IHRC'S BRIEFING ON THE AMENDMENTS TO SECTION 40 OF THE BRITISH NATIONALITY ACT 1981 IN THE IMMIGRATION BILL 2013-14

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Summary of concerns sent to members of the House of Lords, March 2014

The Immigration Bill is currently going through the House of Lords. Part of the Bill seeks to amend Section 40 of the British Nationality Act 1981. This is an opportunity for MPs and Peers to table and debate much needed amendments to the legislation. The amendment tabled by the Home Secretary in January 2014 (New Clause 18) seeks to extend her powers to deprive British nationals of their citizenship.

Currently the Home Secretary has the ability to deprive a person of their citizenship if they have obtained it through fraudulent means or where she deems it to be 'conducive to the public good, on the condition that the individual is not left stateless. Under the new proposals, the Home Secretary's powers will be extended to allow deprivation of citizenship regardless of whether or not it will result in statelessness. This acts contrary to international law and its incorporative measures in UK law.

The Islamic Human Rights Commission believes such extensive unchecked powers are both legally and ethically dubious. Vesting these powers in an individual betrays a lack of judicial scrutiny and due process, and is a disproportionate response to the threats to national security.

On 1 April 2014 IHRC urges all members of the House of Lords to oppose the proposed Government clause. If members decide against opposition to the clause in its entirety we suggest several amendments in an attempt to encourage a more just exertion of such a power:

- Test to determine that a deprivation order is 'a necessary and proportionate measure to prevent conduct that is seriously prejudicial to the vital interests of the UK.'

- In the deprivation order test, the phrase 'seriously prejudicial conduct to the vital interests of the UK' should be narrowly defined to mean 'conduct involving terrorism, espionage, serious organized crime and war crimes only.'

- Requirement for a conviction of terrorism, espionage, serious organised crime, or war crimes as a condition for a deprivation order to be issued.

- Requirement for a court order for the deprivation of citizenship. The application should set out how the deprivation is conducive to the public good; how the person, while having citizenship status, has conducted himself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, of the islands, or any British Overseas Territory; and how a deprivation order will be necessary and proportionate.

- Requirement that a deprivation order can only be made whilst the individual is in the United Kingdom. Alternatively, a requirement that the Home Secretary immediately issue an order once satisfied the above grounds are made out.

- Appointment of an Independent Reviewer for these measures.

- Routine publication of statistics based on the usage of this power.

Research conducted by the Islamic Human Rights Commission has long suggested, particularly since the launch of the War on Terror following 9/11, that British Muslims feel like second-class citizens. The new measures, if introduced will do nothing to reassure the British Muslim population. Most known cases of those already deprived of their British citizenship are not only non-white, but also Muslims.

The Islamic Human Rights Commission's full briefing follows. Further suggested reading from IHRC includes our publication from 2004 on the issue of dual citizenship and British Muslims' expectations of the Government.

Introduction

In January 2014 the Home Secretary tabled a Government amendment to the Immigration Bill 2013-14 (New Clause 18) which would extend powers to deprive British citizens of their nationality.

At present, the Home Secretary can deprive a person of their citizenship under section 40 of the British Nationality Act 1981 (as amended by Section 4 of the). This can be done where either the individual has acquired it using fraud, false representation or concealment of a material fact (s40(3)); or where she is satisfied that doing so is 'conducive to the public good' (s40(2)) so long as the person would not be left stateless as a result (s40(4)).

The amendment changes the 1981 Act to create a sub-category of cases which enables the Secretary of State to deprive, by order, a person of their British citizenship status - regardless of whether or not it will render them stateless. This can occur where the individual has (i) acquired citizenship as a result of naturalisation and (ii) conducted themselves in a manner seriously prejudicial to the vital interests of the UK (and so for this reason it is conducive to the public good to deprive that person).

The amendment was introduced as a new Government clause twenty-four hours before Report Stage in the House of Commons (New Clause 18). There was no prior consultation with the public or community groups such as the Islamic Human Rights Commission about the measures and little time was afforded to ourselves and others to respond and indeed little opportunity given to both houses to discuss and amend the provision where appropriate. Therefore it is of paramount importance that members of the House should scrutinise the amendment.

It is of little surprise that the amendment passed in the Commons by a considerable margin. In a climate where terrorism is so feared, it may have appeared to members of the Commons that the measure was necessary and proportionate. However in the absence of knowledge around the largely opaque and secretive use of deprivation powers by the Home Secretary in recent years it is understandable that the Commons came to the decision that it did.

The amendment is now at Report Stage and on 1st April 2014 members of the House of Lords have the last opportunity to table amendments, as well as engage in discussion and line-by-line examination of the Bill.

