

Organization: UMUNTHU: Access to Justice for All (Malawi)

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Strengthening the Right to an Effective Remedy for Forcibly Displaced Populations.

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol stand as foundational instruments in international refugee law, providing a framework for the protection of individuals fleeing persecution. As USCRI Humanitarian Legal Services seeks to highlight legal advocacy around the world on provisions of the Convention, Umunthu, a Malawian Non-Governmental Organisation seeks to contribute to this effort by focusing on Article **16 (Access to Courts)** and the broader principle of **effective remedy** for refugees and asylum seekers within the Malawian context.

The Undermining of Effective Remedy: The Case of Malawi

The situation in Malawi, as detailed in a recent joint civil society submission to the AU Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons, and Migrants in Africa, starkly illustrates how the right to effective remedy and adequate representation can be severely undermined. Key instances where the right to effective remedy and representation was denied include: **arbitrary detention** and **loss of property**.

In relation to arbitrary detention, between 17 May and 26 May, 2026, Malawi's Homeland Security Ministry stated that it had detained 902 refugees and asylum seekers. Worryingly, 117 of these detainees were children. The Ministry further affirmed that the sole purpose of arrest and detention was to screen their documentation and ascertain their status either as illegal immigrants, asylum seekers or refugees. During this period, refugees and asylum seekers found themselves separated from their families, endured overcrowded conditions, physical abuse, lack of access to legal representation and family, detention without trial, and limited access to basic amenities such as food and menstrual pads.

Regarding the loss of property, the massive relocation of refugees resulted into a widespread looting and plunder of the property belonging to asylum seekers and refugees. Sadly, some of the looting and plunder was orchestrated by the Malawi Police Service and the ruling political party cadres.

Lack of An Effective Remedy.

To begin with, the right to an effective remedy is paramount in ensuring that forcibly displaced populations can assert their rights, challenge unlawful actions, and find safety and dignity.

In Malawi, however, a result of the involvement of the State's own law enforcement agencies and individuals with links to the ruling elite, in the violation of the victims' rights under the Refugee Convention, cases lodged on behalf of the victims have either been dismissed for lack of effective prosecution by the State or not been resolved expeditiously by the judiciary three years after the violations occurred. This situation speaks of the extent to which the right to an effective remedy for refugees in Malawi continues to be suppressed especially when it is the State, or individuals with links to powerful interests, who are the perpetrators of the rights violations.

Conclusion

This systematic denial of effective protection, as seen in cases of arbitrary detention and procedural shortcomings, directly undermines the protective framework of the 1951 Refugee Convention and the 1967 Protocol. To better protect these rights, Malawi must: **Ensure Access to Legal Aid, Strengthen Judicial Oversight, Combat Impunity, and Uphold International Obligations.** By championing and

strengthening the right to adequate representation and effective remedy, we can ensure that the promise of protection enshrined in international law and Malawi's Constitution becomes a reality for all forcibly displaced populations.

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Bio: Dr Cristiano d'Orsi is a Lecturer and Senior Research Fellow at the Faculty of Law, University of Johannesburg and a Senior Consultant in Asylum and Human Rights Law in Africa at Witness Expert in London. Cristiano holds a two-year Diplôme d'Etudes Approfondies (Master of Advanced Studies equivalent, International Law, Graduate Institute for International and Development Studies, Geneva); and a Ph.D. in International Law from the same institution. Additionally, Cristiano has done post-doctoral studies at the University of Michigan Law School (Grotius Scholar) and at the Centre for Human Rights, University of Pretoria. His research interests mainly focus on African Refugee Law, Migration Law, Human Rights Law and Humanitarian Law and, more broadly, on the development of Public International Law in Africa and on African Governance.

As an educator, I am particularly sensitive to the application and implementation in South Africa, country where I have been living for the past 12 years of **Article 22** ("Public Education") of the 1951 Refugee Convention (Refugee Convention).

Under South African law and international conventions -including Article 22 of the Refugee Convention- refugees and asylum-seekers (such as Section 22 permit holders of the South African Refugee Act of 1998) have a guaranteed right to access basic public education. This applies regardless of the learner's documentation status, as affirmed by the Constitution and South African courts. For example, in *The Centre for Child Law Judgment* (2019) an Eastern Cape High Court ruling declared that undocumented children cannot be barred or expelled from public schools due to a lack of permits or birth certificates. The court struck down discriminatory clauses in school admission policies, affirming immigration status is immaterial to receiving basic education. The court ordered the education department to admit all undocumented children into public schools in the Eastern Cape and provide funding for them. The Court also ordered the department not to remove any undocumented children from school, including the children of immigrants in the country illegally and emphasised that the best interests of the child are considered paramount.

The Refugee Convention (Article 22) requires host states to grant refugees the same treatment as nationals regarding elementary (primary) education.

Additionally, South African Constitution (Section 29) stipulates that "everyone" have the right to a basic education, which covers Grades 1 through 9. According to the South African Schools Act (Act 84 of 1996) public schools are prohibited from unfairly discriminating against learners or refusing admission based on a lack of identification or immigration status (Section 5).

