of risk they each bring to the general public, this would appear to take Begum outside the intended application of s 40(2) of the British Nationality Act.

B *Reality of deprivation*

Despite Begum’s role with ISIL not being consistent with a threat to public safety, the Home Secretary made an order depriving her of British citizenship. This suggests that the Home Secretary has a broad mandate to apply deprivations in a blanket and uniform way beyond the interests of national security.³⁷ This section will argue that deprivations are used as a form of punishment for transgressing British values. As British values are historically patriarchal and reinforce the supremacy of the white male, transgressions by Muslim women are punished more often and more severely. This section will first discuss the political factors that are evidence of citizenship deprivation being used as a form of punishment. It will then assess how this disproportionately affected Begum as a Muslim woman.

General statistical trends suggest that citizenship deprivations are being used by the British government as a political tool to punish ISIL returnees and to show that the government is being tough on terror. In 2017, 104 people were stripped of their citizenship upon their return from Syria, compared with just 14 in the previous year.³⁸ This number increased again by 600 per cent between 2018 and 2019.³⁹ These numbers do not just account for an increase in people returning from Syria, as the rate of return remained at approximately half of those who had left.⁴⁰ This exponential increase in deprivations also started before the collapse of the ISIL caliphate in March 2019,⁴¹ which may have increased the rate of former ISIL members trying to escape Syria and return home.

Using deprivations as punishment is consistent with the United Kingdom’s political history. Mercedes Masters and Salvador Santino F Regilme Jr suggest that since the 7 July 2005 London terrorist attacks, which killed 56 people, the United Kingdom has been on a trajectory towards prioritising the vaguer objective of security concerns over tangible civil and political rights (such as citizenship).⁴² This legislative trend is exacerbated and exploited by partisan political machinations and the ease of deprivations.

36 Iliana Magra “Dutch ISIS Fighter, Husband of Shamima Begum, Wants To Return Home with Family” *The New York Times* (online ed, New York, 3 March 2020).

37 Buner, above n 34, at 421.

38 Md Ziaur Rahman “Nationality and Statelessness – Legal Issues Involved in Shamima’s Case” (2020) 19 *JATI Journal* 31 at 32–33.

39 Ana Luquerna “The Children of ISIS: Statelessness and Eligibility for Asylum under International Law” (2020) 21 *Chicago Journal of International Law* 148 at 165. We do not know what the gender breakdown is of this statistic.

40 “Timeline of the rise and fall of the Islamic State Group” *Politico* (online ed, Arlington (Virginia), 27 October 2019).

41 Rukmini Callimachi “Last ISIS Village Falls, and a Caliphate is Erased” *The New York Times* (New York, 24 March 2019) at 1.

42 Mercedes Masters and Salvador Santino F Regilme Jr “Human Rights and British Citizenship: The Case of Shamima Begum as Citizen to *Homo Sacer*” (2020) 12 *Journal of Human Rights Practice* 341 at 342.

The Conservative Party, which has been in power since 2010,⁴³ is twice as likely to desire a “tough on terrorism” reputation than its left-wing counterparts.⁴⁴ Public sentiment in the United Kingdom even appeared to advocate for a punitive element in this approach—34 per cent of newspaper coverage of Begum’s case referred to the need for punishment.⁴⁵ This is a considerable political mandate to utilise deprivation powers as a way to punish transgressing citizens.

Furthermore, deprivations are attractive because outsourcing punishment offshore saves the United Kingdom from having to follow due process, such as giving weight to expert testimony or evidence at a trial,⁴⁶ or proving guilt beyond reasonable doubt (the threshold at the border is mere reasonable suspicion),⁴⁷ before handing down a punishment. Begum noted the seriousness of the decision and the lack of consideration for her perspective, saying, “[t]his is a life-changing decision and they haven’t even spoken to me.”⁴⁸ Despite international recognition that citizenship deprivation is “a form of punishment more primitive than torture” and something that should not be used as a weapon by a government to express displeasure at its citizens,⁴⁹ this appears to be exactly how it is currently being used.

