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# REPORT ON CITIZENSHIP LAW: MOZAMBIQUE

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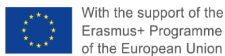
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# Report on Citizenship Law

## Mozambique

*Patrícia Jerónimo*

### 1. Introduction

Mozambique is a former Portuguese colony located on the eastern coast of southern Africa. It is bound by Tanzania to the north, Malawi, Zambia, and Zimbabwe to the west, South Africa to the west and south, Swaziland to the south, and the Indian Ocean to the east. It occupies a total area of 799,380 square kilometres, divided into eleven provinces and three regions: North (Niassa, Cabo Delgado and Nampula provinces), Central (Zambezia, Sofala, Manica and Tete provinces) and South (Inhambane, Gaza and Maputo provinces, plus Maputo city).<sup>1</sup> At the time of the 2017 General Census, the country's resident population was estimated at 28,861,863 people.<sup>2</sup>

As was the case with all newly-independent African states, Mozambique was faced at independence, on 25 June 1975, with the task of creating a new nation out of the territory it had inherited from the colonial state (Chabal 2002: 41). A difficult task anywhere, this was a formidable endeavour in Mozambique, given the extension of the territory and the fact that the Portuguese had never built a proper communications system linking the regions north and south of the Zambesi river (Newitt 2002: 186; Chabal 2002: 48, 56). As pointed out by Newitt (2002: 186), the Zambesi valley 'acted like an inward extension of the sea, [helping] to perpetuate cultural divisions between the matrilineal peoples to the north of the river and the patrilineal peoples to the south'. Furthermore, due to intense migration to neighbouring countries during colonial times (for work and later to escape the liberation war), the various regions of Mozambique were more closely linked with their neighbours across the border than with other parts of Mozambique (Newitt 2002: 187-188). At the time of independence, much like today, the ethno-linguistic composition of the population could be described in the following manner: 98% as originating from a variety of Bantu ethnic groups (e.g. Makua, Tsonga, Makonde, Shona, Sena, Swahili, Ndaou) and other indigenous groups, with the

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<sup>1</sup> Information taken from the United Nations Human Rights Committee Consideration of Initial Reports from Mozambique, of 23 May 2012, CCPR/C/MOZ/1, §§ 5-6, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMOZ%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMOZ%2f1&Lang=en) [17.03.2019].

<sup>2</sup> *Statistical Yearbook 2017*, p. 19, available at <http://www.ine.gov.mz/estatisticas/publicacoes/anuario/nacionais/anuario-estatistico-2017.pdf/view> [17.03.2019].

remaining 2% being made up of groups of European (mostly Portuguese) and Asian (mostly Indian and Chinese) descent, Arab Mozambicans, and multiracial groups.<sup>3</sup>

In the first years after independence, the ruling FRELIMO<sup>4</sup>, following a Marxist blueprint, took it upon itself to create a ‘New Man’ (*Homem Novo*), free from the constraints of ethnicity and tradition (Sumich 2013: 103, 106), and to build a modern postcolonial nation-state that would accommodate all ethnic, racial, regional and religious groups (Chabal 2002: 56, 69). Consistent with its purpose of ‘killing the tribe in order to build the nation’ – famously stated by President Samora Machel (Pinto 2012: 88) –, FRELIMO paid no attention to pre-colonial traditions of belonging when establishing the citizenship regime at independence, opting instead to replicate the European model of citizenship as attached to the state system (Manby 2018b: 37-41). The country’s ethno-linguistic diversity was eventually acknowledged by the 1990 Constitution – albeit with no implications for the citizenship regime – and, as elsewhere in Africa, remains politically visible and socially relevant in people’s daily lives. As a retort to RENAMO’s<sup>5</sup> claim to be the sole defender of tradition, FRELIMO has in recent years been more careful not to come across as an out-of-touch mixed elite and therefore has appointed mostly black Mozambicans as cabinet members and has taken on the goal of creating a black bourgeoisie (Sumich 2013: 109). This attention to race and ethnicity is not without nefarious consequences, of course. The internal cleavages based on race, ethnicity or region, which were taboo in the official discourse during socialism, have resurfaced and open expressions of hostility towards minority groups are increasingly common. In particular, popular resentment against the privileges and wealth enjoyed by Mozambican whites and Indians has fuelled the perception that they do not belong to the Mozambican nation, even if they are Mozambican citizens under the law (Sumich 2013: 102-113). Although Mozambique has consistently adopted *ius soli* as the main criterion for citizenship attribution throughout its history as an independent state, it becomes apparent that ‘simply being born in Mozambique does not necessarily make one a full citizen in the popular imagination’ (Sumich 2013: 113).