We urge all members of the House of Lords to oppose the government clause. Deprivation of citizenship without due process, and where statelessness would result, cannot be a necessary or proportionate response to terrorism or threats to national security. It is instead a carte blanche to the Home Secretary to strip citizenship from Britons without just cause. If the members are not mindful to oppose the Government clause in its entirety we suggest a series of amendments to (attempt) to improve the power.

A Breach of the UK's International Treaty Obligations

> "use of denationalization as a punishment [means] the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture".

These were the comments of Chief Justice Warren in the US Supreme Court case of Trop v Dulles in 1958. Despite the War on Terror and all the measures associated with it – the US has not changed its position.

In 1961, the UK was one of the founding parties to the UN Convention on Reduction of Statelessness and one of the first countries to ratify the treaty in 1966. The spirit of the Convention was to galvanise the community to reduce statelessness, not increase it.

Since 1966 many countries have gone on to sign the international treaty and an international consensus has emerged that statelessness should be reduced because it is in the interests of individuals and also facilitates international cooperation between states themselves.

Therefore it is with great surprise that the UK has taken steps to strip individuals of their citizenship, thereby rendering them stateless. We argue that if the UK follows through with this latest stage in the 'War on Terror' it runs the risk of attracting criticism from the international community, and alienating domestic minority communities further.

The Government claims that "This provision is intended to be consistent with the 1961 UN Convention on the Reduction of Statelessness, which allowed states to declare on ratifying the Convention that they retain the right to deprive a person and render them stateless in specific circumstances." Lord Taylor of Holbeach has claimed that "we are legislating to correct the anomaly between what we are required to do with regards to statelessness and what we are required to do in international law."[1]

However expert opinion accessible online[2] from Professor Guy Goodwin-Gill, Barrister and Professor of International Refugee Law at the University of Oxford, states that the Government amendment , if successful, will lead to a breach of our treaty obligations not only under the UN Convention on the Reduction of Statelessness, but other treaties too. It will consequently have a serious detrimental impact on our relations with other member states and thereby hamper the need for international cooperation in combating terrorism and war.

Our view on reading Professor Goodwin-Gill's opinion paper is that his position is legally sound and that the Government is incorrect. We recommend that the paper is read to fully grasp the issues with the Government's amendment in full. On this basis alone the amendment should be opposed.

An alarming escalation in use of the power

The level of use of deprivation powers since the current Home Secretary came to power is unprecedented.

During World War I when the power to deprive citizenship was first enshrined in statute, the power was only used 4 times.[3]

From the end of World War II to the height of the struggle to end British colonial rule (1945-1971), only 24 deprivation orders were made.

Only 1 order was made between 1972 and 2002, against the Czech spy Nicholas Prager.

Following 9/11, the Labour Government sought to make it easier to deprive persons of citizenship. Despite the climate, Labour Government did not go so far as to allow a person to be deprived of citizenship if it rendered them stateless - once the power was enacted they only used the new power on 5 occasions.

During the 34 months since the Home Secretary came to power in 2010 she has used the power at least 16 times. This is 4 times more than they were used in World War I, and more than 3 times more than they were used by Labour between 2002-2010.

Part of Theresa May's wider crusade to banish terror suspects

Theresa May has made targeting 'terror suspects' a key aim.

At the Conservative Party Conference in 2012 she opened by stating 'Wasn't it great to say goodbye - at long last - to Abu Hamza and those four other terror suspects on Friday?'. The audience clapped adoringly and gave her a standing ovation.[4]

At the Conservative Party Conference in 2013 she claimed the 'deportation' of Abu Qatada as a key achievement. At the time, tabloid newspapers and 24 hour news channels frantically featured clips of the 'deportation' of Abu Qatada – despite his departure being voluntary.

Given that deprivation of citizenship when the person is outside the country is effectively similar to deportation – insofar as one cannot re-enter – one can see that deprivation is not the only measure used by May – which further amplifies our concerns.

More recently Theresa May was engaged in the high profile exercise of royal prerogative powers to confiscate Moazzam Begg's British passport.[5]

This is especially concerning given the fact that Moazzam Begg is a former Guantanamo Bay detainee who obtained substantial compensation following his detention and is now a high profile human rights campaigner.

Al-Jedda

Al-Jedda was born in Iraq. During the Presidency of Saddam Hussein he came to Britain and was granted nationality with his family, and automatically lost his Iraqi citizenship as a result. In 2004, he travelled to Iraq and was detained without charge for three years – until 2007.