Using citizenship deprivations as a form of punishment in pursuit of political goals is already a violation of the limited permitted use of deprivations. However, a feminist lens demonstrates further how citizenship deprivations disproportionately affect women, particularly those at the intersections of discrimination. In Javid’s speech justifying his decision to strip Begum’s citizenship, he cited Begum’s rejection of British values, saying that those returning from overseas “detest our values”.⁵⁰ Javid’s justifications demonstrates how the artificial construct of citizenship is less about inalienable rights, and more about adherence to a code of conduct that only serves to reinforces dominant power structures.⁵¹ This creates a hierarchy of citizenship, with those at the intersections of discrimination being lower down the hierarchy because they are less likely to share the white, male values that are the product of patriarchal society (British or otherwise).

43 The United Kingdom was governed by a Conservative–Liberal Democrat coalition government from 2010 to 2015, before the Conservative Party formed a majority government following the 2015 general election.

44 Comparing their 2019 manifestos, the Conservative Party was twice as likely than the Labour Party to mention confronting terror or terrorism: see Conservative and Unionist Party *Get Brexit Done, Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019* (November 2019); and Labour Party *It’s Time for Real Change: The Labour Party Manifesto 2019* (November 2019).

45 Suzanne Snowden “Framing the female foreign terrorist fighter: A Thematic Analysis of how Headlines in the United Kingdom portray the case of Shamima Begum” (Master’s Degree Thesis, Malmö University, 2019) at 17.

46 Alex Psilakis “Stripping Citizenship, States Struggle to Confront Foreign Fighters” (2019) 35 IELR 99 at 100.

47 Lucia Zedner “The Hostile Border: Crimmigration, Counter-Terrorism, or Crossing the Line on Rights?” (2019) 22 New Criminal Law Review 318 at 337.

48 Esther Addley and Redwan Ahmed “Shamima Begum will not be allowed here, says Bangladesh” *The Guardian* (online ed, London, 20 February 2019).

49 *Trop v Dulles* 356 US 86 (1958) at 92–93 and 101.

50 Sajid Javid, United Kingdom Secretary of State for the Home Department “Home Secretary speech on keeping our country safe” (speech to the Metropolitan Police Service, London, 20 May 2019).

51 JM Spectar “To Ban or Not to Ban an American Taliban? Revocation of Citizenship & Statelessness in a Statecentric System” (2003) 39 Cal WL Rev 263 at 287.

This means any subversions of those values by people like Begum are more likely to result in citizenship deprivation as a form of punishment.

Begum is both Muslim and a woman, which already places her at odds with white, male British values that Javid saw as the basis of British citizenship. The value of her citizenship is lower down the “hierarchy” because of the intersectionality of these two factors. This hierarchy demonstrates how deprivations are more likely to disproportionately affect these more vulnerable groups. The United Kingdom Supreme Court has already held that deprivations can only be used to meet clear objectives that cannot be met another way.⁵² The practical consequences of deprivation and the symbolic message they send mean deprivations cannot be justified solely on the basis of their perceived utility in enforcing British values. In other words, deprivations can only be a last resort. Begum’s case demonstrates that, for Muslim women, this is not how they are used.

Women are also more vulnerable because of the political and partisan elements underpinning the pivot towards punishment. Women fare worse when a decision is made on the basis of public pressure. 76 per cent of the United Kingdom supported the removal of Begum’s citizenship,⁵³ which is a remarkable political mandate that goes beyond partisan loyalty.⁵⁴ However, without knowing what Begum—or most returnees—have actually done in Syria, such support is likely based on harmful and discriminatory stereotypes about the acceptable roles for women in society.⁵⁵ Such attitudes towards Begum as a woman are compounded by attitudes towards her as a Muslim. Begum sits at the intersection between racism and sexism, which only furthers the public’s disgust towards her alleged rejection of British values.⁵⁶ As citizenship is a code of conduct, and deprivation a form of punishment, Begum was “othered” by British society as someone who did not fit into the idealised notion of a citizen.⁵⁷ Furthermore, because Begum did not fit the ideal archetype of a British citizen, public opinion largely ignored her uniquely gendered trauma of being married to an ISIL member and carrying three children who died young.

Finally, this political and moral approach to a values-dependent notion of citizenship makes women uniquely vulnerable as it encourages punishment disproportionate to established wrongdoings—as was the case for Begum. Without knowing what happened in Syria or what Begum’s role was within ISIL, the deprivation is by default a criminal sanction for leaving for Syria at the age of 15. This was explicitly mentioned in submissions to the Home Secretary prior to his deprivation decision. The Court of Appeal noted that the Security Service advised the Home Secretary they considered any individual “assessed to have travelled to Syria and to have aligned with ISIL” as posing a threat.⁵⁸

This approach does not account for many factors that would otherwise be considered when assessing criminal culpability. For example, while Begum chose to leave the United

52 *Beghal v Director of Public Prosecutions (Secretary of State for the Home Department intervening)* [2015] UKSC 49, [2016] AC 88 at [93].

