

Citizenship Laws and
Statelessness



Papua New Guinea

Overview of Citizenship and Statelessness

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BACKGROUND

Papua New Guinea achieved independence in 1975 and became a United Nations Member state that same year.

Papua New Guinea has signed seven human rights treaties:

- The *Convention Relating to the Status of Refugees*;
- The *International Covenant on Civil and Political Rights*;
- The *International Covenant on Economic, Social and Cultural Rights*;
- The *Convention on the Rights of the Child*;
- The *Convention on the Elimination of Racial Discrimination*,
- The *Convention on the Elimination of All Forms of Discrimination Against Women*; and
- The *Convention of the Rights of Persons with Disabilities*.

Papua New Guinea has not signed the *Convention relating to the Status of Stateless Persons*, or the *Convention on the Reduction of Statelessness* ('1961 Convention').

ACQUISITION

Descent

Persons of Papua New Guinean descent are entitled to citizenship through the *Constitution of the Independent State of Papua New Guinea* and the *Citizenship Act*.¹ If a child is born inside Papua New Guinea, in or out of wedlock, citizenship is automatically passed if either parent is a citizen.² A child born outside of Papua New Guinea, born in or out of wedlock, is entitled to the automatic acquisition of citizenship if either parent is a citizen.³

A child born outside of Papua New Guinea who is adopted by citizens of Papua New Guinea is entitled to be registered as a citizen in the same manner, including adoption by custom.⁴ Further, a person who had a grandparent who qualified for citizenship under section 66 is also entitled to apply for citizenship by descent.

To be eligible for citizenship on these grounds, the applicant must have been a resident of Papua New Guinea for a total of 12 months in the three years preceding the application,⁵ be of good character, and make a declaration of loyalty. These

¹ *Constitution of the Independent State of Papua New Guinea 1975* (w amendments to 2001) ('Constitution'); *Citizenship Act 1975 (Chapter 12)* (w amendments to 2009) (Papua New Guinea) ('Citizenship Act Chapter 12').

² Constitution (n 1) s 66(1)(a) and (b).

³ Ibid s 66(2)(a), (b) and (c); *Citizenship Act Chapter 12* (n 1) s 5.

⁴ Constitution (n 1) s 78.

⁵ *Citizenship Law 2016* ('Constitutional Amendment No 43') s 3; *Constitution of the Independent State of Papua New Guinea 1975* (w amendments to 2016) s 66(5)(a) ('Constitution with 2016 amendment').

provisions are consistent with article 4 of the 1961 Convention.

Due to undesirable compilation practices, it is still listed in the *Constitution* that a citizen must renounce any other foreign citizenship they may hold.⁶ This is inconsistent with the 2016 amendments to both the *Constitution*,⁷ and the *Citizenship Act* which reflect the current state of the law.

Foundlings are recognised under the *Constitution* and the law thus presumes that any child found abandoned in the country is a citizen, in the absence of evidence to the contrary.⁸ This is consistent with article 2 of the 1961 Convention. The provision for foundlings extends to the presumptive citizenship of the parent, which goes beyond the requirements found in the 1961 Convention.

Naturalisation

Persons who are not of Papua New Guinean descent are entitled to citizenship by naturalisation through four channels: residence, marriage, sporting endeavours, or investment.

1. Residence

The *Constitution* permits persons who have resided in Papua New Guinea for at least eight years to apply for citizenship by naturalisation.⁹ The application for naturalisation must be made within two months of the person's total time of residence reaching eight years.

There is no explicit age requirement, however, section 67(3) dictates that any person included on an application who is under 'voting age' will become naturalised. This implies that applications can only be

lodged by persons who have reached 'voting age', which is 18 years. This is consistent with article 1 of the 1961 Convention.

An applicant must intend to reside permanently in Papua New Guinea,¹⁰ must make a declaration of loyalty, and have a reasonable knowledge of the rights and responsibilities of citizenship. The applicant must be of good character, be conversationally fluent in Pisin, Hiri Motu, or another regional vernacular, and have respect for the cultures of the country. The applicant must be of good health and be unlikely to become a charge on public funds.

