

## MALAWI GOVERNMENT

Act

No. 2 of 1964

I assent

GLYN JONES

GOVERNOR-GENERAL

12th November, 1964

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**An Act to make provision for the acquisition of citizenship of Malawi by registration in certain cases; to regulate the manner and circumstances in which aliens may be naturalized as citizens of Malawi and in which citizens of Malawi may renounce or be deprived of their citizenship; and to make provision for certain other matters relating to citizenship of Malawi and for matters incidental thereto and connected therewith**

ENACTED by the Parliament of Malawi

PART I—PRELIMINARY

Short title  
and com-  
mencement

1. This Act may be cited as the Malawi Citizenship Act and shall come into force on such date as the Minister may, by notice in the *Gazette*, appoint.

Interpre-  
tation

2.—(1) In this Act, unless the context otherwise requires—

“alien” means a person who is not a Commonwealth citizen, a protected person or a citizen of the Republic of Ireland;

“certificate of naturalization” means a certificate of naturalization granted under this Act;

“ Commonwealth ” means Malawi, any country to which section 8 of the Constitution applies and any dependency of any such country;

“ foreign country ” means a country (other than the Republic of Ireland) that is not part of the Commonwealth;

“ minor ” means a person who has not attained the age of twenty-one years;

“ protected person ” means any person who, under any enactment for the time being in force in any country that is part of the Commonwealth, is a British protected person of that country;

“ Malawi consulate ” means an office of a consular officer of the Government of Malawi where a register of births or residents is kept or, where there is no such office, such office as may be prescribed.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft or aboard an unregistered ship or aircraft of the Government of any country shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) A person shall, for the purposes of this Act, be of full age if he has attained the age of twenty-one years, and of full capacity if he is not of unsound mind.

(4) For the purposes of this Act, a person shall be deemed not to have attained a given age until the commencement of the relevant anniversary of the day of his birth.

## PART II—REGISTRATION AND NATURALIZATION

3.—(1) Subject to the provisions of subsection (2) of this section, any person to whom section 2 of the Constitution applies, or a citizen of any country to which section 8 of the Constitution applies or of the Republic of Ireland or a protected person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Malawi if he satisfies the Minister—

(a) that he is ordinarily resident in Malawi, and has been so resident for a period of five years; and

(b) that he has an adequate knowledge of a prescribed vernacular language or of the English language; and

Registration  
of Common-  
wealth  
citizens,  
citizens of  
the Republic  
of Ireland,  
protected  
persons and  
children of  
citizens by  
descent

(c) that he is of good character; and

(d) that he would be a suitable citizen of Malawi.

(2) A person shall not be registered as a citizen of Malawi under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule of this Act.

Registration  
of citizens of  
certain  
African  
States

4.—(1) Subject to the provisions of subsection (2) of this section, a citizen of any State to which this section applies, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Malawi if he satisfies the Minister—

(a) that he is ordinarily resident in Malawi and has been so resident for a period of five years; and

(b) that he has an adequate knowledge of a prescribed vernacular language or of the English language; and

(c) that he is of good character; and

(d) that he would be a suitable citizen of Malawi:

Provided that the Minister may, by order in the *Gazette*, waive or vary the requirement set out in paragraph (b) of this subsection in respect of the citizens of any State to which this section applies, where he is satisfied that any corresponding provision in the law of that State may be waived or varied in respect of citizens of Malawi.

(2) A person shall not be registered as a citizen of Malawi under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule to this Act.

(3) The Minister may, where he is satisfied that reciprocal provisions are or may be made in respect of Malawi citizens under the law of any State on the continent of Africa, and that it is desirable so to do, by order in the *Gazette* made with the prior approval signified by resolution of the National Assembly, declare such State to be a State to which this section applies.

5. Notwithstanding any other provisions in this Act contained, the Minister may, in such special circumstances as he in his discretion thinks fit—

Registration  
in special  
circum-  
stances

(a) cause the minor child of any citizen of Malawi to be registered as a citizen of Malawi upon application made in the prescribed manner by a parent or guardian of that child; and

(b) may confer upon any person, as well a minor as a person of full age, citizenship of Malawi, and thereupon that person shall become a citizen of Malawi.

6.—(1) Subject to the provisions of subsection (2) of this section, a person registered as a citizen of Malawi under section 3 or section 6 of the Constitution or under section 3, section 4 or section 5 of this Act shall become a citizen of Malawi by registration on the date on which he is registered.

