



UNSW  
Kaldor Centre  
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Refugee Law



# The Future of Nationality in the Pacific

## Preventing Statelessness and Nationality Loss in the context of Climate Change

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# Table of Contents

<b>Executive summary</b> .....	<b>2</b>
<b>Recommendations</b> .....	<b>3</b>
<b>1. Introduction</b> .....	<b>4</b>
1.1. <i>What is at risk?</i> .....	4
1.2. <i>Why consider these issues now?</i> .....	4
1.3. <i>What is the role of this report?</i> .....	5
<b>2. Methodology</b> .....	<b>6</b>
2.1. <i>Selecting material</i> .....	6
2.2. <i>Analysis</i> .....	6
2.3. <i>Recommendations</i> .....	6
<b>3. Key terms</b> .....	<b>7</b>
<b>4. Snapshot of the Pacific</b> .....	<b>9</b>
4.1. <i>Brief history of citizenship law and governance</i> .....	9
4.2. <i>Regional architecture</i> .....	10
4.2.1. Independent and associated States that designate citizenship .....	10
4.2.2. French territories and French citizenship .....	11
4.2.3. New Zealand territory and countries covered by New Zealand citizenship laws .....	11
4.2.4. UK territory .....	11
4.2.5. US territories .....	11
<b>5. Risks of statelessness and barriers to passing down nationality in the Pacific</b> .....	<b>12</b>
5.1. <i>International efforts to reduce and prevent statelessness</i> .....	12
5.2. <i>Risks of statelessness at birth</i> .....	13
5.2.1. Children born in the territory .....	13
5.2.2. Children born overseas .....	14
5.2.3. Foundlings .....	16
5.3. <i>Risk of contravening fundamental principles of international law</i> .....	17
5.3.1. Gender discrimination .....	17
5.3.2. Arbitrary deprivation of citizenship .....	18
5.4. <i>Risk of statelessness/loss of nationality arising from limitations on dual citizenship and renunciation</i> 19	
5.4.1. Dual citizenship .....	19
5.4.2. Renunciation of citizenship .....	20
5.5. <i>Risk of statelessness arising from withdrawal of nationality</i> .....	22
5.5.1. Withdrawal of nationality resulting in statelessness: General .....	22
5.5.2. Residence abroad .....	23
5.5.3. Misrepresentation and fraud .....	24
5.5.4. Rendering services to another State .....	25
5.5.5. Conduct threatening national interests .....	26
5.5.6. Changing allegiance .....	28
5.6. <i>Risk of statelessness persisting from failure to facilitate naturalisation of stateless persons</i> .....	29
5.6.1. Naturalisation .....	29
<b>6. Migration and voting rights</b> .....	<b>30</b>
<b>7. Conclusion</b> .....	<b>32</b>
<b>9. Appendix 1</b> .....	<b>33</b>
<b>10. Appendix 2</b> .....	<b>36</b>
<b>Endnotes</b> .....	<b>37</b>

## Executive summary

This report identifies risks of statelessness and nationality loss under current citizenship laws in the Pacific and recommends reforms that will support Pacific Islanders to retain and pass on their citizenship.

Pacific Island Countries and Territories (PICTs) bear the brunt of the worst impacts of climate change. Disasters are expected to occur more frequently, and more powerfully. Over time, rising sea levels may even submerge low-lying areas of land. Most research into statelessness and climate change in the Pacific has focused on the question whether, if a country were submerged, statehood would survive, and whether this would leave citizens of that country stateless. As a matter of law, the question about ongoing statehood in this context is unsettled; in practice, and relevantly to the first question, it is likely that people will have left the country long before loss of territory occurs. But that is not to say that people in the Pacific do not face risks of statelessness and loss of nationality.

Although it is not the only, or necessarily preferred, measure available, some Pacific countries are already considering cross-border mobility as a way to protect people from the impacts of climate change. If people must leave, perhaps permanently, what happens to their relationship with their home country? This question is deeply connected with important social, cultural and spiritual issues that are beyond this report's remit. Instead, the report considers this question from a legal perspective, and finds that under current citizenship laws, some Pacific Islanders who leave their homes permanently are at risk of losing the citizenship of their home country, or the ability to pass this on to their children. In some cases, they may even become stateless. Indeed, some people may be at risk of statelessness and nationality loss even before they leave the country.

The international community has established safeguards to combat statelessness, and many PICTs have put some, or all, of these in place. Where appropriate, this report recommends that PICTs adopt specific safeguards against statelessness by, for example, including laws that automatically grant citizenship to children born stateless in the territory, or born stateless to citizens overseas; amending laws that discriminate based on gender, or that permit citizenship to be deprived arbitrarily; amending laws that permit statelessness to result from renunciation or withdrawal of citizenship; and making naturalisation easier for stateless people. These measures would help PICTs to protect their people from risks of statelessness now, and into the future, whatever it holds.

Statelessness is not the only risk that people may face if they move away from home. Under the citizenship laws of some PICTs, people may be able to acquire another nationality, but doing so could come at the cost of retaining or passing on their home nationality. This could occur in PICTs with laws that prevent or restrict children born to citizens overseas from acquiring their parents' citizenship, restrict or prohibit dual citizenship, or withdraw a person's nationality if they reside abroad for a period of time, acquire another citizenship, or behave in the manner of a foreign citizen (by voting in a foreign election, or serving in a foreign army, for example).

Losing the nationality of one's home country severs a person's legal connection to that place, and excludes them from their home country's political future. Most immediately, loss of citizenship usually means a loss of voting rights in that country (indeed, in some PICTs, even citizens who reside overseas lose these rights). In the long term, loss of citizenship could hinder access to future iterations of the home country's government (if, for example, a State were to establish its government in another State's territory). This future is not as far-fetched as it may sound. For example, Tuvalu's 2021 *Future Now Project (Te Ataeao Nei Project)* sets out a plan to digitise all government services and archive Tuvalu's history and culture to create a 'digital nation' that would retain its sovereignty, even if the entire population were to move to safer territory. People who lose the citizenship of their home country may also suffer emotional and psychological harm.

This nexus of migration and nationality loss is where traditional understandings of citizenship collide with the emerging reality of a changing climate. Traditionally, citizenship was an exclusive bond between a citizen and one State, laden with the obligation of undivided loyalty and expectations of contributing to the national

interest either within the territory, or overseas in national service. Globalisation has already reshaped this model in many parts of the world – dual (and even multiple) citizenship is widely accepted, and nationality represents 'belonging' to a national community as much as, or more than, it implies connection to a territory. As climate change threatens to leave some States uninhabitable, forcing large sections of their populations to move abroad, protecting connections between people and place requires innovative approaches to citizenship.

This report makes a number of recommendations about legal reforms that would prevent nationality loss in the Pacific. Given that these issues go to the heart of sovereignty, Pacific countries, both individually and collectively, should address them in line with the needs and desires of their people, and with the support of the international community.

## **Recommendations**

Pacific States (and, where relevant, States with territories in the Pacific) should:

1. accede to the UN Statelessness Conventions;
2. amend citizenship laws to include a provision that automatically grants nationality to all stateless children born in the territory;
3. amend citizenship laws to include safeguards against statelessness for children born overseas;
4. amend citizenship laws to include a provision that presumes foundlings to be nationals of the State in which they are found;
5. amend all provisions of citizenship laws that discriminate based on gender;
6. remove all provisions that permit arbitrary withdrawal of citizenship and ensure all decisions to withdraw citizenship are subject to review by a court;
7. amend nationality laws to permit dual citizenship to prevent loss of connection between migrants and their home State;
8. amend nationality laws to prevent statelessness arising from voluntary renunciation of citizenship;
9. amend laws to prevent loss of nationality from residence abroad;
10. amend laws that withdraw nationality for fraud, misrepresentation or mistake where statelessness would result;
11. amend citizenship laws to include safeguards against statelessness resulting from withdrawal of nationality for those who render services to the armed forces of another State;
12. amend legislation to limit conduct that leads to citizenship deprivation to that which is seriously prejudicial to vital national interests, and include safeguards against statelessness;
13. amend legislation to limit conduct that leads to citizenship deprivation to formal oaths and declarations of allegiance, and include safeguards against statelessness;
14. amend nationality laws to facilitate naturalisation of stateless persons; and
15. facilitate overseas voting, while balancing the interests of citizens residing within the territory and those outside of the territory.

# 1. Introduction

This report identifies the risks of people in the Pacific becoming stateless, losing nationality, and being unable to pass down citizenship on the basis of existing law.

The report considers laws in 23 Pacific island countries and territories (PICTs): American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, the Marshall Islands, Nauru, New Zealand, Niue, Nouvelle Calédonie, Palau, Papua New Guinea, the Pitcairn Islands, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Wallis et Futuna.

## 1.1. What is at risk?

Statelessness, loss of nationality, and the inability to pass on nationality are related, albeit distinct, risks. A person is stateless if they are 'not considered as a national by any State under the operation of its law'.<sup>1</sup> Without a nationality, a person is vulnerable to discrimination and differential treatment, and may find it difficult to access many basic rights, such as education, healthcare, housing, employment, social welfare, and documentation, as well as the right to own property, travel, and participate politically in the life of the country in which they live. Even though losing one's original nationality, or the ability to pass on that nationality, will not necessarily result in statelessness, these outcomes are also inherently undesirable. Nationality is the legal bond between a person and their home State. It signifies membership of a community and culture that endures beyond residence in the territory. Retaining this link may provide access to current, or future, diplomatic arrangements that preference citizens of the home country.

This report considers the risk that Pacific Islanders may:

- remain, or become, stateless;
- lose their original nationality when they settle in another country, either as a result of residing outside the territory, or upon attaining another nationality;
- be prevented from passing their original nationality to their descendants, by having lost this nationality, or by laws that prevent

citizens born outside the territory from passing on their nationality; and

- be prevented from participating in elections of their home country and having their voices heard.

## 1.2. Why consider these issues now?

While migration is not a new phenomenon in the Pacific region – indeed, the history of the Pacific is a history of mobility – understanding these risks is important and timely in a context where the impacts of disasters and climate change are likely to result in increasing numbers of Pacific Islanders seeking to move to other countries.<sup>2</sup>

Around the world, the impacts of climate change and disasters are already prompting millions of people to move each year. In 2020, there were 31 million such internal displacements,<sup>3</sup> a number that is predicted to rise as climate change renders disasters more frequent and/or intense, and environmental degradation and slow-onset processes, such as sea-level rise, worsen. In the Pacific, more intense cyclones, heavy rain, flooding, storm surges, coastal erosion, drought and sea-level rise, in combination with other factors,<sup>4</sup> pose risks to the long-term habitability of low-lying island areas,<sup>5</sup> threatening fresh water supplies and other infrastructure. Even in the interim, people may seek to move elsewhere to escape the present (and anticipated future) impacts of disasters. Indeed, the 2018 Boe Declaration on Regional Security describes climate change as 'the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific'.<sup>6</sup>

Cross-border mobility in the Pacific is a live and evolving area of legal and policy development, particularly in the context of climate change and disasters.<sup>7</sup> Human mobility is emerging as an adaptation measure in national policy responses to climate change.<sup>8</sup> For example, Tuvalu's *Climate Change Policy 2012–2021* proposes the creation of 'climate change migration/resettlement plans' to ensure that 'Tuvaluans have a secured place to live', should the worst-case climate scenario eventuate. Fiji's *National Climate Change Strategy 2018–2030* establishes human mobility as a 'priority human security and national security issue', and encourages the development of regional responses 'to manage cross-border migration and displacement'.<sup>9</sup> A series of reports

have outlined the gaps – and opportunities – in international and domestic legal frameworks when it comes to enhancing mobility in the region,<sup>10</sup> and a process is currently underway to create a regional framework on climate mobility.<sup>11</sup>

These developments parallel and complement similar initiatives in other regions,<sup>12</sup> as well as at the international level. Since the 2010 Cancún Adaptation Framework first invited States to ‘enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels’,<sup>13</sup> important language on mobility in this context has been incorporated into instruments across a range of policy areas. These include the Sendai Framework for Disaster Risk Reduction,<sup>14</sup> the Agenda for Sustainable Development,<sup>15</sup> the 2015 Paris Outcome on climate change,<sup>16</sup> the 2018 Global Compact on Refugees<sup>17</sup> and the 2018 Global Compact for Safe, Orderly and Regular Migration.<sup>18</sup> This work has been given particular clarity and focus by the Nansen Initiative on Disaster-Induced Cross-Border Displacement (2012–15) (Nansen Initiative) and its successor, the Platform on Disaster Displacement (2016–). The International Law Association and the International Law Commission also have dedicated groups examining international legal issues concerning mobility, human rights and statehood in the context of sea-level rise.

Notwithstanding this significant range of initiatives and programmes of work, the relationship between climate-related mobility and statelessness and/or loss of nationality has not received adequate attention to date. In 2011, addressing the UN Security Council, Antonio Guterres asked, ‘[w]here will these people go if and when it becomes impossible for them to remain in their own country? Some of them may be able to acquire a second nationality once they have been obliged to move. But how will they retain their national identity?’<sup>19</sup> Much scholarship and policy work has been directed to the first question, but far less to the second.

Where statelessness has been considered in this context, analysis has generally been directed to the question whether Pacific Islanders could be rendered ‘stateless’ if their countries were to become uninhabitable on account of the impacts

of climate change. This is linked to an underlying question about continuity of statehood. Yet, experts have argued that this framing is premised on inaccurate assumptions about how movement is likely to take place, speculative arguments about loss of statehood, and misunderstandings about how the law on statelessness applies.<sup>20</sup> As noted above, in international law, a person is stateless if they are not recognised as a national by the law of any country. That is, what matters is the legal relationship between a person and a State – it is not clear that a person would become stateless because their State has lost its territory (the link between loss of territory and loss of statehood is, itself, complex). In any event, people are likely to move long before territory ‘disappears’, by which time they, and their descendants, may well have become citizens of other countries.

However, this does not mean that statelessness is an unimportant or irrelevant issue in this context. On the contrary, as the United Nations High Commissioner for Refugees (UNHCR) has recently explained, people who are already stateless ‘face specific and heightened risks’ in the context of climate-related displacement.<sup>21</sup> In addition, statelessness may result from ‘protracted or permanent displacement outside of one’s country’.<sup>22</sup> What is clear is that specific research and analysis is needed to understand the risks of statelessness in this context, and to guard against such risks eventuating by undertaking preventative reform of laws and policies as appropriate.

### **1.3. What is the role of this report?**

This report provides the first in-depth exploration of the risks of statelessness, nationality loss and inability to pass on nationality in the context of climate-related mobility in the Pacific. It complements and draws on other work on Pacific nationality laws<sup>23</sup> by identifying existing risks of statelessness in the Pacific, as well as risks that may materialise after people move away from their country of origin. Some Pacific States already lack safeguards to ensure those born in their territory today are protected against statelessness. Some of these risks are present regardless of movement but are magnified by it; other risks arise precisely because of movement. The greatest risk of statelessness arising in the context of climate change is where displacement

breaks the connection between citizen and State.<sup>24</sup>

Climate-related mobility is a politically sensitive topic.<sup>25</sup> It is not the only, or even the preferred, response to climate change in the region.<sup>26</sup> However, States have begun 'looking to the future and preparing now for the worst case scenario'.<sup>27</sup> Permanent movement away from home undoubtedly has profound cultural and emotional impacts on Pacific communities.<sup>28</sup> This report assesses *legal* risks of statelessness and nationality loss and makes recommendations for domestic law reform to address these risks.

This work is very timely. The International Law Commission is currently considering the impacts of sea-level rise on statehood and the protection of affected peoples. In April 2022, it released a second issues paper examining these matters in depth, and specifically noted some questions concerning risks of statelessness.<sup>29</sup> As part of this work, the Commission sought information about the measures States have taken to support residency and naturalisation pathways, maintenance of original nationality, and conservation of cultural identity of people.<sup>30</sup>

The present report recommends steps that Pacific States could take to safeguard against risks of statelessness and nationality loss in the region, while continuing to respect the values and traditions of Pacific peoples.

## 2. Methodology

### 2.1. Selecting material

The analysis in this report is based on a desktop review of laws in the 23 PICTs that comprise the Pacific region. It includes each Pacific country and territory listed in Melanesia, Micronesia, and Polynesia by the UN's Statistical Division, as well as New Zealand (often considered part of Polynesia, culturally).<sup>31</sup> While 10 of the Pacific territories in this report do not promulgate their own citizenship laws (see section 5.2 Regional architecture for details), this fact makes them no less likely to experience the impacts of climate change<sup>32</sup> and, as such, they are included.

Legislation, constitutional provisions and regulations relating to nationality and voting were obtained from the Pacific Islands Legal

Information Institute database and national government databases.

### 2.2. Analysis

The laws were analysed in accordance with 17 criteria (see Appendix 2) which were developed with reference to international standards relating to nationality and statelessness (discussed in detail in the section below).

Fourteen criteria pertained to structures and functions of the domestic citizenship regimes, particularly those relevant to climate-related mobility and loss of nationality. Three concerned citizenship, migration and the right to vote.

### 2.3. Recommendations

To the extent that nationality laws in the Pacific could potentially result in statelessness or loss of nationality, this report provides recommendations for reform. The report makes these recommendations for Pacific States (and, where relevant, States with territories in the Pacific) with reference to key sources of international law and policy as a guide. While these sources are referenced throughout the report, a brief description of the framework governing statelessness in international law is provided here.

The 1954 *Convention relating to the Status of Stateless Persons*<sup>33</sup> (1954 Convention) and the 1961 *Convention on the Reduction of Statelessness*<sup>34</sup> (1961 Convention) constitute the cornerstone of the international community's response to statelessness. They respectively secure basic rights for stateless people and promote safeguards against statelessness. A further seven UN treaties contribute to the body of international law governing nationality.<sup>35</sup> Generally, these instruments seek to avoid statelessness by upholding the right to a nationality for all people and prohibiting citizenship laws that discriminate on protected grounds including on the basis of race, nationality, gender, religion and disability.

While relatively few Pacific countries have ratified the 1954 Convention and 1961 Convention (six each), almost all have ratified several of the other key treaties which contain obligations specific to the right to nationality, such as the *Convention on*



the *Rights of the Child (CRC)*, the *Convention on the Elimination of Discrimination against Women (CEDAW)* and the *Convention on the Rights of Persons with Disability (CRPD)*.<sup>36</sup> Most countries have also ratified the *International Convention on the Elimination of Racial Discrimination (ICERD)*, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *Convention relating to the Status of Refugees* and/or the *Protocol relating to the Status of Refugees*,<sup>37</sup> which also contain relevant safeguards, most notably the principle of non-discrimination. Indeed, developments in international law suggest that the avoidance of statelessness, and prevention of arbitrary deprivation of nationality, may have attained the status of customary international law that would be binding on all States, regardless of their specific treaty obligations.<sup>38</sup>

The UNHCR has the mandate to identify and protect stateless persons and to prevent and reduce statelessness.<sup>39</sup> As such, in 2014, the UNHCR launched its *Global Action Plan to End Statelessness (2014–2024) (Action Plan)*, which translates core international law standards into tangible actions for States.

The present report makes recommendations in line with international law standards, both treaty-based and emerging norms of customary international law, and the UNHCR's *Action Plan*.<sup>40</sup> In this sense, the criteria developed for the purpose of this report represent best practice, regardless of whether a specific State has ratified the core statelessness treaties.

There are many different models of citizenship laws globally, and this report does not propose a 'one size fits all' solution. Rather, it seeks to highlight gaps in current domestic regimes, and to offer reforms that would empower PICTs to prevent statelessness and ensure retention of nationality, which may be taken up in line with the needs of their own communities.

### 3. Key terms

#### Climate-related mobility

This report uses 'climate-related mobility' as an umbrella term to describe the various ways that people may move in response to the impacts of climate change, including through evacuations, displacement, migration and planned relocations.

Climate change does not cause movement on its own but instead interacts with existing drivers of movement, amplifying existing threats and vulnerabilities and rendering disasters more frequent and/or severe.<sup>41</sup> While most climate-related movement is internal, some occurs across international borders. The precise numbers are not known, partly because there are no formal legal categories for 'counting' those who move in this context, and partly because there is often a time lag between initial (internal) displacement and subsequent cross-border movement.

