AMNESTY INTERNATIONAL

Bill C-24:

Amnesty International's concerns regarding proposed changes to the Canadian Citizenship Act

Amnesty International Canada

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This document sets out Amnesty International's concerns and recommendations with respect to Bill C-24, "An act to amend the Citizenship Act and to make consequential amendments to other Acts." The brief highlights a number of serious contextual human rights concerns about the Bill, related to the nature and impact of proposed new powers that would allow revocation of citizenship when individuals are convicted of specified crimes related to terrorism, treason and similar offences. These serious concerns undermine the integrity of the proposed legislation from a human rights perspective. Amnesty International also highlights a number of aspects of the procedures for revocation proceedings which fail to conform to required international fair trial standards.

In Amnesty International's view the proposed new revocation provisions are divisive and buy into and promote false and xenophobic narratives about "true" Canadians and others, which equate foreignness with terrorism. This will have a detrimental impact on the environment in which many Canadians of foreign origin or certain racial/ethnic/religious groups of Canadians will be able to enjoy their human rights on the basis of equality. Government legislation should instead focus on eliminating such stereotypes, consistent with Canada's duty to fulfil the right to non-discrimination under international human rights law.

Given these and other overarching human rights concerns, as well as the specific provisions which do not meet international due process standards, Amnesty International urges that the sections of Bill C-24 which propose revocation of citizenship for specified criminal offences be withdrawn. At a minimum the organization is calling for amendments to deal with the due process concerns.

1. Bill C-24's Flawed Human Rights Context

Amnesty International approaches this review of Bill C-24 from a human rights perspective, drawing on a number of international human rights obligations, binding on Canada, as well as the Canadian Charter of Rights and Freedoms. Given that there are a number of significant human rights implications, Amnesty International urges Parliamentarians to review Bill C-24 with particular care and caution.

We have taken note of and welcome the provision in Bill C-24 guaranteeing that citizenship will not be revoked if it would lead to the person concerned becoming stateless. The 1961 Convention on the Reduction of Statelessness, to which Canada is a party, limits the situations in which a person may be lawfully deprived of nationality if such deprivation results in statelessness. However, even where such deprivations do not result in statelessness that does not necessarily imply that they are not arbitrary or that they do not give rise to possible human rights concerns. Numerous human rights considerations continue to apply to such decisions, especially where they may result in deportation. These include the rights to private and family life, the right to a fair hearing and the right to non-discrimination.

It is important to recall that having a second nationality is not necessarily something of which people are even aware, nor is it a characteristic that is always changeable. As the Government of Canada warns on its travel website, individuals may not know that they have a second citizenship, since dual nationality can arise by default because of family connections (including birthplace of a parent or even grandparent), marriage to a foreign national, or extended residency in a foreign country.[1] For instance, the child of an Egyptian-born father is a citizen of Egypt, and the wife of an Iranian man is deemed a national of Iran. Furthermore, many states refuse to recognize the renunciation of citizenship.[2]

a) The human rights dimensions of citizenship

Amnesty International's analysis takes account of three human rights dimensions associated with citizenship.

- Citizenship is itself a human right, as is the right not to be arbitrarily deprived of citizenship. Both of those rights are enshrined in article 15 of the Universal Declaration of Human Rights, which guarantees that "everyone has the right to a nationality"; and also that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

- There are a number of other rights that flow from and are dependent on citizenship. Article 25 of the International Covenant on Civil and Political Rights enumerates the right of citizens to participate in public affairs, vote and have equal access to public services. Several important rights enshrined in the Charter of Rights are linked to citizenship. For instance, section 2 of the Charter guarantees citizens the right to vote and section 6 guarantees the rights to enter, remain in and leave Canada. Section 6 also safeguards the mobility rights of citizens, along with permanent residents, notably the rights to reside and gain a livelihood in any province.