Effect of  
registration

(2) If a person of full age who is registered as a citizen of Malawi under this Act does not produce to such officer as the Minister may appoint in that behalf, within three months of being so registered or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer that he has renounced any other nationality or citizenship which he may have possessed and that he has taken an oath of allegiance in the form specified in the First Schedule of this Act, the registration of that person as a citizen of Malawi shall be cancelled and he shall be deemed never to have been so registered.

7.—(1) Subject to the provisions of this section—

(a) the Minister may, if application therefor is made to him by any alien of full age and capacity who satisfies him that he is qualified under the provisions of the Second Schedule to this Act for naturalization, grant to such alien a certificate of naturalization; and

(b) the alien to whom such a certificate is granted shall become a citizen of Malawi by naturalization, from the date of the grant.

Naturaliza-  
tion of aliens

(2) A certificate of naturalization as a citizen of Malawi shall not be granted under this section except to a person who, before the grant of such certificate, has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship which he may possess and to take an oath of allegiance in the form specified in the First Schedule to this Act.

(3) If a person to whom a certificate of naturalization as a citizen of Malawi has been granted under this section does not produce to such officer as the Minister may appoint in that behalf, within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer that he has renounced any other nationality or citizenship which he may have possessed and that he has taken an oath of allegiance in the form specified in the First Schedule to this Act, the naturalization of that person as a citizen of Malawi shall be cancelled and he shall be deemed never to have been so naturalized.

PART III—RENUNCIATION AND DEPRIVATION OF  
CITIZENSHIP

Renuncia-  
tion of  
citizenship

8.—(1) If any citizen of Malawi of full age and capacity who is also—

(a) a person to whom section 2 of the Constitution applies; or

(b) a citizen of any country to which section 8 of the Constitution applies, or of the Republic of Ireland; or

(c) a national of a foreign country,

makes a declaration in the prescribed manner of renunciation of citizenship of Malawi, the Minister may cause the declaration to be registered and, upon registration, that person shall cease to be a citizen of Malawi.

(2) The Minister may refuse to register any declaration of the kind mentioned in subsection (1) of this section if it is made during any war in which Malawi may be engaged or if, in his opinion, it is otherwise contrary to public policy; but, notwithstanding the refusal of the Minister, a person who makes any such declaration shall cease to be a citizen of Malawi at the time prescribed in section 7 of the Constitution.

Deprivation  
of citizen-  
ship of  
persons who  
exercise  
certain rights  
in other  
countries

9. The Minister may by order deprive any person, other than a person who is a citizen of Malawi by virtue of subsection (1) of section 4 of the Constitution or by virtue of section 9 of the Constitution, of his Malawi citizenship if the Minister is satisfied that that person has at any time while a citizen of Malawi and of full age and capacity voluntarily claimed and exercised—

(a) in a foreign country; or

(b) in any other country under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens generally,

any right available to him under the law of that country, being a right accorded exclusively to its own citizens, and that it is not conducive to the public good that he should continue to be a citizen of Malawi.

10.—(1) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Malawi who is such by registration or by naturalization if he is satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representation or the concealment of any material fact.

Deprivation  
of citizenship  
in other cases

(2) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Malawi who is such by naturalization if he is satisfied that that citizen—

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Malawi; or

(b) has, during any war in which Malawi was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(c) has, within seven years after becoming naturalized, been sentenced in any country to imprisonment for a term of not less than twelve months; or

(d) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has not registered annually in the prescribed manner with a Malawi consulate, or by notice in writing to the Minister, his intention to retain his citizenship of Malawi.

(3) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malawi.

(4) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this section; and, if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

Deprivation  
of citizen-  
ship of  
Malawi when  
person  
deprived of  
citizenship  
elsewhere

**11.—(1)** Where a citizen of Malawi who is such by registration—

(a) was a person to whom section 2 of the Constitution applies or a citizen of any country to which section 8 of the Constitution applies or of the Republic of Ireland, or of any country to which section 4 of this Act applies, by virtue of a certificate of naturalization granted to him or in which his name was included; and

(b) has been deprived of that citizenship on grounds which in the opinion of the Minister are substantially similar to any of the grounds specified in subsections (1) and (2) of section 10 of this Act,

the Minister may by order deprive him of his Malawi citizenship, if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malawi.

