

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 36th Session

MALAWI

I. BACKGROUND INFORMATION

Malawi is a party to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*. Whilst acceding to the 1951 Convention, Malawi made reservations to the following Articles of the Convention:

Article 7	Exemption from Reciprocity,
Article 13	Movable and Immovable Property,
Article 15	Right of Association,
Article 19	Liberal Professions,
Article 22	Public Education, and
Article 24	Labour Legislation and Social Security.

The Government of Malawi intimated that it considers the above as mere recommendations that do not have binding efficacy to Malawi as a refugee hosting State. Malawi also indicated that it reserved a right to limit enjoyment of the right to wage-earning employment (Article 17 of the *1951 Convention*) and to freedoms of movement and choice of place of residence (Article 34 of the *1951 Convention* regulating naturalization).

On 7 October 2009, the country ratified the *1954 Convention relating to the Status of Stateless Persons*. Malawi has yet to accede to the *1961 Convention on the Reduction of Statelessness*.

In 1989, Malawi passed the *Refugee Act* which provides for the receiving, admission and treatment of refugees and the application of the international instruments. The 1994 Malawi Constitution recognizes international law and contains a Bill of Rights applicable to all people of Malawi. Despite having such a regulatory framework in place, the country continues to experience a number of challenges in relation to protection of and assistance to asylum seekers and refugees. This has resulted in calls for a review of existing policies, laws and practices affecting refugees.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

In 2018, the Government accepted to roll out the Comprehensive Refugee Response Framework (CRRF) under the *New York Declaration* of 2016. This is a key achievement as it would enhance harmonious co-existence of both refugees and asylum-seekers together with nationals. Under CRRF, the country intends to implement activities that will foster the following: include refugees in national systems especially in health, education and security; legal and policy reform; registration and documentation; enhanced reception conditions and increased livelihood opportunities.

The Government has in the past initiated a complete review of its refugee policies and the refugee law leading to the mentioned draft refugee law. UNHCR actively supports this process. UNHCR views this process as a positive step and a display of the willingness by the Government to improve the human rights situation for persons seeking international protection in the country.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Refugee law and policy

UNHCR wishes to note that the draft refugee law has been under review for the past seven years. In accordance with government procedures the draft Act will be enacted after the related refugee policy (which is contained in the Migration policy) has been endorsed by Government. The draft law introduces sections with rights and obligations for refugees which were not covered by the current law. The Migration Policy has introduced other areas including statelessness and internally displaced persons that were never covered as well in the old law.

Recommendations:

UNHCR recommends that the Government of Malawi:

- a) Accelerate the adoption of the Migration Policy and enactment of the Revised Refugees Act.

Issue 2: Lifting of reservations to the 1951 Convention

The nine reservations Malawi made to the *1951 Convention* exist only on paper. In practice, refugees own property, have formed associations, engage in wage earning employment and practice their professions (mainly as teachers) and some of the refugee children attend public schools in Malawi. The Government of Malawi should thus be encouraged to lift these reservations. In addition, the reservation to Article 26 on freedom of movement and choice of place residence greatly hampers and affects prospects for social reliance and livelihood.

Recommendation:

UNHCR recommends that the Government of Malawi:

- a) Consider lifting the nine reservations Malawi made to the *1951 Convention*.

Issue 3: Accession to the 1964 Convention on Reduction of Statelessness

In Malawi statelessness, is among others, a result of lack of migration. During the colonial era, migration took place between Malawi, Zimbabwe and Zambia. The colonial legacy of recruitment of labour workers for the mines from different countries led to many moving and residing in other countries. Further, the policies and legal frameworks put in place at the time had a central feature of racial discrimination that began to define people's identity. After independence, many of the former colonies adopted the policies and laws of their former colony including the definition of citizenship.

In Malawi, the Citizenship Act is the principal law that enables one to become a citizen and without following the Act's provisions, one can be a stateless person. Although the Act contains some safeguards against statelessness, gaps remain with regard to ensuring that children who are otherwise stateless can acquire a nationality. For instance, children born in Malawi to parents who are not of African race are explicitly excluded in the Malawi Citizenship Act from the right to acquire Malawian citizenship by birth.

Recommendations:

UNHCR recommends that the Government of Malawi:

- a) Consider adopting further measures to protect stateless persons, and prevent statelessness among children;
- b) Consider acceding to the 1964 Convention on Reduction of Statelessness.

Issue 4: Development of a policy on internal displacement

Malawi ratified the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention). The country however does not have a policy or domestic legislation to fully implement the provisions of the Kampala Convention.

Recommendations:

UNHCR recommends that the Government of Malawi:

- a) Develops and adopts national legislation and policies to address internal displacement and protect the rights of internally displaced persons.

UNHCR

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