His release signalled the start of protracted litigation that continues to this day.
Al-Jedda immediately pursued legal proceedings following his arbitrary detention, which was eventually ruled unlawful by the European Court in 2011.[6]

In the meantime the Home Secretary sought to deprive his citizenship. Al-Jedda appealed against the order on the basis that depriving him of citizenship would render him stateless – which was prevented by section 40(4) of the act. The case ended up in the Supreme Court last June. The court had to decide whether or not Al-Jedda would be rendered stateless if he could regain his Iraqi citizenship.

In October last year, the Supreme Court determined that even if he *could* regain his nationality, it was relevant that he did not at the time of the order have any other citizenship, and therefore the order, in the Court's view, rendered him stateless, in breach of domestic law.

According to Lord Taylor of Holbeach, the Government sponsor for the bill, only 15 persons have lodged an appeal against deprivation orders and all have lost on appeal apart from one – Al-Jedda.

Unsurprisingly the Home Secretary, aware that she has broken the law, has decided to continue her drive to deprive Al-Jedda of citizenship. Instead of taking notice of the judgment of the Supreme Court judges the Home Secretary has decided to repeal the prohibition against rendering a person stateless in domestic law to ensure that Al-Jedda can be deprived of his citizenship.

The introduction of statutory changes which bring about a broad discretionary power on the back of one case is vindictive and very disturbing.

Statelessness

> "To be stateless is to be without nationality or citizenship. There is no legal bond of nationality between the state and the individual. Stateless people face numerous difficulties in their daily lives: they can lack access to health care, education, property rights and the ability to move freely".
>
> Definition of Statelessness, Office of the United Nations High Commissioner for Refugees (UNHCR)

Citizenship is a fundamental right and introducing the power to remove citizenship has grave consequences for society and the individual. A person without citizenship has none of the protections of citizenship and is stateless. Stateless persons in many states are unable to work, claim welfare or benefits or access education. They are also vulnerable to repeated removal/deportation from state to state if they do not have leave.

According to a report in November 2011 by the UNHCR and Asylum Aid[7] "stateless people in the UK live[d] in constant risk of human rights abuses" including:

- stateless people forced to live on the street, with no accommodation in the UK and no right to remain, but with no other country to which they can turn for help,

- stateless people separated from their spouses and children for many years – in some cases, for more than a decade,

- stateless people held in immigration detention, often for many months, when evidence shows there is no country of nationality or residence to which they can be returned.

At the time blame was laid with the Government for failing to provide processes for stateless people to apply to regularise their stay, and to claim welfare and benefits.

The Government claims to have improved the processes since then and indeed there is now a process by which people in the UK can apply to stay on the basis that they cannot return to another country due to statelessness.

The Security Minister James Brokenshire MP told fellow MPs that if the person is in the UK when made stateless 'where appropriate we could regularise a person's position in the UK by granted limited leave, possibly with conditions relating to access to public funds and their right to work and study.' Nonetheless a stateless person is not eligible to claim housing or money whilst a decision is being made – so they are therefore likely to be rendered homeless and destitute in the meantime.

If the person is outside the UK when made stateless – the UK Government is leaving people open to the possibility of homelessness and destitution abroad.

Second class citizens

The Government's introduction of an exception to Section 40(4) of the British Nationality act 1981 (preventing deprivation of citizenship when a person would be rendered stateless) establishes a hierarchy of first and second-class citizens. The exception where only those who have gained their citizenship through naturalisation can be rendered stateless implies naturalised citizens are not as British as those born as such.

By introducing this distinction a two-tiered citizenship is introduced which goes against the idea of all citizens being equal. Whilst non-naturalised citizens cannot have their citizenship deprived, naturalised citizens can.

Naturalised citizens are already forced to earn their citizenship by passing the Life in the UK test, as well as participation in a citizenship ceremony in which they pledge an oath of allegiance unlike non-naturalised citizens who gain their citizenship through no work of their own – by birth, descent, or registration.

Non-naturalised citizens have inalienable rights whereas naturalised citizens are being treated as though they are lucky to have citizenship and that their citizenship is akin to a contract which can be rescinded at any time. The Home Office has said that 'Citizenship is a privilege not a right'. Naturalised citizens are effectively rendered permanently in debt under this contract.

The citizenship of naturalised citizens is *conditional* on the Home Secretary not exercising her discretion.

This is likely to have a 'chilling effect' on the political activity of naturalised citizens.

Naturalised citizens are no doubt a large contingent of the British population. There are no published statistics on the number of naturalised British citizens, however it is estimated that up to three or four million people[8] will be rendered second-class citizens if this law is allowed to pass.

The distinction between naturalised and non-naturalised citizens is in our view veiled racism.