(2) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and may refer the case to a committee of inquiry constituted in the manner provided by section 10 of this Act.

Effect of  
renunciation  
or depriva-  
tion

**12.—(1)** A citizen of Malawi who is deprived of his citizenship by an order of the Minister under section 9, section 10 or section 11 of this Act shall, upon the making of the order, cease to be a citizen of Malawi.

(2) The renunciation by any person of his Malawi citizenship or the deprivation of any person's Malawi citizenship under the provisions of this Part of this Act shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

#### PART IV—SUPPLEMENTAL

Married  
women

**13.** For the purposes of Parts II and III of this Act, any woman who has been married shall be deemed to be of full age.

Legitimated  
children

**14.—(1)** A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage or of the commencement of this Act, whichever is later, be treated, for the purpose of determining whether he is a citizen of Malawi, as if he had been born legitimate.

(2) A person shall be deemed for the purposes of this section to have been legitimated by the subsequent marriage of his parents if, by the law of the place in which his father was domiciled at the time of the marriage, the marriage operated immediately or subsequently to legitimate him, and not otherwise.

15. Any reference in this Act to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before the 6th July, 1964, and the birth occurred after the 5th July, 1964, the national status that the father would have had if he had died on the 6th July, 1964, shall be deemed to be his national status at the time of his death.

Posthumous  
children

16. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

Decision of  
Minister to  
be final

17. The Minister may in such cases as he thinks fit, on the application of any person with respect to whose citizenship of Malawi a doubt exists, whether on a question of fact or law, certify that that person is a citizen of Malawi, and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

Certificate  
of citizen-  
ship in cases  
of doubt

18.—(1) Every application under section 3 or section 6 of the Constitution shall be made to the Minister.

Manner of  
making  
applications

(2) Every application to the Minister under section 3 or section 6 of the Constitution, or under this Act—

(a) shall be accompanied by the prescribed fee (if any);

(b) where the form of any such application is prescribed under this Act, shall be made in such form with such variations as the circumstances require and the Minister accepts;

(c) shall be supported by such evidence of the statements made therein as may be prescribed under this Act or as the Minister may require; and

(d) shall be verified by an affidavit or a declaration made before a magistrate or commissioner for oaths.

Renunci-  
ation of  
citizenship  
of other  
countries  
and  
declarations  
relating to  
residence

19.—(1) Where, under Chapter 1 of the Constitution or the foregoing provisions of this Act, a person is required to renounce the nationality or citizenship of any country other than Malawi and the law of such other country makes no provision for the renunciation of nationality or citizenship, such person shall make the appropriate declaration specified in the Third Schedule to this Act; and a person who makes such declaration shall be treated as having complied with any such requirement.

(2) Where, under Chapter 1 of the Constitution, a person is required to make any declaration of his intentions concerning residence, he shall make a declaration in the form specified in the Fourth Schedule to this Act, with such variation as the circumstances of the case require.

Evidence

20.—(1) Every document purporting to be a notice, certificate, order or declaration, or any entry in a register, or subscription of an oath of allegiance or declaration of renunciation, given, granted or made under the provisions of Chapter 1 of the Constitution or under this Act, shall be received in evidence, and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.

(2) Prima facie evidence of any document of the kind mentioned in subsection (1) of this section may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.

(3) Any entry in a register made under the provisions of Chapter 1 of the Constitution, or under this Act, shall be received as evidence of the matters stated in the entry.

Offences

21.—(1) Any person who, for the purpose of procuring anything to be done or not to be done under the provisions of Chapter 1 of the Constitution or under this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be

liable on conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Any person who fails to comply with any requirement imposed on him by regulations made under this Act with respect to the delivering up of certificates of naturalization or certificates of registration shall be guilty of an offence and shall be liable on conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

22.—(1) The Minister may make regulations—

Regulations

(a) for prescribing any matter which is to be prescribed under this Act, other than a matter for which provision is made in subsection (2) of this section;

(b) for the registration of anything required or authorized under Chapter 1 of the Constitution or under this Act to be registered;

(c) for the administration and taking of oaths of allegiance under Chapter 1 of the Constitution or under this Act, for the time within which oaths of allegiance shall be taken and for the registration of oaths of allegiance;

(d) for the giving of any notice required or authorized to be given to any person under this Act;

(e) for the cancellation of the registration of, and the cancellation and amendment of certificates of naturalization relating to, persons deprived of citizenship under this Act, and for requiring such certificates of registration to be delivered up for those purposes;

(f) for the registration of the births and deaths of persons of any class or description born or dying elsewhere than in Malawi, and otherwise for registration at Malawi consulates;

(g) for enabling the births and deaths of citizens of Malawi born or dying in any country in which the Government of Malawi has for the time being no diplomatic or consular representative to be registered by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malawi, has undertaken to represent that Government's interest in that country, or by a person authorized in that behalf by the Minister, and for the registration thereby of citizens of Malawi ordinarily resident outside Malawi;

(h) for matters incidental to and connected with the matters mentioned in the preceding paragraphs of this subsection.

