

THE CONSTITUTION OF THE KINGDOM OF SWAZILAND ACT, 2005

(Act No: 001 of 2005)



AN ACT
entitled

An Act to provide for the constitution of the Kingdom of Swaziland, 2005.

ENACTED by the King and the Parliament of Swaziland.

CHAPTER IV CITIZENSHIP

Part 1 Acquisition of Citizenship

Citizen of Swaziland

40. A person who, on the commencement of this Constitution, is a citizen of Swaziland shall continue to be such citizen.

Citizenship by descent

41. A person born, whether before or after the commencement of this Constitution and whether in or outside of Swaziland, is a citizen by descent if by birth that person is a descendant.

Citizenship by operation of law

42. (1) A person born in or outside Swaziland before the commencement of this Constitution shall be a citizen of Swaziland by operation of law if at the birth of that person one of the parents was a citizen of Swaziland.

(2) In this section “citizen by operation of law” refers to a person who was born before the existence of the status of a citizen of Swaziland and was a member of a class of persons -

- (a) generally regarded as Swazi by descent; and
- (b) subsequently declared by law to be citizens of Swaziland.

(3) This section shall cease to apply to a person being a citizen of another country who, on being so required by the Board in terms of section 49 (1) (d), has failed to renounce that other citizenship -

- (a) within one year after that person attains the age of majority (or within such extended period as the Board may allow); or
- (b) where that person attained the age of majority before the commencement of this Constitution, within one year after that commencement (or within such extended period as the Board may allow).

Citizenship by birth

43. (1) A person born in Swaziland after the commencement of this Constitution is a citizen of Swaziland by birth if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.
- (2) A person born outside Swaziland after the commencement of this Constitution is a citizen of Swaziland if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.
- (3) A person born outside Swaziland who becomes a citizen by virtue of subsection (2) shall cease to be a citizen if the father of that person was also born outside Swaziland unless, within one year after attaining the age of majority (or within such extended time as the Board may allow) that person notifies the Board in writing of the desire to retain the citizenship of Swaziland.
- (4) Where a child born outside of marriage is not adopted by its father or claimed by that father in accordance with Swazi law and custom and the mother of that child is a citizen of Swaziland, the child shall be a citizen of Swaziland by birth.
- (5) A child adopted, whether before or after the commencement of this Constitution, under the legislation relating to the adoption of children or under customary law, shall, if not already a citizen, be deemed to be a citizen of Swaziland by birth if, at the time of adoption the adoptive parent was a citizen of Swaziland or would have been a citizen if this Constitution were in force.

Citizenship by marriage

44. (1) A woman who is not a citizen of Swaziland at the date of her marriage to a person who is a citizen (otherwise than by registration) shall become a citizen by lodging a declaration in the prescribed manner with the Minister responsible for citizenship or with any Diplomatic Mission or Consular Office of Swaziland or at any other prescribed office, either before or at any time during the marriage, accepting Swaziland citizenship.
- (2) A woman who lodges a declaration in terms of subsection (1) shall be a citizen from the date of her marriage, where the declaration is lodged before the marriage, or where the declaration is lodged after marriage, from date of lodgement.
- (3) This section applies to marriage whether before or after the commencement of this Constitution.

Citizenship by registration

45. (1) A person may acquire citizenship by registration where that person satisfies the Board on the conditions set out in subsection (2), (3) or (4).
- (2) The conditions for registration of a person are that the person-

- (a) has been ordinarily and lawfully resident in Swaziland,
 - (i) for a continuous period of at least twelve months immediately preceding the date of application for registration; and
 - (ii) for periods amounting in the aggregate to not less than five years during the seven years preceding the date of application for registration.
 - (b) is of good character;
 - (c) has an adequate knowledge of siSwati or English;
 - (d) intends, in the event of citizenship being granted, to reside in Swaziland;
 - (e) has adequate means for support whilst in Swaziland; and
 - (f) has contributed and shall contribute to the development of the country.
- (3) A person who is ordinarily resident in Swaziland and has been so resident for a period of at least ten years and whose application is supported by a Chief after consultation with *bandlancane* or supported by three reputable citizens, may be registered as a citizen.
- (4) Citizenship by registration shall not be granted to any person under this section until that person has taken the oath or affirmation of allegiance in the Second Schedule or such other oath or affirmation as may be prescribed.
- (5) The person to whom citizenship is granted in terms of this section shall be a citizen from the date on which a certificate of registration as a citizen is granted.
- (6) In this section, “*bandlancane*” means a Chief’s council established in accordance with Swazi law and custom.

Posthumous children

46. A child born after the death of the father shall be deemed to be a citizen under this Chapter on the same conditions as if the father were alive when that child was born.

Foundlings

47. A deserted child of not more than seven years found in Swaziland shall, unless the contrary is proved, be deemed to have been born in Swaziland and shall be treated for the purposes of this Chapter as a citizen by birth.

