UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Statement Relating to Bill C-425, An Act to amend the Citizenship Act
(honouring the Canadian Armed Forces)

Standing Committee on Citizenship and Immigration,
26 March 2013

Chairman Tilson, Honourable Committee Members, Ladies and Gentlemen,
Monsieur le Président, honorables membres du Comité, mesdames et messieurs,

1. Au nom du HCR, je tiens à vous exprimer ma gratitude et à remercier le Comité permanent de la citoyenneté et de l'immigration de m'avoir invité à participer au débat sur le Projet de loi C-425, Loi modifiant la Loi sur la citoyenneté (valorisation des Forces armées canadiennes).

2. Le HCR est heureux d'avoir l'occasion de s'adresser au Comité sur le Projet de loi C-425 dans la mesure où il fait référence à la question de l'apatridie. Avant de commencer toutefois, je voudrais brièvement vous présenter le rôle et le mandat du HCR en ce qui a trait à l'apatridie.

3. Les responsabilités du HCR vis-à-vis les personnes apatrides ont d'abord commencé avec les réfugiés sans nationalité et ce, en vertu du paragraphe 6 (A) (II) du Statut du HCR et de l'Article 1 (A) (2) de la Convention de 1951 relative au statut des réfugiés qui tous deux font référence aux personnes apatrides répondant aux critères de définition d'un réfugié.

4. Following the adoption of the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate responsibilities concerning statelessness were expanded. General Assembly resolutions 3274 (XXIV) of 1974 and 31/36 of 1976 designated UNHCR as the body mandated to examine the cases of persons who claim the benefit of the 1961 Convention and to assist such persons in presenting their claims to the appropriate national authorities. Subsequently, the United Nations General Assembly resolution 50/152 of 1995 and subsequent resolutions conferred upon UNHCR a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.

5. UNHCR's statelessness mandate includes *prevention* of statelessness. As a result, it is not limited to addressing cases of statelessness which have already occurred. This means that UNHCR works to identify and address risks of statelessness, which may arise as a result of gaps in nationality laws and conflicts of laws between States; administrative obstacles such as onerous requirements for proof of nationality; situations of State succession and; discrimination on race, gender, disability and other grounds. It is in relation to this latter intersection between prevention of statelessness and citizenship and the Office's responsibilities in respect of the 1961 Convention that UNHCR welcomes the opportunity to present to you a specific comment on Bill C-

425. Please allow me to clarify from the outset that UNHCR can only comment on elements of the bill which relate to statelessness. I will therefore avoid referring to the question of withdrawal of the Canadian citizenship of individuals who possess dual or multiple nationality as in principle statelessness in such cases is not an issue.

Comments to Bill C-425, An Act to amend the Citizenship Act *(honouring the Canadian Armed Forces)*

6. Clause 2 of Bill C-425, amending Section 9 of the Citizenship Act, provides for withdrawal of Canadian citizenship, as follows:

    a. *9(1.1) A Canadian citizen who is also a citizen or a legal resident of a country other than Canada is deemed to have made an application for renunciation of their Canadian citizenship if they engage in an act of war against the Canadian Armed Forces.*

7. UNHCR would like to submit that the possible withdrawal of citizenship of a Canadian national who is also a "legal resident" of a country other than Canada is at odds with the provisions of articles 7 and 8 of the 1961 Convention, requiring contracting states not to permit renunciation or provide for loss of nationality (article 7), or deprivation of nationality (article 8), where the individual concerned would be rendered stateless.

8. In this respect, I wish to state from the outset UNHCR's acknowledgement and appreciation for the Minister's comments before this Committee that since Canada is a party to the 1961 Convention on the Reduction of Statelessness, the Bill needs to be amended in order to ensure Canada follows its international obligations. The Minister stated that, as written, the Bill would apply to citizens who are legal residents of another country and should they not have dual citizenship, it would render them stateless. The Minister urged the Committee to consider amendments so that only those with dual citizenship would have their citizenship renounced, in order to ensure that no one is made stateless.

9. UNHCR fully concurs with this position and highlights that this is the only section of the Bill that, if not amended, would be inconsistent with Canada's obligations under the 1961 Convention. Therefore, UNHCR respectfully recommends that the words "or a legal resident" be deleted.

Background on renunciation, loss and deprivation of nationality

10. The 1961 Convention prohibits renunciation, loss or deprivation of nationality[1] where it results in statelessness. There are exceptions to this general rule, as foreseen in article 7 with regard to "loss of nationality" and in article 8 with regard to

[1] The 1961 Convention uses the term "loss of nationality" to refer to a withdrawal of nationality which occurs automatically (*ex lege*) on the basis of national legislation. "Deprivation of nationality" refers to withdrawal of nationality on the basis of a decision of a national authority, ie. an administrative or judicial decision.

"deprivation of nationality". These exceptions are not applicable to Bill C-425. The exceptions are narrowly defined. With respect to "loss of nationality" the only exceptions to the general rule are in relation to prolonged residence abroad by naturalized citizens and failure to register for individuals born outside the territory. With respect to "deprivation", the exceptions to the general rule relate essentially to nationality acquired by misrepresentation or fraud and conduct which is inconsistent with the duty of loyalty towards the State. However, this latter set of exceptions to the general rule prohibiting deprivation of nationality resulting in statelessness may be applied only by those States which made a declaration at the time of signature, ratification of accession that they retained the right to apply them. Canada did not make such a declaration upon accession in 1978. The Convention also requires that these grounds needed to exist in national law at the time that the declaration was made. Canada, together with the UK, put forward the drafting for these elements of Article 8 when the text of the 1961 Convention was negotiated.

11. International Human Rights law foresees differences in treatment depending on the specific circumstances of different groups of people. This approach can be summed up with the axiom that "people who are equal should be treated equally and those who are different should be treated differently". However, there must be a legitimate reason for the difference in treatment. In support of this principle, The UN Human Rights Committee states "[t]he enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance." (para.8, General Comment 18, Human Rights Committee, 1989).

12. It is necessary that the Citizenship Act differentiate between the impact of specific elements of the Citizenship Act on people who have another nationality and on those do not. The former are left with the protection of another State, the latter are stateless. The difference in treatment therefore serves a legitimate purpose, which is the prevention of statelessness.

Chairman Tilson, Honourable Committee Members, Ladies and Gentlemen, I thank you for your attention.

UNHCR
26 March 2013