(2) The Minister may make regulations—

(a) prescribing forms; and

(b) providing for the imposition and recovery of fees, in respect of any application made to the Minister or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath of allegiance, authorized to be made, granted or taken or under Chapter 1 of the Constitution or under this Act, and in respect of supplying a certified or other copy of any notice, certificate, order, declaration or entry given, granted or made under that chapter of the Constitution or under this Act.

#### PART V—PROVISIONS RELATING TO TIME

Provisions  
relating to  
section 3 of  
the  
Constitution

23.—(1) The period during which any woman to whom subsection (3) of section 3 of the Constitution applies may register under that subsection shall be the lifetime of the husband to which that subsection refers, and, for the purposes of paragraph (b) of subsection (6) of that section, that period is hereby prescribed.

(2) The Minister, and any officer of the Government authorized in that behalf by the Minister, may—

(a) declare that the specified date relating to any person to whom subsection (6) of section 3 of the Constitution refers, who is of unsound mind during any period between the 6th July, 1964, and the date declared by that subsection to be the specified date in relation to that person, shall be such later date as will, in the opinion of the Minister or such authorized officer, permit such person when of sound mind an opportunity of making application for registration under section 3 of the Constitution;

(b) in any other case in which he is satisfied that a person to whom subsection (6) of section 3 of the Constitution refers is, by reason of any circumstances not attributable to his default or neglect, unable to make application within the time prescribed in relation to that person in that subsection or in subsection (1) of this section, declare that the specified date in relation to that person shall be

such later date as will permit such person an opportunity of making application for registration under section 3 of the Constitution.

(3) The power of the Minister, and any officer of the Government authorized in that behalf by the Minister, under this section may be exercised before or after the relevant date declared by section 3 of the Constitution to be the specified date.

24.—(1) The specified date in relation to any person to whom subsection (6) of section 7 of the Constitution refers who is of unsound mind during any period commencing on the date on which he attains twenty-one years of age, or on the date on which, having first attained the age of twenty-one years or, in the case of a woman, having first married, he acquires the citizenship of some country other than Malawi otherwise than in the circumstances described in paragraph (a) of subsection (3) of that section; and ending on the date declared to be the specified date by subsection (6) of that section, shall be the first anniversary of the date on which such person ceases to be of unsound mind; and where before the first anniversary of that date, or any later date which may be taken for the purpose under the succeeding provisions of this section, such person again becomes of unsound mind, the specified date shall be the first anniversary of the date on which he subsequently ceases to be of unsound mind.

Provisions  
relating to  
section 7 of  
the  
Constitution

(2) The Minister or any officer of the Government authorized in that behalf by the Minister may, in any case in which he is satisfied that a person to whom subsection (6) of section 7 of the Constitution refers is, by reason of any circumstances not attributable to such person's default or neglect, unable to renounce his citizenship of some country other than Malawi or take the oath of allegiance, or make or register any such declaration as is specified in the Fourth Schedule to this Act within the time prescribed in relation to that person in that subsection, or any later date declared under this subsection, declare that the specified date in relation to that person shall be such later date as will permit that person an opportunity of doing all such acts, or all such acts as remain to be done:

Provided that nothing in this subsection shall confer on the Minister or any such authorized officer power to make any such declaration in relation to any such person after he has ceased to be a citizen of Malawi.

## FIRST SCHEDULE

SECTIONS 3 (2); 4 (2); 6 (2); 7 (2); 7 (3)

## OATH OF ALLEGIANCE

I, ....., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will support and uphold the Constitution of Malawi as by law established. So help me God.