#### Foundlings

Foundlings are children of unknown origin found in a territory. Citizenship laws generally apply to children born within a territory, or to citizen parents. As the birth location and parentage of foundlings is unknown, such laws may prevent foundlings from attaining citizenship unless it is explicitly granted to them. Countries and territories vary in the way they designate foundling status.<sup>42</sup> Terms used in the Pacific include 'foundling',<sup>43</sup> 'infant... found abandoned',<sup>44</sup> 'a person of unknown parentage under the age of five years',<sup>45</sup> '[a] person, having recently been born, ... found abandoned',<sup>46</sup> and '[a] child born in [the territory] of unknown parents'.<sup>47</sup>

#### Jus sanguinis and jus soli

Generally, nationality is acquired at birth. *Jus sanguinis* ('law of the blood') is the term used to describe nationality acquired at birth by virtue of being descended from a national. *Jus soli* ('law of the soil') describes nationality acquired by virtue of being born within a country's territory. Some countries may designate nationality at birth by a combination of *jus sanguinis* and *jus soli*. For example, a country may designate nationality by *jus soli* to children born within the territory, and by *jus sanguinis* to children born overseas to nationals of that country.

#### Nationality and citizenship

Although often treated as synonyms, the terms 'nationality' and 'citizenship' have slightly distinct meanings. 'Nationality' describes a person's connection to a State, particularly as a matter of international law, whereas 'citizenship' is usually used within a domestic legal system, to describe people who 'belong to' that country.<sup>48</sup>

The domestic law of some jurisdictions distinguishes between citizens and nationals including, relevantly to this report, the US (this distinction is described in detail below at 4.2.5 US territories). Except when discussing this distinction in US law, the terms are used interchangeably.

### **Naturalisation**

Naturalisation is the process of granting the status of citizen to a person (as opposed to that status being automatically acquired at birth). There are many ways in which a person may become a naturalised citizen. In the Pacific, the most common routes of naturalisation are by residence in the territory, by marriage to a citizen, by descent, and by re-applying for citizenship as a former citizen<sup>49</sup> (which has become increasingly common as more PICTs have chosen to permit dual citizenship).

### **Pacific Island Countries and Territories (PICTs)**

This report uses the term ‘Pacific Island Countries and Territories’ (PICTs) to describe the collection of independent States, associated countries, and overseas territories that make up the Pacific region. See section 5.2 Regional architecture for a detailed description of these arrangements.

### **Independent State**

Thirteen of the PICTs considered in this report are UN Member States. They have obtained political independence and grant citizenship to their people. The independent States considered in this report are: Fiji, the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

### **Associated countries**

Associated countries are those with some degree of statehood that freely enter into a formal agreement with another State that outlines economic, military and other support for that country. In the Pacific, there are five associated countries: the Cook Islands and Niue are in association with New Zealand, and the Federated States of Micronesia, the Marshall Islands and Palau are in association with the US.

Relevant to this report, whether a country is in free association with another country does not necessarily determine the citizenship of its people. The three States in association with the United States (US) are also independent States with UN membership and the power to grant their own citizenship.

Both the Cook Islands and Niue have the power to conduct their own international affairs, but they are not UN Member States and do not grant their own citizenship. These two countries may be compared with Tokelau, which is a dependent territory of New Zealand and does not conduct its international affairs. People of the Cook Islands, Niue and Tokelau acquire New Zealand citizenship under New Zealand law.

### **Overseas territory**

There is no settled definition of the term ‘overseas territory’ in international law, but the concept generally refers to territories that are politically dependent on another State to some degree.<sup>50</sup> The Pacific territories considered in this report have relationships of varying degrees of dependence with larger countries, namely, France, New Zealand, the United Kingdom (UK) and the US.

France’s Pacific territories are French Polynesia, Nouvelle Calédonie and Wallis et Futuna; New Zealand’s Pacific territory is Tokelau (note, New Zealand citizenship law also applies in the Cook Islands and Niue); the UK’s Pacific territory is the Pitcairn Islands; and the US’s Pacific territories are American Samoa, the Commonwealth of the Northern Mariana Islands and Guam.

### **Statelessness**

In international law, a person is stateless if they are ‘not considered as a national by any State under the operation of its law’.<sup>51</sup> This definition describes de jure statelessness – statelessness as a matter of law. De jure statelessness may be contrasted with what is often referred to as de facto statelessness – where a person formally has the nationality of a country but does not actually have recourse to the protection of that country.<sup>52</sup> Both kinds of statelessness can have devastating impacts on people, presenting barriers to basic social services, political participation and social inclusion.<sup>53</sup>

This report is concerned with the risks of de jure statelessness arising under current citizenship laws in the Pacific, and particularly risks that may arise if Pacific Islanders migrate to and settle in other countries. It does not consider the status of de facto stateless people in the region. Accordingly, in this report the term ‘statelessness’ refers to de jure statelessness.

There are several ways in which people may become stateless. The most significant cause of statelessness globally is discrimination in citizenship laws, which may deny access to citizenship (or prerequisites to citizenship acquisition such as legal documentation) based on protected grounds such as race, ethnicity, disability, religion, language, socio-economic status or gender. People can also become stateless when new States are formed if, as residents of the territory, they fail to obtain the new citizenship (whether through discrimination or oversight).

Not all statelessness is a direct result of discrimination. Citizenship laws vary between States, and sometimes there may be conflicts or gaps in countries’ citizenship laws which prevent children from acquiring a nationality at birth. This risk increases when people move across international borders. A person may also lose their nationality by operation of law, or have it deprived by a State for reasons other than discriminatory ones, which will render them stateless if they cannot obtain another nationality.

#### **Withdrawal of nationality: loss and deprivation**

The *1961 Convention* distinguishes between loss of nationality – which occurs automatically by operation of law – and deprivation of nationality – which is initiated by a State’s government. Within the Convention, different rules govern the prevention of statelessness caused by loss and deprivation of citizenship. The terms ‘loss’ and ‘deprivation’ are sometimes used interchangeably in States’ domestic laws (for example, a provision of Tuvaluan law entitled ‘Loss of Tuvalu citizenship’ uses the verb ‘deprive’).<sup>54</sup>

Following the lead of the UNHCR’s 2020 guidelines on loss and deprivation of citizenship under the *1961 Convention*,<sup>55</sup> this report uses ‘withdrawal’ of nationality as an umbrella term that covers both deprivation and automatic loss

of citizenship. Withdrawal refers to involuntary loss or deprivation of citizenship, and so is distinguishable from voluntary renunciation.

It should be noted here that the US citizenship law (which governs American Samoa, the Commonwealth of the Northern Mariana Islands and Guam) contains provisions that permit loss of nationality for performing certain acts (including declaring allegiance to a foreign country, committing treason, etc), if done ‘with the intention of relinquishing United States nationality’.<sup>56</sup> However, US case law has interpreted this provision to require a person’s ‘specific intent’<sup>57</sup> to terminate their citizenship, and the US authorities will assume this was not intended unless the citizen formally renounced their citizenship.<sup>58</sup> Accordingly, this report does deem these laws to permit nationality withdrawal, despite their reference to ‘loss’ of nationality.

## **4. Snapshot of the Pacific**

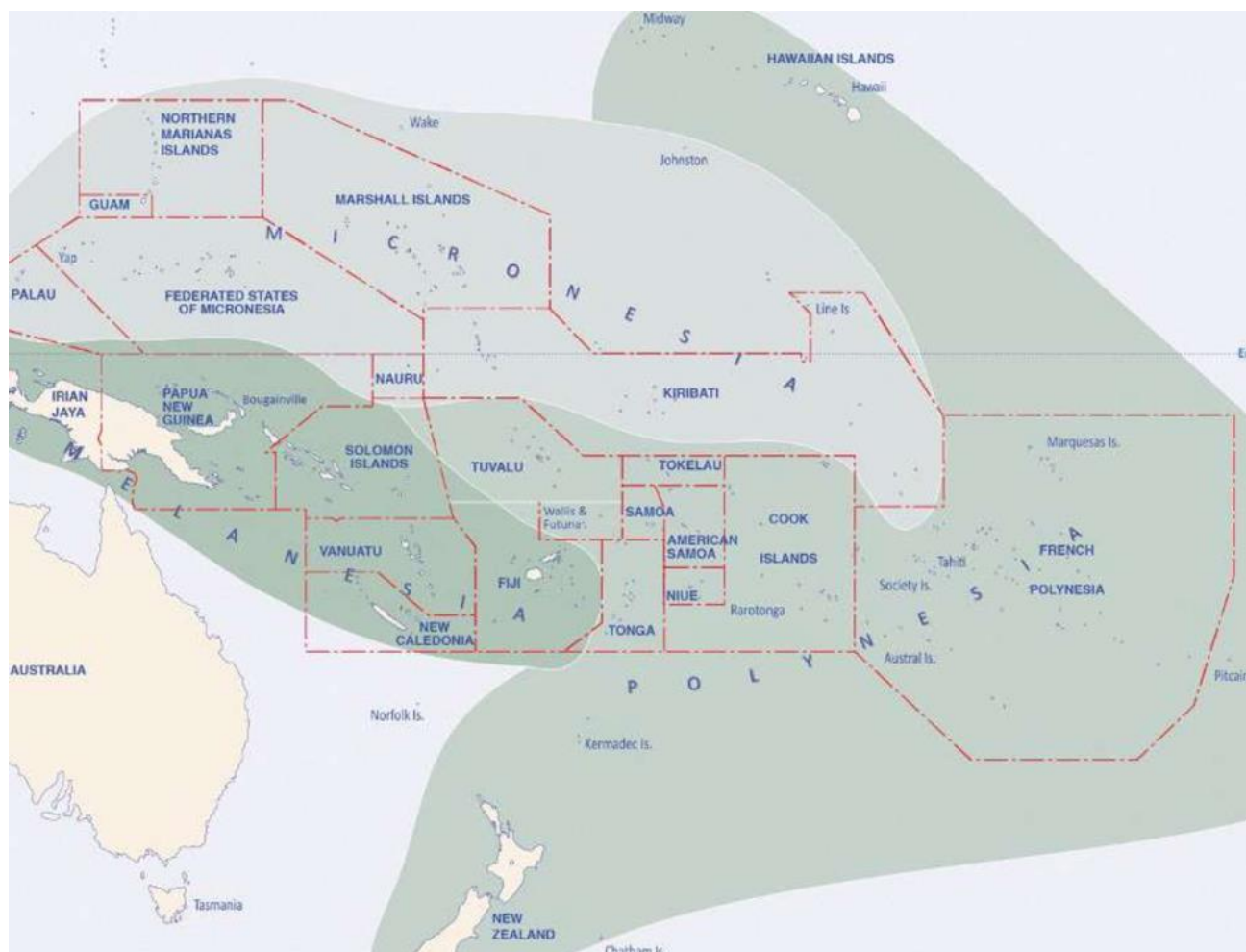
### **4.1. Brief history of citizenship law and governance**

The Pacific is a diverse region with many distinct cultures and a long history of migration between island communities. While an account of the region’s rich history is beyond this report, the following brief overview of the forces that shaped current citizenship laws and governance provides helpful context.<sup>59</sup>

From the late nineteenth century, colonial powers in the UK and Europe, and later, Australia, New Zealand, and the US, exerted increasing influence in the region. Of the Pacific’s 13 independent States, all but Tonga are former colonies that gained independence following World War II.<sup>60</sup> France, New Zealand, the UK and the US all still retain territories in the region. This history of inter-island comity, colonisation and ongoing decolonisation influences the governance and citizenship laws of the Pacific.

Citizenship laws and governance arrangements have an especially significant influence on migration pathways in the Pacific, due to the region’s geography. As Burson, Bedford and Bedford note in their 2021 report on existing migration pathways in the Pacific, the vast expanses of ocean between PICTs mean that

Figure 1: Map of the Pacific Region



geographical proximity shapes human mobility patterns far less than in regions where countries share land borders.<sup>61</sup> People cannot simply walk or drive to another territory – they must travel by plane or boat, and these modes of entry are typically highly regulated.

With this in mind, the present report discusses groups of PICTs by their legal relationships – in particular, whether they are territories of a State, or have entered into a compact of free association with another State – rather than their geographical position in Melanesia, Micronesia or Polynesia.<sup>62</sup>

The subsection below outlines these legal relationships and their bearing on citizenship in the Pacific.

## 4.2. Regional architecture

The Pacific comprises States and territories with varying degrees of independence, ranging from independent States to countries in free association with independent States, to self-governing and non-self-governing territories of other States. For a table representing these arrangements, see Appendix 1.

### 4.2.1. Independent and associated States that designate citizenship

**The Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu, Vanuatu**

Each of these 13 Pacific countries is a UN Member State which designates citizenship under its own law (unlike the countries in free association with New Zealand, and the territories

of France, New Zealand and the US, discussed below; see section 4 Key terms).

Ten of these States are part of the British Commonwealth (Fiji, Kiribati, Nauru, New Zealand, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu). The remaining three countries (the Federated States of Micronesia, the Marshall Islands and Palau) have a Compact of Free Association with the US. None of these intergovernmental relationships directly affects citizenship. However, citizens of the Federated States of Micronesia, the Marshall Islands and Palau may enter and work in the US and its territories, which provides an important migration route in the Pacific.<sup>63</sup>

#### 4.2.2. French territories and French citizenship

##### **French Polynesia, Nouvelle Calédonie, Wallis et Futuna**

Three Pacific territories – French Polynesia, Nouvelle Calédonie and Wallis et Futuna – are administered by France. French citizenship law applies in these territories as it does in metropolitan France,<sup>64</sup> and citizens of these territories enjoy the same rights of entry and stay in France as all other French citizens. As French citizens, they are also EU citizens (even though their territories are not part of the European Union).

Legally, French Polynesia and Wallis et Futuna are overseas collectivities of France, and share legislative control over their internal affairs with metropolitan France. French Polynesia was also granted the title of an ‘overseas country’, reflecting the wider scope of legislative autonomy that it obtained in 2004.<sup>65</sup>

Nouvelle Calédonie has a unique relationship with France (a *sui generis* collectivity) under the 1998 *Noumea Accord*, which sets out a gradual transition of power from France to Nouvelle Calédonie. In conformity with the *Accord*, Nouvelle Calédonie has held three referenda on independence from France. The people of Nouvelle Calédonie have voted to remain part of France at each referendum.<sup>66</sup> The most recent, held in December 2021, is the final referendum scheduled by the *Accord*, meaning that Nouvelle Calédonie is unlikely to achieve independence soon.

#### 4.2.3. New Zealand territory and countries covered by New Zealand citizenship laws

##### **The Cook Islands, New Zealand, Niue, Tokelau**

New Zealand has very close relationships with three PICTs – the Cook Islands, Niue and Tokelau. New Zealand citizenship law deems these PICTs to be part of New Zealand, and children born in the Cook Islands, Niue and Tokelau acquire New Zealand citizenship if at least one of their parents is entitled to reside there or is a New Zealand citizen.<sup>67</sup> The Cook Islands and Niue are self-governing countries in free association with New Zealand, with constitutions that explicitly provide for their people to acquire New Zealand citizenship under New Zealand law. These two countries have their own legislatures with full law-making powers<sup>68</sup> and the capacity to conduct their own international affairs. By contrast, Tokelau is a non-self-governing dependent territory of New Zealand. The Cook Islands, Niue and Tokelau receive economic support from New Zealand and, as New Zealand citizens, their people can work and live in New Zealand without restriction.

#### 4.2.4. UK territory

##### **The Pitcairn Islands**

The Pitcairn Islands is a British overseas territory of the UK. Pitcairn Islanders obtain British citizenship under the *British Nationality Act 1981* (UK),<sup>69</sup> and the *Constitution of Pitcairn 2014* protects them from arbitrary deprivation of British citizenship.<sup>70</sup>

#### 4.2.5. US territories

##### **American Samoa, the Commonwealth of the Northern Mariana Islands, Guam**

The US administers three Pacific territories – American Samoa, the Commonwealth of the Northern Mariana Islands and Guam. There are important and contested distinctions in the way citizenship laws operate within these territories. Under the statute governing US citizenship, the Northern Mariana Islands and Guam are deemed to have the same status as the US, meaning that people born in these territories acquire US citizenship at birth (acquisition is discussed further below).<sup>71</sup>

By contrast, American Samoa is deemed to be an ‘outlying possession’ of the US.<sup>72</sup> People born in outlying possessions are nationals, but not citizens, of the US (see section 4 Key terms). US nationals owe permanent allegiance to the State and have rights to enter the US. However, American Samoans do not enjoy full US citizenship rights, such as voting in US elections or running for federal office. Recent legal action has challenged the constitutionality of these laws in a bid to extend full citizenship rights to American Samoans. In June 2021, the US 10th Circuit Court of Appeal dismissed this challenge and a petition for re-hearing was denied, confirming that American Samoans do not obtain birthright citizenship.<sup>73</sup> American civil rights groups have requested the federal Attorney General and Solicitor General to overturn the case law underpinning this decision.<sup>74</sup>

Although American Samoans do not have full US citizenship, for clarity of analysis this report considers their status as nationals to be that of citizens. However, it is important to bear in mind the distinction between nationality and citizenship in the US Pacific territories and be aware that it is a live political issue.

## 5. Risks of statelessness and barriers to passing down nationality in the Pacific

Nationality laws in the Pacific have clear gaps that expose people to the risk of becoming stateless, losing their nationality or being prevented from passing down their nationality. Many of these risks are increased when people move across borders.

In the Pacific, anecdotal evidence suggests that people are already using existing migration categories as a means to move away from the anticipated long-term impacts of climate change. For instance, labour mobility to Australia and New Zealand, including through the latter’s Pacific Access Category, provides one such pathway.<sup>75</sup>

While most Pacific Islanders would prefer not to leave their home countries permanently,<sup>76</sup> there is also recognition that ‘if we fail to plan, we plan to fail’.<sup>77</sup> Pacific governments, alongside their climate change mitigation efforts, are ‘looking to the future and preparing now for the worst case

scenario, where our lands disappear and our people must leave’.<sup>78</sup> Pacific countries are calling on States in the region to provide additional migration pathways for their peoples, and are in the process of developing a regional framework on climate mobility to partly address this.<sup>79</sup>

It is against this backdrop that the report considers the risks of statelessness, loss of nationality and barriers to passing down nationality that Pacific Islanders face under current laws. Importantly, many of these risks are already present, even if people have not migrated. The report highlights these risks, as well as those likely to be exacerbated by climate-related mobility.

### 5.1. International efforts to reduce and prevent statelessness

**Finding: In the Pacific, ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness is low.**

- The 1954 Convention applies in six PICTs.<sup>80</sup>
- The 1961 Convention applies in six PICTs.<sup>81</sup>
- In 13 PICTs, neither treaty applies.<sup>82</sup>

#### International standards

##### UN treaties

Globally, 96 States have ratified the 1954 Convention and 77 have ratified the 1961 Convention. One State, the Holy See (a UN non-Member State), has signed but not ratified the 1954 Convention. Three States (including France) have signed but not ratified the 1961 Convention. These States have not consented to be bound by the treaties, but must ‘refrain from acts which would defeat the object and purpose of the treaty’.<sup>83</sup>

##### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 9: Accede to the UN Statelessness Conventions*

By 2024, the UNHCR aims to increase the total number of States that have ratified the 1954 Convention to 140 States, and the 1961 Convention to 130 States.<sup>84</sup>

In the Pacific, ratification of these two key statelessness treaties is low. Of the 23 PICTs, only two independent States – Fiji and Kiribati – have ratified the *1954 Convention*, along with France and the UK, whose citizenship laws apply in the territories of French Polynesia, Nouvelle Calédonie and Wallis et Futuna, and the Pitcairn Islands, respectively.

New Zealand and Kiribati are the only two independent States in the Pacific to have ratified the *1961 Convention*. The UK has also ratified the *1961 Convention*. New Zealand's citizenship laws apply in the Cook Islands, Niue and Tokelau and UK law applies in the Pitcairn Islands. France signed the *1961 Convention* in 1962, but has not ratified it, meaning that it is only bound 'to refrain from acts which would defeat the object and purpose of the treaty'.<sup>85</sup> In 13 of the 23 PICTs, neither treaty applies.

**Recommendation: Pacific States (and, where relevant, States with territories in the Pacific) should accede to the UN Statelessness Conventions.**

All Pacific States, and States with territories in the Pacific, should consider acceding to the *1954 Convention* and the *1961 Convention* if they have not yet done so.

Those countries that are currently parties to the *Conventions* should consider amending their laws to ensure compliance. This report provides specific recommendations to support States to amend their laws in line with these *Conventions* to reduce and prevent statelessness.