Irrespective of whether or not there is a gap between the statutory provisions on citizenship and the ‘popular imagination’, there is certainly a gap between those provisions as they are set in the Constitution and in ordinary legislation and the way in which they are being applied in practice by public authorities throughout the country and used by (prospective) citizens in Mozambique and abroad. Being modelled after European citizenship standards, these provisions were from the start predicated on the existence of a comprehensive network of civil registries able to ensure universal birth registration and the issuance of identity documents. Instead, what Mozambique was left with at independence was a meagre administrative infrastructure barely present outside the capital, and much of it would, in any case, be destroyed during the 16 years of civil war. With the loss of public records and the massive displacement of Mozambicans to urban centres in Mozambique or across the border, the determination of who is entitled to Mozambican citizenship becomes a problem. As reported by UNHCR, in 2011, Mozambique has a significant potential to have among its original population ‘persons with citizenship problems’, i.e. who are stateless or at risk of statelessness, due to the lack of primary documents (e.g. birth certificates) that would enable them to prove their Mozambican citizenship, something which affects mostly those

<sup>3</sup> Information available at <https://www.worldatlas.com/articles/ethnic-groups-of-mozambique.html> [22.03.2019].

<sup>4</sup> Mozambique Liberation Front (*Frente de Libertação de Moçambique*).

<sup>5</sup> Mozambique’s National Resistance (*Resistência Nacional Moçambicana*), the rebel force created by the Rhodesian security forces to destabilise Mozambique and later supported by the South African government during the civil war that RENAMO fought with FRELIMO from 1977 until 1992 (Chabal 2002: 76-86; Newitt 2002: 209-210).

individuals who migrated to neighbouring countries and failed to establish their citizenship in Mozambique upon their return or from abroad.<sup>6</sup> The indeterminacy of their citizenship status is a source of vulnerability, leading to harassment by state officials and to obstacles in accessing basic rights, but the lack of primary documents is a wider problem affecting also those who never left the country and whose citizenship is in principle not disputed.

The majority of the population in Mozambique is undocumented.<sup>7</sup> In spite of the efforts made by Mozambican authorities over the past decade,<sup>8</sup> birth registration rates are still below 50%, as admitted by the Minister of Justice Isaque Chande in 2018, during the presentation of a plan designed to ensure the birth registration of 1,4 million individuals within a four-year timeframe, to reach the goal of a 90% registration rate overall.<sup>9</sup> Registration is mandatory and free of charge if made within 120 days of the birth and registration units have been established next to maternity hospitals across the country in recent years,<sup>10</sup> but many births take place at home and a large part of the Mozambican population is still unaware of the importance of birth registration, since many manage to go about their daily lives without being impeded by lack of documentation. According to Sérgio Sueia, Director of the Civil Registry Department at the Ministry of Justice and Constitutional and Religious Affairs (*Departamento do Registo Civil no Ministério da Justiça, Assuntos Constitucionais e Religiosos*), many parents are reluctant to register their children due to the fees charged after the 120 days grace period and because the Civil Registry Office refuses to register ‘African names’, so children are often only registered if/when they are enrolled at

<sup>6</sup> In 2009, the Mozambican authorities devised a plan to register Mozambicans in other countries in the region, estimating that around 45,000 persons of Mozambican origin without their citizenship recognized were then living in Malawi, 42,000 in Tanzania, 35,000 in Zimbabwe, 30,000 in Swaziland, 20,000 in Zambia and 1.2 million in South-Africa. An estimate of the potentially stateless persons living in Mozambique was (and continues to be) more difficult to make. Since 2009, there have been several missions by UNHCR and local NGO designed to map the cases of statelessness and risk of statelessness, focusing mostly on the bordering areas with Zimbabwe and South Africa, which has resulted in the identification of thousands of individuals at risk. See UNHCR Fact-sheet ‘Fighting Statelessness’, available at <http://citizenshiprightsafrika.org/wp-content/uploads/2016/07/UNHCR-Mozambique-Statelessness-Project.pdf> [26.04.2019]. It is worth noting that, in some instances, the Mozambican authorities are not directly to blame for the situation. That is the case e.g. with many of the descendants of Mozambican migrant workers in Kenya (circa 3,500, mainly from the Makonde ethnic group), who were contacted by the Mozambican consulate in Mombasa in order to register to vote in Mozambican elections, but who did not wish to hold Mozambican citizenship for fear that it would hinder their chances of obtaining Kenyan citizenship. Indeed, during the 2016 registration process of the Makonde population at risk of statelessness, the Kenyan authorities rejected applications by those who had Mozambican voter registration documents (Manby 2018a: 48). In any case, there are also instances where Mozambican authorities are to blame, even when their initiatives are well intended. For example, in 2015, the Mozambican immigration authorities travelled to Zanzibar to make documentation available on application, but the fees charged were too high for the majority of the target population to actually benefit from the initiative (Manby 2018a: 64-66).