- Citizenship also plays an important role in ensuring protection from other human rights violations. In particular, it provides a strong guarantee against deportation to another country, where an individual may be at risk of torture or other serious human rights violations. A citizen can only be deported if he or she is first stripped of her or his citizenship. Deportation may also lead to the disruption of private life or the rupture of close family relationships, including minor children and spouses, who choose or are forced to remain behind in Canada.

b) Fueling discrimination

Amnesty International is deeply concerned that the provisions with respect to revocation of citizenship under proposed section 10(2) have the potential to foster a climate of hostility and suspicion on the

[1] Government of Canada, "Dual Citizenship: What You Need to Know," (Last updated 8 April 2014), available at: http://travel.gc.ca/travelling/publications/dual-citizenship#how_can_you_find_out.
[2] Craig Scott, "The Capacity to Protect: Diplomatic Protection of Dual Nationals in the 'War on Terror,'" Eur J Int Law (2006) 17 (2), p. 383 [Scott].

basis of national origin and other factors, leading to discrimination. These provisions risk fueling stereotypes that view Canadians of certain national origins and who maintain (voluntarily or not) citizenship of those other countries, as being less loyal to Canada; stereotypes that equate their particular foreignness with terrorism. Individuals who do not carry additional nationalities are seen as the "true" or "pure" Canadians; while individuals who carry other nationalities in addition to their Canadian citizenship are perceived to have suspect or divided loyalties. In fueling those stereotypes it helps create a climate in which certain groups of migrants and Canadians of certain national origins may find themselves victims of discrimination, regardless of whether or not they come within the remit of the revocation provisions or whether they have dual nationality.

The principle of non-discrimination is firmly established in Canadian law, including s. 15(1) of the *Canadian Charter of Rights and Freedoms*, which specifically prohibits discrimination based on national origin, as well as race, religion and other grounds. Non-discrimination provisions are also found in numerous international human rights instruments, binding on Canada. Importantly, states have a duty not only not to discriminate, but to take positive measures to fulfill the right to be protected from discrimination by countering stereotypes which undermine equality and may lead to discrimination. The approach to revocation of citizenship in Bill C-24 runs counter to that duty, as it feeds into stereotypes that increase the risk of discrimination.

Issues of citizenship and immigration, though ostensibly neutral as to race, religion, national origin and other factors, have historically been interwoven with such concerns, and often have disparate impacts on certain groups or allow for discrimination based on race, religion, or other grounds by proxy.

Over the past decade, in the wake of revelations from judicial inquiries into such cases as Maher Arar, Abdullah Almalki, Ahmad Abou El-Maati and Muayyed Nureddin and court rulings in cases such as Omar Khadr and Abousfian Abdelrazik, concern has mounted that individuals with more than one nationality and individuals with particular religious or national backgrounds, are less likely to have their rights protected by Canadian officials. In that context, individuals with additional nationalities have expressed feelings of being viewed as second-class Canadian citizens. Amnesty International does not assert that these particular provisions in Bill C-24 are *intended* to treat individuals with more than one nationality as being second-class citizens. However, that is their inevitable impact, both as a matter of perception and actual consequence.

Canada must be on guard against the potential for laws which, although neutral on their face as to such factors, may have the effect of discriminating by proxy against people on grounds such as national origin, race or religion, or which may have effects which undermine equality in areas even unrelated to the aims of the specific legislation.

c) Other contextual considerations

There are a number of other contextual considerations that also compel close attention to the significant changes proposed in Bill C-24.

- Currently citizenship can only be lost through misrepresentation or fraud, which recognizes essentially that the grant of citizenship was a nullity at the time it was given. The provisions in Bill C-24 are instead premised on the principle that some citizens become unworthy of retaining citizenship because of criminal misconduct, even if that person was born and has been raised in Canada. Having done so, where does the line get drawn? It is a step that opens the potential for numerous categories of 'unworthiness' and undermines the certainty, permanence and stability associated with citizenship.