While the law is clear, however, refugee and asylum-seeker children often face barriers enrolling in public schools due to administrative friction, particularly regarding admission requirements and processing delays with the Department of Home Affairs (DHA).

Schools typically request a birth certificate, passport, or a valid permit (South African Refugee Act: Section 22 for asylum-seekers or Section 24 for refugees). However, the lack of these documents should not prevent a child from being admitted. If children lack valid documentation, schools may admit them provisionally while the parents are given time to regularize their status with the DHA.

Yet, if refugee parents encounter obstructions such as a school principal refusing to admit a child without an identity document, parents should ask the school for a formal letter on their letterhead stating why the child is being denied.

Once issued, the refusal letter should be taken to the provincial or regional Department of Basic Education (DBE), which is legally obligated to find a suitable placement for the child. In this scenario, organizations like Lawyers for Human Rights (LHR) or Section 27 provide free legal advocacy and advice for families fighting for their children's right to learn. In this regard, in November 2025 a South African court has ordered an anti-migrant group to stop blocking foreign nationals from accessing public health facilities and schools, saying such actions are illegal.

Operation Dudula has been picketing hospitals and clinics in Gauteng and KwaZulu-Natal provinces, checking identity cards and stopping anyone who is not South African from entering. This has since extended to schools. Nevertheless, the High Court in Johannesburg has ordered the group to stop 'intimidating, harassing [or] interfering with accesses to these facilities', following a case brought by rights groups.



Legal Refugee Center

Contribution from Legal Refugee Center (LRC)

Strengthening Refugee Protection and Access to Rights in Burundi, Tanzania, and South Africa

The work of Legal Refugee Center (LRC) focuses on strengthening protection, legal assistance, and access to fundamental rights for refugees, asylum seekers, and other forcibly displaced populations across Burundi, Tanzania, and South Africa.

Our advocacy is deeply connected to the principles enshrined in the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees, particularly regarding:

- Protection against discrimination.
- Access to legal protection and documentation.
- Freedom from refoulement.
- Access to education and healthcare.
- Protection of women and children.
- Human dignity and equal treatment.

Burundi: Protection and Community-Based Support

In Burundi, LRC currently provides community-based protection services within refugee sites including Musenyi, Busuma and Urban Refugees. Our work includes:

- Legal orientation and protection referrals.
- Psychosocial support for survivors of gender-based violence (GBV).
- Child protection and recreational activities.
- Community awareness on human rights and refugee protection.

One of the major concerns observed in Burundi is the growing vulnerability of women, children, persons living with disabilities, and survivors of violence who continue to require urgent protection services, healthcare access, and psychosocial assistance.

LRC continues advocating for stronger protection coordination mechanisms and increased humanitarian support for refugee communities living in difficult conditions.



Legal Refugee Center

Tanzania: Concerns Regarding Refugee Camp Closures and Access to Protection

In Tanzania, LRC remains concerned about the situation affecting Burundian refugees following restrictive refugee policies and the closure or downsizing of refugee camps, including the situation surrounding Nduta camp in Kigoma region.

Many refugees and asylum seekers continue to face uncertainty regarding:

- Access to legal status and documentation.
- Voluntary repatriation procedures.
- Freedom of movement.
- Access to education and livelihoods.
- Risks of forced or pressured return.

LRC advocates refugee protection approaches that fully respect the principles of voluntary repatriation and non-refoulement under international refugee law.

Our organization also supports refugees through legal orientation, rights awareness, and advocacy aimed at ensuring that refugee returns remain safe, voluntary, and dignified.

South Africa: Rising Xenophobia and Protection Challenges

In South Africa, LRC is increasingly alarmed by the worsening protection environment affecting refugees, asylum seekers, and migrants.

In recent years, refugees and asylum seekers have faced:

- Xenophobic violence and discrimination.
- Community hostility against foreign nationals.
- Threats, assaults, and forced displacement.
- Barriers to documentation and asylum procedures.
- Limited access to employment, healthcare, and social services.

Many refugees report fear for their safety due to anti-foreigner sentiments and attacks targeting non-South Africans. These conditions undermine the protections guaranteed under the Convention Relating to the Status of Refugees, particularly principles related to non-discrimination, legal protection, and human dignity.

LRC continues to provide legal referrals, advocacy support, and humanitarian assistance to vulnerable refugees and asylum seekers affected by xenophobia and social exclusion.



Legal Refugee Center

We also advocate for stronger implementation of refugee protections and greater public awareness to combat hate, discrimination, and violence against displaced populations.

Legal Advocacy and Strengthening Protection

Across all three countries, LRC works to strengthen refugee protection through:

- Community legal education.
- Documentation and referral of protection cases.
- Advocacy on gender-based violence and child protection.
- Partnerships with humanitarian actors.
- Human rights awareness campaigns.
- Support for vulnerable refugees through direct services and referrals.

We believe that the principles established under the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees remain critically important today, especially as displaced populations continue facing growing protection risks, discrimination, and humanitarian crises.

LRC remains committed to promoting dignity, legal protection, and durable solutions for refugees and asylum seekers throughout the region.

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