

## KEY POINTS

- In the absence of an international legal framework to govern dual citizenship, there is a piecemeal structure of regional, bilateral and unilateral agreements in place.
- Increasing access to dual citizenship will have positive impacts on economic prosperity, increase social cohesion and bridge existing policy gaps.
- States should improve coordination and integration of citizenship law through bilateral protection agreements, which will improve citizenship rights for all diaspora groups.
- The United Nations should play a greater role in facilitating and promoting the global governance of dual citizenship, particularly by enshrining the principles that guarantee access to dual citizenship as a human right.

# DUAL CITIZENSHIP: REDUCING GOVERNANCE AND PROTECTION GAPS

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## INTRODUCTION

On December 29, 2013, the journalists Mohamed Fahmy, Peter Greste and Baher Mohamed<sup>1</sup> were arbitrarily arrested and detained in Cairo, Egypt. They were sentenced to seven years in prison after a five-month trial, a verdict US Secretary of State John Kerry called “chilling and draconian” (quoted in Holmes 2014). Although more contentious, the 2002 rendition of Canadian-Syrian citizen Maher Arar also garnered international condemnation.<sup>2</sup> The subsequent apology by the Canadian government drew attention to the vulnerability of dual citizens, both abroad and at home. In 2006 and 2011, Canadian citizens from Lebanon and Egypt called upon the Canadian government for support during conflicts, with over 13,000 evacuated from Beirut alone by the end of July 2006. These cases all bring to light the complex web of obligations and transnational legalities, which come to the fore during times of conflict. Characterized by an absence of global governance, dual citizenship occupies a grey area in the international arena, as no international conventions directly apply to this citizenship status. In this absence, there are fragmented state responses based on geopolitical and geographical demand — dual citizenship can be permitted, avoided,

1 All al-Jazeera colleagues, Mohamed Fahmy has dual citizenship with Canada and Egypt, Peter Greste has Australian citizenship and Baher Mohamed has Egyptian citizenship.

2 Maher Arar is a telecommunications engineer with dual Canadian and Syrian citizenship. Arar was extradited from the United States (where he was travelling) to Syria and detained for a year, imprisoned on suspicions of terrorist activity and tortured for the duration of his detainment. He was later released and declared innocent. Although Arar holds dual citizenship, he was a Canadian resident at the time.

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restricted or renounced — according to the whims of states. This has created a messy terrain around rights, state responsibilities, security and migration.

While there is a noticeable lack of global consensus around the international legal framework of dual citizenship, there is also a lack of human rights protection within the current regime. This brief first outlines the key areas of tension for dual citizenship with respect to sovereignty, transnationalism and geopolitics. It contextualizes the issue of dual citizenship with a case study of Canada, which is a leader in immigration law, to showcase how these legal changes will undermine citizenship rights for dual citizens globally. The brief argues that there is a pressing need for improved harmonization of citizenship governance and the development of best practices with respect to dual citizenship.

### FORMATION OF AN INTERNATIONAL (NON)CONSENSUS

The position of the international community on dual citizenship has changed significantly since the 1930 League of Nations declaration, which stated that citizens are entitled to possess only one nationality. The declaration suggested that the cost of citizenship was the renunciation of another (Faist and Gerdes 2008). This view has shifted, given the increased recognition of the benefits of immigrant integration, democratic legitimacy and gender equality. Today, over half of the world's states acknowledge dual citizenship in some form (*ibid.*, 1).

The shift toward accepting dual citizenship was primarily driven by increasing interconnectedness between states and geopolitical considerations. However, the Universal Declaration of Human Rights is silent on the subject of citizenship and it upholds state sovereignty. Conversely, the United Nations High Commissioner for Refugees'

1951 Refugee Convention upholds the rights of stateless people, and the 1961 Convention on the Reduction of Statelessness disallows the loss of citizenship. This illustrates the primary tension between dual citizenship and state-centric ideals.

