

Citizenship Laws and
Statelessness



Fiji

Overview of Citizenship and Statelessness

Last Update: 1 November 2022

BACKGROUND

Fiji's political history has a pattern of military coups, martial law, and ongoing ebbs and flows in the country's adherence to the democratic process.¹ A new Constitution was drafted in 2013, which enshrined the process of free and fair democratic elections.²

Fiji is a signatory to the *Convention relating to the Status of Stateless Persons*, but not the *Convention on the Reduction of Statelessness* ('1961 Convention').

However, Fiji has ratified every other major human rights convention,³ including the *Convention Relating to the Status of Refugees*. Most recently, Fiji acceded to the *International Covenant on the Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* in 2018.

ACQUISITION

Descent

Persons of Fijian descent are entitled to citizenship through the *Constitution of Fiji*, the *Citizenship Decree (No 23)* ('Decree') and the *Citizenship Regulations*.⁴ Dual citizenship is permitted in the *Decree* and the *Constitution*.

These instruments permit acquisition of citizenship by birth, for children born in and out of wedlock.⁵ Any person born in the country is entitled to automatic acquisition at the time of their birth, regardless of their parents' citizenship.⁶ This is limited only where one of the parents of that child is a foreign diplomat in Fiji and neither of the parents are citizens.

Further, the *Citizenship Decree* explicitly recognises citizenship for foundlings, consistent with article 2 of the 1961 Convention. The *Decree* assumes a child found abandoned in Fiji was born in the

¹ Alumita Durutalo, 'Fiji' (2018) 30(2) *The Contemporary Pacific* 492, 492-493; Richard Herr, 'Cultural adaptation of the Westminster Model: Some examples from Fiji and Samoa' (2015) 30(1) *Australasian Parliamentary Review* 72, 75-76.

² *Constitution of Fiji 2013* s 23 ('Constitution').

³ See, e.g., *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). NB: Fiji ratified to this Convention on 13 July 1993; *International Convention on the Elimination of All forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969). NB: Fiji succeeded to this Convention on 11 January 1973 and withdrew its reservations

and declarations to the Convention on 10 August 2012.

⁴ *Constitution* (n 2) s 5(3); *Fiji Citizenship Decree (No 23) 2009* s 5(a) ('Decree'). The Decree is also known as the *Citizenship of Fiji Act 2009*; *Fiji Citizenship Regulations 2009* s 4, 7 ('Regulations').

⁵ *Constitution* (n 2) s 5(3); *Decree* (n 8) s 5(a); 1961 *Statelessness Convention* (n 4) art 1(3).

⁶ *Constitution* (n 2) s 5(3); *Decree* (n 8) s 5(b), 6; *Regulations* (n 8) s 4; 1961 *Statelessness Convention* (n 4) art 4(1).

country, in the absence of contrary evidence.⁷

For those persons who have a parent who has Fijian citizenship at the time of the child's birth, but who are born outside of the country, they are entitled to citizenship by registration.⁸ This is consistent with Articles 1 and 4 of the 1961 Convention.

Children under the age of 18, who are adopted by Fijian citizens, are entitled to citizenship by registration.⁹ Further, any child who was under the age of 18 at the time either parent became a citizen is entitled to become a citizen by registration, which may be filed on their behalf by a parent or guardian.

For those persons who apply for citizenship by registration over the age of 18 but who are the children of Fijian citizens must demonstrate that they, and any applicant included on their application, have been lawfully present in Fiji for at least three of the five years immediately preceding the application.¹⁰ Applicants for citizenship by registration are required to undertake an oath of allegiance. If an applicant is under the age of 18, they are not required to undertake such an oath until they have reached that age, as a condition of their registration.

A person who was formerly a citizen of Fiji, but who, for any reason, lost their citizenship, may reapply for citizenship by

registration.¹¹ All applications for citizenship by registration must be undertaken without delay.