<sup>7</sup> See UNHCR Fact-sheet ‘Fighting Statelessness’, *cit.*

<sup>8</sup> Which allowed for the registration of 7,959,816 children between 2009 and 2016. See Combined third and fourth periodic reports submitted by Mozambique under Article 44 of the Convention, due in 2016, CRC/C/MOZ/3-4, received on 28 March 2018, § 147, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMOZ%2f3-4&Lang=en) [08.05.2019].

<sup>9</sup> Information retrieved from news item entitled ‘Governo moçambicano quer atingir 1,4 milhões de registos de nascimento em quatro anos’, published on 9 May 2018, available at [https://24.sapo.pt/noticias/internacional/artigo/governo-mocambicano-quer-atingir-1-4-milhoes-de-registos-de-nascimento-em-quatro-anos\\_24151870.html](https://24.sapo.pt/noticias/internacional/artigo/governo-mocambicano-quer-atingir-1-4-milhoes-de-registos-de-nascimento-em-quatro-anos_24151870.html) [29.04.2019].

<sup>10</sup> Two features commended by the African Commission on Human and Peoples’ Rights in 2015. See Concluding Observations and Recommendations on the Second and Combined Periodic Report of the Republic of Mozambique on the Implementation of the African Charter on Human and Peoples’ Rights (1999 – 2010), § 34, available at [http://www.achpr.org/files/sessions/17th-ec/conc-obs/1-1999-2010/concluding\\_observations\\_mozambique.eng.pdf](http://www.achpr.org/files/sessions/17th-ec/conc-obs/1-1999-2010/concluding_observations_mozambique.eng.pdf) [29.04.2019].

primary school.<sup>11</sup> As for the registration and documentation of adults, there have been several campaigns over the years, often as a side effect of children birth registration campaigns,<sup>12</sup> but the most far-reaching registration procedure is still that of voter registration in preparation for general elections. Starting with the first multi-party elections of 1994, voters without an identity card or a passport have been allowed to register in the electoral rolls, and be issued a voter's card, based on other documents containing a recent photograph, signature or fingerprint (e.g. work card, military identity card), on recognition by members of the registration brigade, or on the testimony of citizens registered at the same registration centre or of religious or traditional authorities.<sup>13</sup> While a source of much needed flexibility, voter registration on the basis of witness testimony is, however, not always reliable, among other reasons because the religious and traditional authorities' views on citizenship may be at odds with the statutory provisions (Manby 2018b: 4-5; Bakewell 2007: 18). The (un)reliability of the electoral rolls has been a constant point of concern for the Mozambican Constitutional Council (Cistac 2012: 2, 5) and for external election observers over the years.

A further reason why recognition as a Mozambican citizen may prove extremely challenging is the confusion surrounding the legal framework in force and the lack of clear implementation guidelines from the central government, which leads to inconsistent practices in the civil registry offices at provincial level (e.g. in the application of witness procedures for the registration of persons without primary documents).<sup>14</sup> The confusion in the application of the legal framework is blatant even at the level of the central government, since ministerial decrees granting naturalisation as recently as 2015<sup>15</sup> make no reference to the relevant provisions in the 2004 Constitution and instead invoke as legal grounds provisions in the 1975 Nationality Act and the 1975 Nationality Regulation which are no longer in force. The 2004 Constitution made significant changes to the citizenship regime, but did not expressly repeal the 1975 Nationality Act nor the 1975 Nationality Regulation, which remain in force to the extent that they do not contradict the constitutional norms. What is to be considered contradictory or merely supplementary has been a matter of contention, particularly in what regards dual citizenship (Manby 2016: 46, 49), which the 2004 Constitution allows, but which still appears as grounds for citizenship deprivation in the 1975 Nationality Act. While it is arguable that many of the questions associated with the interplay between the Constitution and the Nationality Act and Regulation may be easily addressed with recourse to classic hermeneutical tools of the civil law tradition, it would certainly be advisable that the Mozambican legislator should adopt a new Nationality Act to repeal both the 1975 Nationality Act and the 1975 Nationality Regulation, as the UNHCR has been recommending for many years now.<sup>16</sup> In July 2012, the Minister of Justice Benvinda Levy announced that a