In an absence of an international legal framework, there is a fragmented landscape comprised of regional, bilateral and unilateral agreements on dual citizenship. The bulk of governance takes place unilaterally where states' decisions are driven by political will and attitudes of the day. The top five immigrant-receiving countries — the United States, Canada, the United Kingdom, Australia and New Zealand — hold differing positions toward dual citizenship. Although all of these countries recognize dual citizenship, the United States does not actively promote dual nationality in its domestic policy. Some countries, such as Pakistan and Spain, allow their citizens to hold dual citizenship with specific countries, while other countries only accept dual citizenship under exceptional circumstances. For instance, Austria does not allow dual citizenship; however, exceptions are made for persons who obtain two citizenships at the time they were born. Others still — such as China, Norway and Saudi Arabia — do not generally allow their citizens to hold dual citizenship.

The European Union is in a unique situation as it is the only entity that provides regional citizenship. The EU member states use a common passport design and title, along with the name of the member state. European citizenship is supplementary to national citizenship and affords citizens additional rights, such as the right to vote in EU elections.

However, many citizens have multiple identities and transnational attachments that have led them to petition for increasing tolerance of their multiple citizenships

by various states. For this reason, some countries have adopted compromising approaches in response to persistent demands for dual citizenship, particularly from diaspora groups. For instance, the Indian government confers all rights to its diaspora with the exception of political rights<sup>3</sup> and agricultural land tenure. Offering the Indian diaspora a legal status comparable to Indian citizenship establishes parity between non-resident and resident Indians. In short, these vastly disparate positions on dual citizenship are incompatible with universal standards of human rights.

## SETTING THE STAGE FOR LACK OF COORDINATION

Globalization, characterized by extensive communication networks and increased cross-border mobility poses unprecedented opportunities and challenges to access citizenship rights. However, state cooperation has narrowly focused on counter-terrorism and border security. This has led to the securitization of dual citizens who are deemed suspicious or dangerous to the state. These circumstances have highlighted the governance and protection gaps limiting citizenship rights thereby demonstrating the need for further cooperation.

Existing literature has focused on the motivations behind conflicting state policy regarding dual citizenship. Hannah Arendt's (1968) theories demonstrate that people have a foundational right to dual citizenship in order to access subsequent economic, social and political rights. In the context of the increasing securitization of dual citizenship, citizens have become threats to be managed by the state. Daiva Stasiulus (2013) claims that dual citizenship blurs the lines between inclusivity and exclusivity and what constitutes "good, safe citizenship" and "bad, dangerous,

<sup>3</sup> Political rights include the right to vote and the right to run in an election and hold office.

citizenship.” This threatens the state’s ability to organize the way in which citizens are governed. The narrative of bad or dangerous citizenship can be traced through the Canadian context in the 2011 Egyptian and 2006 Lebanese evacuations and the popular discourse on “deserving” citizens (Government of Canada 2014). This creates binaries of illegal versus legal citizens, which affect their social status and perception within society and limits their basic right to dual citizenship.

Despite the current rhetoric of internationalism and global citizenship, barriers to mobility and citizenship have continued for many, largely in the interest of states. Although a multitude of factors have contributed to this trend, the lack of international coordination on dual citizenship has been perpetuated by a state-centric security discourse.

## **IMPACT OF IMPROVING THE GLOBAL GOVERNANCE OF DUAL CITIZENSHIP**

Many citizens have multiple socio-economic and political connections to various states, which shape their personal identity, societal view and desire for global engagement. For such individuals, acknowledgement of dual citizenship is an integral component of their societal acceptance (Faist and Gerdes 2008). For many governments, allowing for dual citizenship may increase the democratic legitimacy of the state, while causing a reduction in bureaucratic costs in the long term (Oloufade and Pongou 2002).<sup>4</sup> Furthermore, improving access to dual citizenship can create a more cohesive society through improved integration and generation of human and financial capital (Mazzolari 2009; Lebang 2013).

<sup>4</sup> There are numerous studies that demonstrate that having a large diaspora population increases foreign direct investment to both the source country and destination countries (Newland 2004).

Finally, increasing access to dual citizenship facilitates the growth of transnational social spaces, which can foster intercommunity trust and a collective identity (Kalekin-Fishman 2012).

