

# GLOBAL **NEXTGEN** INDEX

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## End Child Detention Scorecard

# **MALAWI**

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



## FINAL SCORE

# 32

Children tend to be held in criminal prisons in Malawi. Time spent in detention often exceeds 3-8 months and there is no time limit – meaning that children need to cope with the indefinite nature of their incarceration. There are few practices in Malawi that provide support for migrant children living in the community, and those that exist are delivered primarily by NGOs. Has a law that states that no child shall be imprisoned for immigration but in practice, Courts continue to issue orders for detention. Despite this, the political will to uphold the rights of migrant children does exist.

	Malawi	Possible
Treaties	16	20
National laws	9	10
Processing	3	26
Placement	2	12
Rights	2	20
Oversight	3	12
<b>Sub Total</b>	<b>34</b>	<b>100</b>
Points off	-8	-15
Bonus points	+5	+15

### Treaties 16/20

Malawi has ratified four of the six Conventions and Protocols that assist in the protection of children in the context of migration.

**Recommendation:** The Government of Malawi is commended on this achievement. Further, the government is encouraged to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

### National laws 9/10

Malawi's Child Care, Protection and Justice Act states that no child shall be imprisoned for any offence, including immigration. It should be noted however, in practice, Courts continue to issue orders to transfer children to reformatory centers for the purposes of immigration detention.

**Recommendation:** The Government of Malawi is strongly encouraged to implement the Child Care, Protection and Justice Act, which prohibits the detention of all children up to the age of 18 years, as well as their families. This would bring the government in alignment with international law obligations and standards.

## Processing 3/26

Malawi has few policies or practices in place which are sensitive to the needs of migrant children. Some positive provisions do exist in law, such as the possibility of guardianship, provision of documentation, and provision of legal advice. However, vital processes such as individualized Best Interest Determination and Assessments, screening, referrals, case management, translations are severely inadequate due to a lack of state resources.

**Recommendation:** The Government of Malawi is strongly encouraged to immediately implement child-centred policies and practices that have systematic impact, especially for unaccompanied children.

## Placement 2/12

In law, the Child Care, Protection and Justice Act provides for the protection of children and there are options for conditional placement for children and families. In practice, there are some placement options with conditions for children, such as young offenders or rehabilitation centres, however places are limited. There is a lack of placement options due to insufficient infrastructure and financial restraint, and often unaccompanied children are placed in prisons when there is no rehabilitation center for them to attend.

**Recommendation:** The Government of Malawi is strongly encouraged to utilise existing practices of alternatives to detention, including community placement options and foster care for unaccompanied minors. The government is encouraged to implement and promote these practices in a robust and systematic fashion.

## Rights 2/20

The law does not provide for housing nor social assistance due to a lack of resources. Access to education is permitted but due to language barriers and widespread detention on arrival, such provisions are seldom enjoyed. Whilst Kachere prison has an in-house school, migrant children have not been given access to it. Access to healthcare includes non-nationals but migrant children rarely access such services due to barriers like transportation, referrals, and language. Parents of child migrants are not granted the right to work and firewall legislation does not exist.

**Recommendation:** The Government of Malawi must uphold the rights of migrant children to indiscriminate access to education and health care. The government is encouraged to introduce provisions for housing, social assistance, and work rights so that parents can contribute to the economy and relieve their reliance on the state. Additionally, the government is encouraged to introduce firewall legislation to ensure social welfare services are not impeded by migration control activities.

## Oversight 3/12

Whilst provisions for Judicial control over the migration process exist, they are rarely implemented as the government cites a lack of funds. Malawi does not have any formal monitoring or reporting of immigration detention by independent bodies, but NGOs are sometimes granted access. Immigration detention statistics are rarely published.

**Recommendation:** The Government of Malawi is strongly encouraged to improve its statistics by disaggregating data about immigration detention, as well as improve judicial oversight of the migration process overall. Additionally, the government is encouraged to develop National Preventive Mechanisms for Detention Monitoring following the ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

## Points off -8/-15

It is estimated that 36 children were detained in Malawi in 2017, all Ethiopian. Those in detention can be held for indefinite periods, almost all reported cases are for periods of longer than 3 months with poor living conditions and children are detained with unrelated adults and criminals. Migrant children are usually arrested and detained for an indefinite period until such a point they can be safely repatriated to their country.

**Recommendation:** The Government of Malawi is strongly encouraged to abolish the detention of children, in law and in practice. The government needs to take significant and immediate action to reduce numbers of children detained for extended periods of time.

## Bonus points +5/+15

Since 2015, there has been a marked improvement in attitudes on this issue, with the clear political will for change to protect the rights of migrant children. There are currently discussions surrounding the implementation of an NGO-Government pilot case management program to divert child migrants from criminal prisons.

**Recommendation:** The Government of Malawi is commended for its political will to protect the rights of children. The government is supported in its efforts to develop and implement pilots. Further, in order to comply with international standards and obligations, the government is supported in its efforts to continue upholding the rights of children.



This scorecard has been assessed by the Malawi NextGen Index Committee:

- Centre for Human Rights Education Advice and Assistance (CHREAA)
- Eye of the Child
- Group of Ethiopian community volunteers working with Ethiopian migrants in Malawian Prisons

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:  
[media@endchilddetention.org](mailto:media@endchilddetention.org)

# Additional Resources & Information

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## Treaties & National Laws

- [Malawi Trafficking in Persons Act, 2015](#)
- [Malawi Refugee Act, 1989](#)
  - Refugee and Asylum Seeker Detention: Section 10(4)
  - Refugee and Asylum Seeker Processing: Section 13

## Directives & Services

- [Constitution of the Republic of Malawi](#)
  - Interpretation and Translation: Section 42(1)(a)
  - Education: Section 25
  - Healthcare: Section 30(2)
  - Due Process: Sections 42(1)(e), 41(3)
  - Prison and Detention Monitoring: Section 169
  - International and Domestic Law: Section 211

## Community Integration & Support

- [Malawi Ministry of Gender, Children, Disability and Social Welfare](#)
- [Malawi Child Care, Protection and Justice Act, 2010](#)
  - Child Imprisonment: Sections 24-25, 140
  - Child Guardianship: Sections 38-45
  - Child Legal Representation: Sections 126-131
  - Child Foster Care and Housing: Section 42, 73

## Infrastructure & Oversight

- IOM: [IOM Repatriates Ethiopian Child Migrants Detained in Malawi](#)
- The Times Group: [Malawi Deports 23 Ethiopian Children](#)
- [Malawi 2016 Human Rights Report](#)
  - Prison and Detention: Page 3

## Articles & Publications

- MSF Malawi: [Detained for a dream, August 2015](#)
- MSF Malawi: [Migrants in Maula Prison, June 2015](#)
- National News Malawi: [Police intercept 56 illegal Ethiopians](#)
- News 24 Malawi: [Horror conditions for 100s detained in Malawi en route to SA, August 2015](#)
- The Sunday Times: [Govt too broke to deport 40 Ethiopian children, May 2016](#)
- VOA News: [Illegal Migrants Stuck in Malawi Prisons After Serving Sentences, September 2015](#)