- These provisions would be out of step with the Canadian trend of developing an inclusive concept of citizenship. As the Federal Court of Appeal has noted:

  > While Canada, in the past, has not always treated immigrants and new Canadians with respect and dignity, Canada's modern position as a multicultural society has redefined, and in some ways curtailed, more traditional, exclusionary views of citizenship. The broader, inclusive, Canadian view of citizenship which has emerged brings with it important legal ramifications. Citizenship […] is a tool of equality, not exclusion.[3]

- These provisions are in certain respects akin to the long discredited practice of banishment, by which subjects or citizens were exiled because of criminality, political activity, religion or any number of other factors. Governments have long abandoned treating citizens in that manner, recognizing that concerns about criminality are properly dealt with through criminal law; and other factors that have led to exile are often objectionable and discriminatory. Parliamentarians should give very careful consideration to provisions which return to that practice.

- There is a dimension of double punishment associated with these provisions. Whether or not revocation of citizenship on grounds of criminality would in some circumstances amount to double jeopardy is undoubtedly a matter that will be the subject of legal challenge. At a minimum it is a second sanction for the same offence; meriting very careful consideration. Historically banishment was a form of criminal punishment.[4] However classified under the modern laws of various states, including Canada, it still retains many punitive features, and may constitute double punishment. One US district court judge has described this in colourful terms, noting that "[h]owever bottled, poison is toxic. An alternative of exile was, we should recall, rejected by Socrates in favor of Hemlock."[5]

- There are human rights shortcomings in legal frameworks that are associated with or impacted by Bill C-24. For instance, Canadian law does not currently comply with the international human rights obligation unconditionally to prohibit deportation to a serious risk of torture, keeping

[3] *Lavoie v. Canada,* [2000] 1 FC 3, para. 121.
[4] Javier Bleichmar, *Deportation as Punishment: A Historical Analysis of the British Practice of Banishment and its Impact on Modern Constitutional Law*, 14 Geo. Immgr. L.J. 115, 149-150 (1999).
[5] *Beharry v. Reno*, 183 F.Supp.2d 584, at 590. The case was reversed on appeal.

open the possibility of deportation in 'exceptional circumstances'. Citizenship minimizes the risks associated with that shortcoming. Similarly, Canadian law does not robustly recognize statelessness as a key consideration in assessing refugee claims and immigration applications. Strong affirmation of citizenship reduces the risk of contributing to further statelessness.

2. Due process

a) Human rights standards

When an individual's rights and freedoms are at stake, she or he is entitled to procedural fairness under both domestic and international law. In Canada, a government decision to revoke citizenship might affect an individual's life, liberty or security of the person, and must only take place in accordance with the principles of fundamental justice.[6] Likewise, the right to a fair trial is protected by numerous international human rights instruments, including the ICCPR.[7] Notwithstanding the fact that a decision to revoke citizenship is not a trial per se, its effects will be very serious for the individual concerned; proportionately robust due process standards must therefore be met. As the Supreme Court of Canada has recognized, the scope of fundamental rights "does not turn on a formal distinction between the different areas of law. Rather, it depends on the severity of the consequences of the state's actions for the individual's fundamental interests of liberty and security and, in some cases, the right to life."[8]

Authoritative interpretations of international human rights law have specifically affirmed that decisions concerning the loss of citizenship must adhere to due process standards. The starting point is the *Universal Declaration of Human Rights*, which affirms that everyone has a right to a nationality, and no one shall be arbitrarily deprived of his or her nationality.[9] In other words, the process must be fair.