## 5.2. Risks of statelessness at birth

### 5.2.1. Children born in the territory

**Finding: Statelessness at birth is a risk in some Pacific countries.**

- Five PICTs do not protect against statelessness at birth in their territory.<sup>86</sup>
- Sixteen PICTs grant citizenship to otherwise stateless children born in their territory.<sup>87</sup>
- Two PICTs provide some limited protection for children born in the territory who would otherwise be stateless.<sup>88</sup>

## International standards

### UN treaties

The right to acquire a nationality at birth is protected by several international law instruments, including the *1961 Convention*,<sup>89</sup> the *CRC*,<sup>90</sup> the *ICCPR*<sup>91</sup> and the *UDHR*.<sup>92</sup>

### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 2: Ensure that no child is born stateless*

By 2024, the UNHCR aims for all States to have a provision in their nationality laws that grants nationality to stateless children born in their territory.<sup>93</sup>

The most important measure recommended by the UNHCR *Action Plan* is for States to adopt laws that grant citizenship to children born in the territory who would otherwise be stateless. Yet in the Pacific, children may be at risk of statelessness if they are born to non-citizen parents in a PICT that only grants citizenship to children of citizens.

In five PICTs (the Federated States of Micronesia, Palau, the Solomon Islands, Tonga and Vanuatu), citizenship is only granted to a child born in the territory if one of the child's parents is a citizen, and there are no provisions that consider granting citizenship to otherwise stateless children born in the territory.<sup>94</sup>

In 16 PICTs, nationality is granted to children born in the territory who would otherwise be stateless. This occurs automatically in the six countries in which citizenship is acquired by birth in the territory (*jus soli*) (American Samoa, the Commonwealth of the Northern Mariana Islands, Fiji, Guam, Kiribati and Tuvalu).<sup>95</sup> Ten PICTs (the Cook Islands, French Polynesia, the Marshall Islands, Nauru, New Zealand, Niue, Nouvelle Calédonie, the Pitcairn Islands, Tokelau and Wallis et Futuna) make special provision for citizenship for children born in the territory who would not automatically acquire citizenship, if they would otherwise be stateless.

In the New Zealand cluster (New Zealand, the Cook Islands, Niue and Tokelau), persons born in the territory who would otherwise be stateless are deemed to be citizens by birth.<sup>96</sup>

The French territories (French Polynesia, Nouvelle Calédonie and Wallis et Futuna) also grant French citizenship to children born in the territory to stateless parents, or foreign national parents who cannot pass on their citizenship to their child due to the operation of foreign nationality laws.<sup>97</sup>

In the Pitcairn Islands, British citizenship will be granted automatically to a person born stateless in the territory if the child has a parent who is a citizen.<sup>98</sup> If neither parent is a citizen, the stateless person must apply to be registered as a citizen before the age of 22, and the applicant must have resided in the territory for the preceding five years.<sup>99</sup>

Nauru and the Marshall Islands grant citizenship to those born in the territory who would otherwise not have the citizenship of any country.<sup>100</sup>

Two countries offer some limited protection for children who might be born stateless in the territory. In Samoa, the Executive has discretion to grant citizenship to children born in the territory if they would otherwise be stateless.<sup>101</sup> Papua New Guinea provides a narrower, though more certain, protection in cases where the citizenship status of parents is 'unknown or doubtful'.<sup>102</sup> In such cases, the parents are deemed to be citizens, thus providing the child automatic citizenship by *jus sanguinis*. However, this provision does not prevent statelessness in cases where the parents are known to be foreign citizens but are not able to pass on their citizenship. This could occur, for example, if their home nationality laws prevent them from passing that nationality to children born outside of the territory.

**Recommendation: Pacific States should amend citizenship laws to include a provision that automatically grants nationality to all stateless children born in the territory.**

The Federated States of Micronesia, Palau, the Solomon Islands, Tonga and Vanuatu should consider adopting a provision which ensures that all children born in the territory acquire citizenship if they would otherwise be stateless, similar to that in New Zealand, French and Nauruan citizenship law.

Papua New Guinea should consider extending its grant of nationality to all children who would

otherwise be stateless, not only those of unknown parentage.

Samoa should consider amending its law by making the acquisition of citizenship automatic for stateless children born in the territory.

## 5.2.2. Children born overseas

**Finding: Statelessness at birth is a risk for children born overseas to citizens of some PICTs.**

- Twelve PICTs grant citizenship to children born to citizens overseas without limitation.<sup>103</sup>
- Two PICTs require registration of the overseas birth.<sup>104</sup>
- Four PICTs require the parents to have resided within the territory for a period before the birth.<sup>105</sup>
- One PICT requires the child to have resided within the territory for a period before the birth is registered, if the child is 18 years of age or older when their birth is registered.<sup>106</sup>
- Six PICTs prevent parents from passing on citizenship to a child born overseas if they themselves obtained citizenship by birth overseas.<sup>107</sup>

### International standards

#### UN treaties

The *1961 Convention* requires States to grant nationality to children born out of the territory to parents who are citizens of the State, if the child would otherwise be stateless.<sup>108</sup> The granting of citizenship should occur by operation of law, or by application.<sup>109</sup>

If nationality is granted upon application, the application must be accepted, subject to exceptions. The grant may be conditional on the applicant being younger than a certain age (not younger than 23 years old), that they lived in the territory for a time immediately before the application was lodged (not less than three years), that the person has not been convicted of an offence against national security, or that the person has always been stateless.<sup>110</sup>

The right to acquire a nationality at birth, as provided for in Article 7 of the *CRC*, means



that States are 'required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born'.<sup>111</sup>

### **UNHCR Global Action Plan to End Statelessness 2014–2024**

#### *Action 2: Ensure that no child is born stateless*

By 2024, the UNHCR aims for all States to have a safeguard in their nationality laws to grant nationality to children born to nationals abroad and who are unable to acquire another nationality.<sup>112</sup>

To maintain a strong connection between the citizenry and the State, some countries may limit the granting of citizenship to children born overseas to parents who are citizens. Limitations include residence requirements for the child or their parents, preventing those who obtained their citizenship by being born outside of the territory from passing it on to children also born outside of the territory, or requiring the birth to be registered. Laws that impose such limits will affect people who migrate and settle overseas.

Twelve PICTs grant citizenship to children born to citizens overseas without limitation. In five countries, this results from citizenship acquisition by *jus sanguinis* that is not restricted to birth in the territory (the Federated States of Micronesia, the Marshall Islands, Palau, the Solomon Islands and Vanuatu).<sup>113</sup> Seven countries and territories make explicit provision for overseas acquisition of citizenship by children born to a citizen (French Polynesia, Nauru, Nouvelle Calédonie, Papua New Guinea, Tonga, Tuvalu and Wallis et Futuna).

The remaining 11 jurisdictions impose restrictions on the granting of citizenship to children born to citizens overseas. Four impose various residence requirements on parents (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and Samoa),<sup>114</sup> one imposes residence requirements on the child (Fiji),<sup>115</sup> six limit citizens by descent from passing on citizenship (the Cook Islands, New Zealand, Niue, the Pitcairn Islands, Samoa and Tokelau)<sup>116</sup> and one only permits fathers (not mothers) to pass on citizenship to children born out of the country (Kiribati, see discussion in section 5.3.1 Gender discrimination).<sup>117</sup>

Two countries, Nauru and Samoa, allow citizenship to be passed on outside of the territory if at least one grandparent of the child is a citizen who was born in the territory.

Two countries, Fiji and Papua New Guinea, require the overseas birth to be registered in order for the child to be granted citizenship. Papua New Guinea requires that the overseas birth must be registered within one year after the birth (or any time after, with the consent of the Minister). In Fiji, children born overseas will be granted citizenship if their birth is registered before they turn 18 years old. If registration occurs after this time, the child must have spent three of the preceding five years in Fiji. Time spent in prison is not counted for the purpose of registering citizenship.

Samoa prevents the passing of citizenship to those born outside of the territory, except in three circumstances: at least one of the child's parents is a citizen otherwise than by descent, or has resided in Samoa for three years or more, or one of the child's grandparents is a citizen otherwise than by descent. These exceptions are not cumulative. That is, if a child born outside of the territory satisfies any one of the exceptions, then that child will obtain Samoan citizenship.

The American territories impose nuanced residence requirements on citizen and national parents of children born overseas which vary depending on whether one or both parents are US citizens, nationals or aliens.<sup>118</sup> If both parents are American Samoans (US nationals), they must have had residence in the territory for their child to acquire US nationality.<sup>119</sup> If one parent is American Samoan and the other is an alien, the alien parent must have spent no less than seven years out of a period of 10 continuous years in the territory for their child to acquire the status of US national.<sup>120</sup> In the Commonwealth of the Northern Mariana Islands and Guam, if both parents are US citizens, one must have resided in the US (including, for this purpose, the Commonwealth of the Northern Mariana Islands or Guam).<sup>121</sup>

Six countries and territories (the Cook Islands, New Zealand, Niue, the Pitcairn Islands, Samoa and Tokelau) limit the ability of citizens who were born overseas (that is, citizens by descent) to pass on their citizenship to children born overseas. In the Pitcairn Islands, parents who are citizens by descent cannot pass British

citizenship to a child born out of the territory, unless they are engaged in national service. In the New Zealand cluster, a child born out of the territory only gains citizenship if at least one parent is a citizen other than by descent. New Zealand legislation guards against statelessness by granting New Zealand citizenship to a child born overseas if at least one parent is a citizen by descent and the child would otherwise be stateless. As noted above, Samoa allows citizenship to pass to children born out of the territory if at least one of the child's parents did not themselves gain citizenship by being born outside of the territory (ie if at least one parent is a citizen by marriage, naturalisation or birth in the territory).

**Recommendation: Pacific States should amend citizenship laws to include safeguards against statelessness for children born overseas.**

To guard against statelessness, the US (in its administration of American Samoa, the Commonwealth of the Northern Mariana Islands and Guam), Fiji and Papua New Guinea should consider granting citizenship to children of all citizens born overseas if they would otherwise be stateless.

Fiji and Papua New Guinea should consider granting citizenship to all children born to citizens overseas, regardless of the age at which their birth is registered. If these States wish to retain these limits, the age at which registration is no longer possible should be raised to not less than 23.<sup>122</sup>

To prevent disconnection from the State when their citizens migrate, Fiji, New Zealand, Papua New Guinea and the US should consider granting citizenship to children born overseas by unrestricted *jus sanguinis*.

### 5.2.3. Foundlings

**Finding: Foundlings are at risk of statelessness in some Pacific countries.**

- Nine PICTs do not contemplate citizenship acquisition by foundlings.<sup>123</sup>
- Fourteen PICTs grant citizenship to foundlings found in their territory.<sup>124</sup>

## International standards

### UN treaties

The *1961 Convention* requires States to deem foundlings 'to have been born within that territory of parents possessing the nationality of that State' if there is no proof to the contrary.<sup>125</sup>

### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 2: Ensure that no child is born stateless*

By 2024, the UNHCR aims for all States to have a provision in their nationality laws to grant nationality to children of unknown origin found in their territory (foundlings).<sup>126</sup>

Nine States make no provision for citizenship acquisition by foundlings (the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Palau, Samoa, the Solomon Islands, Tonga and Vanuatu).

Fourteen PICTs grant citizenship to foundlings located in the territory (American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, Fiji, French Polynesia, Guam, New Zealand, Niue, Nouvelle Calédonie, Papua New Guinea, the Pitcairn Islands, Tokelau, Tuvalu and Wallis et Futuna).<sup>127</sup>

The laws of some PICTs grant citizenship directly to foundlings, whereas others presume that the parentage or place of birth of foundlings is such that they qualify for citizenship. For example, in Fiji and Tuvalu, where citizenship is acquired by *jus soli*, the relevant provisions of domestic law grant foundlings citizenship by deeming that they were born in the territory. Papua New Guinea, where citizenship is acquired by *jus sanguinis*, provides strong protection against statelessness for foundlings by providing that 'a foundling discovered at any time in the country shall, in the absence of proof to the contrary, be deemed to be the child of parents at least one of whom was, or if he had survived, would have been, a citizen'.<sup>128</sup>

In the US territories, citizenship (or 'national' status in American Samoa) is granted to those 'of unknown parentage found... while under the age of five years'. However, if, before the child turns 21, it is shown that the child was not born in the territory, they cease to be a citizen (or national).<sup>129</sup>

**Recommendation: Pacific States should amend citizenship laws to include a provision that presumes foundlings to be nationals of the State in which they are found.**

Kiribati, where nationality is acquired by *jus soli*, should consider enacting a law that deems foundlings to have been born in the territory (similar to laws in Fiji and Tuvalu).

The Federated States of Micronesia, Nauru, Palau, Samoa, the Solomon Islands, Tonga and Vanuatu, where nationality is acquired by *jus sanguinis*, should consider adopting a provision that deems foundlings to have been born to at least one citizen parent (similar to the law in Papua New Guinea).

### 5.3. Risk of contravening fundamental principles of international law

#### 5.3.1. Gender discrimination

**Finding: Some Pacific Islanders are at risk of gender discrimination from nationality laws.**

- Two PICTs have nationality laws that discriminate based on gender.<sup>130</sup>

#### International standards

##### UN treaties

The 1961 *Convention* prohibits deprivation of nationality on 'racial, ethnic, religious or political grounds', notably excluding gender.<sup>131</sup>

CEDAW requires State parties to grant men and women equal rights to acquire, change or retain their nationality, and forbids laws that affect women's nationality automatically upon a change in marital status.<sup>132</sup> CEDAW also requires State parties to grant men and women equal rights with respect to the nationality of their children.<sup>133</sup>

The ICCPR provides that 'the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.<sup>134</sup>

#### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 3: Remove gender discrimination from nationality laws*

By 2024, the UNHCR aims for all States to have nationality laws which treat women and men equally with regard to conferral of nationality to their children and with regard to the acquisition, change and retention of nationality.<sup>135</sup>

Over the past decades, many PICTs have removed discriminatory provisions from their citizenship laws.<sup>136</sup> Two countries, Kiribati and Tuvalu, retain laws that discriminate based on gender. Both have a similar discriminatory provision that carves out an exception to the acquisition of citizenship by *jus soli* for children born in the territory. In both countries, a child will not obtain citizenship if they are born to non-citizen parents whose *father* (but not mother) is a foreign diplomat, or at war with Kiribati or Tuvalu and the birth occurs in occupied territory (as the case may be).<sup>137</sup> The exception only applies to mothers if the child is born out of wedlock. Fiji has a similar exception in its granting of citizenship by *jus soli* to children of foreign diplomats, however, it uses the gender-neutral term 'parents'.<sup>138</sup>

Other provisions of citizenship law in Kiribati discriminate based on gender. In particular, only fathers can pass on citizenship of Kiribati to children born outside of Kiribati (unless the child is born out of wedlock, in which case the child can obtain I-Kiribati citizenship from their mother; note that a person of I-Kiribati descent is a person who has an ancestor born in Kiribati before 1900).<sup>139</sup> This poses a real risk of statelessness if the child is born overseas to a father who is not a citizen of that country, and to a mother with I-Kiribati citizenship, in a country that grants citizenship by *jus sanguinis* without protections against statelessness.

Kiribati also distinguishes between men and women in its laws relating to citizenship by naturalisation through marriage. Women may acquire I-Kiribati citizenship by marrying a citizen of Kiribati, but the husband of a woman who is a citizen of Kiribati cannot do the same.<sup>140</sup> Additionally, if someone not of I-Kiribati descent (that is, a person who does not have an ancestor born in Kiribati before 1900)<sup>141</sup> is born in Kiribati

and obtains another nationality, and that person's mother is a citizen of Kiribati but their father is not, that person will not become a citizen of Kiribati. In other words, mothers cannot pass on I-Kiribati citizenship if their child would also have another nationality and they are not of I-Kiribati descent, but fathers can.<sup>142</sup>

**Recommendation: Pacific States should amend all provisions of citizenship laws that discriminate based on gender.**

Kiribati and Tuvalu should consider using gender-neutral language in laws that prevent the acquisition of citizenship by *jus soli* by children born in the territory to foreign diplomats and citizens from countries at war with Kiribati or Tuvalu.

Kiribati should remove the remaining gender discrimination from its laws. It could change the laws governing acquisition of citizenship (both by children born outside of the territory, and children who acquire another nationality when born in the territory) by replacing references to 'father' with 'parent'. Kiribati should also consider replacing the term 'women' with 'persons' in its laws governing acquisition of citizenship by marriage.

### 5.3.2. Arbitrary deprivation of citizenship

**Finding: Some Pacific Islanders are at risk of arbitrary deprivation of citizenship.**

- Two PICTs have nationality laws that may permit arbitrary deprivation of citizenship.<sup>143</sup>

#### International standards

##### UN treaties

The prohibition on arbitrary deprivation of nationality is explicitly found in Article 15(2) of the *UDHR*.<sup>144</sup>

Many sources of international law seek to prevent States from arbitrarily withdrawing nationality by prohibiting discrimination. The *1961 Convention* provides that States 'may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds'.<sup>145</sup> Likewise, non-discrimination norms are found in the

*ICCPR*,<sup>146</sup> the *CRC*,<sup>147</sup> the *ICERD*<sup>148</sup> and the *CRPD*.<sup>149</sup>

There is also emerging consensus that the prohibition on arbitrary deprivation of nationality constitutes a norm of customary international law. In 2018, the African Court on Human and Peoples' Rights affirmed that the right not to be arbitrarily deprived of nationality forms part of customary international law,<sup>150</sup> and in 2020 the UNHCR published guidelines naming the prohibition on arbitrary deprivation of nationality as a 'fundamental principle of international law'.<sup>151</sup> These UNHCR guidelines deem the minimum content of the prohibition on arbitrary deprivation of nationality to require the withdrawal of nationality to 'conform to what is prescribed by law; be the least intrusive means of achieving a legitimate purpose; and follow a due process'.<sup>152</sup> To facilitate withdrawal that conforms to law, the laws must be 'sufficiently precise so as to enable citizens to reasonably foresee the consequences of actions which trigger a withdrawal of nationality'.<sup>153</sup>

#### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds*

By 2024, the UNHCR aims for no States to have nationality laws which permit denial, loss or deprivation of nationality on discriminatory grounds.<sup>154</sup> To achieve this goal, the UNHCR considers one of its major roles to be the promotion of international standards relating to non-discrimination, the right to a nationality and the prohibition of arbitrary deprivation of nationality.

In two PICTs, Kiribati and Tuvalu, laws empowering the government to deprive citizenship from those who gained it by naturalisation (both Kiribati and Tuvalu) or by being adopted (only Kiribati) may be so wide as to permit arbitrary withdrawal of citizenship.

Under Kiribati's citizenship laws, a person not of I-Kiribati descent (that is, a person who does not have an ancestor born in Kiribati before 1900),<sup>155</sup> who gained citizenship by naturalisation or adoption, may have their citizenship deprived if the relevant Minister is 'satisfied that it is not

conducive to the public good that such person should continue to be a citizen'.<sup>156</sup> An order to deprive citizenship under this power is deemed non-justiciable — that is, it cannot be reviewed by a court.<sup>157</sup> These provisions likely contravene the prohibition against arbitrary deprivation of citizenship because they exclude the decision from judicial oversight, contrary to due process. Additionally, the criterion for withdrawal under this provision — the Minister's satisfaction about whether a person's continued citizenship is conducive to the public good — may be too imprecise to allow citizens to foresee withdrawal of citizenship as a consequence of their actions.<sup>158</sup> This imprecision could result in arbitrary withdrawal of citizenship.

Tuvaluan law empowers the country's Citizenship Committee to deprive citizens by naturalisation of their citizenship based on 'such other matters as the Citizenship Committee may consider material'.<sup>159</sup> This criterion is so general as to render it almost impossible for a citizen to reasonably foresee whether loss of citizenship could result from their actions, and thus means that arbitrary deprivation of naturalised citizenship is possible. Citizens do not have the opportunity to make representations to the Citizenship Committee (unlike a decision to deprive citizenship based on fraud or concealment of fact).<sup>160</sup> However, the decision is open to review — that is, a person may appeal any decision by the Citizenship Committee to the Minister at first instance, and then to the High Court.<sup>161</sup>

**Recommendation: Pacific States should remove all provisions that permit arbitrary withdrawal of citizenship and ensure all decisions to withdraw citizenship are subject to review by a court.**

Kiribati and Tuvalu should consider removing these broad provisions so that their citizens may more readily know whether certain conduct will result in withdrawal of their citizenship.

Kiribati should consider making all decisions relating to withdrawal of citizenship justiciable.