## SECOND SCHEDULE

SECTION 7 (1)

## QUALIFICATIONS FOR NATURALIZATION

1. Subject to the provisions of paragraph 2 of this Schedule, the qualifications for naturalization of an alien who applies therefor are—

(a) that he has resided in Malawi throughout the period of twelve months immediately preceding the date of the application; and

(b) that during the seven years immediately preceding that said period of twelve months he has resided in Malawi for periods amounting in the aggregate to not less than five years; and

(c) that he has an adequate knowledge of a prescribed vernacular language or of the English language; and

(d) that he is of good character; and

(e) that he would be a suitable citizen of Malawi; and

(f) that he intends, if naturalized, to continue to reside permanently in Malawi.

2. The Minister, if in the special circumstances of any particular case he thinks fit, may—

(a) allow a continuous period of twelve months ending not more than six months before the date of application to be reckoned for the purposes of sub-paragraph (a) of paragraph 1 of this Schedule as though it had immediately preceded that date;

(b) allow periods of residence earlier than eight years before the date of application to be reckoned in computing the aggregate mentioned in sub-paragraph (b) of paragraph 1 of this Schedule.

## THIRD SCHEDULE

(SECTION 19 (1))

## DECLARATION CONCERNING CITIZENSHIP

(under Section 7 of the Constitution)

I, ..... (full name in block capitals), do solemnly and sincerely declare—

1. That I was born at ..... in \*Malawi/.....  
..... (insert name of country) and am of or over the age  
of 21 years.

2. That I am a citizen of Malawi by \*birth/descent/registration/  
naturalization and am also a national of ..... (insert name  
of country) by \*birth/descent/registration/naturalization/marriage.

3. That as I am desirous of retaining my status as a citizen of Malawi  
I hereby renounce so far as it lies within my power my status as a citizen/  
national of ..... (insert name of country) and any  
claim I have to the protection of that country.

.....  
Signature of Applicant

Declared at ....., this ..... day of

....., 19..... before me.

.....  
\*Magistrate/Commissioner for Oaths

\*Delete as applicable

OR

(under Sections 3, 4 and 7 of the Act)

I, ..... (full name in block capitals), do solemnly and sincerely declare—

1. That I was born at ..... (insert name of country)  
and am of or over the age of 21 years.

2. That I have been granted Malawi citizenship by \*registration/  
naturalization on condition that I renounce my citizenship/nationality of  
..... (insert name of country)

3. I hereby renounce so far as it lies within my power my status as a  
citizen/national of ..... (insert name of country)  
and any claim I have to the protection of that country.

Declared at ....., this ..... day of .....  
19....., before me.

.....  
\*Magistrate/Commissioner for Oaths

\*Delete as applicable.

## FOURTH SCHEDULE

(SECTION 19 (2))

DECLARATION CONCERNING RESIDENCE  
(under Section 7 of the Constitution)

I, ..... of ....., do solemnly and sincerely declare—

\*That so far as it lies within my power, I have renounced my citizenship/nationality of ..... (*insert name of country*) and intend to reside permanently in Malawi if permitted.

\*2. That although I have renounced my citizenship/nationality of ..... (*insert name of country*) and intend my domicile of choice to be Malawi it may be necessary in the course of my employment as ...../ as self-employed to be absent from time to time from Malawi.

.....  
*Signature of Applicant*

Declared at ..... this ..... date of .....  
19.....

.....  
*\*Magistrate/Commissioner for Oaths*

\*Delete paragraphs or words not applicable

Passed in Parliament this thirtieth day of October, one thousand, nine hundred and sixty-four.

L. J. MWENDA  
*Clerk of Parliament*

## FOURTH SCHEDULE

(SECTION 19 (2))

DECLARATION CONCERNING RESIDENCE  
(under Section 7 of the Constitution)

I, ..... of ....., do solemnly and sincerely declare—

\*That so far as it lies within my power, I have renounced my citizenship/nationality of ..... (*insert name of country*) and intend to reside permanently in Malawi if permitted.

\*2. That although I have renounced my citizenship/nationality of ..... (*insert name of country*) and intend my domicile of choice to be Malawi it may be necessary in the course of my employment as ...../ as self-employed to be absent from time to time from Malawi.

.....  
*Signature of Applicant*

Declared at ..... this ..... date of .....  
19.....

.....  
*\*Magistrate/Commissioner for Oaths*

\*Delete paragraphs or words not applicable

Passed in Parliament this thirtieth day of October, one thousand, nine hundred and sixty-four.

L. J. MWENDA  
*Clerk of Parliament*