2. Marriage

A person who is the spouse of a citizen may apply for citizenship by naturalisation.¹¹ Provisions for the application of citizenship by marriage may pass through a male or female citizen to their spouse. The applicant must have resided in Papua New Guinea for at least 12 months in the three years preceding the date of the application.

The applicant must be of good character. Further, the marriage must be valid under Papua New Guinean marriage law, not custom. It is still listed in the *Constitution* that a citizen must renounce any other foreign citizenship they may hold.¹² This is a legislative inconsistency.

3. Sporting Endeavours

A person who participates in a particular sport, and is likely to receive a medal, or be recognised, in that sport as a representative of Papua New Guinea, is

⁶ Constitutional Amendment No 43 (n 5) s 3; Constitution with 2016 amendment (n 5) s 66(5)(c).

⁷ Constitutional Amendment No 43 (n 5).

⁸ Constitution (n 1) s 77(1).

⁹ Ibid s 67(1).

¹⁰ Ibid s 67(2)(b).

¹¹ Constitutional Amendment No 43 (n 5) s 3; Constitution with 2016 amendment (n 5) s 66(4).

¹² Constitutional Amendment No 43 (n 5) s 3; Constitution with 2016 amendment (n 5) s 66(5)(c).

eligible to apply for citizenship by naturalisation.¹³

Under the *Constitutional Amendment*, an applicant under this section must satisfy the requirements set out in section 67(2), but is exempt from the language requirements for naturalisation.¹⁴ This is inconsistent with the *Citizenship Amendment*, which stipulates that the Minister shall consider an applicant's conversational abilities in the local vernacular when reviewing their application.¹⁵

Further, the *Citizenship Amendment* requires that the Minister consider an applicant's sporting background; other qualifications or skills the applicant may be able to utilise to be gainfully employed; and, any pre-existing connection to the country that the applicant may have.

4. Investment

A person who has resources, capital, and the commitment to invest in the economy in a manner which creates employment and teaches skills to citizens, is eligible to apply for citizenship by naturalisation.¹⁶

An applicant under this section must satisfy the requirements set out in section 67(2), but is exempt from the language requirements for naturalisation.¹⁷ This is inconsistent with the *Citizenship Amendment*, which stipulates that the Minister shall consider the applicants' conversational abilities in the local

vernacular when reviewing their application.¹⁸

Further, the *Citizenship Amendment* requires the Minister to take into account the applicant's business and investment background in other countries;¹⁹ as well as their history of job creation and skill development for employees. The Minister must also consider if the applicant has held or currently holds an investor visa, and any other pre-existing connection the applicant may have to the country.

RENUNCIATION

A person may not renounce their citizenship until they have reached the age of 18.²⁰ A person who is under the age of 19 and who is required to renounce their foreign citizenship may do so only after reaching the age of 18.

The *Constitution* stipulates that a person may not renounce their citizenship unless they hold another citizenship or nationality;²¹ or the renunciation is done for the purpose of obtaining another nationality or citizenship. Further, a person may not renounce their citizenship during a time of war. This is consistent with article 7 of the 1961 Convention.

Regaining Citizenship

If a person loses their citizenship as a result of their marriage to the national of another country which resulted in their renunciation of Papua New Guinean citizenship, they may apply to regain their citizenship.²²

¹³ Constitutional Amendment No 43 (n 5) s 4; Constitution with 2016 amendment (n 5) s 67(4)(a).

¹⁴ Constitutional Amendment No 43 (n 5) s 4; Constitution with 2016 amendment (n 5) s 67(5).

¹⁵ *Citizenship (Amendment) (No 42) Act 2016* (Papua New Guinea) s 2 ('Citizenship Amendment No 42'); *Citizenship Act 1975 (Chapter 12)* (w amendments to 2016) (Papua New Guinea) s 6A(1)(c) ('Citizenship Act with 2016 Amendment').