## 5.4. Risk of statelessness/loss of nationality arising from limitations on dual citizenship and renunciation

### 5.4.1. Dual citizenship

**Finding: Some Pacific Islanders cannot obtain dual citizenship.**

- Two PICTs prohibit dual citizenship.<sup>162</sup>
- Twenty-one PICTs allow dual citizenship both for foreigners who seek domestic citizenship, and citizens who seek foreign citizenship.
- Three of these PICTs restrict dual citizenship.<sup>163</sup>

#### International standards

None of the UN treaties relevant to nationality imposes standards relating to dual citizenship.

Historically, dual citizenship was considered incompatible with understandings of the relationship between citizens and the State, such as the expectation of a citizen's loyalty, and conscription for military service.<sup>164</sup>

As globalisation allows more people to move across borders for work, education or protection, attitudes and State practice have shifted. Dual citizenship (and even multiple citizenship) is becoming increasingly common and accepted. For example, the 1997 *European Convention on Nationality* protects the right of those who acquire another nationality automatically (by birth or marriage, rather than by application) to retain that nationality.<sup>165</sup>

Permitting dual citizenship enables migrants to participate fully in their new countries, while remaining connected to their home State.

Many Pacific countries have loosened restrictions on dual citizenship in the past decade.<sup>166</sup> Only two States retain blanket prohibitions against dual citizenship: the Federated States of Micronesia and the Marshall Islands.

The law of the Federated States of Micronesia explicitly provides that 'dual citizenship is

prohibited'.<sup>167</sup> Dual citizens by birth must renounce their foreign citizenship within three years of their eighteenth birthday if they wish to retain their Micronesian citizenship.<sup>168</sup> Micronesia does not permit naturalisation by residence, so a person seeking to obtain citizenship could only do so by marriage and would need to renounce their existing citizenship. Micronesian citizens who seek foreign citizenship will automatically lose their Micronesian citizenship.<sup>169</sup> The country is due to hold another referendum on this issue in 2022, having previously voted against allowing dual citizenship in 2005 and 2017.<sup>170</sup>

The law of the Marshall Islands empowers the relevant Minister to apply to the High Court to deprive citizenship from anyone of full capacity who voluntarily obtains another nationality (other than by marriage) without express approval from the Executive.<sup>171</sup> People seeking naturalisation must renounce their original citizenship or, if this is not possible or practicable, repudiate allegiance to the former country and declare allegiance to the Marshall Islands.<sup>172</sup> Under these laws, people arriving in the Marshall Islands would need to renounce their previous citizenship if they wished to naturalise, and Marshall Islands citizens who obtain another nationality may potentially lose their Marshall Islands citizenship.

Three States – Kiribati, Papua New Guinea and Vanuatu – allow dual citizenship in limited circumstances.

In Kiribati, only people of I-Kiribati descent (those who have an ancestor born in Kiribati before 1900)<sup>173</sup> may hold dual citizenship.<sup>174</sup> This exception applies to people of I-Kiribati descent who are citizens of a foreign country but wish to apply for I-Kiribati citizenship, and people of I-Kiribati descent who are citizens of Kiribati seeking foreign citizenship. Conversely, citizens who are not of I-Kiribati descent will lose their I-Kiribati citizenship if they obtain another nationality (see section 5.5.6 Changing allegiance), and those seeking to acquire I-Kiribati citizenship must renounce their previous citizenship. This distinction is part of a suite of laws enacted upon Kiribati's independence, and was designed to ensure an enduring connection between the former inhabitants of Banaba (Ocean Island, in Kiribati) who were relocated to Rabi in Fiji in 1945.<sup>175</sup>

In Papua New Guinea, dual citizenship must be registered and is only permitted with eight prescribed countries – Australia, Fiji, Germany, New Zealand, Samoa, the UK, the US and Vanuatu. Citizens who seek naturalisation other than through this scheme will automatically lose their Papua New Guinea citizenship.<sup>176</sup> This could occur if the dual citizenship is unregistered, or with a country that is not prescribed. People who seek naturalisation in Papua New Guinea from countries other than those prescribed by law are required to renounce their citizenship.

Vanuatu citizens seeking another citizenship by naturalisation, and foreigners seeking Vanuatu citizenship by naturalisation, must apply formally to the Citizenship Commission.<sup>177</sup> As in Papua New Guinea, obtaining another citizenship outside this scheme results in automatic loss of Vanuatu citizenship.<sup>178</sup>

If a country does not permit dual citizenship, the people who migrate to or from that country must choose between their current citizenship, and that of their new home. Effectively, they must sever their legal connection to their previous home country or forgo citizenship and benefits that go with it (including the right to vote) in their new country.

**Recommendation: Pacific States should amend nationality laws to permit dual citizenship to prevent loss of connection between migrants and their home State.**

The Federated States of Micronesia, the Marshall Islands, Papua New Guinea and Vanuatu should consider loosening their restrictions on dual citizenship to ensure that their people can retain a legal link to their homeland, as well as a sense of identity and belonging, while enjoying citizenship rights if they emigrate permanently. If these countries are concerned about protecting their society and government from external influence, they could consider adopting Kiribati's model, which allows dual citizenship for people with strong links to the country.

#### 5.4.2. Renunciation of citizenship

**Finding: Some Pacific Islanders are at risk of statelessness if they choose to renounce their home citizenship.**

- Twenty-one PICTs allow citizens to voluntarily renounce their citizenship.
- Four of these PICTs do not provide any protection against statelessness,<sup>179</sup> seven offer some protection,<sup>180</sup> and 10 prevent statelessness arising from renunciation.<sup>181</sup>
- Two PICTs do not have a legal mechanism for citizenship renunciation.<sup>182</sup>

## International standards

### UN treaties

The *1961 Convention* provides that when a State party permits its nationals to renounce their nationality, the renunciation will not result in loss of nationality unless the person acquires another.<sup>183</sup>

This provision does not apply where it would be inconsistent with the right to freedom of movement within the borders of each State, and the right to leave any country, including one's own,<sup>184</sup> or the right to seek and enjoy in other countries asylum from persecution.<sup>185</sup>

The ability to renounce a nationality can assist people who wish to settle in another country, since some countries require people to give up their existing citizenship before they can naturalise as citizens and enjoy the full suite of rights available in their new home. However, if a person who renounces their citizenship does not successfully obtain another, they will be left stateless unless the laws of their home country contain proper safeguards.

Twenty-one PICTs allow citizens to renounce their citizenship. Two, Palau and Tonga, do not make any provision for renunciation.

In four countries and territories, laws allowing renunciation of citizenship do not protect against statelessness (American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia and Guam).<sup>186</sup> In other words, there is no prohibition against people renouncing their citizenship without obtaining another.

Two countries (Nauru and the Solomon Islands) provide the relevant Minister with discretion as to whether to allow renunciation that results in statelessness.<sup>187</sup>

In five countries (Kiribati, the Marshall Islands, Papua New Guinea, Tuvalu and Vanuatu), the laws governing renunciation contain some protection against statelessness. These countries have very similar 'boilerplate provisions' which provide that a citizen 'who is of full age and full capacity may, in the prescribed manner, renounce his citizenship'.<sup>188</sup> This provision is qualified by two exceptions: '[a] person may not renounce his citizenship unless... he already holds some other nationality or citizenship; or... the renunciation is for the purpose of his obtaining some other nationality or citizenship', and '[d]uring a time of war, citizenship may not be renounced without the prior consent of the Cabinet'.<sup>189</sup>

Similarly, the Solomon Islands provides that an application for renunciation *must* be approved if the applicant is of age and has the citizenship of another country or needs to renounce their Solomon Islands citizenship to obtain another (and that this will occur as soon as renunciation is approved).<sup>190</sup> An application must be denied if the country is at war, unless the relevant Minister consents.

These laws seek to balance prevention of statelessness against allowing necessary flexibility for those who seek foreign citizenship but cannot obtain it without first renouncing their current citizenship.

Strictly, under the laws of these six countries, it is possible to renounce citizenship without having already obtained another nationality, which may result in statelessness if the other citizenship is not actually granted.

In the Pitcairn Islands (UK) and Samoa, the legislation overcomes this issue by deeming a renunciation ineffective if the applicant does not actually obtain another nationality.<sup>191</sup> The remaining countries and territories (the Cook Islands, Fiji, French Polynesia, New Zealand, Niue, Nouvelle Calédonie, Tokelau and Wallis et Futuna) require another nationality before citizenship is renounced, so statelessness cannot result.<sup>192</sup>

**Recommendation: Pacific States should amend nationality laws to prevent statelessness arising from voluntary renunciation of citizenship.**

The US (in its administration of American Samoa, the Commonwealth of the Northern Mariana Islands and Guam), the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Papua New Guinea, the Solomon Islands, Tuvalu and Vanuatu should consider adopting a safeguard against statelessness from renunciation, similar to that in Samoa:

for a person intending to be a citizen of another state, the person is taken to be a citizen of Samoa until his or her citizenship status in the country in which he or she intends to become a citizen is proclaimed or registered.<sup>193</sup>

If Palau and Tonga move to adopt a law allowing renunciation of citizenship, these countries should also consider including this kind of safeguard.

## 5.5. Risk of statelessness arising from withdrawal of nationality

### 5.5.1. Withdrawal of nationality resulting in statelessness: General

**Finding: Pacific Islanders are at risk of becoming stateless from withdrawal of nationality.**

- All PICTs permit withdrawal of nationality resulting in statelessness in some circumstances.
- Nine PICTs have criteria for withdrawal of nationality that are not permitted by the *1961 Convention*.<sup>194</sup>

#### International standards

##### UN treaties

The *1961 Convention* prohibits withdrawal of nationality that results in statelessness,<sup>195</sup> subject to very limited exceptions, listed below:

- when naturalised persons reside abroad for a period of seven consecutive years and fail to declare an intention to retain their nationality;<sup>196</sup>
- when children born abroad fail to register as citizens within one year upon attaining majority;<sup>197</sup>

- when nationality is acquired by misrepresentation or fraud;<sup>198</sup> or
- when, at the time of signature, ratification or accession, the State's law confers a power to deprive nationality in the following circumstances, and the State makes a declaration retaining that right:
  - inconsistently with a duty of loyalty to the State, a national renders services or receives emoluments from another State;<sup>199</sup>
  - inconsistently with a duty of loyalty to the State, a national conducts themselves in a manner seriously prejudicial to the vital interests of the State;<sup>200</sup> or
  - a national repudiates their allegiance to their State or declares allegiance to another State.<sup>201</sup>

The power to withdraw nationality is also governed by prohibitions on arbitrary and discriminatory withdrawal in many international law instruments (discussed in section 5.3.2 Arbitrary deprivation of citizenship). Withdrawal of citizenship that is not the least intrusive means proportionate to achieving a legitimate aim contravenes the prohibition on arbitrary withdrawal.<sup>202</sup>

#### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds*

By 2024, the UNHCR aims for no States to have nationality laws which permit denial, loss or deprivation of nationality on discriminatory grounds. To achieve this goal, the UNHCR considers one of its major roles to be the promotion of international standards relating to non-discrimination, the right to a nationality and the prohibition of arbitrary deprivation of nationality.

The circumstances in which someone's nationality may be withdrawn are important features of a country's citizenship regime. Withdrawal of nationality can occur automatically by operation of law (generally referred to as 'loss' of nationality) or may be initiated by governments ('deprivation' of nationality) (see section 4 Key terms). A State's laws on nationality withdrawal have obvious implications for statelessness – if a person's only nationality is withdrawn, they will be



rendered stateless. The *1961 Convention* allows this to happen in only very limited circumstances.

The citizenship laws of nine PICTs contain provisions for loss or deprivation of nationality that do not comply with international law. This is perhaps unsurprising, given that few PICTs have ratified the *1961 Convention*. The non-compliant provisions found in these nine PICTs range from minor incompatibilities, such as those that cover conduct slightly broader than the *1961 Convention* permits, to those that could potentially allow arbitrary deprivation of nationality, with the latter being an obligation that arguably applies universally regardless of treaty ratification.

This report first examines laws in the Pacific that correspond to the permitted grounds for withdrawal of nationality – residence abroad, misrepresentation and fraud, and disloyalty and non-allegiance – and considers whether these laws comply with the *1961 Convention's* standards. The report then discusses laws that are plainly non-compliant, including discriminatory laws, and laws that permit arbitrary deprivation of nationality.

### 5.5.2. Residence abroad

**Finding: The act of permanent migration may expose some Pacific Islanders to loss of citizenship and potential statelessness.**

- Three PICTs permit loss of citizenship by naturalisation for residence abroad. In each of these PICTs, the provision does not comply with the *1961 Convention*.<sup>203</sup>

#### International standards

##### UN treaties

The *1961 Convention* generally prohibits withdrawal of nationality resulting in statelessness for reasons of 'departure, residence abroad, failure to register or on any similar ground'.<sup>204</sup>

However, this provision contains an exception which permits a naturalised citizen's nationality to be withdrawn if they reside abroad for a period of seven consecutive years and fail to declare an intention to retain their nationality.<sup>205</sup>

This exception allows a State to sever links with those citizens whose connection to the State has waned, even if statelessness results. However, greater global mobility has changed understandings of what constitutes a connection to a State, and UNHCR guidelines encourage States to take this into account when weighing their own interests against those of the individual who may be rendered stateless.<sup>206</sup>

In order to require a genuine ongoing connection with their citizens, States may wish to withdraw citizenship from people who have resided outside their territory for a time. Under the *1961 Convention*, this must not result in statelessness (with a few very limited exceptions).

Three Pacific countries permit loss of citizenship for residence abroad – Nauru, Samoa and Tuvalu. In each of these countries, persons who acquired citizenship by birth or descent cannot lose their citizenship in this way. Only naturalised citizens, who gain citizenship by marriage or residence in these countries, can lose citizenship for residing abroad.

Naturalised citizens of Nauru risk having their citizenship cancelled by the Minister if they fail to reside in Nauru for a continuous period of three years, even if they will be rendered stateless (though the Minister must 'take into account whether the person would become stateless').<sup>207</sup>

Under Samoan law, the Minister may deprive a naturalised citizen of their citizenship if they have resided overseas for a continuous period of two years, and they are 'unlikely to reside in Samoa in the future'.<sup>208</sup>

Tuvalu does not set a period of time spent abroad that qualifies a naturalised citizen to lose their citizenship, but rather provides that citizenship may be deprived if such citizens fail to comply with any three of the criteria considered when citizenship was granted – most relevantly, the intention to make a permanent home in Tuvalu (additionally, the ability to remain financially self-supporting and 'such other matters as the Citizenship Committee may consider material').<sup>209</sup>

These laws do not meet the international standards set by the *1961 Convention*, since the periods spent abroad that trigger nationality

withdrawal are lower than the seven years required to comply with Article 7(4) of the treaty. Of course, Nauru, Samoa and Tuvalu have not ratified the *1961 Convention*, and so are not obliged as a matter of law to conform to this standard.

Naturalised citizens of Nauru, Samoa and Tuvalu who leave these countries for a long time are at risk of losing their citizenship. In each of these countries, the loss does not occur by operation of law; rather, the Minister or relevant member of the Executive must choose to revoke the citizenship. They may also be at risk of statelessness. The fact that each of these countries permits dual citizenship mitigates this risk somewhat: naturalised citizens will be rendered stateless only if they chose to renounce their original citizenship, and they have not acquired citizenship in their new country of residence. Nauruan law also requires the Minister to consider whether a decision to deprive a person's citizenship will render them stateless.

Further, if people move abroad in large numbers (even over the long term), Nauru, Samoa and Tuvalu may be at risk of diminishing their political community by stripping people of the right to vote (an entitlement of their citizenship).<sup>210</sup> If large sections of the population are relocated to another country (such as the Banaban relocation to Fiji in the 1940s), retaining citizenship enables an ongoing political connection to their homeland.

**Recommendation: Pacific States should amend laws to prevent loss of nationality from residence abroad.**

Nauru, Samoa and Tuvalu should consider amending their laws to prevent naturalised citizens from losing their nationality and/or becoming stateless if they have resided abroad for a particular period of time. This would enable those who leave to retain their connection to the country.

Since States are required to balance their interests against those of the person whom they may render stateless, it is arguable that best practice would be to remove these laws altogether.

### 5.5.3. Misrepresentation and fraud

**Finding: Pacific Islanders may have their nationality withdrawn for misrepresentation and fraud.**

- All PICTs have the power to withdraw nationality that was obtained through misrepresentation or fraud, even if statelessness results.
- One PICT withdraws nationality on grounds similar to misrepresentation and fraud, but which may not comply with international standards.<sup>211</sup>

#### International standards

##### UN treaties

The *1961 Convention* permits a State to deprive a person of nationality, even if this results in statelessness, if nationality has been obtained by misrepresentation or fraud.<sup>212</sup>

Guidelines from the UNHCR on the deprivation and loss of nationality under the *1961 Convention* suggest that principles of causality and proportionality should temper this power.<sup>213</sup> Generally, deprivation would not be justified where the fraud or misrepresentation would not have affected the granting of citizenship, nor where the misrepresentation was honest (ie it was a mistake, where the person at the time could not have been aware that the information provided was inaccurate).<sup>214</sup>

The power to deprive nationality on the grounds that it was obtained by fraud or misrepresentation is common in the Pacific. Each PICT has a legislative provision to deprive citizenship obtained by misrepresentation and fraud. The scope of these powers varies considerably and, in one PICT, Samoa, powers to deprive citizenship are arguably broader than permitted under the *1961 Convention*.

The citizenship laws of New Zealand (including the Cook Islands, Niue and Tokelau) and Samoa allow for withdrawal of citizenship where it was acquired by mistake, which is broader than the *1961 Convention* exception for misrepresentation

and fraud. New Zealand legislation only allows this power to be exercised if it would not cause the person to become stateless.<sup>215</sup> Samoa's law does not include such a protection against statelessness, and so does not conform with the standard set out in the *1961 Convention*.<sup>216</sup>

The law of the Federated States of Micronesia limits the time in which citizenship may be deprived for reasons of fraud or misrepresentation. Naturalised citizens may have their citizenship cancelled within five years of the discovery of the fact 'that naturalization was obtained through concealment of a material fact or wilful misrepresentation'.<sup>217</sup> French law presumes that acquisition of nationality by marriage is fraudulent if a couple ceases to co-habit, but only if this occurs within 12 months of declaration of acquisition.<sup>218</sup>

Kiribati, the Solomon Islands, Tuvalu and Vanuatu limit deprivation for fraud and misrepresentation to instances where that conduct is causally connected to the decision to grant citizenship.<sup>219</sup> Kiribati, Tuvalu and Vanuatu provide exceptions where the conduct 'was of a minor nature and... revelation of the true facts would not have affected the grant',<sup>220</sup> while the Solomon Islands permits deprivation where 'had the person not given the false or misleading information, the Commission would have refused the person's application for citizenship'.<sup>221</sup>

Nauru is unique in explicitly providing that citizenship obtained by bribery, as well as misrepresentation or fraud, may be cancelled.<sup>222</sup>

**Recommendation: Pacific States should amend laws that withdraw nationality for fraud, misrepresentation or mistake where statelessness would result.**

Samoa should consider amending the provisions that allow withdrawal of nationality where it has been obtained by mistake, to prevent causing statelessness on this ground. It should consider adopting the New Zealand model, which does not withdraw nationality obtained by mistake if it would cause statelessness, or remove this ground for withdrawal entirely.

All PICTs should consider adopting time limits for withdrawal or cancellation of nationality for

misrepresentation or fraud, as in the Federated States of Micronesia and French territories.

All PICTs should consider making citizenship withdrawal for misrepresentation and fraud contingent on a causal connection between the deceptive or mistaken conduct and the grant of citizenship, as in Kiribati, the Solomon Islands, Tuvalu and Vanuatu.

#### 5.5.4. Rendering services to another State

**Finding: Some Pacific Islanders are at risk of statelessness if they render services to the armed forces of another State.**

- Eight PICTs allow citizenship to be deprived if a person renders services to the armed forces of another State.<sup>223</sup>

#### International standards

##### UN treaties

The *1961 Convention* permits a State to deprive a person of their nationality, even if this results in statelessness, if, 'inconsistently with his duty of loyalty to the state, the person... has in disregard of an express prohibition by the Contracting State rendered services to, or received or continued to receive emoluments from another State'.<sup>224</sup> 'Service' includes civil and military service, and 'emoluments' refer to money or any benefit.<sup>225</sup>

This ground for deprivation is only permitted under the treaty if the State had already declared that it would retain this ground from pre-existing laws before signature, ratification or accession, and any act justifying withdrawal on these grounds was done with the intention of being disloyal.<sup>226</sup>

Further, the prohibition on arbitrary deprivation of nationality requires the withdrawal of nationality to 'conform to what is prescribed by law; be the least intrusive means of achieving a legitimate purpose; and follow a due process'.<sup>227</sup> Withdrawal of citizenship that is not the least intrusive means proportionate to achieving a legitimate aim violates this prohibition.<sup>228</sup>

What constitutes loyalty and disloyalty to a State, such that withdrawal of nationality would be justified, has evolved since the *1961 Convention* was drafted. Many people live their lives across borders, and the international law threshold of disloyalty that justifies nationality withdrawal has arguably risen.