## **CASE STUDY: CITIZENSHIP CHANGES AND THE ARAB DIASPORA IN TORONTO, CANADA**

For a country relatively welcoming to immigrants (Lapelsoa 2013), there have been significant changes to Canada’s citizenship legislation within the last five years. The pejorative term “Canadians of convenience” was made popular after the 2006 Israel-Lebanon conflict, embodying the notion that it was a misappropriation of government funds to evacuate Canadian-Lebanese citizens. Bill C-37, which was a reaction to the 2006 Lebanon evacuations, amended the Citizenship Act to alter fundamental rights of Canadian citizenship. The bill denies citizenship to children whose parents were born outside of Canada, made legal under the “first generation limitation” (Open Parliament 2010).

In 2008, Bill C-50 “modernized” the immigration system with reforms to the Immigration and Refugee Protection Act. The Citizen Action Plan of 2011 contained measures that could revoke the citizenship of 1,800 Canadians who were believed to have obtained citizenship through “fraudulent means” (CBC 2011). 600 permanent residents were removed or denied and a further 1,100 applications were denied or revoked. These numbers are extremely disproportionate for a country with a rate of 0.37 percent fraudulent immigrant applications (Décoste 2012). A crackdown of this scale is unprecedented, as less than 70 citizenships have been revoked since the Citizenship Act became law in 1947. Given Canada’s history of “racialized” immigration and security policies (Hennebry and Momani 2013), the Citizenship Action Plan will likely

further reduce mobility for persons of Middle East and Persian Gulf origins.

Recent proposed changes to the Citizenship Act further undermines the rights of naturalized Canadians.<sup>5</sup> The fact that dual citizenship can also be revoked if a citizen is convicted of terrorist activities in other countries<sup>6</sup> highlights some of the pertinent policy issues this brief is attempting to reconcile. The increasing precariousness of citizenship fosters fear and suspicion, rather than commitment from governments to their citizens (Waldman and Macklin 2014, 10). These types of policies provide the government with unprecedented power to revoke citizenship, withhold citizenship rights and effectively create a “two-tiered” structure, divided between those born in Canada and those born outside of Canada (Hall 2013). This demonstrates that state power must be checked in order to guarantee basic human rights.

States have adopted legislative reforms that demonstrate their ambiguous position toward dual citizenship and portray their unease toward establishing a strong citizenship rights framework. Although there is evidence to suggest that dual citizenship can foster economic growth and knowledge creation, many countries are unwilling to reconcile these benefits and the multiple loyalties associated with dual citizenship (Stasiulis 2013). As a result, the Canadian government has adopted a highly constrained definition of citizenship with strict barriers governing dual citizens.

5 If the reforms of Bill C-24 come into law, naturalized Canadians would need to demonstrate intent to reside in Canada to receive citizenship, citizenship can be revoked if persons do not reside in Canada, revocation can be made without a formal hearing and the appeal process would come under ministerial discretion (Open Parliament 2010).

6 Canadian citizen Omar Khadr was held in the United States at the Guantanamo Bay detention camp and prosecuted for war crimes as a minor. Based on a diplomatic agreement between Canada and the United States, Khadr accepted an eight-year sentence with the possibility of transferring to Canada after serving 12 months. Canada chose not to seek extradition or repatriation despite strong urging by human rights and legal organizations.

By erecting legislative barriers to mobility, Canada is setting a dangerous international precedent. Economic and bureaucratic inefficiencies will result from the diversion of resources to proving fraudulent citizenship. Not only are their costs for highly skilled workers, but there are also long-term economic, social and political implications for families and communities. Canada’s path exacerbates protection gaps whereby people are denied the most basic right to citizenship.

### ARAB DIASPORA YOUTH IN TORONTO

Against a background of legislative changes on citizenship, the authors carried out a study of Arab diaspora youth living in Canada regarding their transnational engagement and citizenship. The case draws on survey data collected from 92 respondents of Arab origin at a 2013 conference in Toronto, Ontario. Questions were asked regarding the ease of mobility, state protection and perceptions of racism. The analysis of the responses helps to disentangle the complexities of transnational engagement and citizenship, one that has been underdeveloped in the research.