The UN Human Rights Council has called upon states to ensure that procedural standards "are observed in all decisions concerning the acquisition, deprivation, loss or change of nationality, including availability of effective and timely judicial review."[10] The Human Rights Council has also reiterated that the arbitrary deprivation of nationality is a violation of an individual's rights and freedoms, and urged states to respect procedural standards "in order to ensure that decisions concerning the acquisition, deprivation or change of nationality do not contain any element of arbitrariness and are subject to review, in conformity with their international human rights obligations."[11]

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[6] *Charter*, s. 7.
[7] Art. 14.
[8] *Charkaoui v Canada (Minister of Citizenship and Immigration) No. 2*, [2008] 2 S.C.R. 326, para. 53.
[9] UDHR, Art. 15.
[10] Human Rights Council, Resolution: The right to a nationality: women and children, 5 July 2012 (UN Doc. A/HRC/20/4), para. 9.
[11] Human Rights Council, Resolution: Human rights and arbitrary deprivation of nationality, 5 July 2012 (UN Doc. A/HRC/20/5), paras. 2, 10.

b) The Bill

From the perspective of due process, a number of provisions are problematic. First, the *absence* of certain elements from Bill C-24 would violate due process standards:

- The proposed s. 10(2)(b) does not require that people "convicted of a terrorism offence […] outside Canada that, if committed in Canada, would constitute a terrorism offence" be convicted in accordance with international fair trial standards. As Amnesty International has documented, in many countries around the world, a charge of "terrorism" provides an excuse to punish innocent individuals such as political opponents, peaceful human rights activists, labour organizers, and journalists.[12]

    - For instance, Sri Lankan journalist JS Tissainayagam was sentenced to 20 years in jail on terrorism charges in 2009 after the magazine he was editing published critiques of the Sri Lankan military's treatment of civilians.[13]
    - In June 2012 in Ethiopia, dissident journalist Eskinder Nega and two leading members of the political opposition were found guilty on charges including "terrorist acts," "encouragement of terrorism," and "high treason;" their convictions resulted from their legitimate and peaceful activities, and particularly for advocating peaceful protest against the government.[14]
    - Nobel Peace Laureate and former South African President Nelson Mandela remained on the US terrorism watch list until 2008.[15]

    Overseas terrorism convictions might not only be spurious, they might be based on torture-derived evidence, which is prohibited under international law.[16]

- Nowhere does Bill C-24 require the Minister provide to affected individuals the evidence (including intelligence) that would be used against them. The proposed section 10(3)(c) requires

[12] See for instance: Amnesty International, "Syrian activists held on spurious 'terrorism' charges face prolonged detention," 26 June 2013, available at: https://www.amnesty.org/en/news/syrian-activists-held-spurious-terrorism-charges-face-prolonged-detention-2013-06-26; Amnesty International, "Grave risk to media freedom in Egypt as journalists face 'terror charges'," 29 January 2014, available at: http://www.amnesty.org/en/news/egypt-al-jazeera-english-journalists-referred-trial-2014-01-29; Amnesty International, "Uganda: Activist charged with terrorism," 29 September 2010, available at: http://www.amnesty.org/en/library/asset/AFR59/012/2010/en/98c4b6dd-e2c9-4691-b152-4178fdb95107/afr590122010en.pdf.

[13] Amnesty International, "Jailed Sri Lankan journalist released on bail," 12 January 2010, available at: https://www.amnesty.org/en/news-and-updates/good-news/jailed-sri-lankan-journalist-released-bail-20100112.

[14] Amnesty International, "Ethiopia: Conviction of government opponents a 'dark day' for freedom of expression" 27 June 2012, available at: http://www.amnesty.org/en/news/ethiopia-conviction-government-opponents-dark-day-freedom-expression-2012-06-27

[15] CNN, "Mandela off U.S. Terrorism Watch List," 2 July 2008, available at: http://www.cnn.com/2008/WORLD/africa/07/01/mandela.watch/.

