

Gender and
Statelessness



Tonga

Gender, Citizenship Laws and Statelessness

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CONFERRAL TO BIOLOGICAL CHILDREN

Children born in the country

A child born in Tonga automatically is a citizen where either parent is a Tongan subject.¹

Children born outside of the country

A child born outside of Tonga automatically is a citizen where either parent is a Tongan subject.²

ADOPTED CHILDREN

Tongan nationality legislation does not explicitly make reference to nationality for adopted children.

FOUNDLINGS

Tongan nationality legislation does not explicitly make reference to nationality for foundlings.

REGISTRATION OF THE BIRTH OF A CHILD

Registration of the birth of a child is required by either parent of the child, or the mother where the child is born outside of wedlock.³ This must be completed within three weeks of the birth of a child.⁴ A person who fails to

do so is liable on conviction to a fine of \$100.⁵

A married woman cannot register an illegitimate child until a Supreme Court order to that effect has been made.⁶ An application for such an order requires evidence in writing by supporting affidavits.⁷

A child born overseas is to be registered by providing the Central Registry with the official birth certificate of the country in which the birth occurred, alongside a supporting affidavit with the grounds that the person is Tongan.⁸

LOSS AND RENUNCIATION OF CITIZENSHIP

Where a person has obtained a certificate of naturalisation, and it appears that this has been obtained by false representation or fraud, the person will be subject to revocation of their certificate of naturalisation.⁹

A person's certificate of naturalisation may also be revoked where the person has been convicted of an offence of terrorism; treason; sedition; an offence involving dishonesty or fraud; defamation of the King or Queen; or any other offence which carries a sentence

¹ *Nationality Act 1915* s 2(a) ('Nationality Act').

² *Ibid* s 2(b) and (c).

³ *Births, Deaths and Marriages Registration Act* s 3(2).

⁴ *Ibid* s 3(2).

⁵ *Ibid* s 3(2).

⁶ *Births, Deaths and Marriages Regulations* r 6.

⁷ *Ibid* r 6.

⁸ *Ibid* r 7.

⁹ *Nationality Act* (n 1) s 12(1).

of two or more years of imprisonment.¹⁰ A certificate of naturalisation may also be revoked where a person constitutes a threat to the security of Tonga.¹¹

Tongan legislation does not make any reference to renunciation of nationality.

NATURALISATION FOR SPOUSE OF CITIZEN

Any non-Tongan who marries a Tongan is deemed a Tongan subject.¹² It is required that the person lodges a written declaration with the Minister of Foreign Affairs that they wish to assume Tongan nationality; and take an oath of allegiance.¹³

Naturalisation may also be granted where a foreigner makes an application for citizenship by naturalisation, subject to certain requirements.¹⁴ The relevant requirements include having resided in Tonga for a period not less than five years; being of good character; adequate knowledge of Tongan language; and the intention to reside in Tonga.¹⁵

The above requirements for naturalisation are exempted for a woman who was a Tongan subject previous to her marriage with a non-Tongan and whose husband has died or whose marriage has been dissolved.¹⁶ It is to be noted that there is no equivalent provision for a man who was a Tongan, who married a non-Tongan.

Where the name of a child is mentioned in an application for naturalisation of the child's parent, the child shall be included in the parent's certificate of naturalisation.¹⁷

¹⁰ Ibid s 12(2).

¹¹ Ibid s 12(3).

¹² Ibid s 2(d).

¹³ Ibid s 2(d).

¹⁴ Ibid s 8.

¹⁵ *Nationality Act* (n 1) s 8.

¹⁶ Ibid s 8(4).

¹⁷ Ibid s 13.

DUAL NATIONALITY

Dual nationality is not explicitly mentioned within Tongan legislation. On this basis there is no express prohibition on dual nationality in Tonga.

The prohibition on dual citizenship which previously existed in Tongan legislation was removed with the *Nationality (Amendment) Act 2007*.

GENDER EQUALITY ACHIEVED

Gender equality was achieved with respect to nationality in Tonga in 2007, with the *Nationality (Amendment) Act 2007*.¹⁸ Prior to this amendment, Tongan nationality was only conferred by a child's father.¹⁹

It is also to be noted that the *Nationality Act* uses only the gender pronoun "he" throughout.

GENDER AND STATELESSNESS RISKS

Gender equality with respect to the conferral of nationality was achieved in Tonga with the introduction of the *Nationality (Amendment) Act 2007*. The removal of the prohibition on dual nationality also means that nationality may be conferred on a child by both parents in Tonga.

There remain some gaps in the legislation however, which may give rise to risk of statelessness. These include the lack of explicit reference to nationality for foundlings or adopted children.

There may also be disincentives to register a child that occur through the interaction of divorce, adultery and birth registration provisions. Adultery and fornication can in certain circumstances be unlawful and punishable by fine, civil damages²⁰ or

¹⁸ *Nationality (Amendment) Act 2007*.

¹⁹ See e.g., the *Nationality Act* as at 1988.

²⁰ *Divorce Act 1927* ('Divorce Act') s 13.

imprisonment.²¹ Parties to a marriage and in some cases families can claim damages for adultery.²² Parties to adultery can also be made co-respondents in divorce proceedings.²³ Further, spousal maintenance entitlements may also be forfeited in cases of adultery.²⁴

Thus, a woman who is separated and gives birth to another man's child may choose not to register her child due to perceived financial, legal and social consequences. Indeed, a married woman must apply to the Supreme Court to register her child as illegitimate and forward a copy of the application to her husband.²⁵ The interaction of these provisions has the potential to disproportionately affect women and represent a risk of non-registration. Further research and validation are required on this area.

UNHCR Representation in Canberra

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

²¹ *Adultery and Fornication Act 1919* s 2(1). Note these provisions are gendered, referring to acts with an 'unmarried woman'.

²² *Ibid* s 2.

²³ *Divorce Act* (n 20) s 4.

²⁴ *Ibid*; *Maintenance of Deserted Wives Act 1916* s 3.

²⁵ *Birth, Deaths and Marriage Regulations* r 6.