



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review

The REPUBLIC OF MALAWI

I. Background and Current Conditions

Malawi acceded to the *1951 Convention relating to the Status of Refugees* as well as its *1967 Protocol* (hereafter, 1951 Convention), following accession on 10 December 1989. On 4 November 1987, the country ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. The refugee definitions of the 1951 Refugee Convention and the 1969 OAU Convention are incorporated into the country's 1989 Refugees Act. 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*.

As of 1 March 2010, the country hosts a total of 5,285 refugees and 6,150 asylum-seekers, whose asylum application is pending a decision at either the first or second instance. Out of the total population of 11,435 individuals, 53.6 per cent are male and 46.4 per cent are female. The refugee and asylum-seeker population constitutes less than 1 per cent of the total population in Malawi. The vast majority of the persons in need of international protection resides in the only designated refugee camp in the country – Dzaleka refugee camp. By policy, all refugees and asylum-seekers must reside in Dzaleka refugee camp, which is managed by the Ministry of Internal Affairs and Public Security.

With regard to stateless persons, there is no reliable data on the number of persons who are stateless in Malawi. A small survey conducted by UNHCR last year indicated that in some districts in the Southern part of the country, there are stateless persons and persons at risk of statelessness. These are in particular descendants of Malawians who migrated to Zimbabwe many years ago and who lost Zimbabwean citizenship through the 2001 Citizenship Amendment Act. Some of them may have problems confirming that they are Malawian citizens. The country's citizenship law contains some safeguards against

statelessness, for instance by ensuring equality between men and women in their right to transmit nationality to their child. Gaps remain, however, with regard to ensuring that children who are otherwise stateless can acquire a nationality. Children born in Malawi to parents who are not of African race are explicitly excluded in the Citizenship Act from the right to acquire Malawian citizenship by birth.

II. Promotion and Protection of Human Rights on the ground

Malawi domestic refugee law was promulgated, when more than 1 million Mozambicans sought asylum in the country. Mozambicans were restricted into the camps where UNHCR and the international community provided protection and assistance. As the law dates back from 1989 and has not been amended since, it is now considered outdated and insufficient to cater for the refugee population in the country. Existing law provides for procedures to determine refugee status, but lacks guidelines on the treatment of refugees.

The legal gaps are filled through inconsistent practices, which are influenced by the negative aspects of the nine reservations the country has made at the time of ratification of the *1951 Convention relating to the Status of Refugees*. Whereas Malawi had declared that its reservations¹ presented mere recommendations, the practice has varied from a liberal translation to strict implementation of some of the basic rights of refugees. In practice and within the camp settings, UNHCR and its implementing partners provide the required protection and assistance to refugees. The access of refugee children to primary education may be affected sometimes by the limited resources of UNHCR and its partners. Refugees can seek paid work within the camp. In the same manner refugees carry out their own income-generating activities and conduct small scale businesses within the camp perimeters.

Outside the camp, however, the freedom of movement is restricted. Residence outside the camp has been declared illegal through a High Court ruling, which overturned previous more liberal decisions made by the government committee established under the Refugees Act. High fees for business permits restrict refugees from establishing and carrying out businesses in other major cities in the country. Local immigration authorities have often rounded up refugees in the rural and urban areas and returned to the camp, claiming that they were complying with the High Court Ruling. Consequently, limited markets within the camp, high fees for work permits and generally negative attitudes of the local population have allowed only very few refugees attaining some degree of self-reliance inside and outside the camp settings. This in turn has resulted in an unfavourable situation, whereby refugees depend largely on international relief. Three refugee families of less than 20 persons have managed to be naturalised through executive orders of the President.

The Government has implemented a refugee status determination procedure and, with the assistance of UNHCR, it has established a dedicated Refugee Status Determination (RSD) Unit to deal with eligibility issues. However, more capacity-building of the officials is

¹ Reservations are made regarding articles 2, 7, 13, 15, 19, 22, 24, 28 and 34 of the 1951 Convention relating to the Status of Refugees.

needed in order for the system to work effectively and efficiently. Procedures surrounding status determination have to be streamlined. UNHCR has been providing training, but the high turnover of staff has limited the impact of the diverse capacity-building initiatives. UNHCR is particularly concerned that despite ongoing training on refugee protection provided to relevant authorities, border officials have at times deported persons who claimed to be in need of international protection without allowing for an assessment of the merits of their asylum applications.

III. Achievements and Best Practices

As indicated earlier, since 2006, the Government of Malawi has established a full-time dedicated RSD Unit staffed with Eligibility Officers and an administrative assistant. As of the end of 2009, a Legal Advisor and an Appeals Officer have also been added to the Unit. The creation of the Unit has improved the status determination and reduced the number of persons awaiting a decision on their asylum applications. Last year, UNHCR sponsored a one week study visit of the Refugee Committee members to Zambia, where senior government officials learnt how their neighbouring country is handling refugee issues, including the treatment of urban refugees. It is hoped that the dedicated staff of the RSD Unit will gradually be taking a more liberal approach towards defining the rights and obligations for refugees and asylum-seekers in Malawi.

The Government has initiated a complete review of its refugee policies and the refugee law. UNHCR actively supports this process. The review is led by a local consultant under the direction of the Government. 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 protection in the country.

IV. Challenges and Constraints

The main challenge constitutes the lack of a favourable legal framework for the implementation of the rights of refugees in the country. Another challenge are the restrictive practices related to the numerous reservations, which Malawi has made to the *1951 Convention*. The frustrations arising out of the protracted nature of the refugee situation in Malawi has created a generally negative attitude towards refugees and asylum-seekers. The situation has been compounded by the increased numbers of migrants who use asylum procedures to regularise their stay in the country on a temporary basis.

V. Capacity Building and Technical Assistance

A number of seminars and workshops have been provided to government officials, media and other stakeholders on topics such as refugee law and international protection in general. These trainings will continue to be provided, as the turnover of staff within the

targeted institutions often is very high. In the future, targeting law makers and media houses will become an important aspect of capacity-building activities of UNHCR.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
April 2010**