[16] CAT Art. 15.

the Minister only to specify the *grounds* on which he or she is relying to make the decision; these might be very vague, and devoid of any meaningful information. This decision would therefore lack one of the basic features of fair proceedings: an adversarial process in which both parties can know and comment upon the evidence and argument advanced by their opponent, in order to challenge it and establish by contrary evidence that it is incorrect.[17]

- Proposed section 10(3)(b) does not contain any requirement that the time period designated by the Minister be adequate, nor is the individual required to be physically present in Canada before the written notice can be understood as having been received. If a person was outside Canada and unable to comply with the schedule set by the Minister, he or she would have their citizenship revoked in absentia and be denied any ability to challenge or alter that decision.

Second, some provisions *contained* in Bill C-24 would violate due process principles:

- The proposed s. 10(4) affirms that a hearing can only take place "if the Minister, on the basis of prescribed factors, if of the opinion that a hearing is required." It is unclear what is meant by prescribed factors. But in any case, when an individual's rights and freedoms are at stake and when serious issues of credibility are involved, a hearing must be guaranteed.[18]

- The different standards of proof placed on the individual and the Minister are unjust. The proposed ss. 10.1(1) and 10.1(2) set out, for the Minister, a very low threshold of "reasonable grounds to believe." By contrast, the proposed s. 10.4(2) imposes upon the affected individual the burden of "a balance of probabilities," which is the much higher, civil standard. The resulting shifting of the onus contravenes international law, which requires the state to bear the burden of justifying the limitation of rights,[19] even in national security contexts.[20]

- The denial of appeal rights to s. 10.1(2) cases is also of serious concern. Eliminating an avenue to correct a faulty decision is unfair in and of itself, and would simultaneously impair the exercise of a person's human rights in Canada and increase his or her chances of being deported to a risk of serious human rights violations.

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[17] Amnesty International, *Left in the Dark: The Use of Secret Evidence in the United Kingdom*, AI Index EUR 45/014/2012 (2012), p. 29, available at: http://www.amnesty.org/en/library/asset/EUR45/014/2012/en/546a2059-db83-4888-93ba-8b90cc32a2de/eur450142012en.pdf.

[18] *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177, para. 59.

[19] UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, 28 September 1984, Principle 12.

[20] *Global Principles on National Security and the Right to Information*, Finalized in Tshwane, South Africa (12 June 2013), Principle 4.

- Proposed ss. 10(2) and 10.1(2) apply retroactively. Although citizenship-revocation is not a penal sanction, the grave consequences for affected individuals should militate against permitting this type of measures to be applied ex post facto.[21]

3. Recommendations

The deprivation of citizenship has very serious human rights consequences. Those concerns mount considerably if the process governing revocation is unfair or if the provisions may encourage or foster discrimination on the basis of national origin, race, religion or other factors.

Given overarching human rights concerns about the premise, impact and perception of Bill C-24's proposed revocation provisions, coupled with the specific concerns about serious due process shortcomings in the revocation procedure, Amnesty International is calling on the sections proposing loss of citizenship on the basis of a number of specified criminal offences, namely proposed sections 10 and 10.1, to be withdrawn from the Bill.

At a minimum, Amnesty International urges that due process be observed in any process leading to possible revocation of citizenship and that the following changes be made to the Bill.

- The proposed s.10(2)(b) must clarify that any relevant overseas terrorism convictions must be reached in strict accordance with international fair trial standards.
- The Bill must guarantee to affected individuals access to the evidence (including intelligence) that would be used against them.
- Proposed section 10(3)(b) must require that the affected person be physically present to receive the written notice, and he or she must be granted adequate time to prepare their case.
- Proposed section 10(4) must guarantee a hearing for all cases, not on a discretionary basis.
- Sections 10.1(1), 10.2(1), and 10.4(2) must be altered so as to place the burden of justifying the deprivation of citizenship upon the Minister, and remove the burden currently placed upon the affected individual.
- The Bill must be amended so as to provide appeal rights to s.10.1(2) cases.
- Sections 10(2) and 10.1(2) must be amended so as to not apply retroactively.

[21] *Charter*, s. 11(g).

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