The discourse around immigration has always been skewed by the omission of key facts. One cannot understand *immi*gration without putting it in context of *emi*gration by the British state, its forces and its colonial apparatus.

In that context it is only fair that immigrants from Commonwealth countries were regarded as British citizens. When Britain wanted labour to rebuild the country after World War II it looked to the colonies to get workers. The discourse of the people of the Commonwealth returning to the Motherland to share in and build on the wealth built up was invoked to encourage people to come. However when the non-whites coming to Britain were identified with struggles for liberation from colonisation and radical political critique, the discourse was pulled. After the Commonwealth Immigrants act 1962 was passed, citizens of Commonwealth countries no longer had extensive rights to immigrate to the UK.

A substantial proportion of naturalised citizens are British citizens as a result of these historical processes.

We suggest that this omission from history as well as the representation of the figure of the non-white bogeyman, the alien 'enemy within', is the basis upon which naturalised citizens can be deprived of citizenship can be 'rationalised'.

Suggested amendments

(i) Lack of any meaningful test for the Home Secretary to satisfy

The Government claims that there is a test for citizenship to be taken away and only those who exceptionally satisfy the test will be deprived of such.

The test proposed that the Home Secretary must satisfy herself that it is "conducive to the public good... because the person while having the citizenship status has conducted themselves in a manner which is seriously prejudicial to the vital interests of the UK".

However this is not defined in the act and there is no clear ordinary English meaning that allows a person to discern what kind of conduct would be considered seriously prejudicial or not. This has serious implications for the rule of law and in particular the right of a person to know what is expected of them in order to regulate their conduct.

The test is so vague that it awards a broad discretion to the Home Secretary to deprive citizenship from any naturalised person.

We might turn to Home Secretary and the Home Office to assist us in defining the test. However this is equally frustrating. According to paragraph 55.4.4 of the UK Border Agency 'Nationality Instructions'[9] , "Conduciveness to the Public Good" means depriving in the public interest on the grounds of involvement in

- terrorism,
- espionage,
- serious organised crime,
- war crimes or
- unacceptable behaviours.

In Paragraph 381 of the Explanatory Notes to the Immigration Bill the Home Secretary provides examples of behaviour which would be considered "seriously prejudicial to the vital interests" of the UK, including cases "involving national security, terrorism, espionage or taking up arms against British or allied forces".

Most of the aforementioned activities are issues that the Government is entitled to focus attention on as they concern serious criminal offences. However the Home Secretary has defined conduct/behaviour that would justify a deprivation order as a non-exhaustive list not limited to serious criminal offences. Conduciveness to the public good is defined as including 'unacceptable behaviours'. 'Seriously prejudicial conduct' is defined as including cases involving 'national security'.

Again these are both vague and expressed in broad terms and give the Home Secretary wide discretion.

Unacceptable behaviours is not defined any further and appears to be a broad 'catch all' term. The idea that the Home Secretary can deprive citizenship on the basis of having grounds to suspect that an individual has engaged with behaviours that she deems unacceptable appears too wide. The idea that even minor offences are sufficient to deprive someone of their citizenship is ludicrous. Whilst the Government may give assurances that this is not the case it is up to the House to ensure we are protected by tightly defining the power.

Whether or not you are mindful to oppose the amendment in its entirety, we suggest an amendment requiring 'seriously prejudicial conduct to the vital interests of the UK' which is 'conducive to the public good' to be narrowly defined in the act as conduct involving terrorism, espionage, serious organised crime, and war crimes only.

(ii) Deprivation Orders are not necessary or proportionate to dealing with terrorism

> "If we identify someone as a person proposing to commit a serious terrorist offence, for example, surely the obligation is on us to deal with that person. If we simply deport him, we shall be handing on—in my submission, irresponsibly—this terrorist problem to another state which may not have the same capability of dealing with it as we do. It cannot be a proper response to the terrorist threat to refuse to deal with it ourselves. … That would be irresponsible of us".[10]
>
> Lord Kingsland, Conservative Shadow Lord Chancellor
> October 2002

There is also a further problem with the test. It imposes no requirement upon the Home Secretary to establish that deprivation is both necessary and proportionate to prevent further seriously prejudicial conduct.

If there are grounds that a person is involved in terrorism, then the likely obvious necessary and proportionate response – to prevent terrorism - is to use the extensive law and enforcement bodies we

have to deal with it ourselves. The Government can use the criminal law and other measures to investigate the person, charge them, prosecute them, and convict them. UK prisons are some of the most secure in the world and are fit to hold those convicted.

Terrorism[11] espionage[12], serious organised crime[13], war crimes[14] and taking up arms against British or allied forces[15] constitute crimes, which are justiciable in the UK courts[16], and for which lengthy custodial sentences – including imprisonment for life[17] – are awarded.