Eight PICTs allow citizenship to be deprived if a person renders services to the armed forces of another State (the Federated States of Micronesia, French Polynesia, Kiribati, Nouvelle Calédonie, Papua New Guinea, the Solomon Islands, Vanuatu and Wallis et Futuna).<sup>229</sup> None of these countries offers protection against statelessness when citizenship is deprived on these grounds.<sup>230</sup>

Service in the US forces does not expose citizens to deprivation of citizenship in the Federated States of Micronesia, nor does military service by dual citizens in Papua New Guinea.

The opportunity to serve in the armed forces of another country is more likely to be taken up by those who have migrated overseas. As more people in the Pacific migrate, the more they may be exposed to statelessness or disconnection from their home State under this ground for withdrawal of nationality.

**Recommendation: Pacific States should amend citizenship laws to include safeguards against statelessness resulting from withdrawal of nationality for those who render services to the armed forces of another State.**

The Federated States of Micronesia, Kiribati, Papua New Guinea, the Solomon Islands, Vanuatu, the US (in its administration of American Samoa, the Commonwealth of the Northern Mariana Islands and Guam) and France (in its administration of French Polynesia, Nouvelle Calédonie and Wallis et Futuna<sup>231</sup>) should amend their citizenship laws to prevent withdrawal of citizenship on this ground if it would leave a person stateless. These PICTs should also bear in mind the principle of proportionality (a general principle of international law) when applying these laws, to avoid depriving a person of their nationality arbitrarily.

### 5.5.5. Conduct threatening national interests

**Finding: Some Pacific Islanders risk statelessness if they engage in conduct seriously prejudicial to the vital interests of the State.**

- Seven PICTs permit deprivation of nationality resulting in statelessness on grounds that may be permitted by the *1961 Convention* under the exception for conduct seriously prejudicial to the vital interests of the State.<sup>232</sup>
- Arguably, three Pacific countries allow deprivation of citizenship that may result in statelessness, in circumstances that go beyond those strictly captured by this exception.<sup>233</sup>

#### International standards

##### UN treaties

The *1961 Convention* permits a State to deprive a person of nationality, even if this results in statelessness, if the person has engaged in conduct seriously prejudicial to the vital interests of the State.<sup>234</sup>

This ground of deprivation is only permitted under the treaty if the State had already declared that it would retain this ground from pre-existing laws before signature, ratification or accession, and any act justifying withdrawal on this ground must have been done with the intention to be disloyal.<sup>235</sup>

Further, the prohibition on arbitrary deprivation of nationality requires the withdrawal of nationality to 'conform to what is prescribed by law; be the least intrusive means of achieving a legitimate purpose; and follow a due process'.<sup>236</sup> Withdrawal of nationality that is not the least intrusive means proportionate to achieving a legitimate aim falls foul of this prohibition.<sup>237</sup>

Seven countries and territories permit deprivation of nationality resulting in statelessness on grounds that may be permitted by the *1961 Convention* under the exception for conduct seriously prejudicial to the vital interests of the State (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Marshall Islands, Nauru, the Pitcairn Islands and Tonga).

The UNHCR describes the threshold of this exception as 'very high', and observes that 'the conduct... must threaten the foundations and organization of the State whose nationality is at issue'.<sup>238</sup> The exception covers acts such as treason, espionage and potentially domestic terrorism, but does not extend to 'criminal offences of a general nature'.<sup>239</sup> Further, the conduct must be contrary to the duty of loyalty to the State in which citizenship is in question. Acts committed against foreign States, even those in alliance with the State in question, are not covered by the exception.

Two Pacific countries, Nauru and Tonga, arguably allow deprivation of citizenship from naturalised citizens that may result in statelessness, in circumstances which go beyond those strictly captured by this exception. Even where a State has not ratified the *1961 Convention*, which Nauru and Tonga have not, exercising an overly broad citizenship-stripping power may constitute arbitrary deprivation of citizenship, which is prohibited as a matter of emerging customary international law.

The Tongan government has the power to render a naturalised person stateless by depriving citizenship for acts of treason and sedition, which are likely covered by the exception. However, it can also do this on grounds far wider than those permitted by the exception, including 'any offence which involves dishonesty or fraud... defamation of the King or Queen; or... any offence which carries a sentence of 2 or more years' imprisonment'.<sup>240</sup> A Tongan certificate of naturalisation may be revoked if, 'on reasonable grounds, a person constitutes a threat to the security of the Kingdom'.<sup>241</sup>

In Nauru, citizenship granted to a person may be cancelled if that person 'engages in terrorism and international financing of terrorist related activities'.<sup>242</sup> This conduct is not clearly limited to actions taken against Nauru itself, and could include international terrorism. It therefore empowers Nauru to render someone stateless by depriving them of citizenship for conduct that falls outside the *1961 Convention's* exception for conduct seriously prejudicial to the vital interests of the State. Importantly, while the Nauruan Cabinet must consider whether the person would become stateless, there is no express prohibition against deprivation resulting in statelessness.<sup>243</sup>

Similarly, the Solomon Islands permits deprivation of citizenship resulting in statelessness where a person contravenes the *Counter Terrorism Act 2009*,<sup>244</sup> which includes acts that threaten foreign countries, and so may also exceed the *1961 Convention*.<sup>245</sup>

The UK citizenship legislation, in force in the Pitcairn Islands, permits deprivation under this exception while ostensibly providing protection against statelessness. Under UK law, statelessness can result in this context if the Secretary of State has 'reasonable grounds for believing that the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory'.<sup>246</sup>

New Zealand legislation (the Cook Islands, New Zealand, Niue and Tokelau) also incorporates protection against statelessness arising from citizenship deprivation for conduct that seriously prejudices the vital interests of the State. Only those persons who acquire another nationality, or who act in relation to rights or duties of another citizenship they possess 'in a manner contrary to the interests of New Zealand', may be deprived of their New Zealand citizenship.<sup>247</sup> Deprivation will not result in statelessness unless the person has previously renounced their other citizenship. Similarly, French law allows deprivation on these grounds, but does not allow withdrawal if it would result in statelessness.<sup>248</sup>

**Recommendation: Pacific States should amend legislation to limit conduct that leads to citizenship deprivation to that which is seriously prejudicial to vital national interests, and include safeguards against statelessness.**

Nauru and Tonga should consider amending their laws to ensure that only conduct that is seriously prejudicial to the vital interests of the State leads to deprivation of citizenship, and include a safeguard against statelessness similar to that found in New Zealand legislation.<sup>249</sup> These changes would prevent deprivation of citizenship that is disproportionate or otherwise arbitrary.

These PICTs should also bear in mind the customary international law obligation of proportionality when applying these laws, to avoid depriving a person of their nationality arbitrarily.

### 5.5.6. Changing allegiance

**Finding: Statelessness or loss of nationality may result from a person repudiating allegiance to their State, declaring allegiance to another State, voting in another State's elections or exercising a right exclusive to citizens of other States.**

- Five PICTs permit citizenship deprivation where a citizen repudiates allegiance to their State or declares allegiance to another State.<sup>250</sup>
- Two PICTs permit citizenship deprivation where a citizen exercises rights exclusive to nationals of another country.<sup>251</sup>
- Four PICTs permit citizenship deprivation where a citizen votes in an overseas election.<sup>252</sup>

#### International standards

##### UN treaties

The *1961 Convention* permits a State to deprive a person of nationality, even if this results in statelessness, if the person has taken an oath or formally declared allegiance to another State, or has given definite evidence of their determination to repudiate allegiance.<sup>253</sup>

This ground of deprivation is only permitted under the treaty if the State had already declared that it would retain this ground from pre-existing laws before signature, ratification or accession.<sup>254</sup>

Further, the prohibition on arbitrary deprivation of nationality requires the withdrawal of nationality to 'conform to what is prescribed by law; be the least intrusive means of achieving a legitimate purpose; and follow a due process'.<sup>255</sup> Withdrawal of citizenship that is not the least intrusive means proportionate to achieving a legitimate aim will contravene this prohibition.<sup>256</sup>

Five PICTs permit deprivation of citizenship where a citizen has either made an oath or formal declaration of allegiance to another State, or has given definite evidence of their determination to repudiate their allegiance to their State (the

Federated States of Micronesia, Fiji, Kiribati, Papua New Guinea and Vanuatu).

Consistent with the limitations on dual citizenship in these countries, the Federated States of Micronesia, Kiribati, Papua New Guinea and Vanuatu may deprive citizenship if a citizen makes a formal declaration of allegiance to another State.<sup>257</sup>

In Kiribati, the provision only applies to citizens not of I-Kiribati descent (namely, a person who does not have an ancestor who was born in Kiribati before 1900).<sup>258</sup> Papua New Guinea and Vanuatu make this ground for deprivation subject to their dual citizenship schemes, in which citizens must register their dual citizenship (and, in Papua New Guinea, must only obtain dual citizenship with a prescribed country: see section 5.4.1 Dual citizenship).

In Fiji, explicitly making an oath of allegiance to another country is not a ground for deprivation per se. Rather, the law allows the relevant Minister to deprive a citizen by naturalisation or registration of citizenship where that person has 'done anything, or is associated with or involved in any activity, which is incompatible with the oath or affirmation of allegiance taken by that person'.<sup>259</sup>

The laws of the Federated States of Micronesia, Kiribati, Papua New Guinea and Vanuatu also allow deprivation of citizenship in circumstances similar to formally changing allegiance, but they are arguably impermissibly broad.

Papua New Guinea citizens, and citizens of Kiribati not of I-Kiribati descent, will lose nationality if they vote 'in a national, provincial, state or local election' or accept 'elective office, of another country',<sup>260</sup> or if they exercise 'a right that is exclusive to nationals or citizens of another country'.<sup>261</sup> If the responsible Ministers are satisfied that the citizen exercised the right inadvertently, they will not lose their citizenship. Kiribati can only deprive citizenship from someone who has voted in a foreign election if citizenship is a prerequisite to vote in the foreign country. Papua New Guinea will not deprive citizenship on this ground if voting is permitted by a law of the Papua New Guinean Parliament, and legally registered dual citizens are exempted from these laws.<sup>262</sup>

Micronesia may deprive citizenship if a citizen votes 'in a political election in a foreign state where a prerequisite to such a vote is citizenship of that foreign state'.<sup>263</sup> Vanuatu withdraws nationality from citizens who vote in elections or accept office in another country, but provides an exception for those who are registered dual citizens.<sup>264</sup>

People who migrate to another country are more likely to engage in conduct that is exclusive to foreign nationals. As more people in the Pacific migrate, the more they may be exposed to statelessness or disconnection from their home State under this ground.

**Recommendation: Pacific States should amend legislation to limit conduct that leads to citizenship deprivation to formal oaths and declarations of allegiance, and include safeguards against statelessness.**

The Federated States of Micronesia, Fiji, Kiribati, Papua New Guinea and Vanuatu should consider amending their laws so that a person's nationality cannot be withdrawn on the ground of changing allegiance, if this would render them stateless.

The Federated States of Micronesia, Kiribati, Papua New Guinea and Vanuatu should consider removing laws that permit deprivation of citizenship for voting in foreign elections, and exercising rights usually exclusive to foreign nationals.

These PICTs should also bear in mind the customary international law obligation of proportionality when applying these laws, to avoid depriving a person of their nationality arbitrarily.

## 5.6. Risk of statelessness persisting from failure to facilitate naturalisation of stateless persons

### 5.6.1. Naturalisation

**Finding: Most PICTs do not facilitate the naturalisation of stateless migrants.**

- Seven PICTs facilitate the naturalisation of stateless persons in their territory.<sup>265</sup>

## International standards

### UN treaties

The *1954 Convention* recognises and protects the rights of stateless people to residence, housing, education and social security. Importantly, it also promotes naturalisation of stateless people as a pathway out of statelessness by requiring State parties to 'as far as possible facilitate the assimilation and naturalization of stateless persons' and, 'in particular, make every effort to expedite naturalisation proceedings'.<sup>266</sup>

### UNHCR Global Action Plan to End Statelessness 2014–2024

*Action 6: Grant protection status to stateless migrants and facilitate their naturalisation*

By 2024, the UNHCR aims to have 70 States identifying stateless migrants through determination procedures which lead to a legal status that permits residence and guarantees the enjoyment of basic human rights, and facilitate naturalisation.

The previous sections focused on the ways PICTs can prevent statelessness of their own people and preserve their legal link to home. However, stateless persons sometimes migrate, for example, in search of a more dignified life or to return to a country with which they may have links other than citizenship. While there is no statistical information on the migration of stateless persons within or to the Pacific, it is conceivable that Pacific States could face situations where people arrive without a nationality or become stateless after arrival. Stateless people often have great difficulties in securing the right to stay, live and work in a new country. These difficulties may further perpetuate statelessness by preventing people from meeting the qualifications required to become citizens of their new home country through naturalisation. Lowering the barriers to naturalisation, such as language proficiency requirements or residency periods, can support stateless people to more easily access a nationality, and all the benefits that go along with it.

Regardless of whether people are stateless or not, the criteria for naturalisation in the Pacific are, generally, strict.<sup>267</sup> A reluctance to admit new citizens too easily may have its roots in

decolonisation. Newly independent States sought to promote the interests and culture of their indigenous people, and it was thought that these could be threatened if too many outsiders became citizens through naturalisation.<sup>268</sup> The desire to protect access to citizenship is understandable – consider, for example, the indigenous ni-Vanuatu people who were left stateless between 1906–80 under the Condominium of the New Hebrides (now Vanuatu) administered by France and Britain.<sup>269</sup> Strict naturalisation policies also allow PICTs to ensure that population size does not outstrip their resource capacity.

The naturalisation laws of seven PICTs (the Cook Islands, French Polynesia, New Zealand, Niue, Nouvelle Calédonie, Tokelau and Wallis et Futuna) make it easier for stateless persons in the territory to naturalise as citizens than other applicants. In New Zealand and its territories, the relevant Minister has a discretionary power to grant citizenship to any person if they would otherwise be stateless, with regard to the criteria for naturalisation.<sup>270</sup>

In the French territories, the concession for stateless people is more limited – stateless persons applying for naturalisation are not required to meet the French language requirement, if they have regularly resided in the territory for at least 15 years and are over the age of 70.<sup>271</sup>

**Recommendation: Pacific States should amend nationality laws to facilitate naturalisation of stateless persons.**

The Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu, the UK (in its administration of the Pitcairn Islands), the US (in its administration of American Samoa, the Commonwealth of the Northern Mariana Islands and Guam) and Vanuatu should consider easing their naturalisation requirements for stateless applicants. This could include reducing or waiving residency requirements, language requirements and associated fees.

## 6. Migration and voting rights

One of the most important benefits of citizenship is the right to participate in a country's political life

through voting in elections. Naturally, if a person loses their citizenship, or their ability to pass on citizenship, they and their descendants will no longer have a say in their homeland's future in this way.<sup>272</sup> However, citizenship is often not the only prerequisite to participating in elections. Relevant to the context of climate-related mobility, countries may require electors to have resided for some time in the territory, either as a condition of first being enrolled as an elector, or to remain an elector (or both). Under these laws, people who settle permanently overseas may lose their ability to vote in their home country's elections, even if they retain that country's citizenship. For States and territories whose long-term habitability is threatened by the impacts of climate change, this could prevent large diaspora communities from retaining a political voice in their home country, severing an important connection to home. They may even be left unable to vote in *any* country's elections if they do not or cannot become citizens of their new country.

This section considers the voting law residence requirements of 23 PICTs, and whether provision is made for overseas voting. For the independent States, it analyses the laws governing national elections; for the territories, it considers the laws of the government of the territory (to take Nouvelle Calédonie as an example, the report considers the elections of the Nouvelle Calédonie government, rather than the government of France).<sup>273</sup>

The related right to stand for election is also often tied to citizenship and place of residence. The present report does not address this issue, but any reform on voting rights should consider it.

**Finding: Residing overseas affects the ability of some Pacific Islanders to participate in the elections of their home country or territory.**

- Fifteen PICTs make voting registration dependent on residence requirements;<sup>274</sup> eight do not.<sup>275</sup>
- Six PICTs that impose residence requirements at registration allow registered voters to vote from overseas.<sup>276</sup>
- Two PICTs that allow citizens who reside overseas to vote do not permit absentee voting.<sup>277</sup>



- Eleven PICTs make the eligibility to vote conditional on ongoing residence in the territory, meaning that those who have migrated permanently overseas are ineligible to vote.<sup>278</sup>

## International standards

### UN treaties

The *ICCPR* promotes for every citizen 'the right and the opportunity, without any of the distinctions mentioned in article 2<sup>279</sup> and without unreasonable restrictions... [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'.<sup>280</sup>

Fifteen PICTs require citizens to have resided in their territory for a certain period of time to be eligible to vote (American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, the Federated States of Micronesia, Guam, Kiribati, New Zealand, Niue, Nouvelle Calédonie, Palau, Papua New Guinea, the Pitcairn Islands, the Solomon Islands, Tokelau and Tonga).

In four of these PICTs, the residence requirements only apply at the time of registration – that is, once a citizen is registered to vote, they can later reside overseas and retain their voting rights (the Federated States of Micronesia, Papua New Guinea, the Solomon Islands and Tonga).<sup>281</sup> Two of these PICTs provide for absentee voting (the Federated States of Micronesia and Papua New Guinea).<sup>282</sup> However, the Solomon Islands and Tonga do not permit absentee voting, meaning that in order to participate in elections, citizens who reside overseas must return home, which may discourage (or at least limit) participation.

In the other 11 of these PICTs, citizens may lose their eligibility to vote if they do not continue to satisfy residence requirements (American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, Guam, Kiribati, New Zealand, Niue, Nouvelle Calédonie, Palau, the Pitcairn Islands and Tokelau).<sup>283</sup> These countries and territories require voters to have been resident in the country for a set period of time before the election, or to have an intention to

return (Guam) or reside there indefinitely (the Pitcairn Islands). This means that people who reside overseas indefinitely may lose the right to register as voters and participate in elections.

Six of these 11 PICTs make exceptions for people who have resided temporarily overseas for approved reasons (American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, New Zealand and Niue). These reasons include study overseas, travel for medical treatment and employment. Provision for absentee voting is made for those who satisfy these exceptions.

The remaining eight PICTs do not require citizens to reside in the territory to register to vote (Fiji, French Polynesia, the Marshall Islands, Nauru, Samoa, Tuvalu, Vanuatu and Wallis et Futuna).<sup>284</sup> However, French Polynesia, Tuvalu, Vanuatu and Wallis et Futuna do place some limits on eligibility that may prevent some citizens from voting. For elections in French Polynesia and Wallis et Futuna, people who no longer reside in these territories may register as overseas nationals. They will be eligible to vote in local elections if they have sufficient connection to one of these territories (that is, if they were born in the territory, if they most recently resided there, or if one of their ancestors was born or registered to vote there).<sup>285</sup> Tuvalu requires all voters, whether they reside in the territory or not, to participate in the 'indigenous community of that electorate',<sup>286</sup> which elders of that community must verify. Although these PICTs do not strictly require citizens to reside in the territory in order to vote, only four make provision for overseas residence to participate in elections without returning for election day (French Polynesia, Nauru, Palau and Wallis et Futuna). Citizens of Samoa and Tuvalu who reside overseas cannot vote from abroad, as no provision is made for absentee voting.

**Recommendation: Pacific States should facilitate overseas voting, while balancing the interests of citizens residing within the territory and those outside of the territory.**

Recommendations for individual PICTs on the best way to balance the civic interests of their local and overseas communities are beyond the scope of this report. However, given that the impacts of climate change may result in more

Pacific Islanders living outside their countries of origin, all PICTs should be mindful of the impact that residence-related voting restrictions may have on participation in their elections.