Birth aboard a ship or aircraft

48. (1) A person born aboard a ship or aircraft registered in Swaziland wherever it may be shall be deemed to be born in Swaziland.
- (2) A person born aboard an unregistered ship or aircraft of the Government shall be deemed to be born in Swaziland.

Part 2 Loss of Citizenship

Deprivation of citizenship.

49. (1) A person who is a citizen of Swaziland by registration may be deprived of that citizenship by order of the Board where the Board is satisfied that –
- (a) the issue of the relevant certificate has been declared by a court to have been procured by fraud, misrepresentation or concealment of material facts;
 - (b) the person has shown himself by any overt act other than marriage to have acquired another citizenship;
 - (c) the person has by any voluntary act other than marriage acquired another citizenship;
 - (d) the person has, on being so required by the Board, failed to renounce the citizenship of any other country;
 - (e) the person has been resident outside Swaziland (otherwise than in the public service) for a continuous period of seven years and during that period has failed without reasonable excuse to register with the Board at such times and in such manner as may be prescribed a declaration of intention to retain citizenship of Swaziland,

and that on any of these grounds it is not conducive to the public good that the person should continue to be a citizen of Swaziland.

(2) A woman who acquired citizenship as a consequence of her marriage to a citizen of Swaziland, may be deprived of that citizenship where the marriage was entered into merely for the purpose of acquiring citizenship.

(3) Before making a revocation order, the Board shall give notice to the person concerned of the fact that the revocation of the citizenship of that person is being

considered, stating the grounds for revocation and the right of that person to apply to the Board within the period stipulated in the notice challenging the revocation order and giving reasons in support of the challenge.

(4) The Board shall investigate the case and where reasonably practicable hear the person or the legal representative of that person.

(5) In depriving a person of Swaziland citizenship, the Board shall endeavour not to render the person stateless.

(6) In this section “registration” includes naturalisation or registration (otherwise than as of right) under any law that existed before the commencement of this Constitution.

Renunciation of citizenship

50. If a citizen of Swaziland who has attained the age of majority, or being a woman is or is about to be married, is or is about to become a citizen of another country and for that reason desires to renounce his or her citizenship of Swaziland, that citizen may do so by lodging with the Board a declaration of renunciation of that citizenship and, upon lodgement of the declaration or, if not then a citizen of that other country, upon becoming that citizen, he or she shall cease to be a citizen of Swaziland.

Preservation of obligations on cessation of citizenship.

51. Where a person ceases to be a citizen of Swaziland that cesser shall not of itself operate to discharge any obligations, duty or liability undertaken, imposed or incurred before the cessation.

Death of citizen or loss of citizenship.

52. (1) The death of a citizen of Swaziland shall not affect the citizenship of a surviving spouse or child or another dependant.

(2) Loss of Swazi citizenship by a person shall not of itself affect the citizenship of a spouse or child.

Citizenship Board.

53. (1) There shall be a Citizenship Board which shall have the exclusive authority to

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(a) grant or cancel citizenship by registration;

(b) investigate and where appropriate revoke the citizenship of any person under section 49;

- (c) advise the Minister responsible for citizenship on any other aspects relating to citizenship; and
 - (d) do such things as are incidental or related to the exercise of its powers.
- (2) The Board shall consist of a Chairman and not more than seven members appointed by the King on the advice of the Minister responsible five of whom shall constitute a quorum and the Chief Immigration Officer shall be *ex officio* member.
- (3) At least one of the members of the Board shall have such qualification as is required for appointment as a Judge of the High Court.
- (4) The Chairman and members of the Board shall hold office for a period not exceeding five years and shall be eligible for a single re-appointment.
- (5) The Chairman and members of the Board may be removed from office by the King on the advice of the Minister responsible for incapacity (whether from infirmity of the body or mind) or for misbehaviour.
- (6) A person who has a case before the Board shall have the right to be heard and to be represented by a legal practitioner at the hearing.
- (7) All matters submitted for consideration by the Board shall be finalised within a period of six months.

Certificate of citizenship

54. (1) The Board shall cause to be issued on request to a citizen of Swaziland a certificate of citizenship in prescribed form certifying that that person is a citizen of Swaziland.
- (2) A certificate of citizenship shall be the property of Government and shall be delivered up on demand by or on behalf of the Board.
- (3) The Board may revoke a certificate of citizenship for good cause.

Provision for other matters

55. (1) Subject to the provisions of this Chapter Parliament may make law relating to the acquisition or loss of citizenship by registration or naturalisation, including but not limited to, the following –
- (a) keeping of record of citizens;
 - (b) registration of births abroad;
 - (c) certificate of citizenship;
 - (d) offences; and
 - (e) incidental matters to the above.