For example, Michael Adebolajo, one of the convicted murderers of Lee Rigby, was arrested, charged, tried and sentenced to a whole life jail term with a minimum term of 45 years, in part because it was found that the murder of Lee Rigby had a connection to terrorism. Holding someone in a secure prison in the UK appears to be a way to both punish and prevent a person from committing any further offences.

Depriving people of citizenship when they are outside the country removes the ability to monitor them and prevent them from committing further crimes – and leaves the responsibility with other states who may not be so well equipped to deal with terrorists.

GCHQ have de-facto powers to engage in mass surveillance[18] to harvest vast quantities of data and to attempt to use such data to prosecute individuals for offences.

The Regulation of Investigatory Powers act allows the Government to subject an individual suspected of involvement in terrorism to targeted covert surveillance.

The investigating authorities, including the Security Services, GCHQ, Police Forces, the New National Crime Agency, also have an extensive array of powers to investigate these crimes[19] which will enable them to prove involvement to a criminal standard and thereby secure convictions.

Arrests can be made and people held without charge for up to 14 days where grounds of involvement in terrorism are found. This is ample time to investigate by questioning.

Indeed deprivation orders are not the only orders the Home Secretary can make without any due process. If the Home Secretary suspects a person's involvement in terrorism they can be subjected to orders restricting their residence, movement and communications, as well as intense monitoring to ensure they comply, under the Terrorism Prevention and Investigation Measures act (TPIM).[20]

It follows that if grounds are made out that a person has committed these offences the investigating authorities and the Criminal Justice system are adequately equipped to deal with these matters – without the Home Secretary needing the power to remove citizenship. Indeed it appears that these measures are more effective in countering terrorism than the deprivation of citizenship.

It may be argued by the Government that in some circumstances people use their British citizenship to move around abroad and commit terrorism and therefore there is no option to charge them because they are unlikely to return to answer charges. However this is questionable. A disturbing report by the Bureau of Investigative Journalism suggests that the Government waited until a person had gone abroad to deprive them of citizenship.[21] If this is true it suggests that instead of pursuing the more effective measure of putting the person on trial the Government waited until the person had left its jurisdiction.

Whether or not you are mindful to oppose the Government amendment in its entirety, we request that you table an amendment to the power requiring the Home Secretary to meet an additional requirement: to determine that a deprivation order is necessary and proportionate to prevent conduct that is seriously prejudicial to the vital interests of the UK.

(iii) Unchecked power vested in the Home Secretary; Lack of Due Process/Judicial Scrutiny

(a) No requirement for a person to be charged, tried, let alone convicted of an offence

The standard of proof that the Home Secretary has set in the guidance is too low, namely 'grounds' i.e. some evidence of involvement.

Even if the offences were limited to those mentioned previously, grounds for suspicion are not sufficient to warrant deprivation of citizenship. A person should not be able to be deprived of their citizenship if they have not been charged, tried, let alone convicted of an offence.

Whether or not you are mindful to oppose the Government amendment in its entirety, we request that you table an amendment to the power requiring a *conviction* for terrorism, espionage, serious organised crime or war crimes as a condition for a deprivation order to be issued.

(b) No requirement for prior judicial approval

The Home Secretary need only satisfy *herself*. Unlike other decisions of such magnitude she is not subject to any statutory requirement to get prior authorisation from the courts that she has met the test before issuing an order. Once she has signed the deprivation order, the person immediately loses their citizenship and all the privileges and entitlements that come with it.

Lord Taylor of Holbeach has suggested that seeking permission will place too many administrative constraints on the ability to quickly make an order to prevent a person from moving away in rapidly evolving national security matters. However we submit that this issue can be resolved. The High Court currently has duty judges at night handling last minute emergency applications for judicial review of decisions to administratively remove/deport people – sometimes without papers being submitted and merely over the phone. If the Home Secretary has established the case, we see no administrative reason that the High Court (or similar) cannot perform the same with respect to an application for permission to deprive citizenship.

If you are not mindful to oppose the Government amendment in its entirety, we request that you table an amendment requiring the Home Secretary seek permission to make an order from the courts, where the application sets out how the deprivation is conducive to the public good and how the person, while having that citizenship status, has conducted himself or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, and of the islands, or any British overseas territory, and how a deprivation order will be necessary and proportionate.

(c) Lack of a fair appeals process

The only way to challenge a deprivation order is through an appeal once the person has had his citizenship revoked. The Government claims that the right of appeal ensures that there is adequate judicial scrutiny.