53 Kim McGuire “Jack Letts: why revoking citizenship from IS recruits hasn’t caused an outcry – even from those who object” (19 August 2019) *The Conversation* <www.theconversation.com>.

54 By comparison, the Conservative Party achieved 43.6 per cent of the popular vote in the 2019 election.

55 Sheri Labenski “Women’s violence and the law: in consideration of Shamima Begum” (20 November 2019) LSE Centre for Women, Peace and Security <www.blogs.lse.ac.uk>.

56 Kimberle Crenshaw “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” [1989] *U Chi Legal F* 139 at 140.

57 *Masters and Regilme*, above n 42, at 354.

58 *Begum (CA)*, above n 5, at [18].

Kingdom, the public does not know what she consented to when she faced the harsh realities of life in the ISIL caliphate.⁵⁹ Without establishing wrongdoing beyond leaving the United Kingdom, the punishment of deprivation is, on its face, disproportionate. This demonstrates that making British citizenship dependent on British values makes Muslim women more vulnerable to deprivation of that citizenship, as any transgression from these values can create a public mandate for punishment. This public mandate may rest on stereotypes or a lack of empathy for women's uniquely gendered trauma, but these factors can be ignored by a political party emboldened by a public attitude in favour of punishment.

C Consequences of deprivation

Blanket deprivations fail to acknowledge the role of women within extremist groups, and therefore cannot be said to be grounded in public safety concerns. Furthermore, when viewing citizenship deprivations as a form of punishment for a rejection of British values, Muslim women like Begum are more vulnerable to deprivation as they are inherently excluded from white, male British values. This section will address the third key feminist strand in the Begum litigation: the consequences of citizenship deprivation are most severe for women, and such decisions should not be made without assessing how women will experience the law in a different and often harsher way than men.

More generally, the consequences of citizenship deprivation already mean that such decisions should not be made lightly. Political philosopher Hannah Arendt defined citizenship as "the right to have rights"; the gateway through which people can access services.⁶⁰ This abstract concept of rights has practical significance in people's everyday lives. For example, in the Court of Appeal judgment, it was noted that Begum's chance of repatriation from the Syrian camp (which was dangerous enough to have killed her infant son) was significantly reduced as a non-citizen.⁶¹ Deprivation places all the fault on the individual, and is both a complete abdication of the state's current responsibilities and an absolution from the state's future duties.⁶² Begum's deprivation does not address the fact that she was radicalised as a minor in the United Kingdom; nor does it confront the state's failure to protect her from online extremism or to stop her from travelling to Syria and going missing for four years.⁶³

The Begum proceedings also demonstrate that the already substantial impact of a citizenship deprivation is exacerbated for women because the right of appeal is essentially meaningless for those without sufficient resources. Begum appealed all the way to the Supreme Court on largely preliminary issues before the substantive merits of her appeal against the deprivation decision were even considered. The cost of filing an application to appeal to the Supreme Court alone is £1,000 (NZD\$1,926, as of June 2022).⁶⁴ This figure does not account for the cost of instructing a solicitor, preparing court documents or the previous appeals that lead to this point. Such costs will only increase throughout the

59 Nabeelah Jaffer "The secret world of Isis brides: 'U dnt hav 2 pay 4 ANYTHING if u r wife of a martyr'" *The Guardian* (online ed, London, 24 June 2015).

60 Hannah Arendt *The Origins of Totalitarianism* (2nd ed, Meridian Books, New York, 1958) at 296.

61 *Begum* (CA), above n 5, at [72].

62 Lizzie Dearden "Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year" *The Independent* (online ed, London, 20 February 2019).

63 Shahnaz Ahsan "The revoking of Shamima Begum's citizenship sets a worrying precedent for the children of immigrants" (20 February 2020) Media Diversified <www.mediadiversified.org>.

