

*Citizenship Laws and
Statelessness*



Kiribati

Overview of Citizenship and Statelessness

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BACKGROUND

Kiribati, formerly the Gilbert Islands, is a small archipelago located north-east of Australia. The majority of the islands sit only two metres above sea level. The effects of rising sea levels in the context of climate change have already affected freshwater and coastlines on the island.¹

Kiribati is a signatory to the *Convention relating to the Status of Stateless Persons* ('1954 Convention') and the *Convention on the Reduction of Statelessness* ('1961 Convention').

Kiribati has also acceded to:

- The *Convention on the Rights of the Child*;
- The *Convention on the Rights of Persons with Disabilities*; and
- The *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW').

ACQUISITION

Descent

Persons of I-Kiribati descent are entitled to citizenship through the *Constitution of Kiribati* and the *Citizenship Act*.² The

inalienable right to citizenship is enshrined in the *Constitution*.

The Constitution and Citizenship Act permit acquisition of citizenship by birth, for children born in and out of wedlock.³ For those children born in wedlock, in the territory of Kiribati, citizenship may only pass where their father is a citizen.⁴

For children born outside of wedlock, in the territory of Kiribati, citizenship may pass through either parent. This is limited where one of the parents of that child is a foreign diplomat in Kiribati and neither of the parents are citizens, the father is a citizen of a country with which Kiribati is at war and the birth occurs under the occupation of that country.

For those children born in wedlock, outside of the territory of Kiribati, citizenship may only pass where their father is a citizen.⁵ For children born outside of wedlock, outside of the territory of Kiribati, citizenship may pass through either parent.⁶

This gendered limitation on children born in wedlock is discriminatory, creates arbitrary outcomes and risks statelessness. Moreover, it breaches Kiribati's obligations

¹ *Oxford Guide to Countries of the World* (online at 13 January 2020) 'Kiribati'.

² *Constitution of Kiribati (Amendment) Act 1995* ('Constitution'); *Citizenship Act 1998* (Kiribati) ('Citizenship Act').

³ Constitution (n 2) s 25(1).

⁴ Ibid s 25.

⁵ Ibid.

⁶ Ibid s 29(1)(iii)(c).

under article 9(2) of CEDAW and article 4(1) of the 1961 Convention.

Children under the age of 18, who are adopted by citizens of Kiribati, will automatically become a citizen on the date the adoption is finalised.⁷ Adoption in Kiribati mirrors the gendered operation of citizenship laws. For example, children ‘adopted in wedlock’ will only acquire citizenship if the adoptive father is a citizen. For children adopted outside of wedlock, the child will automatically become a citizen, if either parent is a citizen.

Persons of I-Kiribati descent who were not born in Kiribati and who did not become a citizen at birth pursuant to sections 20–22 of the *Constitution* may apply for citizenship by registration.⁸ This is consistent with article 4 of the 1961 Convention.

Naturalisation

The Act permits application for citizenship through naturalisation by residence. It requires that the applicant has resided in Kiribati for at least seven of the years preceding the date of application.⁹

Applicants for naturalisation must be of good character, have an adequate knowledge of Kiribati for conversational purposes (unless prevented by a mental or physical disability), and must undertake an oath of allegiance.

Applicants must understand and respect the customs and traditions of Kiribati, and must intend to reside in Kiribati. Applicants must have the means to support themselves and their dependents, and

have reasonable knowledge of their rights as a citizen.

Further, individual applicants for naturalisation must be of ‘full age and capacity’ as defined by the Act. Applications on behalf of minor children may be included on the applications of their father.¹⁰ A woman who is married to a citizen may apply for citizenship by registration: the process is not automatic.¹¹

Men may include their wives and children in their applications for naturalisation,¹² on the condition that the wife consents to the acquisition of citizenship. There is however no attendant procedure for women to include their partners under the same procedure. This gendered provision is inconsistent with the principle of non-discrimination enshrined in article 3 of the 1954 Convention.

A woman who was formerly a citizen of Kiribati, who lost their citizenship as a result of the prohibition on dual citizenship and who renounced their Kiribati citizenship upon marriage to a foreign national, may reapply for citizenship by registration.¹³ This process is also not automatic, though the loss of citizenship is. There are no provisions for acquisition of citizenship through alternate pathways.

Dual citizenship is prohibited under the *Constitution*.¹⁴ Persons who apply for citizenship by naturalisation are required to demonstrate proof of renunciation of their foreign citizenship at the time of application.

RENUNCIATION

⁷ Citizenship Act (n 2) s 6.

⁸ Constitution (n 2) s 23.

⁹ Citizenship Act (n 2) s 7(2)(a).

¹⁰ Ibid s 7(3)(b),(c).

¹¹ Ibid s 7(4); Constitution (n 2) s 26.

¹² Citizenship Act (n 2) s 7(3)(a),(c).

¹³ Ibid s 10.

¹⁴ Constitution (n 2) s 24. Note loss of citizenship due to dual citizenship depends on whether the individual is naturalised citizen and/or whether they are a person of “I-Kiribati descent”.

The Act permits voluntary renunciation of citizenship.¹⁵ An applicant for renunciation must be over the age of 18 and must have acquired the citizenship of another country.

Alternatively, renunciation may occur as a necessary step in the acquisition of citizenship in another country. There is a general prohibition on renunciation during a time of war without the consent of the Minister. This is consistent with provisions found in article 7 of the 1961 Convention.

LOSS

A person may be deprived of their citizenship on five grounds:

- A breach of allegiance to Kiribati;
- If they obtain citizenship in another country by any voluntary act (other than marriage);

If a person who is not of I-Kiribati descent is deprived of their citizenship under section 8 or 8A of the *Act*, the deprivation occurs on the date the order was issued. This is consistent with the rights afforded to States in article 8 of the 1961 Convention, however, the *Act* provides no express protection against statelessness for persons who are deprived of their citizenship under section 8 or 8A.

Of particular concern is section 8A which provides for the Minister to deprive a person of non I-Kiribati descent on broad “public good” grounds. This goes beyond the exceptions permissible in article 8 of the 1961 Convention. Further, section 8A seeks to make such a decision non-justiciable, again in breach of Kiribati’s obligations under article 8 of the 1961 Convention.

- If they exercise a right that is exclusive to the nationals or citizens of another country, including electoral participation;
- If they take an oath or declaration of allegiance to another country;
- Or if they serve in the military of another country, except with the permission of the Beretitenti.¹⁶

These provisions do not apply to any act done under the compulsion of the law of another country.

Further, and in accordance with article 8 of the 1961 Convention, a person will be deprived of their citizenship if it is found that their citizenship was achieved through misrepresentation, unless the Minister is satisfied that the offence was minor.

UNHCR Representation in Canberra

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.

¹⁵ Citizenship Act (n 2) s 9(1).

¹⁶ Ibid s 8(1)(e) (similar to Office of the President).