

**Submission by the United Nations High Commissioner for Refugees (UNHCR)
For the Office of the High Commissioner for Human Rights' Compilation Report**

Universal Periodic Review:

MALAWI

I. BACKGROUND INFORMATION

The Republic of Malawi is a State party to the *1951 Convention Relating to the Status of Refugees (1951 Convention)* and its *1967 Protocol*. Malawi has made reservations to Article 7 (reciprocity), Article 13 (movable and immovable property), Article 15 (rights of association), Article 17 (wage-earning employment), Article 19 (liberal professions), Article 22 (public education), Article 24 (labour legislation and social security), Article 26 (freedom of movement) and Article 34 (naturalization). Malawi is also a State party to the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention)*. Malawi also acceded to the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*. Finally, Malawi is a State party to the *1954 Convention on the Status of Stateless Persons*, but not the *1961 Convention on the Reduction of Statelessness*.

Malawi hosts 5,877 refugees and 14,149 asylum-seekers as of 30 August 2014. As seen from the statistics, the bulk of this caseload consists of asylum-seekers because decisions on refugee status have not been made for two and half years. Majority of the Persons of Concern (POCs) originate from the Democratic Republic of Congo (9,775), followed by Burundi (5, 2625) and then Rwanda (4, 886) and 103 from Ethiopia, Kenya, Somalia, Sudan, Uganda and Zambia.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Malawi is renowned for its hospitality toward hosting refugees for several decades having hosted close to a million Mozambican refugees in the 1980s. UNHCR commends the Government and the people of the Republic of Malawi for this affable attitude toward refugees, which ought not to be taken for granted, given the burden large refugee populations entail. In addition UNHCR commends the Government of Malawi for continuing to identify persons with protection needs from composite flows of persons transiting Malawi to South Africa, despite delays in the RSD process.

UNHCR also welcomes the launch of a compulsory birth registration process in March 2012. This programme formalizes an institutional arrangement between the

National Registration Bureau and the Ministry of Health¹ and makes birth registration compulsory and universal.

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: Reservations to the 1951 Convention

One of the major obstacles to refugees' ability to enjoy their rights, access to services and attain self-reliance are the reservations Malawi has made to the *1951 Convention* on the right of association (article 15), the right to a wage-earning employment (article 17), the right to education (article 22) and the choice of residence and the freedom of movement (article 26).² Although the reservations merely exist on paper, the Republic of Malawi pledged during the 2011 Ministerial Intergovernmental Event on Refugees and stateless Persons to: "*Revisit and, if necessary, withdraw its reservations entered on certain articles in the 1951 Convention Relating to the Status of Refugees.*"³ Yet, nothing suggests this critical review has taken place and none of the reservations has been removed so far. The pledges have thus not been met.

Recommendation

UNHCR recommends that the Government of Malawi

- Vacates all reservations to the *1951 Convention* which only contribute to restrict the refugees' rights.

Issue 2: Asylum legislation and procedure

With support from UNHCR, the government has come up since 2011 with a draft refugee law which is in accord with key international instruments relating to refugees. However the Government is yet to promulgate the law. In the meantime, Malawi relies on an inadequate provision known as the Refugees Act Chapter 15: 04 of the Laws of Malawi in its management of refugee affairs in the country. This law was enacted in 1989 in reaction to an influx of over 1 Million Mozambican refugees. While the law provides a broad refugee definition and sets the process of determining refugee status, it does not stipulate the basic rights that refugees have under international law. In addition, it is limited in the provision of mechanisms to deal with issues relating to asylum.

Recommendations:

UNHCR recommends that the Government of Malawi:

- Promulgates the draft refugee law which has been pending since 2011.