The act requires the Home Secretary to serve notice of deprivation on a deprived person. However the requirement to give notice does not entail that the person has received the notice. There is nothing in the act preventing an order being made whilst a person is out of the country.

Research by the Bureau of Investigative Journalism states that of 18 people identified as being deprived of citizenship since 2006, at least 15 were known to be abroad when orders were issued.[22] In one case it is reported that the Home Secretary waited until the person had left the UK to issue an order.

It is hard to understand how a person can effectively exercise their appeal rights if they are deprived of citizenship whilst they are out of the country – and thereby prevented from re-entering to consult with solicitors, and indeed gather evidence in support of their appeal that may be available in the UK.

The appeals process is also notoriously long and arduous and therefore even if the appellant has the means to succeed - the time and effort taken to appeal will no doubt be a punishment in and of itself.

The time limits for appeals to be submitted in the relevant Procedure rules[23] place even more pressure on appellants: 5 days if in immigration detention, not later than 10 days if the appellant is in the UK at time of notice service, and not later than 28 days if the appellant is outside the UK at time of notice service. Although the time limits can be extended if the AIT/SIAC consider it unjust to do so it places more pressure on appellants.

Whether or not you are mindful to reject the Government amendment in its entirety, we request that you propose an amendment requiring a deprivation order to be made whilst the person is in the United Kingdom.

Alternatively you could propose an amendment requiring the Home Secretary to immediately issue an order once she is satisfied the grounds are made out. This may prevent the Home Secretary waiting until a suspect has left the UK to issue a deprivation order.

(d) The role of secret courts and secret evidence

Where the deprivation is on national security grounds, appeals go to the Special Immigration Appeals Commission (SIAC).

Where the Home Security certifies that she has evidence of national security breaches, the court hears it in closed proceedings. The individual and their legal team are not allowed to know what the evidence against them is. A special advocate is appointed to challenge the evidence. But the special advocate is not allowed to discuss the secret evidence with their client without the court's permission, making an appellant's ability to make their case as well as cross examination extremely difficult.

Every case that we are aware of, except one, has been heard at SIAC.

The case of L1[24] demonstrates that the possibility of a fair trial is even more limited. The Judge in the case made a decision to uphold an order on the basis that even though all evidence was not seen, the Home Secretary was 'unlikely to have made a decision without substantial and plausible grounds for doing so' and accordingly upheld a decision to deprive. The idea that the evidence submitted by the Home Secretary be treated with such deference by an independent court is ridiculous.

If the appellant is unsuccessful and deprived they will again have any appeal against removal, deportation or exclusion heard at SIAC in the same circumstances – which means that the right to a fair trial for this matter is called into question again.

(iv) Lack of Independent Review or Inspection of the Home Secretary's Use of the Powers

Unlike the employment of other powers concerned with terrorism[25] , the use of these powers by the Home Secretary does not appear to be subject to any independent review.

At Committee Stage in the House of Lords, Lord Taylor of Holbeach rejected the need for an Independent Reviewer to be involved on the grounds "that there is a pre-existing independent monitor [the Independent Chief Inspector of Borders and Immigration...] John Vine. His role was set up under the UK Borders Act 2007, and he is able to monitor and report on the efficacy and effectiveness of functions relating to immigration, asylum and nationality. That includes the effectiveness of decision-making on deprivation of British citizenship, so it exists already."

From a cursory glance at the website of the Independent Chief Inspector of Borders and Immigration it does not appear that he has done any work on 'inspecting' deprivation orders.

Instead it would be better to require this of the Independent Reviewer of Terrorism Legislation – given that he is experienced in reviewing similar orders made by the Home Secretary in relation to other terrorism powers, namely orders under the Terrorism Prevention and Investigation Measures act 2005.

Whether or not you are mindful to reject the Government amendment in its entirety, we propose an amendment to be made to the power requiring an Independent Reviewer to be appointed, namely the current Independent Reviewer of Terrorism Legislation.

(v) Opaqueness and a lack of transparency

Unlike the use of other powers the Home Secretary does not actively publish information and statistics on the use of these powers.

All of the information obtained by ourselves and journalists on previous cases has been gleaned from published judgments of SIAC, freedom of information requests, and questions asked in the Commons and the Lords.

However we do not know the circumstances of all deprivation decisions and indeed some deprivation decisions may have been made on grounds of fraud or other grounds as opposed to conduciveness.

Given the seriousness of the powers, the recent surge in use, and the fact that the powers are already heavily secretive given the use of secret hearings in SIAC, the Government should take positive steps to publicise statistics on the way the powers are used.

For example:

- the number of decisions to deprive – given the fact that it appears that there has been a large increase in the last couple of years and that there is confusion about numbers in the public domain.