64 The Supreme Court Fees (Amendment) Order 2011 (UK), s 3.

substantive appeal. Begum is also unable to conduct her substantive appeal from within the United Kingdom. As the Court of Appeal noted, this means Begum is relying on access to resources such as audio-visual links and phone connections in a remote refugee camp.⁶⁵ Women, particularly those in vulnerable situations such as Begum, are disproportionately subjected to these barriers as they often lack financial resources and other means to access justice compared to men in such camps.⁶⁶ These barriers to appeal also offer the Home Secretary a level of immunity from judicial oversight of their deprivation decisions.

V Feminist Alternative to Citizenship Deprivation

Citizenship deprivation is a tool only to be used when there are no alternatives to meet a policy objective. This article has established the objective is not truly public safety but rather punishment. If the objective is punishment, then there are more appropriate avenues available that, among other benefits, do not subjugate women. For the following three reasons, the best alternative would be to allow alleged members to return to their home country and then, if there are sufficient grounds, prosecute them on home soil for their involvement in ISIL.⁶⁷

First, a trial allows for individual circumstances to be taken into account. Therefore, justice is contextualised. Upon returning, a decision would have to be made as to whether the person's behaviour overseas amount to criminal conduct and requires a trial. A trial ensures standards of proof are upheld and sentences are justly determined. The defendant would also be able to present and dispute evidence as to the extent of their role in the ISIL caliphate, and the court can assess relevant international instruments. Secondly, a trial is consistent with the principles of open and public justice. This forces fellow citizens to confront extremism and forces the state to recognise their role in the radicalisation process. Finally, returning alleged combatants to their home country allows for engagement in emotional reprogramming and de-radicalisation that works to reduce terror as well as condemn it.⁶⁸

For women, the most significant benefit of this approach is that it allows for evidence of their role within ISIL to come to light and their potential role as victims to be assessed. This allows for the application of international instruments that address culpability in these scenarios. One of the most important passages in the Court of Appeal judgment was the acknowledgement that international law considerations came second to national security interests.⁶⁹ Because "public safety" is an amorphous concept that can be applied to condemn any form of behaviour, international considerations will nearly always be meaningless, despite extremism being an inherently international problem.⁷⁰

65 *Begum* (CA), above n 5, at [93].

66 Shazia Choudhry *Women's Access to Justice: A Guide for Legal Practitioners* (Council of Europe, 2018) at 6.

67 Amr Jomaa "Addressing Jurisdictional Challenges in Prosecuting ISIL Fighters" (2020) 11 *Berkeley J Middle E & Islamic L* 18 at 46.

68 Gina Vale *Cubs in the Lions' Den: Indoctrination and Recruitment of Children Within Islamic State Territory* (International Centre for the Study of Radicalisation, July 2018) at 3.

69 *Begum* (CA), above n 5, at [107]–[108].

70 See Karen Yourish and others "How Many People Have Been Killed in ISIS Attacks Around the World" *The New York Times* (online ed, New York, 16 July 2016), which found that between September 2014 and July 2016 ISIL alone were responsible for more than 1,200 deaths outside of Iraq and Syria, which included attacks in Canada, Egypt, Tunisia, France, United States of America, Belgium, Turkey, Yemen, and Bangladesh.

At trial, Begum's support for ISIL could be viewed through a framework of international instruments that assess culpability differently because of her age, and might negate her consent to activities because of potential exposure to gendered violence.⁷¹ Such instruments include art 3 of the Palermo Protocol, which suggests her "recruitment ... by means ... of deception" for "forms of sexual exploitation, forced labour, or services" is a form of trafficking.⁷² As Begum was under 18 when she left the United Kingdom, this would be child trafficking.⁷³ The Paris Principles also suggest that as Begum was a minor when she entered Syria, she could be classified as a child soldier.⁷⁴ Under European Union anti-trafficking laws, as a victim of trafficking, a court would have to take into account what Begum was compelled to do, and what she actually consented to when considering both her culpability and sentence.⁷⁵ Finally, this process would enable the United Kingdom to confront the reality of Begum's background: she was born, raised and radicalised in the United Kingdom. A trial could spark an open discussion about the United Kingdom's potential failures at protecting vulnerable young people from online radicalisation.

