



Position Paper on the Revision of the Malawi Refugee Act

Presented by Inua Advocacy

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Recommendations for a Progressive Refugee Legal Framework in Malawi

Introduction

Inua Advocacy is a Malawian organization committed to the protection and promotion of refugee rights. For many years, we and other stakeholders have awaited the long-overdue review of the Refugee Act. We therefore welcome and commend the Malawi Law Commission for embarking on this critical revision process. We also express our deep appreciation to the Governments' development partners and donors for supporting this effort.

This review presents a timely opportunity for Malawi to align its refugee legal framework with its constitutional values, regional obligations, and international commitments. Inua Advocacy is pleased to present this paper, which provides recommendations grounded in a rights-based and development-orientated approach to refugee protection. This approach acknowledges refugees as potential contributors to Malawi's social and economic advancement.

1. Critique of the Current Refugee Act

The existing Refugee Act of 1989 was enacted in a distinct political era, preceding the adoption of the 1994 democratic Constitution. At that time, Malawi was undergoing a transitioning from authoritarian rule and was hosting a large influx of refugees fleeing regional conflicts. However, the 1989 Act does not reflect the rights-based principles enshrined in the 1994 Constitution which guarantees fundamental rights and freedoms to every individual, including refugees.

Despite the constitutional changes, the 1989 Act continues to serve as the primary legal framework for refugees in Malawi. However, this Act is outdated and does not align with current national and international legal standards related to refugee protection. Because of this, refugees in Malawi are not adequately protected and the inconsistencies between the Act and current national and international standards may create legal uncertainties and challenges.

Between 2022 and 2025, we documented the cases of 18 refugees and Asylum Seekers, 16 Ethiopian men and one Congolese woman with her four-month-old child who were arrested, detained at Kamuzu Military Barracks, and deported to their countries of origin without due legal process. Notably, the Congolese woman and her infant endured 137 days of unlawful detention prior to their deportation to the Democratic Republic of Congo.

2. Alignment with International and Regional Instruments

Malawi is a party to several international and regional legal frameworks that outline minimum standards and guiding principles for the protection of refugees. The revised Refugee Act must be harmonized with these instruments to ensure Malawi upholds its international obligations while promoting human dignity and regional solidarity.

a) Malawi's Nine Reservations to the 1951 Refugee Convention

While Malawi is a signatory to the 1951 UN Refugee Convention and the 1967 Protocol, it entered nine reservations that significantly limit refugee rights and obstruct integration efforts. These reservations are as follows:

Article 7: Exemption from Reciprocity: Limits refugees from receiving equal legal protection afforded to nationals.

Article 13: Movable and Immovable Property: Restricts refugees from owning property, undermining economic independence.

Article 15: Right of Association: Prohibits refugees from forming or joining associations and civil society organizations.

Article 17: Wage-earning Employment: Denies access to employment, reinforcing dependency and poverty.

Article 18: Self-employment: Prevents refugees from operating businesses or engaging in trade.

Article 19: Liberal Professions: Blocks skilled refugees from practicing their professions.

Article 21: Housing: Limits access to adequate housing and state-supported programs.

Article 22: Public Education: Restricts equal access to education, especially beyond primary level.

Article 26: Freedom of Movement: Enforces restrictive encampment policies, contrary to international best practices.

These reservations contradict key provisions of the Malawi Constitution, including:

Section 20: Prohibits discrimination on any grounds.

Sections 29 & 30: Protect economic rights and the pursuit of development.

Section 35: Guarantees freedom of movement and residence.

Section 13 (c & g): Emphasizes equality, education, and participation in development.

b) The 1969 OAU Convention, Governing the Specific Aspects of Refugee Problems in Africa

This Convention, tailored to the African context, urges states to offer protection and facilitate the integration of refugees. It calls on member states to “receive refugees and to secure the settlement of those who, for well-founded reasons, are unable or unwilling to return to their country of origin.” It also prohibits refoulement, stating that “no person shall be subjected by a member state to rejection at the frontier, return, or expulsion.”

c) The African Charter on Human and Peoples’ Rights

The Charter applies to all individuals, including refugees, and enshrines key rights relevant to refugee protection. It guarantees the right to non-discrimination, freedom of movement, and education. It also supports the principle that “every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind.”

d) The Global Compact on Refugees (2018)

Although not legally binding, Malawi endorsed the Compact and committed to its principles. It calls for improved refugee inclusion, economic participation, and shared responsibility. The Compact highlights the importance of self-reliance and states that “refugees and host communities should be empowered to become resilient and self-reliant, with the support of national authorities and the international community.”

As a signatory to these and other international frameworks, Malawi is obligated to uphold global standards and ensure that its national laws align with its commitments.

Harmonizing Malawi's Refugee Act with international and regional instruments will not only strengthen the protection and support provided to refugees but also foster greater regional solidarity and cooperation. This alignment would mark an important step toward building a more inclusive, humane, and supportive environment for refugees in Malawi.

3. Recommendations

1. Repeal the 1989 Refugee Act and enact comprehensive legislation that fully complies with Malawi's Constitution, incorporates obligations under international and regional instruments to which Malawi is a party, and responds to contemporary challenges.
2. Withdraw the nine reservations to the 1951 Refugee Convention to uphold refugee rights and dignity.
3. Recognize refugees as rights-holders, entitled to legal protections, dignity, and socio-economic inclusion.
4. End the policy of mandatory encampment and adopt community-based alternatives that promote freedom of movement.
5. Allow refugees to work and operate businesses, in line with the Malawi 2063 Vision and national development strategies.
6. Establish clear pathways to local integration or long-term residence, particularly for those in protracted refugee situations.
7. Ensure access to essential public services, including education, healthcare, and social welfare.
8. Create an independent Refugee Appeals Board to guarantee due process and access to justice in asylum procedures.
9. Strengthen institutional coordination among government departments, UNHCR, and civil society to ensure effective and humane refugee management.

Conclusion

The revision of the 1989 Refugee Act is a long-overdue necessity, driven not only by legal imperatives but also by moral and constitutional obligations. For decades, refugees in

Malawi have languished in uncertainty, unable to build their lives or contribute meaningfully to the society due to lack of clear and protective legal framework. A revised act that aligns with Malawi constitutional, regional and international commitment is essential to unlock the potential of refugees and enable them to thrive. We therefore urge the commission to expedite the process.

We are committed to supporting and collaborating with the Commission and all stakeholders to disseminate information about the revision and contribute to its successful implementation.

Sincerely,



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