¹⁶ Constitutional Amendment No 43 (n 5) s 4; Constitution with 2016 amendment (n 5) s 67(4)(b).

¹⁷ Constitutional Amendment No 43 (n 5) s 4; Constitution with 2016 amendment (n 15) s 67(5).

¹⁸ Citizenship Amendment No 42 (n 15) s 2; Citizenship Act with 2016 Amendment (n 15) s 6B(1)(d).

¹⁹ Citizenship Amendment No 42 (n 15) s 2; Citizenship Act with 2016 Amendment (n 15) s 6B(1)(a).

²⁰ Constitution (n 1) s 72(1); Citizenship Act Chapter 12 (n 1) s 2(a).

²¹ Constitution (n 1) s 72(2)(a).

²² Constitution (n 1) s 73(2)(b) and (c).

The ability to regain citizenship only applies to persons who were conferred automatic citizenship on Independence Day, and those persons who gain citizenship by descent.

Further, this applies only where that marriage has ended and the applicant has resided in Papua New Guinea for five years.²³ If that person was a resident in Papua New Guinea when the marriage broke up, the residence requirement is only three years. This is consistent with article 5 of the 1961 Convention.

LOSS

If a court finds that citizenship was acquired by fraud, misrepresentation, or concealment of fact, citizenship will be lost automatically, unless the Minister is satisfied that the offence was minor.²⁴ This is consistent with article 8 of the 1961 Convention.

This subsection does not apply to children travelling on the passport of a parent or guardian,²⁵ or a person travelling on the passport of another country with the explicit permission of the Minister. No provision relating to the automatic loss of citizenship will apply to an act done under the compulsion of the law of another country. These provisions are consistent with the 1961 Convention.

If a parent loses citizenship, and the Minister is satisfied that the welfare of the child would not suffer to do the same, the Minister may deprive that child of their citizenship.

Under this section of the *Constitution*, and where a child under the age of 19 loses

their citizenship, the Minister may grant citizenship to a child who has lost citizenship as a result of their parent's loss of citizenship. The Minister must be satisfied that it is in the best interests of the child to do so, and the decision must be as the result of an application made by or on behalf of the child.

DUAL CITIZENSHIP

The 2016 *Citizenship Amendment* permits applications for dual citizenship of individuals from a prescribed list of countries: Australia, Fiji, Germany, New Zealand, Samoa, Vanuatu, the United Kingdom and the United States of America.²⁶

Applicants for citizenship by marriage, by descent, by overseas birth (including adopted children), naturalisation through residency, naturalisation through sports performance, naturalisation through investment, and refugees are all entitled to apply for dual citizenship.

The only recognition of this change is found in the amendment, but it does not clearly state the obligations or requirements of a person who applies for dual citizenship.²⁷ It is also not clear how the new dual citizenship provisions might interact with section 70 of the Constitution regarding automatic loss which on their face are inconsistent with the allowance of dual citizenship.

However, an updated consolidation of the current Constitution was unable to be located at the time of the research.

UNHCR Representation in Canberra

²³ Ibid s 73(1)(a).

²⁴ Ibid s 70(2).

²⁵ Ibid s 70(3)(b).

²⁶ Immigration and Citizenship Service Authority, 'Citizenship and Dual Citizenship Guide', *Citizenship and Dual Citizenship* (Information Guide, 27 March 2017) 4-5 <<https://www.immigration.gov.pg/image>

s/documents /Dual_Citizenship/Citizenship%20Pathways%20-%20Client%20Guide%20booklet%20v1.0%20-%20final.pdf>.

²⁷ Citizenship Amendment No 42 (n 15) s 2; Citizenship Act with 2016 Amendment (n 15) s 6C.

Note: *This factsheet only provides information of a general nature. It should not be relied on for any other purpose. This factsheet should be read in light of the last date on which it was updated.*