## **7. Conclusion**

The ongoing habitability of some PICTs over the longer term is a highly fraught and sensitive issue. Some Pacific communities have already relocated to safer areas within their own countries on account of the impacts of disasters and climate change,<sup>287</sup> and it is anticipated that more relocations are likely in the future.<sup>288</sup> Increasingly, even if reluctantly, some people may seek to migrate to other countries in the region and beyond, in search of more sustainable living conditions and secure employment opportunities.

While the issues identified in this report are important generally, they have particular pertinence in the climate change context. If large proportions of Pacific communities are to settle in other countries, maintaining connections to home will be especially important. Nationality law

provides a formal means of retaining identity – and with it, rights and entitlements to political franchise, land and, ultimately, self-determination. The ability to retain the citizenship of one’s home country while living elsewhere, and to pass it down to one’s children, can also play a powerful psychological role in maintaining an ongoing connection with one’s origins. Furthermore, since the right to vote and stand for election is often tied to citizenship and residence, ensuring that citizens abroad are entitled and able to vote is another key consideration – especially if, at some future point, a government seeks to operate ‘in exile’ because climate impacts make it unsafe to remain in the country’s territory.<sup>289</sup>

The unique policy challenges of citizenship and climate-related mobility in the Pacific warrant a tailored response, coordinated between PICTs and the wider international community. This is the strongest way to future-proof the connection between Pacific Islanders and their homes.

## 9. Appendix 1

Table 1: Summary of Governmental Structures in Pacific Island States and Territories<sup>290</sup>

	Country		Territory
	UN Member State	In free association	Self-governing: Y or N
<b>Pacific States that designate citizenship under their own law</b>			
FSM	Y	Y, with US	-
Fiji	Y	N	-
Kiribati	Y	N	-
Marshall Islands	Y	Y, with US	-
Nauru	Y	N	-
New Zealand	Y	N	-
Palau	Y	Y, with US	-
PNG	Y	N	-
Samoa	Y	N	-
Solomon Islands	Y	N	-
Tonga	Y	N	-
Tuvalu	Y	N	-
Vanuatu	Y	N	-
<b>Territories governed by French citizenship law</b>			
French Polynesia	-	-	Y/N*
Nouvelle Calédonie	-	-	Y/N**
Wallis et Futuna	-	-	Y
<b>Countries and territories governed by New Zealand citizenship law</b>			
Cook Islands	N	Y, with NZ	-
Niue	N	Y, with NZ	-
Tokelau	-	-	N
<b>Territory governed by UK citizenship law</b>			
Pitcairn Islands	-	-	N
<b>Territories governed by US citizenship law</b>			
American Samoa	-	-	N
CNMI	-	-	Y
Guam	-	-	N

\* French Polynesia has the status of an autonomous overseas collectivity of France, although the UN lists French Polynesia as a non-self-governing territory.

\*\* Nouvelle Calédonie is a sui generis overseas collectivity of France, which is not entirely self-governing, but which does exercise significant autonomy. The UN lists Nouvelle Calédonie as a non-self-governing territory.

**Table 2: Status of UN Treaties Governing Statelessness and Nationality Law**

PICT	1954 CRSSP	1961 CRS	ICERD	ICCPR	CEDAW	CRC	CRPD	ICPRMW	CRSR*/ Protocol <sup>^</sup>	ICESCR*
<b>Independent States that designate citizenship</b>										
FSM	N	N	N	N	PR (a)	PR (a)	PR (a)	N	N/N	N
Fiji	PR (d)	N	PR (d)	PR (a)	PR (a)	PR	PR	PR	PR/PR (d)	PR (a)
Kiribati	PR (d)	PR (d)	N	N	PR (a)	PR	PR (a)	N	N/N	N
Marshall Islands	N	N	PR (a)	PR (a)	PR (a)	PR	PR (a)	N	N/N	PR (a)
Nauru	N	N	PS	PS	PR (a)	PR	PR	N	PR/PR (a)	N
New Zealand	N	PR	PR	PR	PR	PR	PR	N	PR/PR (a)	PR
Palau	N	N	PS	PS	PS	PR (a)	PR	PS	N/N	PS
PNG	N	N	PR (a)	PR (a)	PR (a)	PR	PR	N	PR (a)/PR (a)	PR (a)
Samoa	N	N	N	PR (a)	PR (a)	PR	PR	N	PR (a)/PR (a)	N
Solomon Islands	N	N	PR (d)	N	PR (a)	PR	PS	N	PR (a)/PR (a)	PR (d)
Tonga	N	N	PR	N	N	PR (a)	N	N	N/N	N
Tuvalu	N	N	N	N	PR (a)	PR (a)	PR (a)	N	PR (d)/PR (d)	N
Vanuatu	N	N	N	PR	PR (a)	PR	PR	N	N/N	N
<b>Territories governed by French citizenship law</b>										
French Polynesia	TR	TS	CR	CR	CR	CR	CR	N	TR/TR	CR
Nouvelle Calédonie	TR	TS	CR	CR	CR	CR	CR	N	TR/TR	CR
Wallis et Futuna	TR**	TS	CR	CR	CR	CR	CR	N	TR/TR	CR
<b>Countries and territories governed by New Zealand citizenship law</b>										
Cook Islands	N	CR	CR	CR	PR (a)	PR (a)	PR (a)	N	CR/CR	CR
Niue	N	CR	CR	CR	TR	PR	CR	N	CR/CR	CR
Tokelau	N	TR	TR	TR	TR	CR	CR	N	TR/TR	TR
<b>Territory governed by UK citizenship law</b>										
Pitcairn Islands	CR	CR	CR	TR	CR	TR	CR	N	CR, CR	TR
<b>Territories governed by US citizenship law</b>										
American Samoa	N	N	CR	CR	CS	CS	CS	N	N, CR	CS
CNMI	N	N	CR	CR	CS	CS	CS	N	N, CR	CS
Guam	N	N	CR	CR	CS	CS	CS	N	N, CR	CS

## Key

PR	Signed AND ratified/succeeded (d)/acceded (a) to the treaty
PS	Signed but NOT ratified/succeeded/acceded to the treaty
TR	Application is extended to the territory by a State that has signed AND ratified/succeeded (d)/acceded (a) to the treaty
TS	Application is extended to the territory by a State that has signed but NOT ratified/succeeded/acceded to the treaty
CR	Application is NOT extended to the territory by the State conferring citizenship, but that State has signed AND ratified/succeeded (d)/acceded (a) to the treaty
CS	Application is NOT extended to the territory by the State conferring citizenship, and State has signed but NOT ratified/succeeded/acceded to the treaty

P = party to the treaty, T = territorial application of the treaty by administering power, C = citizenship law of a State party to the treaty applies in the territory, but the State party has not expressly extended its application to the territory, R = ratification (including accession and succession), S = signature

\*The *Refugee Convention* and the *ICESCR* do not impose obligations relating to nationality, but are included here to provide an overview of broader human rights obligations in the region.

\*\*Wallis et Futuna was a dependency of Nouvelle Calédonie at the time of ratification. It later became independent of Nouvelle Calédonie, but remained a dependency of France. At the time of ratifying the *1954 Convention*, France did not explicitly extend its application to Wallis et Futuna.

^Parties to the *1967 Protocol* undertake to apply articles 2 to 34 of the *Refugee Convention*. The *Protocol* effectively removes the temporal and geographical restraints on the *Refugee Convention's* scope. Entries in this column relating to the *Refugee Convention* are indicated in roman font, while entries relating to the *1967 Protocol* are indicated in italics.

## 10. Appendix 2

The domestic laws discussed in this report were analysed in accordance with the 17 questions below. The questions were developed with reference to international standards relating to nationality and statelessness.

1. Is citizenship acquired in the territory by *jus soli*, *jus sanguinis*, or a combination?
2. Is nationality granted to a child born to a national abroad?
3. Can citizens who gain citizenship outside of the relevant country pass on citizenship?
4. Is dual or multiple citizenship permitted?
5. Is nationality granted to otherwise stateless children born in the territory?
6. Is nationality granted to foundlings found in the territory?
7. Can mothers confer their nationality on their children on an equal basis as fathers?
8. Does the law facilitate the naturalisation of stateless persons in its territory?
9. Are nationals permitted to voluntarily renounce their nationality if this leaves them stateless?
10. Can nationals lose their nationality by residing abroad?
11. Can nationality be deprived even if this results in statelessness?
12. Are the grounds for deprivation of nationality permitted under the *1961 Convention*?
13. Does the law permit deprivation of nationality due to a change in marital status?
14. Does the nationality law discriminate based on gender, race, religion, etc?
15. Is citizenship required in order to vote?
16. Does migration/overseas residence affect voting registration?
17. Can civilian citizens residing overseas vote?

## Endnotes

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- <sup>1</sup> *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 1 (*1954 Convention*).
- <sup>2</sup> See, eg, Jane McAdam and Jonathan Pryke, *Climate Change, Disasters and Mobility: A Roadmap for Australian Action* (Policy Brief No 10, Kaldor Centre for International Refugee Law, October 2020) <[https://kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy\\_brief%2010\\_Climate\\_Change.pdf](https://kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_brief%2010_Climate_Change.pdf)>.
- <sup>3</sup> Internal Displacement Monitoring Centre, *GRID 2021: Internal Displacement in a Changing Climate* (Report, 2021) 7.
- <sup>4</sup> Walter Kälin and Nina Schrepfer, 'Protecting People Crossing Borders in the context of Climate Change: Normative Gaps and Possible Approaches' (Legal and Protection Policy Research Series Paper No PPLA/2012/01, United Nations High Commissioner for Refugees, February 2012) 4–7 <<https://www.unhcr.org/protection/environment/542e9abd9/protecting-people-crossing-borders-context-climate-change-normative-gaps.html>>.
- <sup>5</sup> Kate Lyons, 'IPCC Report Shows "Possible Loss of Entire Countries within the Century"', *The Guardian* (online, 10 August 2021) <<https://www.theguardian.com/world/2021/aug/10/ipcc-report-shows-possible-loss-of-entire-countries-within-the-century>>; Intergovernmental Panel on Climate Change, 'Small Islands' (Regional Fact Sheet, 2021) <[https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC\\_AR6\\_WGI\\_Regional\\_Fact\\_Sheet\\_Small\\_Islands.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Small_Islands.pdf)>.
- <sup>6</sup> In September 2021, the Prime Minister of Vanuatu announced the country's intention to seek an advisory opinion from the International Court of Justice on the rights of present and future people to protection from the impact of climate change: Melanie Burton, 'Vanuatu to Push International Court for Climate Change Opinion', *Reuters* (online, 25 September 2021) <<https://www.reuters.com/world/asia-pacific/vanuatu-push-international-court-climate-change-opinion-2021-09-25/>>.
- <sup>7</sup> For an overview of Pacific nation responses to climate change, see Pacific Islands Forum, *Submission to the International Law Commission on the Sub-Topics of Sea-Level Rise in Relation to Statehood and to the Protection of Persons Affected by Sea-Level Rise* (Information Paper, 31 December 2021) <[https://legal.un.org/ilc/sessions/73/pdfs/english/slr\\_pif.pdf](https://legal.un.org/ilc/sessions/73/pdfs/english/slr_pif.pdf)>.
- <sup>8</sup> Fanny Thornton et al, 'Policy Developments and Options to Address Human Mobility in the context of Climate Risk in the Pacific Islands Region' (Pacific Climate Change Migration and Human Security Policy Brief Series No PUB2021/085/R, International Organization for Migration, May 2021) 4–6 <<https://environmentalmigration.iom.int/policy-developments-and-options-address-human-mobility-context-climate-risk-pacific-islands-region>>. See also Pacific Islands Forum Secretariat, Pacific Islands Forum Leaders Summit, *Hiri Declaration: 'Strengthening Connections to Enhance Pacific Regionalism'*, 46<sup>th</sup> mtg, 10 September 2015; Pacific Community (SPC) et al, *Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management (FRDP) 2017–2030* (Guidelines, 2016) <[http://tep-a.org/wp-content/uploads/2017/05/FRDP\\_2016\\_finalResilient\\_Dev\\_pacific.pdf](http://tep-a.org/wp-content/uploads/2017/05/FRDP_2016_finalResilient_Dev_pacific.pdf)>; Ministry of Economy (Fiji), *Displacement Guidelines in the context of Climate Change and Disasters* (Guidelines, 2019) 3; Ministry of Economy (Fiji), *Planned Relocation Guidelines: A Framework to Undertake Climate Change Related Relocation* (Guidelines, 2018) ('*Fiji Planned Relocation Guidelines*'); *Climate Relocation of Communities Trust Fund Act 2019* (Fiji); Vanuatu National Disaster Management Office, *National Policy on Climate Change and Disaster-Induced Displacement* (Policy Document, 2018).
- <sup>9</sup> Ministry of Economy (Fiji), *National Climate Change Policy 2018–2030* (Policy Document, 2018) 54 <<https://www.economy.gov.fj/images/CCIC/uploads/General/FIJI-National-Climate-Change-Policy-2018-2030-FINAL.pdf>>.
- <sup>10</sup> See Bruce Burson, Richard Bedford and Charlotte Bedford, *In the Same Canoe: Building the Case for a Regional Harmonisation of Approaches to Humanitarian Entry and Stay in 'Our Sea of Islands'* (Platform on Disaster Displacement, March 2021); Thornton et al (n 8); Bruce Burson and Richard Bedford, *Clusters and Hubs: Towards a Regional Architecture for Voluntary Adaptive Migration in the Pacific* (Nansen Initiative on Disaster-Induced Cross-Border Displacement, 9 December 2013); McAdam and Pryke (n 2).
- <sup>11</sup> '[PCCMHS] Enhancing Protection and Empowerment of Migrants and Communities Affected by Climate Change and Disasters in the Pacific Region', *International Organization for Migration: Environmental Migration Portal* (Web Page, 2019) <<https://environmentalmigration.iom.int/pccmhs-enhancing-protection-and-empowerment-migrants-and-communities-affected-climate-change-and-disasters-pacific-region>> ('*Enhancing Protection and Empowerment of Migrants and Communities*'). This is part of the Pacific Climate Change Migration and Human Security programme (2019–2021), which brought together international and regional agencies 'to protect and empower communities adversely affected by climate change and disasters in the Pacific region, focusing specifically on climate change and disaster-related migration, displacement, and planned relocation'. One of the authors of the present report, Jane McAdam, is leading the drafting process.
- <sup>12</sup> See, eg, Nansen Initiative, *A Guide to Effective Practices for RCM Member Countries: Protection for Persons Moving across Borders in the context of Disasters* (Guide, November 2016); South American Conference on Migration, *Regional Guidelines on Protection and Assistance for Persons Displaced across Borders and Migrants in Countries Affected by Disasters of Natural Origin* (Guidelines, 2018); Intergovernmental Authority on Development, *Protocol on Free Movement of Persons in the IGAD Region: Communiqué of the Sectoral Ministerial Meeting on the Protocol on Free Movement of Persons in the IGAD Region* (Communiqué, 26 February 2020).
- <sup>13</sup> Conference of the Parties, United Nations Framework Convention on Climate Change, *Decision 1/CP.16: The Cancun Agreements*, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011, adopted 10–11 December 2010) para 14(f).
- <sup>14</sup> *Sendai Framework for Disaster Risk Reduction 2015–2030*, GA Res 69/283, UN Doc A/RES/69/283 (adopted 3 June 2015).

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<sup>15</sup> *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (adopted 25 September 2015).

<sup>16</sup> Conference of the Parties, United Nations Framework Convention on Climate Change, *Decision 1/CP.21: Adoption of the Paris Agreement*, UN Doc FCCC/CP/2015/10/Add.1 (adopted 13 December 2015). A Task Force on Displacement was also established under the auspices of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts 'to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change': para 49; see also para 50.

<sup>17</sup> United Nations High Commissioner for Refugees, *Report of the United Nations High Commissioner for Refugees: Part II Global Compact on Refugees*, UN GAOR, 73<sup>rd</sup> sess, Supp No 12, UN Doc A/73/12 (Part II) (2 August 2018) paras 8, 12, 63. See also *New York Declaration for Refugees and Migrants*, GA Res 71/1, UN GAOR, 71<sup>st</sup> sess, Agenda Items 13 and 117, UN Doc A/RES/71/1 (adopted 19 September 2016) paras 1, 18, 43, 50.

<sup>18</sup> *Global Compact for Safe, Orderly and Regular Migration*, GA Res 73/195, UN GAOR, 73<sup>rd</sup> sess, Agenda Items 14 and 119, UN Doc A/RES/73/195 (11 January 2019, adopted 19 December 2018) paras 18(h)–(l), 21(g)–(h).

<sup>19</sup> António Guterres, 'Maintenance of International Peace and Security: New Challenges to International Peace and Security and Conflict Prevention' (Speech, United Nations Security Council, 23 November 2011)

<<https://www.unhcr.org/en-au/admin/hcsp/4ee21edc9/statement-mr-antonio-guterres-united-nations-high-commissioner-refugees.html>>.

<sup>20</sup> Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012) 5; Report of the International Law Association Committee on International Law and Sea Level Rise (Sydney Conference, 2018) 25 <[https://www.ila-hq.org/images/ILA/DraftReports/DraftReport\\_SeaLevelRise.pdf](https://www.ila-hq.org/images/ILA/DraftReports/DraftReport_SeaLevelRise.pdf)>; Kälin and Schrepfer (n 4) 37.

<sup>21</sup> United Nations High Commissioner for Refugees, Norwegian Refugee Council and Peter McMullin Centre on Statelessness, 'Statelessness and Climate Change' (Fact Sheet, October 2021) 1 <<https://www.refworld.org/docid/617c01da4.html>>.

<sup>22</sup> *Ibid.* See also International Law Commission, *Sea-Level Rise in relation to International Law: Second Issues Paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-Level Rise in relation to International Law*, 73<sup>rd</sup> sess, UN Doc A/CN.4/752 (18 April–3 June and 4 July–5 August 2022) paras 252(g), 398.

<sup>23</sup> In 2020, the Global Citizenship Observatory published a comparative regional report on citizenship law in Oceania, authored by legal scholar Anna Dziedzic: see Anna Dziedzic, *Comparative Regional Report on Citizenship Law: Oceania* (Global Citizenship Observatory, February 2020)

<[https://cadmus.eui.eu/bitstream/handle/1814/66229/RSCAS\\_GLOBALCIT\\_Comp\\_2020\\_1.pdf](https://cadmus.eui.eu/bitstream/handle/1814/66229/RSCAS_GLOBALCIT_Comp_2020_1.pdf)>. This report analyses the citizenship laws of 12 independent Pacific countries in great detail, discusses relevant debates and trends over time, and situates these laws in the region's historical, political and economic contexts. Dziedzic's report is an excellent compendium of citizenship law in these 12 Pacific countries. It has supplemented this report's independent analysis and is referred to throughout this report.

<sup>24</sup> United Nations High Commissioner for Refugees and Norwegian Refugee Council and Peter McMullin Centre on Statelessness (n 21) 1.

<sup>25</sup> Pacific Islands Forum (n 7) 22.

<sup>26</sup> For example, a strategic objective of the Federated States of Micronesia is to 'prevent environmental migration through adaptation strategies, while addressing human mobility associated with natural disasters and climate change through durable solutions': see Federated States of Micronesia, 'Nationwide Integrated Disaster Risk Management and Climate Change Policy' (Policy Document, June 2013) 3 <<https://fsm-data.sprep.org/system/files/Climate%20Change%20Disaster%20Risk%20Reduction%20Policy%5B824%5D.pdf>>.

<sup>27</sup> 'PCCMHS Hosts Successful COP26 Side Event on Climate-Related Mobility', *International Organization for Migration* (Web Page, 15 November 2021) <<https://www.iom.int/news/pccmhs-hosts-successful-cop26-side-event-climate-related-mobility>>.

<sup>28</sup> For a discussion of Pacific cultural values and climate-related mobility, see Kate Wilkinson Cross and Pefi Kingi, 'Fonua Cultural Statelessness in the Pacific and the Effects of Climate Change' in Tendayi Bloom and Lindsey N Kingston (eds), *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press, 2021) 34.

<sup>29</sup> International Law Commission (n 22) para 419. See also International Law Commission, *Report of the International Law Commission*, 72<sup>nd</sup> sess, UN Doc A/76/10 (26 April–4 June and 5 July–6 August 2021) paras 26–27.

<sup>30</sup> Four States made submissions through the Pacific Islands Forum on these specific issues. The Cook Islands, the Federated States of Micronesia and the Marshall Islands discussed the migration and residence arrangements open to their citizens under their agreements with other States (see section 5.2 Regional architecture for details of these agreements). Tuvalu noted international law relevant to the protection of its people and statehood. See Pacific Islands Forum (n 7) 23–26.