<sup>11</sup> See 'Governo moçambicano quer atingir 1,4 milhões de registos de nascimento em quatro anos, *cit.* In its 2018 report to the UN Committee on the Rights of the Child, the Mozambican Government explained the low levels of registration as being caused by 'socio-demographic factors, such as the level of education of the parents, cultural barriers, lack of knowledge that registration is free of charge in the first 120 days after the birth, and limitations of resources'. See Combined third and fourth periodic reports submitted by Mozambique under Article 44 of the Convention, *cit.*, § 143.

<sup>12</sup> As indicated in the report submitted to the UN Human Rights Committee in 2012, the registration campaigns for children ended up involving also the registration of hundreds of thousands of adults (657,209 between 2005 and 2010), since unregistered parents showed up to the brigades wishing to register their children, and the solution was to register the parents first and then the children. United Nations Human Rights Committee Consideration of Initial Reports from Mozambique, *cit.*, § 137.

<sup>13</sup> This solution has been consistently adopted by different Voter Registration Acts over the years, from Law 5/97, of 28 May 1997 [Article 18 (3)] until Law no. 9/2007, of 26 February 2007 [Article 21 (3)].

<sup>14</sup> See UNHCR Fact-sheet 'Fighting Statelessness', *cit.*

<sup>15</sup> See e.g. the 3 April 2015 edition of the *Boletim da República*, I series, no. 27, available at <https://lexlink.eu/FileGet.aspx?FileId=1147951> [04.04.2019].

<sup>16</sup> See UNHCR Fact-sheet 'Fighting Statelessness', *cit.*

new Nationality Act was in the works, seemingly with the fight against fraud as its primary goal,<sup>17</sup> but nothing came of it. A new Nationality Act and proper guidelines and training to civil registry officials across the country remain a top priority.

A final remark on terminology. Editorial constraints require the use of the term *citizenship* when *nationality* would be a more appropriate term to refer to the legal ties existing between the Mozambican state and its citizenry. Unlike other legal systems where citizenship and nationality are taken as synonymous and used interchangeably, in Mozambique the term used both in the Constitution and in ordinary legislation is *nacionalidade* (nationality). The few instances in which the 2004 Constitution uses the term ‘citizen’ (*cidadão*), e.g. Article 24 (3), is as synonymous with ‘individual’. It is also worth noting that, while the grounds for attribution of ‘citizenship by origin’ (*nacionalidade originária*) in the 2004 Constitution cover only grounds for attribution on the basis of birth – and therefore will be referred to as ‘citizenship by birth’ –, this was not always the case, so we will use the expression ‘citizenship by origin’ when referring to the regime set by the 1975 Nationality Act, since it also covers attribution on the basis of domicile in the country on the date of independence, participation in the liberation struggle, etc. Furthermore, following a long standing tradition in Portuguese speaking countries, we will use the terms *attribution* for citizenship by origin and *acquisition* for acquired citizenship, even though the distinct use of the two terms was only expressly adopted by the Mozambican law makers in the 2004 Constitution and is not always consistently applied in practice.

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<sup>17</sup> Information retrieved from news item entitled ‘Moçambique: Governo estuda proposta lei da nacionalidade’, published on 3 July 2012, available at <https://www.voaportugues.com/a/article-07-03-mozambiquenationality-voanews-161245565/1451408.html> [28.03.2019].