- the number and proportion of persons deprived of citizenship born in the UK (or other UK territories) and those not born in the UK – We know that many born in the UK have been deprived. The impact on those born in the UK, as well as the impact on their families, especially if they lived in the UK for most of their lives, is likely to be much more severe.

- the number and proportion of persons deprived of citizenship from each religion and race – This is especially important given the fact that all the cases we know of, with the exception of one non-Muslim Russian spy, involve Muslims and of these Muslims all were non-white with the exception of David Hicks. This is important given the positive duty under the Equality Act 2010 to have due regard to the need not to discriminate.

- the number and proportion of persons deprived of citizenship arrested/charged/tried for an offence of terrorism

- the number and proportion of persons deprived of citizenship whilst *in* the UK

- the number and proportion of persons deprived of citizenship whilst *outside* the UK – This is especially important given the detrimental impact on appeal rights outlined previously.

- the number and proportion of persons deprived under section 40(2) of the act who were given the right to appeal against the decision at the Asylum and Immigration Tribunal, and the same for the Special Immigration Appeals Commission - – We do not know of any case where a person was deprived of citizenship under section 40(2) of the act and did not have their trial in secret

- the number and proportion who appealed to SIAC; those that were successful; those that were unsuccessful

If you are not mindful to reject the Government amendment in its entirety, we propose an amendment to routinely publish statistics on the use of the powers.

Assistance to third party states by facilitating extra judicial killing, torture and rendition

Two friends – Mohammed Sakr and Bilal al-Berjawi - were killed shortly after having their citizenship stripped following US drone strikes in Somalia. Mohammed Sakr and his family were allegedly targeted by counter-terrorism officials over a two year period before leaving for Somalia.

This raises the question as to whether they had their citizenship stripped in order to facilitate extra judicial killing by the US. The former solicitor of Mohammed Sakr, Saghir Hussain, said that "It appears that the process of deprivation of citizenship made it easier for the US to then designate Sakr as an enemy combatant, to whom the UK owes no responsibility whatsoever". Indeed SIAC stated in the case of S1-T1-U1-V1[26] that "the United Kingdom owed no obligation to the appellants to secure to them their rights under Articles 2 and 3 in respect of any subsequent act of the Pakistani State or of non-state actors in Pakistan." (para 30).

Then there is the case of Mahdi Hashi, currently represented by Baroness Kennedy. He and several friends were pressured into joining Mi5 in 2009. That same year Hashi moved to Somalia, despite saying he had been warned by an MI5 agent: 'Whatever happens to you outside [the] UK is not our responsibility'. In June 2012 he was stripped of his citizenship and in December 2012 turned up in a jail in New York having been rendered there by US forces from Somalia.[27]

It appears that there is a common thread in these cases. Persons were targeted by counter-terrorism officials/MI5. It appears that they left the UK following these encounters. They were stripped of their citizenship whilst they were out of the country and were subsequently targeted by the US. If the UK is depriving people of citizenship to relinquish any responsibility for extra-judicial killing or rendition by the US this is deeply disturbing.

A continuation of the witch-hunt against British Muslims

The Islamic Human Rights Commission is deeply alarmed by this amendment. However the amendment does not exist in a vacuum. Rather the amendment exists in a context of widespread attacks on Muslims and non-whites.

They are part of a long-standing tradition of scapegoating minorities to gain political capital and instil fear in the population to deter dissent. It appears to us that the policy of depriving citizenship is not so much about preventing terrorism – but if anything about pandering to right wing forces in the Conservative party.

The measures can also be seen as part of a long standing war on the internal other – non-white internal minorities or the bogeyman of the 'immigrant', particularly given the condition that citizens be naturalised and the fact that since 2002 almost all people who have been deprived of citizenship have been non-white. There were only two white people we are aware of – one was an alleged Russian spy, Anna Chapman. The other was David Hicks, who happened to be a white *Muslim*.

Our research has long suggested that British Muslims feel like second-class citizens.[28] The new measures if introduced will do nothing to reassure the British Muslim population. Most of the people are not only non-white; all the known cases are Muslims – with the exception of Anna Chapman.

These measures are in this sense nothing new.

The War on Terror has seen a rise in laws curtailing our civil liberties principally through the targeting of minority communities.

Following 9/11 the Government enacted new powers that allowed indefinite detention without charge of terror suspects in prison.[29] It was not until the House of Lords ruled against the Government that the law was defeated.[30] However the Government shifted the goalposts as a result and control orders were introduced which allowed the house arrest of terror suspects without charge.[31] Control orders were abolished but the almost identical Terrorism Prevention and Investigation Measures remain.