<sup>31</sup> United Nations Statistics Division, 'Methodology: Standard Country or Area Codes for Statistical Use (M49)' (Web Page) <<https://unstats.un.org/unsd/methodology/m49/>>.

<sup>32</sup> However, people living in these territories may have more mobility pathways open to them, often by virtue of their French, New Zealand, UK or US citizenship: see generally Burson and Bedford (n 10).

<sup>33</sup> *1954 Convention* (n 1).

<sup>34</sup> *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) (*1961 Convention*).

<sup>35</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) art 15 (*UDHR*); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 16, 24, 26 (*ICCPR*); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 600 UNTS 195 (entered into force 4 January 1969) art 5 (*ICERD*); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (*ICESCR*); *Convention on the Elimination of All Forms*



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of *Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9 (*CEDAW*); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 2, 7 (*CRC*); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 18 (*CRPD*); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 29 (*ICPRMW*).

<sup>36</sup> See Appendix 1 for ratification status of relevant treaties across the Pacific.

<sup>37</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) (*Refugee Convention*); *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (*1967 Protocol*). See Appendix 1 for ratification status.

<sup>38</sup> United Nations High Commissioner for Refugees, *Guidelines on Statelessness No 5: Loss and Deprivation of Nationality under Articles 5–9 of the 1961 Convention on the Reduction of Statelessness* (Guidelines, May 2020) 3 <<https://www.refworld.org/docid/5ec5640c4.html>> (*Guidelines on Statelessness No 5*).

<sup>39</sup> See Matthew Seet, 'The Origins of UNHCR's Global Mandate on Statelessness' (2016) 28(1) *International Journal of Refugee Law* 7.

<sup>40</sup> United Nations High Commissioner for Refugees, *Global Action Plan to End Statelessness: 2014–2024* (Action Plan, 2014) (*Global Action Plan*).

<sup>41</sup> Jane McAdam, 'Displacement in the context of Climate Change and Disasters' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, 2021) 832.

<sup>42</sup> United Nations High Commissioner for Refugees, *Guidelines on Statelessness No 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness* (Guidelines, 21 December 2012) 12 <<https://www.refworld.org/docid/50d460c72.html>>.

<sup>43</sup> *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 77; *Constitution of Tuvalu 1986* (Tuvalu) s 43.

<sup>44</sup> *Citizenship Act 2009* (Fiji) s 7; *British Nationality Act 1981* (UK) s 1(2).

<sup>45</sup> 8 USC § 1401(f) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam); 8 USC § 1408(3) (Supp 2020) (American Samoa).

<sup>46</sup> *Citizenship Act 1977* (NZ) s 6(i).

<sup>47</sup> *Code Civil* [Civil Code] (France) art 19.

<sup>48</sup> Peter McMullin Centre on Statelessness, 'An Overview of Statelessness' (Fact Sheet, September 2020) 1.

<sup>49</sup> Dziedzic (n 23) 11–17.

<sup>50</sup> Gregor Novak, 'Overseas Territories, Australia, France, Netherlands, New Zealand, United Kingdom, United States of America' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, online at 13 January 2022).

<sup>51</sup> *1954 Convention* (n 1) art 1.

<sup>52</sup> Héléne Lambert, 'Stateless Refugees' in Costello, Foster and McAdam (n 41) 797.

<sup>53</sup> Peter McMullin Centre on Statelessness (n 48) 1.

<sup>54</sup> *Citizenship Act 2008* (Tuvalu) s 7.

<sup>55</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 3.

<sup>56</sup> 8 USC § 1481 (Supp 2020).

<sup>57</sup> *Vance v Terrazas*, 444 US 252 (1980).

<sup>58</sup> Peter J Spiro, *Report on Citizenship Law: United States of America* (EUDO Citizenship Observatory, July 2015) 9.

<sup>59</sup> For further detail, see Dziedzic (n 23) 2–3.

<sup>60</sup> Tonga, while never officially ceding sovereignty, became a British protectorate in 1900. It gained full independence in 1970.

<sup>61</sup> Burson, Bedford and Bedford (n 10).

<sup>62</sup> Other intergovernmental arrangements that influence mobility in the Pacific, but do not have direct citizenship ramifications, include labour schemes between Australia and Pacific countries, and between the Melanesian Spearhead Group consisting of Fiji, Papua New Guinea, the Solomon Islands and Vanuatu: see *ibid* 40.

<sup>63</sup> This initially broad right of entry and work as a 'non-immigrant' was curtailed slightly in re-negotiations of the Compacts in the early 2000s. The changes allowed some provisions of US immigration law to apply to those who entered the US under a Compact, such as that which empowers the US government to remove migrants who are not financially self-supporting. See Burson and Bedford (n 10) 30.

<sup>64</sup> *Code Civil* [Civil Code] (France) art 17-4.

<sup>65</sup> *Loi organique n° 2004-192 du 27 février 2004 portant statut d'autonomie de la Polynésie française* [Organic Law No 2004-192 of 27 February 2004 on the Status of the Autonomy of French Polynesia] (France) JO, 2 March 2004, 0052.

<sup>66</sup> Though note, the result of the 2021 referendum was marred by some controversy. Under 44% of Nouvelle Calédonie's eligible voters participated in the referendum. Many of the indigenous Kanak people, who are largely in favour of independence, abstained as an act of mourning following a spate of deaths in that community from COVID-19. The French government had resisted calls from the Kanak community to postpone the vote. See 'New Caledonia Votes "No" to Independence from France in Third Referendum', *Australian Broadcasting Corporation* (online, 13 December 2021) <<https://www.abc.net.au/news/2021-12-13/new-caledonia-votes-no-to-independence-from-france/100694496>>.

<sup>67</sup> *Citizenship Act 1977* (NZ) ss 2(1), 6(1).

<sup>68</sup> *The Constitution of the Cook Islands 1964* (Cook Islands) ss 27, 46; *The Constitution of Niue 1974* (Niue) ss 28, 36.

<sup>69</sup> *British Nationality Act 1981* (UK) ss 1–2.

<sup>70</sup> *Constitution of Pitcairn 2014* (UK) s 22(2).

<sup>71</sup> 8 USC § 1101(a)(38) (Supp 2020).

<sup>72</sup> *Ibid* § 1101(a)(29) (Supp 2020).

<sup>73</sup> *Fitisemanu v United States of America*, 1 F 4th 862 (10<sup>th</sup> Cir, 2021).

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<sup>74</sup> 'Civil Rights Groups Send Letter Asking the Justice Department to Reject the "Insular Cases"', *NAACP Legal Defense and Educational Fund* (online, 10 February 2022) <<https://www.naacpldf.org/news/civil-rights-groups-send-letter-asking-the-justice-department-to-reject-the-insular-cases/>>.

<sup>75</sup> See, eg, Burson and Bedford (n 10); Burson, Bedford and Bedford (n 10). These reports were commissioned by Nansen Initiative and its successor, the Platform on Disaster Displacement, but do not represent the views of those bodies.

<sup>76</sup> Burson and Bedford (n 10) 8.

<sup>77</sup> "'To Fail to Plan is to Plan to Fail": Human Mobility, Disasters and Climate Change at the SIDS Conference', *Platform on Disaster Displacement* (online, 2 September 2014) <<https://disasterdisplacement.org/to-fail-to-plan-is-to-plan-to-fail-human-mobility-disasters-and-climate-change-at-the-sids-conference>>. This quotation is attributable to Henry Puna, former Prime Minister of the Cook Islands.

<sup>78</sup> International Organization for Migration (n 27). This quotation is attributable to Simon Kofe, Foreign Minister of Tuvalu.

<sup>79</sup> 'Enhancing Protection and Empowerment of Migrants and Communities' (n 11).

<sup>80</sup> Fiji, French Polynesia (territorial application extended by France), Kiribati, Nouvelle Calédonie (territorial application extended by France), the Pitcairn Islands (the UK did not extend application of the treaty to the Pitcairn Islands, but UK citizenship law applies there) and Wallis et Futuna (territorial application initially extended by France). Note that, just before ratifying the *1954 Convention*, France explicitly extended its application to French Polynesia and Nouvelle Calédonie and its dependencies. Wallis et Futuna was a dependency of Nouvelle Calédonie at this time, before becoming an overseas collectivity of France in its own right.

<sup>81</sup> The Cook Islands (the Cook Islands is not a party to the *1961 Convention*, but New Zealand citizenship law applies there), Kiribati, New Zealand, Niue (Niue is not a party to the *1961 Convention*, but New Zealand citizenship law applies there), the Pitcairn Islands (the UK did not extend application of the treaty to the Pitcairn Islands, but UK citizenship law applies there) and Tokelau (Tokelau is not a party to the *1961 Convention*, but New Zealand citizenship law applies there).

<sup>82</sup> The following States have not ratified the statelessness treaties, nor do they otherwise apply: American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, Nauru, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

<sup>83</sup> *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 18 (VCLT).

<sup>84</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 28.

<sup>85</sup> VCLT (n 83) art 18. This is notwithstanding article 4 (no retrospective effect), since the VCLT codifies customary international law: *Case concerning Kasikili/Sedudu Island (Botswana v Namibia) (Judgment)* [1999] ICJ Report 1045.

<sup>86</sup> The Federated States of Micronesia, Palau, the Solomon Islands, Tonga and Vanuatu.

<sup>87</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, Fiji, French Polynesia, Guam, Kiribati, the Marshall Islands, Nauru, New Zealand, Niue, Nouvelle Calédonie, the Pitcairn Islands, Tokelau, Tuvalu and Wallis et Futuna.

<sup>88</sup> Papua New Guinea and Samoa.

<sup>89</sup> *1961 Convention* (n 34) art 1.

<sup>90</sup> CRC (n 35) arts 3(1), 7(1).

<sup>91</sup> ICCPR (n 35) art 24(3).

<sup>92</sup> UDHR (n 35) art 15.

<sup>93</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 11.

<sup>94</sup> *Constitution of the Federated States of Micronesia 1978* (Federated States of Micronesia) s 2; *Constitution of Palau 1979* (Palau) art III s 4; *Constitution of Solomon Islands 1978* (Solomon Islands) s 22; *Nationality Act 1915* (Tonga) s 2; *Constitution of Vanuatu 1980* (Vanuatu) s 11.

<sup>95</sup> 8 USC § 1408(1) (Supp 2020) (American Samoa); 8 USC § 1401(a) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam); *Citizenship of Fiji Act 2009* (Fiji) s 6; *Constitution of Kiribati 1979* (Kiribati) s 25(1); *Constitution of Tuvalu 1986* (Tuvalu) s 45.

<sup>96</sup> *Citizenship Act 1977* (NZ) s 6(3)(a).

<sup>97</sup> *Code Civil* [Civil Code] (France) art 19-1.

<sup>98</sup> *British Nationality Act 1981* (UK) sch 2 s 2.

<sup>99</sup> *Ibid* sch 2 s 3.

<sup>100</sup> *Constitution of Nauru 1968* (Nauru) s 73; *Constitution of the Marshall Islands 1978* (Marshall Islands) art XI s 1(2)(b).

<sup>101</sup> *Citizenship Act 2004* (Samoa) s 6(3).

<sup>102</sup> *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 77(2).

<sup>103</sup> The Federated States of Micronesia, French Polynesia, the Marshall Islands, Nauru, Nouvelle Calédonie, Palau, Papua New Guinea, the Solomon Islands, Tonga, Tuvalu, Vanuatu and Wallis et Futuna.

<sup>104</sup> Fiji and Papua New Guinea.

<sup>105</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and Samoa.

<sup>106</sup> Fiji.

<sup>107</sup> The Cook Islands, New Zealand, Niue, the Pitcairn Islands, Samoa and Tokelau.

<sup>108</sup> *1961 Convention* (n 34) art 4(1).

<sup>109</sup> *Ibid*.

<sup>110</sup> *1961 Convention* (n 34) art 4(2).

<sup>111</sup> United Nations Human Rights Committee, *CCPR General Comment No 17: Article 24 (Rights of the Child)*, 35<sup>th</sup> sess (7 April 1989) para 8 <<https://www.refworld.org/docid/45139b464.html>>.

<sup>112</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 11.

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- <sup>113</sup> *Constitution of the Federated States of Micronesia 1978* (Federated States of Micronesia) s 2; *Constitution of the Marshall Islands 1978* (Marshall Islands) art XI s 1(2)(a); *Constitution of the Republic of Palau 1980* (Palau) art III s 4; *Constitution of Solomon Islands 1978* (Solomon Islands) s 22; *Constitution of Vanuatu 1980* (Vanuatu) s 11.
- <sup>114</sup> 8 USC § 1401(g), 1408(2), (4) (Supp 2020) (American Samoa); 8 USC § 1401(c)–(e), (g) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam); *Citizenship Act 2004* (Samoa) s 7(1)(b).
- <sup>115</sup> *Citizenship of Fiji Act 2009* (Fiji) ss 8(1), (5).
- <sup>116</sup> *Citizenship Act 1977* (NZ) s 7 (the Cook Islands, New Zealand, Niue and Tokelau); *British Nationality Act 1981* (UK) s 2(1)(a) (the Pitcairn Islands); *Citizenship Act 2004* (Samoa) s 7(1)(a).
- <sup>117</sup> *Constitution of Kiribati 1979* (Kiribati) s 25(2).
- <sup>118</sup> For details, see 8 USC § 1401(g), 1408(2), (4) (Supp 2020) (American Samoa); 8 USC § 1401(c)–(e),(g) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam).
- <sup>119</sup> 8 USC § 1408(2) (Supp 2020).
- <sup>120</sup> 8 USC § 1408(4) (Supp 2020).
- <sup>121</sup> 8 USC § 1401(c) (Supp 2020).
- <sup>122</sup> *1961 Convention* (n 34) art 4(1).
- <sup>123</sup> The Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Palau, Samoa, the Solomon Islands, Tonga and Vanuatu.
- <sup>124</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, Fiji, French Polynesia, Guam, New Zealand, Niue, Nouvelle Calédonie, Papua New Guinea, the Pitcairn Islands, Tokelau, Tuvalu and Wallis et Futuna.
- <sup>125</sup> *1961 Convention* (n 34) art 2.
- <sup>126</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 11.
- <sup>127</sup> 8 USC § 1408(3) (Supp 2020) (American Samoa); *Citizenship Act 1977* (NZ) s 6(3)(b) (the Cook Islands, New Zealand, Niue and Tokelau); *Citizenship of Fiji Act 2009* (Fiji) s 7; 8 USC § 1401(f) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam); *Code Civil* [Civil Code] (France) art 19 (French Polynesia, Nouvelle Calédonie and Wallis et Futuna); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 77(1); *British Nationality Act 1981* (UK) s 1(2); *Constitution of Tuvalu 1986* (Tuvalu) s 43(2).
- <sup>128</sup> *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 77(1).
- <sup>129</sup> 8 USC § 1408(3) (Supp 2020) (American Samoa); 8 USC § 1401(f) (Supp 2020) (the Commonwealth of the Northern Mariana Islands and Guam).
- <sup>130</sup> Kiribati and Tuvalu.
- <sup>131</sup> *1961 Convention* (n 34) art 9.
- <sup>132</sup> CEDAW (n 35) art 9(1).
- <sup>133</sup> *Ibid* art 3.
- <sup>134</sup> *ICCPR* (n 35) art 26.
- <sup>135</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 14.
- <sup>136</sup> Dziedzic (n 23) 28. Dziedzic provides a thorough account of this history.
- <sup>137</sup> *Constitution of Kiribati 1979* (Kiribati) ss 25(1)(a)–(b); *Constitution of Tuvalu 1986* (Tuvalu) s 45(2).
- <sup>138</sup> *Citizenship of Fiji Decree 2009* (Fiji) s 6.
- <sup>139</sup> *Constitution of Kiribati 1979* (Kiribati) s 25(2).
- <sup>140</sup> *Ibid* s 26.
- <sup>141</sup> *Ibid* s 29(1)(a).
- <sup>142</sup> *Ibid* s 25(1).
- <sup>143</sup> Kiribati and Tuvalu.
- <sup>144</sup> *UDHR* (n 35) art 15(2).
- <sup>145</sup> *1961 Convention* (n 34) art 9.
- <sup>146</sup> *ICCPR* (n 35) art 26.
- <sup>147</sup> *CRC* (n 35) art 2(2).
- <sup>148</sup> *ICERD* (n 35) art 5(d)(iii).
- <sup>149</sup> *CRPD* (n 35) art 18(1)(a).
- <sup>150</sup> *Anudo v Tanzania (Judgment)* (African Court on Human and Peoples' Rights, App No 012/2015, 22 March 2018) paras 76–79.
- <sup>151</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 25.
- <sup>152</sup> *Ibid* 28.
- <sup>153</sup> *Ibid*.
- <sup>154</sup> United Nations High Commissioner for Refugees, *Global Action Plan* (n 40) 16.
- <sup>155</sup> *Constitution of Kiribati 1979* (Kiribati) s 29(1)(a).
- <sup>156</sup> *Citizenship Act 1979* (Kiribati) ss 8A(1)–(2).
- <sup>157</sup> *Ibid* s 8A(4).
- <sup>158</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 28.
- <sup>159</sup> *Citizenship Act 2008* (Tuvalu) s 7(2).
- <sup>160</sup> *Ibid* s 7(3).
- <sup>161</sup> *Ibid* s 4(2).
- <sup>162</sup> The Federated States of Micronesia and the Marshall Islands.
- <sup>163</sup> Kiribati, Papua New Guinea and Vanuatu.
- <sup>164</sup> Peter J Spiro, 'Multiple Nationality' in Wolfrum (n 50) paras 3–4.
- <sup>165</sup> *European Convention on Nationality*, opened for signature 6 November 1997, ETS No 166 (entered into force 1 March 2000) arts 14–17.