¹ United States Department of State, *2012 Country Reports on Human Rights Practices - Malawi*, 19 April 2013, available at <http://www.refworld.org/docid/517e6e0d18.html> [accessed 15 September 2014]; UNICEF, *In Malawi, compulsory universal birth registration protects children from abuses and open access to social services*, 10 October 2012, available at http://www.unicef.org/infobycountry/malawi_66153.html

² UN High Commissioner for Refugees (UNHCR), *The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence*, September 2012, PPLA/2012/05, available at: <http://www.refworld.org/docid/50474f062.html>

³ UN High Commissioner for Refugees (UNHCR), *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, available at: <http://www.refworld.org/docid/50aca6112.html> [accessed 15 September 2014]

Issue 3: Stalled Refugee Status Determination process

For two and a half years now, the Eligibility Committee has not sat to either grant or reject applications made for refugee status. The UN Human Rights Committee raised serious concern over the fact that: “*No asylum seeker has been granted refugee status since 2011.*”⁴ The Principal Secretary in the Ministry of Home Affairs is also the Commissioner for Refugees while the Chief Secretary is the Chairman of the Eligibility Committee with government officials from various Ministries and departments such as Foreign Affairs, Defense, Health, Justice Immigration and Police as members. A Technical Committee comprising of junior civil servants interviews applicants for refugee and makes recommendations to the Committee chaired by the Chief Secretary to determine who can and cannot be accorded refuge in Malawi. Whilst the Technical Committee has continued to meet and interview asylum-seekers, the Eligibility Committee is yet to meet and decide on the status of applicant.

Recommendations:

UNHCR recommends that the Government of Malawi:

- Resuscitates the Eligibility Determination process; and
- Conducts Eligibility Determination sessions on a regular basis, at least once every month

Issue 4: Access to birth registration and issuance of birth certificates

While UNHCR remains grateful that all Refugees and Asylum Seeker are issued with identity cards, the same is not the case as relates to birth certificates. Moreover, while UNHCR welcomes the compulsory universal birth registration process, launched by the government in 2012, the actual issuance of birth certificates falls short.

Birth registration is fundamental to the protection of children. Failure to document a child’s legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care. Due the lack of birth certificates, refugee children often face problems enrolling in schools or receiving immunizations and medical attention. Furthermore, birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of the link between the child and the country of nationality of the parents and/or the country of birth, and therefore facilitates acquisition of proof of nationality for the child.

Recommendations:

UNHCR recommends that the Government of Malawi:

- Considers issuing birth certificates to offspring of refugees and asylum-seekers born on its territory.

⁴ UN Human Rights Committee, Concluding observations of the Human Rights Committee, 3090-3091st meeting, CCPR/C/MWI/CO1/1/Add.1, 10 July 2014, paragraph 27, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MWI/CO/1/Add.1&Lang=En

Issue 5: Accession to Statelessness Conventions

While Malawi is a State party to the *1954 Convention relating to the Status of Stateless Persons*, the country is yet to accede to the *1961 Convention on the Reduction of Statelessness*.

States are responsible for conferring nationality and ensuring the right of every child to acquire a nationality. Discharging this responsibility requires the establishment of safeguards against statelessness in nationality law. The 1961 Convention establishes a range of standards to prevent statelessness at birth and later in life, in particular that States shall grant their nationality to children who have ties with these States through birth on the territory or descent and who would otherwise be stateless. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the *1961 Convention* is essential to strengthening international efforts to prevent and reduce statelessness.

While there are no confirmed cases of statelessness at the moment, many individuals of Malawian origin who were born and/or have lived for an extended period of time in the other countries in the region, notably South Africa, Zambia, Zimbabwe and Angola, may be at risk of statelessness. The same is applicable to many individuals of Mozambican origin who have been resident in Malawi for decades. It is also worth noting that there is no statelessness determination procedure in place in Malawi, which poses a challenge to effective identification of stateless individuals.

The 1966 Malawi Citizenship Act contains some significant gaps which may lead to statelessness, including lack of safeguards against statelessness with regard to children born in Malawi who do not acquire any other nationality and foundlings.