Naturalisation

The *Decree* permits application for citizenship through naturalisation by residence. It requires that the applicant must reside, on a permanent residence permit in Fiji for an aggregate period of five years in the 10 consecutive years immediately before the application.¹² Applicants for naturalisation must be of good character, have an adequate knowledge of English and the responsibilities and privileges of Fijian citizenship, hold a valid permanent residence permit and must undertake an oath of allegiance set by Schedule 1 of the *Decree*.¹³

Further, individual applicants for naturalisation must be an 'adult person' as defined by the Act, but minor children may be included on the applications of their parents or guardians. Applicants must intend to reside in Fiji after the issuance of citizenship by naturalisation.¹⁴

A person who is married to a citizen may apply for citizenship by registration if they have been lawfully present in Fiji for three of the five years immediately preceding their application,¹⁵ and on the condition that their relationship is genuine and continuing marital relationship. Applicants for

20 consecutive years' immediately before the application for naturalisation is made. Moreover, as of the last update of this factsheet, the Government of Fiji website states that applications for naturalisation are not currently being accepted.

¹³ Ibid s 13(1)(b); sch 1; Regulations (n 8) s 12.

¹⁴ Ibid s 13(2)(c); Regulations (n 8) sch 1H.

¹⁵ Decree (n 8) s 8(7). Note, the *Citizenship of Fiji (Amendment) Act 2020*, passed by the Fijian Parliament (but not yet in force), adds the requirement that applicants must be residing in Fiji on a 'permanent residence permit'.

⁷ Decree (n 4) s 7.

⁸ Decree (n 4) s 5(b), 8(1); Regulations (n 8) s 4; 1961 Statelessness Convention (n 4) art 4(1)(b).

⁹ Constitution (n 2) s 5(3); Decree (n 8) s 5(b), 8(2); Regulations (n 8) s 5.

¹⁰ Decree (n 8) s 8(5); Regulations (n 8) s 7; 1961 Statelessness Convention (n 4) art 1(2)(b).

¹¹ Ibid s 8(6); Regulations (n 8) s 8.

¹² Decree (n 8) s 11(2). Note, the *Citizenship of Fiji (Revised Budget Amendment) Act 2022*, passed by the Fijian Parliament (but not yet in force), extends the requirements, *inter alia*, around lawful presence in Fiji to 'for an aggregate period of 15 years in the

naturalisation by marriage must undertake an oath of allegiance, but are not subject to language requirements.

There are no provisions for acquisition of citizenship through alternate pathways, such as investment. Those on investment permits, may however, meet the regular requirements for citizenship.

RENUNCIATION

The *Constitution*, the *Decree* and the *Regulations* permit voluntary renunciation of citizenship.¹⁶ An applicant for renunciation must over the age of 18 and must have acquired the citizenship of another country. The *Constitution* explicitly provides that the written law of Fiji shall contain provisions which aim to prevent statelessness.¹⁷

While no subsection of the *Decree* provides for express protection against statelessness, the practical operation of section 15 achieves this goal with respect to renunciation. This is consistent with provisions found in the 1961 Convention, namely article 7.

LOSS

A person may be deprived of their citizenship on two grounds: a breach of allegiance to Fiji,¹⁸ or if it is found that their citizenship was achieved through misrepresentation.¹⁹

If a person is deprived of their citizenship under section 17 of the *Decree*, the deprivation occurs on the date the order was issued, or, where an appeal has been lodged under section 21, the date the appeal was rejected. This is consistent with

the rights afforded to States in the 1961 Convention under article 8.

The *Decree*, however, provides no express protection against statelessness for persons who are deprived of their citizenship under section 17.

Temporal Requirements for Deprivation and Judicial Review

In advance of an order under section 17(2), the Minister must provide written notice of the intention to revoke citizenship. The notice must contain the reasons why the Minister intends to make the order for revocation, and a request that the person show cause why the order shall not be made.

If the person fails to do so 'within a reasonable time after receipt of the written notice', the Minister may proceed with the order.²⁰ Under section 21 of the *Decree*, 'reasonable time' can be understood to mean 14 days. If an order is made, the person must surrender their passport or certificates of naturalisation and registration within 21 days of the order.²¹

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.*

¹⁶ Constitution (n 2) s 5(5)(f); Decree (n 8) s 15; Regulations (n 8) s 13.

¹⁷ Constitution (n 2) s 5(5)(d).

¹⁸ Constitution (n 2) s 5(5)(f); Decree (n 8) s 17(2)(b); Regulations (n 8) s 14, 15.

¹⁹ Decree (n 8) s 17(2)(a); Regulations (n 8) s 14, 15; 1961 Statelessness Convention (n 4) art 8(2)(b).

²⁰ Ibid s 17(4); Regulations (n 8) s 14(2).

²¹ Regulations (n 8) s 15(1).