The findings indicate that Arab youth surveyed in this study act as transnational citizens by partaking in protests, engaging with Middle Eastern politics and sending remittances to their respective countries of origin. Approximately 68 percent of respondents engaged in multiple forms of transnational activism during the Arab Spring.<sup>7</sup> In addition, 89 percent of respondents also saw a

7 In the survey, 67.5 percent of respondents stated that they engaged in one or more of the following types of transnational activism during the Arab Spring: signed an online petition, sent money to support political activism, travelled to participate in protests, participated in political opposition movements, blogged about the Arab Spring, posted videos or images, and/or tweeted about the protests.

strong role for the Canadian Embassy in times of crisis.<sup>8</sup> However, in a troubling trend, 32 percent of respondents stated that they had issues with border services and 45 percent stated that their mobility was restricted in some way due to their Arab descent. These findings demonstrate that although many of these respondents engage as transnational citizens, the Canadian government curtails their mobility and engagement.

This poses particular problems for dual citizens, as they aim to establish and maintain transnational ties such as family networks. This limits the extent to which these citizens build various formal and informal networks, which are conducive for international engagement (Faist 2000). Furthermore, the restrictions placed on these respondents through visa and residency requirements limit their rights as transnational citizens. This reaffirms the gap in global governance in the management of dual citizenship.

## **RECOMMENDED STRATEGIES FOR STRENGTHENING GLOBAL DUAL CITIZENSHIP GOVERNANCE**

In order to strengthen dual citizenship governance, a multi-pronged strategy must be developed that targets international governance and engages individual states. The recommended strategy will foster increased integration and cooperation on a global scale on matters related to citizenship, while strengthening citizen's human rights.

### **Increased coordination and integration of citizenship law is needed at the bilateral and international levels.**

By establishing coherence at the international level, it

<sup>8</sup> The survey demonstrates that 89.9 percent of respondents stated that the Canadian Embassy should intervene in one or more of the following crisis scenarios: natural disaster, political unrest, conflict or war, detention or imprisonment, and/or intimidation and harassment.

will reduce the social and political costs of unilateral and bilateral negotiations. However, the potential for the diaspora to meaningfully engage in development is curtailed by mobility restrictions and protection gaps for dual citizens.

**Bilateral and multilateral commitments on citizenship rights need to be fortified through the creation of bilateral protection agreements (BPAs).** Better communication and stronger relationships between source and destination countries can ensure improved citizenship rights for all diaspora groups. BPAs could guarantee mutual recognition of dual citizenship and facilitate greater cohesion in government relations for dual citizenship arrangements. BPAs would be structurally and functionally similar to existing bilateral agreements on social security. Like all bilateral agreements, they assume the capacity and willingness of the involved states. Thus, a broader global governance framework is required to mediate agreements between countries.

The United Nations should play a greater role in facilitating and promoting the global governance of dual citizenship. Since the League of Nations developed the policy on dual citizenship, it follows that its succeeding international body play a greater role governing this regime. Issues of citizenship have slipped under the radar of the United Nations because states have been given sovereignty to provide and protect citizenship. However, given the increasingly transnational nature of citizenship, global governance is required to provide a structure with which to help address the extant protection gaps. At a minimum, the United Nations should enshrine the principles that guarantee access to dual citizenship as a human right. A Committee on Citizenship should be created through the United Nations Human Rights Council to set universal guidelines on the governance of dual citizenship. A subsidiary body of the UN General

Assembly, the council works closely with the Office of the High Commissioner for Human Rights and would be well positioned to draft a UN Convention on Citizenship. This convention would enable the creation of an arbitration mechanism to settle dual citizenship disputes. While an international legal convention will provide a normative basis for soft law, it will not guarantee the rights of citizens or fill all protection gaps.

## CONCLUSION

The transnational legality of dual citizenship remains a point of contention for the international community because it is subject to geopolitical demands and strategic diplomatic relations. The case study in this brief demonstrates that the Arab diaspora in Canada is engaging transnationally, but this engagement has brought greater securitization and has exposed them to vulnerabilities when travelling abroad. While this is but one case, it reflects growing concern that the absence of governance in this regime is detrimental to both governments and citizens. There needs to be a stronger and more cohesive global governance regime for dual citizenship to foster transnational engagement and to ensure the protection of the rights of citizens. While the overburdened UN system seems like an ineffectual starting point, it is the only international organization capable of provoking an international dialogue on matters of dual citizenship. While states are increasingly recognizing the benefits of dual citizenship, an international legal framework is required to actualize a powerful norm and close protection gaps.

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