Recommendation:

UNHCR recommends that the Government of Malawi:

- Accedes to the *1961 Convention on the Reduction of Statelessness* and reforming its nationality law in order to bring it into compliance with international standards on prevention of statelessness.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
September 2014**

Excerpts of Concluding Observations from UN Treaty Bodies

- Universal Periodic Review:

MALAWI

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to Malawi.

Human Rights Committee on Civil and Political Rights

[Concluding observations \(2014\) CCPR/C/MWI/CO/1, 111th Session](#)

10 July 2014

Equality between men and women

7. While welcoming the adoption of the Gender Equality Act, the Committee regrets that there are still laws in force which discriminate against women. The Committee is particularly concerned that women are denied by law equal rights as men with respect to nationality (arts. 2, 3 and 26).

The State party should:

(c) **Amend all laws that still discriminate against women, directly or indirectly. In particular, the State party should repeal or amend Sections 9 and 16 of the Citizenship Act so as to ensure that all nationality provisions apply equally to men and women. It should also explicitly provide by law that, in cases of divorce, courts fully recognize the value of non-financial contributions with regard to the acquisition of property during marriage.**

Sexual Orientation and Gender Identity

10. The Committee is concerned that consensual same-sex sexual activity among consenting adults is still criminalized. It is also concerned about reports of cases of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and that, due to the stigma, LGBTI persons do not enjoy effective access to health services (arts. 2 and 26).

The State party should:

(a) **Review its legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination and repeal the provisions that criminalises homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code);**

(b) **Introduce a mechanism to monitor cases of violence against LGBTI and undertake all necessary measures to prevent those cases, prosecute the perpetrators and compensate the victims;**

(c) **Ensure that public officials refrain from using language that may encourage violence and raise awareness to eliminate stereotyping and discrimination;**

(d) **Guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.**

Trafficking in persons

17. The Committee is concerned about the prevalence of trafficking in persons in the State party and the lack of official data available on its extent. It is also concerned about delays in adopting specific legislation on trafficking. It deeply regrets the lack of adequate programs to protect and support victims of trafficking (art. 8).

The State party should:

- (a) **Expedite the adoption of a law on trafficking in persons providing for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims;**
- (b) **Provide training for police officers, border personnel, judges, lawyers and other relevant personnel and raise awareness among children, teachers, parents, women and population at large;**
- (c) **Increase efforts to bring alleged perpetrators to justice and ensure that all victims are adequately protected, assisted, rehabilitated and compensated;**
- (d) **Compile disaggregated data on the scale of the problem.**

Asylum seekers and refugees

27. The Committee is concerned that no asylum seeker has been granted refugee status since 2011. It is also concerned at reports of denial of entry into the State party to persons in need of international protection (arts. 7, 10 and 13).

The State party should fully comply with the principle of *non-refoulement* and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on refugee status determination are dealt with expeditiously.

Human Rights Committee on Civil and Political Rights

[Concluding observations \(2012\) CCPR/C/MWI/CO/1, 103rd Session](#)

18 June 2012

Trafficking

15. The Committee is concerned about trafficking in persons, in particular of minors for sexual exploitation or child labour purposes, which allegedly remains common in the State party. The Committee is also concerned about the lack of comprehensive information on this issue, and statistical data on the number of persons concerned, as well as about the number of persons prosecuted and convicted. It is further concerned about the lacuna on trafficking in the Penal Code with regard to women, child prostitution and trafficking for forced labour (arts. 3, 7, 8 and 24).

The State party should strengthen its efforts to eliminate trafficking in persons, in particular of women, girls and boys, for sexual exploitation and child labour. The State party should also prosecute all persons allegedly responsible, and punish those who are convicted. It should continue to train law enforcement officials and immigration officers and offer protection and rehabilitation to victims, and enhance its cooperation with neighbouring countries. The State party should pursue its campaigns to raise awareness among the population regarding the negative effects of trafficking. It should amend the Penal Code to

prevent trafficking of women, child prostitution and trafficking for forced labour.