There have been several feminist critiques of the trial process and how it fails to foster a supportive environment for women to share their experiences. Most notably, the worldwide Feminist Judgments Project, a collection of alternative judgments for significant cases based on feminist legal theory, often emphasise how sexism interacts with the overly formal judicial system to alienate women.⁷⁶ Again, this unfamiliarity would be exacerbated by other factors. For example, Begum's age, social status, cultural background and level of education (given she left school at 15) would intersect to make the system foreign to her. Another aggravating factor is the tendency of courts, unless someone is completely blameless, to treat defendants with hostility.⁷⁷ Accounting for these critiques would limit the efficacy of a trial process and require it to adapt to adequately support women. Regardless, these adaptations should be made, especially when the alternative sees women being left stateless in dangerous refugee camps.⁷⁸

Despite the United Kingdom immediately announcing it would not prosecute Begum if she returned,⁷⁹ other nations have taken this alternative approach on the grounds that it allows for people to leave the dangerous Syrian camps and instead engage in "emotional

71 National Coordinator for Security and Counterterrorism and General Intelligence and Security *The Children of ISIS: The indoctrination of minors in ISIS-held territory* (April 2017) at 13.

72 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* GA Res 55/25 (2000), art 3(a).

73 Article 3(d).

74 *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* UNICEF (February 2007), s 2.1.

75 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims [2011] OJ L101/1, art 8.

76 "New publication release - Feminist Judgments in Aotearoa New Zealand - Te Rino; a Two-Stranded Rope" (December 2017) The New Zealand Law Foundation <www.lawfoundation.org.nz>.

77 Julia Tolmie and Khylee Quince "Commentary on *Police v Kawiti: Kāwiti at the Centre*" in Elisabeth McDonald and others (eds) *Feminist Judgments of Aotearoa New Zealand* (Bloomsbury Publishing, London, 2017) 481 at 485.

78 A full discussion of the appropriate measures to take to support Muslim women in such a trial scenario is beyond the scope of this article. Furthermore, discussion of what a trial would look like and whether it would be modelled on a criminal prosecution is also beyond the scope of this article.

79 David Barret "Three 'Jihadi brides' from London who travelled to Syria will not face terrorism charges if they return" *The Telegraph* (online ed, London, 10 March 2015).

reprogramming”.⁸⁰ In 2016, Laura Passoni was fined and given a suspended sentence on her return to Belgium.⁸¹ Albania declines to even prosecute, instead preferring to monitor women on their return.⁸² The active nationality principle means French law is applicable to French citizens outside of France. This allows France to domestically sanction their citizens for crimes committed overseas.⁸³ These examples all demonstrate that, despite evidentiary concerns, a domestic trial is possible and blanket deprivations are not the only way to ensure public safety or punishment.

A domestic trial also allows for a multitude of factors to be considered and discussed in the public domain. Overseas approaches also show that citizenship deprivation is not the only way to protect public safety. However, as this article has acknowledged, there is great public appetite for Begum to face consequences for her role in the terror that ISIL has inflicted domestically and abroad. A trial is not a “free pass”—it is still the most appropriate way to meet that objective. A trial provides an opportunity for Begum’s culpability to be assessed fairly, for appropriate punishment to be ordered, and is also a way of achieving concrete justice and acknowledgment for the victims of ISIL. This article has argued that the citizenship deprivation decision did not consider what Begum actually did abroad. Instead, it punished her for her decision to leave the United Kingdom and join ISIL. A domestic trial could inquire into the acts Begum committed abroad and ensure the consequences are proportional to those acts.⁸⁴ This process may even lead to a harsher punishment, such as a longer term of imprisonment, as Begum’s actions in Syria would be on trial, rather than only the act of leaving the United Kingdom. This would more accurately fulfill the punishment policy objective, while still being a sentence that accords with the principles of open, considered and natural justice.

VI Application to New Zealand

Begum’s case, and the issues it highlights, transcend the United Kingdom. Despite New Zealand’s close ties to the United Kingdom and the two jurisdictions’ similar legal frameworks, New Zealand should not follow the United Kingdom approach. With returnees looking likely following the collapse of the ISIL caliphate, New Zealand should reassess its approach before putting it into practice. To date, the New Zealand government has only suspended or revoked the passports of citizens suspected of affiliating with ISIL prior to them leaving the country.⁸⁵ This only prevents citizens from travelling, rather than denying them citizenship all together. However, this is not a solution for what the New Zealand Security and Intelligence Service describes as “a number” of New Zealand citizens who have already left to join ISIL and may want to return.⁸⁶

80 Vale, above n 68, at 3.

81 Sam Knight “If Shamima Begum, the ISIS Bride, is no longer British, what does Citizenship mean?” *The New Yorker* (online ed, New York, 15 February 2020).