For a decade Section 44 of the Terrorism Act 2000 was used to conduct thousands of stop and searches without reasonable suspicion. Campaigning by the IHRC and seven years of protracted litigation led to it being ruled unlawful by the European Court of Human Rights.[32] The Home Secretary subsequently repealed the power.

However stop and search without reasonable suspicion remains – at ports and borders under Schedule 7 of the Terrorism act 2000. We recently worked together with the House of Lords to amend the power in the Anti-Social Behaviour, Crime and Policing act 2014.

We hope that the Lords can continue the tradition of fighting to prevent the worst excesses of the War on Terror in its tracks and join us in the enduring struggle for justice in opposing this motion.

Endnotes

[1] http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/Government-response-Immigration-Bill-140314.pdf

[2] Accessible at: https://www.documentcloud.org/documents/1086878-guy-s-goodwin-gill-legal-opinion-on-deprivation.html

[3] http://www.theguardian.com/commentisfree/2013/nov/14/theresa-may-erode-britons-citizenship-right

[4] http://www.conservatives.com/News/Speeches/2012/10/Theresa_May_Conference_2012.aspx

[5] http://www.theguardian.com/world/2013/dec/22/moazzam-begg-passport-confiscated

[6] Al-Jedda v United Kingdom (2011) 53 EHRR 789

[7] 'Mapping Statelessness in the UK' – available at: http://www.unhcr.org.uk/resources/monthly-updates/november-2011-update/statelessness-report.html

[8] This is the number of people who hold a British passport but were not born in the UK – and therefore did not acquire their citizenship by birth in the UK.

[9] Accessible at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293881/Chapter_55.pdf

[10] Lords Hansard. Official Report. 9 October 2002: cols. 277-78.

[11] There are a range of offences under many pieces of (counter-)terrorism legislation. For example under the Terrorism act 2000 there are numerous offences for involvement in terrorism e.g. sections 11, 12, 15 to 18, 54 and 56 to 63 etc.

[12] Unless spies benefit from diplomatic immunity, they will almost certainly commit offences under the Official Secrets acts of 1911 and 1920

[13] Cf. The Serious Organised Crime and Policing Act 2005 for a range of offences

[14] Pursuant to Part 5 of the International Criminal Court act 2001

[15] Taking up arms against any state would constitute terrorism for the purposes of section 1 Terrorism act 2000 as well as likely other offences

[16] For the avoidance of doubt due to the obfuscating discourse around international crimes in Britain, War Crimes are justiciable in the UK pursuant to the International Criminal Court act 2001.

[17] As confirmed by the Court of Appeal in Attorney General's Reference (No. 69 of 2013) [2014] EWCA Crim 188

[18] For example Operation Tempora. http://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa

[19] For example the National Crime Agency has powers to investigate Serious Organised Crime cf. The Crime and Courts act 2013 and The Serious Organised Crime and Policing act 2005; The Security Services have counter-espionage powers under the Security Services act 1989

[20] Pursuant to the Terrorism Prevention and Investigation Measures act 2005. Note that we do not in any way endorse TPIMs but we regard them as more effective then depriving citizenship.

[21] http://www.thebureauinvestigates.com/2014/02/13/home-secretary-waited-until-terror-suspect-was-abroad-before-stripping-citizenship/

[22] http://www.thebureauinvestigates.com/2013/02/27/graphic-detail-how-uk-government-has-used-its-powers-of-banishment/

[23] See Rule 8, the Special Immigration Appeals Commission (Procedure) Rules 2003 for the rules for appellants in SIAC. See Rule 7, Asylum and Immigration Tribunal (Procedure) Rules 2005 for the rules for appellants in AIT

[24] Accessible at para 18 on page 8 of following: http://www.siac.tribunals.gov.uk/Documents/L1_StrikeOutJudgment_031210.pdf

[25] There is independent oversight of terrorism legislation by the Independent Reviewer of Terrorism Legislation. Cf. https://terrorismlegislationreviewer.independent.gov.uk/about-me/

[26] SC/106/107/108/109/2012. Accessible at: SC/106/107/108/109/2012

[27] For further info look at the excellent work of the Bureau of Investigative Journalism

[28] Ameli, R and Merali A. "British Muslims' Expectations of the Government: Dual Citizenship: British, Islamic or Both? Obligation, Recognition, Respect and Belonging" Islamic Human Rights Commission. Summary of findings here: http://www.ihrc.org.uk/file/BMEG_VOL1.pdf

[29] Part 4 of Anti-Terrorism, Crime and Security act 2001

[30] [2004] UKHL 56

[31] Pursuant to the Prevention of Terrorism act 2005

[32] Gillan and Quinton v United Kingdom

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