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- <sup>166</sup> Dziedzic (n 23) 22.
- <sup>167</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 203.
- <sup>168</sup> *Ibid.*
- <sup>169</sup> *Ibid* § 206.
- <sup>170</sup> Thomas Heaton, 'Micronesia Debates Changing Constitution to Allow Dual Citizenship', *Honolulu Civil Beat* (online, 16 November 2021) <<https://www.civilbeat.org/2021/11/micronesia-debates-changing-constitution-to-allow-dual-citizenship>>.
- <sup>171</sup> *Citizenship Act 1984* (Marshall Islands) tit 43 ch 4 § 408.
- <sup>172</sup> *Ibid* §§ 406, 411.
- <sup>173</sup> *Constitution of Kiribati 1979* (Kiribati) s 29(1)(a).
- <sup>174</sup> *Citizenship Act 1979* (Kiribati) s 8(1)(a).
- <sup>175</sup> See Jane McAdam, "'Under Two Jurisdictions': Immigration, Citizenship, and Self-Governance in Cross-Border Community Relocations' (2016) 34(2) *Law and History Review* 281.
- <sup>176</sup> Additionally, if a child obtains dual citizenship at birth by operation of another country's laws, they must apply to have the dual citizenship registered, or lose their Papua New Guinea citizenship upon turning 19.
- <sup>177</sup> *Constitution of the Republic of Vanuatu 1980* (Vanuatu) s 13; *Citizenship Act 1980* (Vanuatu) s 13A.
- <sup>178</sup> *Citizenship Act 1980* (Vanuatu) ss 14(1)(b), (4).
- <sup>179</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia and Guam.
- <sup>180</sup> Kiribati, the Marshall Islands, Nauru, Papua New Guinea, the Solomon Islands, Tuvalu and Vanuatu.
- <sup>181</sup> The Cook Islands, Fiji, French Polynesia, New Zealand, Niue, Nouvelle Calédonie, the Pitcairn Islands, Samoa, Tokelau and Wallis et Futuna.
- <sup>182</sup> Palau and Tonga.
- <sup>183</sup> *1961 Convention* (n 34) art 7(1)(a).
- <sup>184</sup> *Ibid* art 7(1)(b), referring to the principle stated in *UDHR* (n 35) art 13.
- <sup>185</sup> *1961 Convention* (n 34) art 7(1)(b), referring to the principle stated in *UDHR* (n 35) art 14.
- <sup>186</sup> 8 USC § 1481(a)(6) (Supp 2020) (American Samoa, the Commonwealth of the Northern Mariana Islands and Guam); *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(e).
- <sup>187</sup> *Naoero Citizenship Act 2017* (Nauru) s 22(3); *Citizenship Act 2018* (Solomon Islands) s 23.
- <sup>188</sup> *Citizenship Act 1979* (Kiribati) s 9(1); *Citizenship Act 1984* (Marshall Islands) tit 43 ch 4 § 408; *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 72; *Citizenship Act 2008* (Tuvalu) s 8; *Citizenship Act 1980* (Vanuatu) s 17.
- <sup>189</sup> *Citizenship Act 1979* (Kiribati) s 9(1); *Citizenship Act 1984* (Marshall Islands) tit 43 ch 4 § 408; *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 72; *Citizenship Act 2008* (Tuvalu) s 8; *Citizenship Act 1980* (Vanuatu) s 17.
- <sup>190</sup> *Citizenship Act 2018* (Solomon Islands) ss 21–23.
- <sup>191</sup> *British Nationality Act 1981* (UK) s 12(3); *Citizenship Act 2004* (Samoa) s 14(3).
- <sup>192</sup> *Code Civil* [Civil Code] (France) arts 20–2–20–3; *Citizenship Act 1977* (NZ) s 15 (the Cook Islands, New Zealand, Niue and Tokelau).
- <sup>193</sup> *Citizenship Act 2004* (Samoa) s 14(3).
- <sup>194</sup> The Federated States of Micronesia, Kiribati, Nauru, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.
- <sup>195</sup> *1961 Convention* (n 34) arts 7(3), 7(6), 8(1).
- <sup>196</sup> *Ibid* art 7(4).
- <sup>197</sup> *Ibid* art 7(5).
- <sup>198</sup> *Ibid* art 8(2)(b).
- <sup>199</sup> *Ibid* art 8(3)(a)(i).
- <sup>200</sup> *Ibid* art 8(3)(a)(ii).
- <sup>201</sup> *Ibid* art 8(3)(b).
- <sup>202</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 29.
- <sup>203</sup> Nauru, Samoa and Tuvalu.
- <sup>204</sup> *1961 Convention* (n 34) art 7(3).
- <sup>205</sup> *Ibid* art 7(4).
- <sup>206</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 13.
- <sup>207</sup> *Naoero Citizenship Act 2017* (Nauru) ss 23(2)(b), (5).
- <sup>208</sup> *Citizenship Act 2004* (Samoa) s 16(a).
- <sup>209</sup> *Citizenship Act 2008* (Tuvalu) ss 6(4)(b)–(c), (f), 7(2).
- <sup>210</sup> Each of these countries currently permits citizens living overseas to vote (see section 7 Migration and voting rights).
- <sup>211</sup> Samoa.
- <sup>212</sup> *1961 Convention* (n 34) art 8(2)(b).
- <sup>213</sup> United Nations High Commissioner for Refugees, *Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation of Nationality* (Summary Conclusions, March 2014) 12–13 (*Summary Conclusions of Expert Meeting on Statelessness*).
- <sup>214</sup> As recommended by the United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 16.
- <sup>215</sup> *Citizenship Act 1977* (NZ) ss 17(2)–(3). Under this law, only those who obtain citizenship by intentional deception face potential statelessness.
- <sup>216</sup> *Citizenship Act 2004* (Samoa) s 17.

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- <sup>217</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 205(2).
- <sup>218</sup> *Code Civil* [Civil Code] (France) art 26-4 (French Polynesia, Nouvelle Calédonie and Wallis et Futuna).
- <sup>219</sup> *Citizenship Act 1979* (Kiribati) s 8(2); *Citizenship Act 2018* (Solomon Islands) s 25(1); *Citizenship Act 2008* (Tuvalu) s 7(1); *Citizenship Act 1980* (Vanuatu) s 14(2). These laws are in line with recommendations from the United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 16.
- <sup>220</sup> *Citizenship Act 1979* (Kiribati) s 8(2); *Citizenship Act 2008* (Tuvalu) s 7(1); *Citizenship Act 1980* (Vanuatu) s 14(2). These laws are in line with recommendations from the United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 16.
- <sup>221</sup> *Citizenship Act 2018* (Solomon Islands) s 25(1).
- <sup>222</sup> *Naoero Citizenship Act 2017* (Nauru) ss 23(1)(a)–(d).
- <sup>223</sup> The Federated States of Micronesia, French Polynesia, Kiribati, Nouvelle Calédonie, Papua New Guinea, the Solomon Islands, Vanuatu and Wallis et Futuna.
- <sup>224</sup> *1961 Convention* (n 34) art 8(3)(a)(i).
- <sup>225</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 18.
- <sup>226</sup> *Ibid* 17.
- <sup>227</sup> *Ibid* 28.
- <sup>228</sup> *Ibid* 29.
- <sup>229</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(c); *Code Civil* [Civil Code] (France) art 23-8 (French Polynesia, Nouvelle Calédonie and Wallis et Futuna); *Citizenship Act 1979* (Kiribati) s 8(1)(e); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(e); *Citizenship Act 2018* (Solomon Islands) s 25(2); *Citizenship Act 1980* (Vanuatu) s 14(1)(c).
- <sup>230</sup> Note that the position may be ambiguous under French law. If a person can lose their nationality for serving in the armed forces of another country, with no mention of possible statelessness (see *Code Civil* [Civil Code] (France) art 23-8), statelessness cannot result from deprivation of nationality where a person has acted for the benefit of another State in ways that are incompatible with being a French citizen (which arguably captures service in foreign armed forces): see *Code Civil* [Civil Code] (France) art 25.
- <sup>231</sup> Subject to the caveat in n 230.
- <sup>232</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Marshall Islands, Nauru, the Pitcairn Islands and Tonga.
- <sup>233</sup> Nauru, the Solomon Islands and Tonga.
- <sup>234</sup> *1961 Convention* (n 34) art 8(3)(a)(ii).
- <sup>235</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 17.
- <sup>236</sup> *Ibid* 28.
- <sup>237</sup> *Ibid* 29.
- <sup>238</sup> United Nations High Commissioner for Refugees, *Summary Conclusions of Expert Meeting on Statelessness* (n 213) 14.
- <sup>239</sup> *Ibid*.
- <sup>240</sup> *Nationality Act 1915* (Tonga) ss 12(2)(a)–(f).
- <sup>241</sup> *Ibid* s 12(3).
- <sup>242</sup> *Naoero Citizenship Act 2017* (Nauru) s 23(2)(a).
- <sup>243</sup> *Ibid* s 23(5).
- <sup>244</sup> *Counter Terrorism Act 2009* (Solomon Islands).
- <sup>245</sup> *Citizenship Act 2018* (Solomon Islands) s 25(4)(b).
- <sup>246</sup> *British Nationality Act 1981* (UK) s 40(4)(c).
- <sup>247</sup> *Citizenship Act 1977* (NZ) s 16(a).
- <sup>248</sup> *Code Civil* [Civil Code] (France) art 25-1.
- <sup>249</sup> *Ibid*.
- <sup>250</sup> The Federated States of Micronesia, Fiji, Kiribati, Papua New Guinea and Vanuatu.
- <sup>251</sup> Kiribati and Papua New Guinea.
- <sup>252</sup> The Federated States of Micronesia, Kiribati, Papua New Guinea and Vanuatu.
- <sup>253</sup> *1961 Convention* (n 34) art 8(3)(b).
- <sup>254</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 17.
- <sup>255</sup> *Ibid* 28.
- <sup>256</sup> *Ibid* 29.
- <sup>257</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(b); *Citizenship Act 1979* (Kiribati) s 8(1)(c); *Constitution of Papua New Guinea 1975* (Papua New Guinea) ss 64, 70(1)(c); *Citizenship Act 1980* (Vanuatu) ss 14(1)(a), (3).
- <sup>258</sup> *Constitution of Kiribati 1979* (Kiribati) s 29(1)(a).
- <sup>259</sup> *Citizenship of Fiji Decree 2009* (Fiji) s 17.
- <sup>260</sup> *Citizenship Act 1979* (Kiribati) s 8(1)(f); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(b).
- <sup>261</sup> *Citizenship Act 1979* (Kiribati) s 8(1)(b); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(f).
- <sup>262</sup> *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 64.
- <sup>263</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(d).
- <sup>264</sup> *Citizenship Act 1980* (Vanuatu) s 14(1)(d).
- <sup>265</sup> The Cook Islands, French Polynesia, New Zealand, Niue, Nouvelle Calédonie, Tokelau and Wallis et Futuna.
- <sup>266</sup> *1954 Convention* (n 1) art 32.
- <sup>267</sup> Dziedzic (n 23) 11.
- <sup>268</sup> *Ibid*.
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- <sup>217</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 205(2).
- <sup>218</sup> *Code Civil* [Civil Code] (France) art 26-4 (French Polynesia, Nouvelle Calédonie and Wallis et Futuna).
- <sup>219</sup> *Citizenship Act 1979* (Kiribati) s 8(2); *Citizenship Act 2018* (Solomon Islands) s 25(1); *Citizenship Act 2008* (Tuvalu) s 7(1); *Citizenship Act 1980* (Vanuatu) s 14(2). These laws are in line with recommendations from the United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 16.
- <sup>220</sup> *Citizenship Act 1979* (Kiribati) s 8(2); *Citizenship Act 2008* (Tuvalu) s 7(1); *Citizenship Act 1980* (Vanuatu) s 14(2). These laws are in line with recommendations from the United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 16.
- <sup>221</sup> *Citizenship Act 2018* (Solomon Islands) s 25(1).
- <sup>222</sup> *Naoero Citizenship Act 2017* (Nauru) ss 23(1)(a)–(d).
- <sup>223</sup> The Federated States of Micronesia, French Polynesia, Kiribati, Nouvelle Calédonie, Papua New Guinea, the Solomon Islands, Vanuatu and Wallis et Futuna.
- <sup>224</sup> *1961 Convention* (n 34) art 8(3)(a)(i).
- <sup>225</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 18.
- <sup>226</sup> *Ibid* 17.
- <sup>227</sup> *Ibid* 28.
- <sup>228</sup> *Ibid* 29.
- <sup>229</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(c); *Code Civil* [Civil Code] (France) art 23-8 (French Polynesia, Nouvelle Calédonie and Wallis et Futuna); *Citizenship Act 1979* (Kiribati) s 8(1)(e); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(e); *Citizenship Act 2018* (Solomon Islands) s 25(2); *Citizenship Act 1980* (Vanuatu) s 14(1)(c).
- <sup>230</sup> Note that the position may be ambiguous under French law. If a person can lose their nationality for serving in the armed forces of another country, with no mention of possible statelessness (see *Code Civil* [Civil Code] (France) art 23-8), statelessness cannot result from deprivation of nationality where a person has acted for the benefit of another State in ways that are incompatible with being a French citizen (which arguably captures service in foreign armed forces): see *Code Civil* [Civil Code] (France) art 25.
- <sup>231</sup> Subject to the caveat in n 230.
- <sup>232</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Marshall Islands, Nauru, the Pitcairn Islands and Tonga.
- <sup>233</sup> Nauru, the Solomon Islands and Tonga.
- <sup>234</sup> *1961 Convention* (n 34) art 8(3)(a)(ii).
- <sup>235</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 17.
- <sup>236</sup> *Ibid* 28.
- <sup>237</sup> *Ibid* 29.
- <sup>238</sup> United Nations High Commissioner for Refugees, *Summary Conclusions of Expert Meeting on Statelessness* (n 213) 14.
- <sup>239</sup> *Ibid*.
- <sup>240</sup> *Nationality Act 1915* (Tonga) ss 12(2)(a)–(f).
- <sup>241</sup> *Ibid* s 12(3).
- <sup>242</sup> *Naoero Citizenship Act 2017* (Nauru) s 23(2)(a).
- <sup>243</sup> *Ibid* s 23(5).
- <sup>244</sup> *Counter Terrorism Act 2009* (Solomon Islands).
- <sup>245</sup> *Citizenship Act 2018* (Solomon Islands) s 25(4)(b).
- <sup>246</sup> *British Nationality Act 1981* (UK) s 40(4)(c).
- <sup>247</sup> *Citizenship Act 1977* (NZ) s 16(a).
- <sup>248</sup> *Code Civil* [Civil Code] (France) art 25-1.
- <sup>249</sup> *Ibid*.
- <sup>250</sup> The Federated States of Micronesia, Fiji, Kiribati, Papua New Guinea and Vanuatu.
- <sup>251</sup> Kiribati and Papua New Guinea.
- <sup>252</sup> The Federated States of Micronesia, Kiribati, Papua New Guinea and Vanuatu.
- <sup>253</sup> *1961 Convention* (n 34) art 8(3)(b).
- <sup>254</sup> United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 5' (n 38) 17.
- <sup>255</sup> *Ibid* 28.
- <sup>256</sup> *Ibid* 29.
- <sup>257</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(b); *Citizenship Act 1979* (Kiribati) s 8(1)(c); *Constitution of Papua New Guinea 1975* (Papua New Guinea) ss 64, 70(1)(c); *Citizenship Act 1980* (Vanuatu) ss 14(1)(a), (3).
- <sup>258</sup> *Constitution of Kiribati 1979* (Kiribati) s 29(1)(a).
- <sup>259</sup> *Citizenship of Fiji Decree 2009* (Fiji) s 17.
- <sup>260</sup> *Citizenship Act 1979* (Kiribati) s 8(1)(f); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(b).
- <sup>261</sup> *Citizenship Act 1979* (Kiribati) s 8(1)(b); *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 70(1)(f).
- <sup>262</sup> *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 64.
- <sup>263</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 7 ch 2 § 206(1)(d).
- <sup>264</sup> *Citizenship Act 1980* (Vanuatu) s 14(1)(d).
- <sup>265</sup> The Cook Islands, French Polynesia, New Zealand, Niue, Nouvelle Calédonie, Tokelau and Wallis et Futuna.
- <sup>266</sup> *1954 Convention* (n 1) art 32.
- <sup>267</sup> Dziedzic (n 23) 11.
- <sup>268</sup> *Ibid*.

- <sup>269</sup> See Gregory Rawlings, 'Statelessness, Human Rights and Decolonisation: Citizenship in Vanuatu 1906–80' (2012) 47(1) *Journal of Pacific History* 45.
- <sup>270</sup> *Citizenship Act 1977* (NZ) ss 9(1)(d), (2).
- <sup>271</sup> *Code Civil* [Civil Code] (France) art 21-24-1.
- <sup>272</sup> While almost all countries only permit citizens to vote, this is not always the case. For example, New Zealand allows non-citizens who are permanent residents to vote if they satisfy certain residence requirements: see *Electoral Act 1993* (NZ) ss 74(1)(a)(ii), 80(1)(b).
- <sup>273</sup> Although note that French citizens in Nouvelle Calédonie (and all French territories) are eligible to vote in French elections; compare this arrangement to New Zealand citizens who reside in the Cook Islands, Niue and Tokelau, who are not automatically eligible to vote in New Zealand's elections – they must satisfy New Zealand's residence requirements to do so.
- <sup>274</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, the Federated States of Micronesia, Guam, Kiribati, New Zealand, Niue, Nouvelle Calédonie, Palau, Papua New Guinea, the Pitcairn Islands, the Solomon Islands, Tokelau and Tonga.
- <sup>275</sup> Fiji, French Polynesia, the Marshall Islands, Nauru, Samoa, Tuvalu, Vanuatu and Wallis et Futuna.
- <sup>276</sup> The Federated States of Micronesia, the Marshall Islands, Papua New Guinea, the Solomon Islands, Tonga and Vanuatu.
- <sup>277</sup> Samoa and Tonga.
- <sup>278</sup> American Samoa, the Commonwealth of the Northern Mariana Islands, the Cook Islands, Guam, Kiribati, New Zealand, Niue, Nouvelle Calédonie, Palau, the Pitcairn Islands and Tokelau.
- <sup>279</sup> Distinctions mentioned in art 2 are 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status': *ICCPR* (n 35) art 2.
- <sup>280</sup> *ICCPR* (n 35) art 25.
- <sup>281</sup> *Federated States of Micronesia Code 2014* (Federated States of Micronesia) tit 9 ch 1 § 103; *Constitution of Papua New Guinea 1975* (Papua New Guinea) s 50(1); *Electoral Law (National Elections) Regulation 2007* (Papua New Guinea) s 24; *Constitution of the Solomon Islands 1978* (Solomon Islands) s 55; *Electoral Act 2018* (Solomon Islands) s 4; *Constitution of Tonga* (Tonga, 2020 rev ed) cl 64; *Electoral Act 1989* (Tonga) s 4.
- <sup>282</sup> Vanuatu establishes voting registration for citizens living overseas who are over 18. Dual citizens who obtain citizenship by investment cannot vote (unless they are also indigenous ni-Vanuatu). People who obtain dual citizenship by naturalisation may vote.
- <sup>283</sup> *Constitution of American Samoa 1967* (Samoa) art 2 s 7; *Constitution of the Commonwealth of the Northern Mariana Islands 1978* (Northern Mariana Islands) art VII s 1; *Commonwealth of the Northern Mariana Islands Code* (Northern Mariana Islands) tit 1 div 6 § 6201; *The Constitution of the Cook Islands 1964* (Cook Islands) s 28; *Guam Code 2020* (Guam) tit 3 ch 3 § 3101, ch 9 § 9123–4; *Constitution of Kiribati 1979* (Kiribati) s 64; *Electoral Act 1993* (NZ) ss 74, 80; *Niue Assembly Act 1966* (Niue) ss 12(1)–(2); *Code électorale* [Electoral Code] (France) arts L1–L6, L388; *Loi n° 99-209 organique du 19 mars 1999 relative à la Nouvelle-Calédonie* [Organic Law No 99-209 of 19 March 1999 relating to Nouvelle Calédonie] (Nouvelle Calédonie) ch II art 188; *Voting Rights Act 1981* (Palau) § 1401; *Local Government Ordinance* (Pitcairn Islands, 2015 rev ed) pt 3 s 11; *National Election Rules 2013* (Tokelau) s 3.
- <sup>284</sup> *Constitution of Fiji 2013* (Fiji) s 55; *Code électorale* [Electoral Code] (France) arts L1–L6, L388; *Loi organique n° 2004-192 du 27 février 2004 portant statut d'autonomie de la Polynésie française* [Organic Law No 2004-192 of 27 February 2004 on the Status of Autonomy of French Polynesia] (French Polynesia) art 105; *Code électorale* [Electoral Code] (France) arts L1–L6, L388; *Constitution of the Marshall Islands 1979* (Marshall Islands) art IV s 3; *Constitution of Nauru 1968* (Nauru) art 29; *Electoral Act 2019* (Samoa) s 14; *Constitution of Tuvalu 1986* (Tuvalu) s 91; *Electoral Provisions (Parliament) Act 2008* (Tuvalu) s 5; *Representation of the People Act 1982* (Vanuatu) ch 146 s 11; *Loi n° 61-814 du 29 juillet 1961 conférant aux îles Wallis et Futuna le statut de territoire d'outre-mer* [Law No 61-814 of 29 July 1961 Conferring on the Wallis and Futuna Islands the Status of Overseas Territory] (France) art 13.
- <sup>285</sup> *Code électorale* [Electoral Code] (France) arts L1–L14, L388.
- <sup>286</sup> *Electoral Provisions (Parliament) Act 2008* (Tuvalu) s 5(3).
- <sup>287</sup> For example, Ministry of Economy (Fiji), *Fiji Planned Relocation Guidelines* (n 8).
- <sup>288</sup> Fiji has established a trust fund for this purpose: see *Climate Relocation of Communities Trust Fund Act 2019* (Fiji).
- <sup>289</sup> See, eg, Tuvalu's plan to digitise its government, which states that '[a]lthough Tuvalu stands against relocation as a solution to the climate crisis, in a future scenario that mass migration becomes necessary, digitized Government services would ensure that Tuvalu could ostensibly shift to another location and continue to fully function as a sovereign nation': Government of Tuvalu, *Future Now Project (Te Ataao Nei Project)* (Policy Document, 2021) 2 <<https://drive.google.com/file/d/1F8Ksc99AsokFJRChQS7lluCiciC-ftny/view>>.
- <sup>290</sup> 'List of Former Trust and Non-Self-Governing Territories', *United Nations: The United Nations and Decolonization* (Web Page, 2021) <<https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts/>>; 'Non-Self-Governing Territories', *United Nations: The United Nations and Decolonization* (Web Page, 2021) <<https://www.un.org/dppa/decolonization/en/nsgt/>>; 'Member States', *United Nations: About Us* (Web Page, 2021) <<https://www.un.org/en/about-us/member-states/>>.