



**Malawi – Researched and compiled by the Refugee Documentation Centre of Ireland on 10 April 2018**

**Information on law from 1988 to date governing nationality/citizenship in Malawi, in particular as to:**

**General provisions including :**

- (i) - Acquisition ;( including by birth and descent) Options for person not born in Malawi**
- (ii) - Forfeiture (voluntarily or involuntarily);**
- (iii) - Restoration; is this possible?**
- (iv) - Is dual citizenship allowed?**
- (v) - Adverse Implication(s) if any, of acquiring second citizenship - and what happens if second citizenship is later given up ;**
- (vi)- Implications, if any, of absence from the country**
- (vii) Surrender of citizenship.**

The Citizenship Act of Malawi, in “Part II: Citizenship By Birth And Descent”, states:

“Every person who on the 5th day of July, 1966, was under any existing law a citizen of Malawi, shall continue to be a citizen of Malawi after that date.

[Ch1501s4]4. Citizenship by birth

5 of 1971, 22 of 1992 Every person born in Malawi after the 5th day of July, 1966, shall become a citizen of Malawi on the date of his birth if one of his parents is a citizen of Malawi:

Provided that this subsection shall not apply to a person whose father is a citizen of a country with which Malawi is at war and the birth occurs at a place then under occupation by the enemy.

[Ch1501s5]5. Citizenship by descent

22 of 1992A person born outside Malawi after the 5th day of July, 1966, shall become a citizen of Malawi on the date of his birth if his father or mother is a citizen of Malawi by birth.” (Republic of Malawi (1966) *Citizenship Act*)

In “Part III: Dual Citizenship” this act states:

“Dual citizenship of persons of full age not permitted

(1) No citizen of Malawi, being a person of full age and capacity, shall be entitled to be also a citizen of any other country.” (ibid)

See also paragraph headed “Acquisition of other citizenship by voluntary act” which states:

“A citizen of Malawi, being a person of full age and capacity, who acquires by voluntary act other than marriage the citizenship of some country other than Malawi shall cease, on the day upon which he acquires such other citizenship, to be a citizen of Malawi.” (ibid)

In “Part V Renunciation And Deprivation Of Citizenship” this act states:

“Renunciation of citizenship

(1) If any citizen of Malawi of full age and capacity, who is a citizen of any other country, or who satisfies the Minister that he will become a citizen of any other country, makes a declaration in the form set forth in the Sixth Schedule of his renunciation of citizenship of Malawi, the Minister may cause the declaration to be registered and, upon its being so registered that person shall cease to be a citizen of Malawi:

Provided that if a person who has made a declaration of renunciation in accordance with this section does not become a citizen of any other country as aforesaid within three months of the date of his making such declaration of renunciation, he shall be deemed to be, and to have remained, a citizen of Malawi, notwithstanding the making by him of such declaration:

Provided further that forthwith upon his being restored to citizenship of Malawi, any such person shall take an oath of allegiance in the form specified in the Second Schedule, and if that person declines, neglects or omits to take the said oath of allegiance his citizenship of Malawi shall not be restored to him.” (ibid)

This section of the act also states:

“Restoration of citizenship

(1) Subject to subsection (2), the Minister, may, if he considers it desirable on taking into account all the circumstances of a case, restore citizenship of Malawi to a person who has lost such citizenship whether voluntarily by a declaration of renunciation of citizenship under section 23, or involuntarily by reason of Part III of this Act.” (ibid)

A document published by the Open Society Foundations, in a section titled “The right to a nationality in national law”, states:

“Only seven constitutions in Africa—Angola, Ethiopia, Guinea-Bissau, Kenya, Malawi, Rwanda and South Africa—provide either in general terms for the right to a nationality, or that every child has the right to a name and nationality.” (Open Society Foundations (OSF) (January 2016) *Citizenship Law in Africa: A Comparative Study*, p.45)

This section of the document also states:

“In Malawi, the constitutional right to a nationality for children is not ensured by the provisions of the citizenship legislation. However, the 1966 Citizenship Act is unusual in specifically providing for the registration of stateless persons

as citizens, if they can show that they are stateless and were born in Malawi or have a parent who is Malawian; the applicant must also satisfy the authorities that he or she has been ordinarily resident in Malawi for three years, intends to remain there, and has no serious criminal convictions. If the person is under 21, an application can be made on his or her behalf.” (ibid, pp.45-46)