82 Knight, above n 81.

83 Jomaa, above n 67, at 29.

84 While the burden of proof for conviction at a trial is higher than that for a deprivation, a discussion on evidentiary concerns that may limit a domestic trial is beyond the scope of this article.

85 See *A v Minister of Internal Affairs* [2020] NZHC 2782.

86 Kurt Bayer “Terror laws designed to stop Kiwis joining Isis results in eight passports cancelled or suspended” *The New Zealand Herald* (online ed, Auckland, 7 December 2018).

For example, in July 2021, Prime Minister Jacinda Ardern announced that Suhayra Aden, a New Zealand-born woman who left Australia to join ISIL, would be allowed to return to New Zealand with her two children.⁸⁷ Unlike the Australian government, the New Zealand government chose not to deprive Aden of her citizenship. The decision from Aden's case is poised to set the precedent for future returnees. Likewise, in 2015, then-Prime Minister John Key stated, with regards to a similar case, that a citizenship deprivation that would leave an individual stateless was unlikely.⁸⁸ However, Begum's case demonstrates that verbal assurances are meaningless when the law confers significant discretions that are subject to political whim and public opinion.

Under s 16(b) of the Citizenship Act 1977, the Minister of Internal Affairs has the power to order a citizenship deprivation if the citizen has acted "in a manner that is contrary to the interests of New Zealand". While few cases have addressed the application of this provision, its similarity with the United Kingdom provision suggests that it can be exercised in a similarly broad fashion.⁸⁹ Rather than exercising this power, the New Zealand government should prosecute returning citizens under the Terrorism Suppression Act 2002. Section 15(a) of that Act allows prosecutions of citizens who have committed acts outside New Zealand. Section 13 makes it an offence to participate in a designated terrorist entity, including ISIL, with a maximum term of imprisonment of 14 years.⁹⁰

Prosecution under the Terrorism Suppression Act would allow the above factors to be considered, as well as for the aforementioned benefits to be realised. It would allow for the unique roles of women in terrorist organisations to be considered, and would prevent women at the intersections of discrimination from being subject to political pressures and harmful stereotypes behind closed doors. Crucially, prosecution would allow for a more nuanced look at victimhood and criminal culpability. In Begum's case, this could be through the lens of international instruments about child trafficking and what constitutes consent in a coerced setting. For other women, the trial process would set a higher standard of proof. This would mean their culpability could be assessed through a framework that accounts for factors such as age and unique gendered experiences, and women would have the opportunity to run substantive defences rather than being subject to the whims of the Minister's definition of public safety. Finally, this approach targets the heart of the problem because it allows for de-radicalisation efforts and training, which reduce the threat of violent extremism while still ensuring that culpable individuals are punished for any crimes they committed as part of ISIL.

VII Conclusion

A feminist analysis of Begum's case reveals the flaws of the United Kingdom's approach to returning extremists. First, the justification for depriving people of their British citizenship on the basis of public safety is inconsistent with the reality of women's experiences with extremism. Instead, this article argues that deprivations are used as a form of punishment, influenced by political pressures. Begum and other women at the

87 "New Zealand to accept return of woman linked to ISIL (ISIS)" (26 July 2021) Al Jazeera <www.aljazeera.com>.

88 "NZ 'unlikely' to strip woman's citizenship - PM" *The New Zealand Herald* (online ed, Auckland, 25 May 2015).

89 Acting "contrary to the interests" might suggest the threshold is even lower than the United Kingdom's acting "seriously prejudicial to the interests".

90 Terrorism Suppression Act 2002, ss 13(1)(a) and 13(3).

intersection of discrimination are uniquely vulnerable to such an approach as it rests on flawed perceptions about women's roles and the superiority of white, British values. Finally, while these deprivations on the basis of punishment are already flawed, they disproportionately affect women who have reduced access to resources to conduct an effective appeal.

On this basis, New Zealand should avoid following a similar path. These cases are complex, highly emotive and inherently global. The United Kingdom's approach fails to recognise the gendered elements of extremism, and is vulnerable to political pressures and posturing. The more appropriate approach is repatriation and internal prosecution. This allows for adequate investigation into the returning citizen's alleged crime and allows for the consideration of all relevant factors.