In a section titled “Nationality based on descent” this document states:

“A handful of countries allow for nationality to be passed for only one generation outside the country: a national from birth born in the country can transmit his or her nationality to a foreign-born child but that child cannot pass his or her nationality on in turn. Provisions to this effect, which derive from a British rule, are in force in Gambia, Lesotho, Malawi...” (ibid, p.53)

A section titled “Naturalisation” states:

“Malawi provides for several categories of person with a close connection to the country to be able to register as citizens; but this registration is on the same discretionary terms as naturalisation for any foreigner...” (ibid, p.81)

A section titled “Loss and deprivation of nationality” states:

“More than half of Africa’s 54 states forbid deprivation of nationality from a national from birth against the person’s will, whether or not the person would become stateless: Botswana, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, DRC, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Malawi...” (ibid, p.104)

This section also states:

“The most common provision for automatic loss of birth nationality is in case of acquisition of another, in countries where dual nationality is not allowed. Countries appearing to provide for loss of nationality in case of acquisition of another as an adult are Botswana, Cameroon, Central African Republic, Côte d’Ivoire, DRC, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Lesotho, Liberia, Malawi, South Africa (if no permission is obtained), Tanzania, Togo and Zambia. However, these provisions can be hard to interpret.” (ibid, p104)

This section refers to the Citizenship Act of Malawi as follows:

“In Malawi, for example, which has provisions that were typical of many Commonwealth countries, someone who has been granted citizenship through registration or naturalisation (only) can be deprived of his or her citizenship on very broad grounds and on the decision only of the designated minister. Citizenship can be revoked where the minister ‘is satisfied’ that the person ‘has shown himself by act or speech to be disloyal or disaffected towards the Government of Malawi’; when he has traded or associated with or assisted an enemy during war; when within five years of receiving citizenship he is sentenced to a prison term exceeding 12 months; when he resides outside Malawi for a continuous period of seven years without being in the service of Malawi or an international organisation or without registering annually at a Malawian consulate his intention to retain his citizenship; or when Malawian citizenship was obtained through fraud, misrepresentation, or

concealment of any material fact.<sup>278</sup> These provisions in the (1966) Citizenship Act appear to violate a (1994) constitutional prohibition on arbitrary deprivation or denial of citizenship.” (ibid, p.107)

A report from the UN Committee on the Rights of the Child, in a section titled “Civil rights and freedoms (arts. 7, 8 and 13-17) (section headed “Birth registration”, paragraph 17), states:

“While noting the enforcement in 2015 of the National Registration Act, the Committee is concerned that:

(a) Births are registered before the mother is discharged from hospital in only 4 out of 28 districts;

(b) There are delays in implementation and low awareness of the Act, and the registration rate is low;

(c) Despite enacting in its Citizenship Act a provision that guarantees that children born on its territory who would otherwise be stateless have the right to nationality, there are still cases where children born outside of Malawi or born to a non-Malawian father are at risk of being stateless.” (UN Committee on the Rights of the Child (CRC) (6 March 2017) *Concluding observations on the combined third to fifth periodic reports of Malawi*, p.5)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

### References:

Open Society Foundations (OSF) (January 2016) *Citizenship Law in Africa: A Comparative Study*

<http://www.refworld.org/docid/56a77ffe4.html>

(Accessed 10 April 2018)

Republic of Malawi (1966) *Citizenship Act*

<http://www.refworld.org/docid/3ae6b5b110.html>

(Accessed 10 April 2018)

UN Committee on the Rights of the Child (CRC) (6 March 2017) *Concluding observations on the combined third to fifth periodic reports of Malawi*

<http://www.refworld.org/docid/58e75d024.html>

(Accessed 10 April 2018)

### Sources Consulted:

Electronic Immigration Network

European Country of Origin Information Network

Google

Immigration and Refugee Board of Canada

Refugee Documentation Centre Query Database  
UK Home Office  
UNHCR Refworld  
US Department of State