## 2. Historical Background

### 2.1. Membership criteria at the time of independence

Mozambique became an independent state on 25 June 1975, after four centuries of Portuguese colonial rule.<sup>18</sup> FRELIMO, which merged the three liberation movements formed in exile,<sup>19</sup> had been fighting for independence since 1964, but the decolonisation process only started when the *Estado Novo* dictatorship collapsed in an uprising of the military in metropolitan Portugal on 25 April 1974. By ‘Constitutional’ Law no. 7/74, of 27 July 1974,<sup>20</sup> the new metropolitan authorities ruled that the solution for the overseas wars was political, not military, which meant that Portugal recognised peoples’ right to self-determination in all its consequences, including the acceptance of the independence of its overseas territories and the repeal of the section in Article 1 of the 1933 Constitution where those territories were listed as being part of Portugal.<sup>21</sup> Mozambique was to be governed in the meantime in accordance with the transitional regime set by Law no. 6/74, of 24 July 1974,<sup>22</sup> replaced soon after by Law no. 8/74, of 9 September 1974,<sup>23</sup> following the signature on 7 September 1974 of the Lusaka Accord<sup>24</sup> between the Portuguese Government and FRELIMO, as the sole legitimate representative of the Mozambican people.<sup>25</sup>

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<sup>18</sup> ‘Four centuries of Portuguese colonial rule’ is arguably an exaggeration (Pélissier 1994: 27-32), since the Portuguese hold over the territory that is today’s Mozambique was never strong and stayed remarkably limited until the end of the nineteenth century. The Portuguese are deemed to have first reached Mozambique in 1498, when navigator Vasco da Gama ‘recognised’ the area on his way to India. Starting in 1505, fortifications were built along the coast and timid military advancements inland allowed for the establishment of trading posts, in competition with Swahili and Arab merchants, first, and then with Indian and North-American ones. When Portugal was required to prove effective occupation, following the Berlin Conference of 1884-1885, only the southern provinces were placed under direct colonial rule, while the administration and exploitation of the rest of the territory was entrusted to British-controlled charter and plantation companies (Newitt 2002: 233). The *Estado Novo* regime reclaimed control of the empire’s economy from the concession companies, bringing the whole of Mozambique under direct Portuguese rule, and, by 1950, Mozambique had become a colony of white settlement (Chabal 2002: 21, 110-112). Mozambique’s status as a Portuguese ‘overseas province’ meant that the territory was governed by special legislation designed to fit its ‘state of civilisation’ (Silva 2009: 33-35, 212-217), such as Law no. 2066, of 27 July 1953 – the Organic Law for the Overseas Territories (*Lei Orgânica do Ultramar*) –, and Decree-Law no. 39666, of 20 May 1954, which regulated the special status enjoyed by the indigenous population of Guinea, Angola and Mozambique. In 1972, Mozambique was granted ‘state’ status, similarly to Angola, as recognition of the ‘progress of its society and the complexity of its administration’, which in effect only meant that Mozambique was an *autonomous region* within Portuguese territory (Gouveia 2017: 224).

<sup>19</sup> These were the National Democratic Union of Mozambique – *União Nacional Democrática de Moçambique* (UDENAMO) –, based in Rhodesia, the Mozambique African National Union (MANU), based in Kenya, and the National African Union of Independent Mozambique – *União Nacional de Moçambique Independente* (UNAMI) –, based in Malawi (Chabal 2002: 21-22, 113).

<sup>20</sup> Text available at <http://www1.ci.uc.pt/cd25a/wikka.php?wakka=descon03> [01.03.2019].

<sup>21</sup> The text of the 1933 Constitution is available at <https://www.parlamento.pt/Parlamento/Documents/CRP-1933.pdf> [01.03.2019].

<sup>22</sup> Applicable also to Angola. Text available at <http://cedis.fd.unl.pt/wp-content/uploads/2016/01/REGIME-T-ANGOLA-MO%C3%87AMBIQUE.pdf> [01.03.2019].

<sup>23</sup> Text available at <https://dre.pt/application/conteudo/552783> [21.03.2019].

<sup>24</sup> Text available at <http://www1.ci.uc.pt/cd25a/wikka.php?wakka=descon06> [21.03.2019].

<sup>25</sup> Although it claimed to represent the aspirations of the Mozambican people ‘from Rovuma to Maputo’ (Paredes, 2014: 144; Macagno 2008: 234), FRELIMO had had to face bitter internal quarrels in the first five years of its existence – some of which were motivated by ethnic hostility between north and south – and had no organised presence in most of the country (Newitt 2002: 189, 192). Furthermore, the fact that only FRELIMO

The Lusaka Accord set the terms for the progressive transfer of power over the territory from the Portuguese Government to FRELIMO. It scheduled the solemn proclamation of Mozambique's independence to 25 June 1975, to coincide with FRELIMO's anniversary (§ 2), and established three governing structures to operate during the transitional period. These were a High Commissioner, in representation of the Portuguese Government; a Transitional Government, appointed by agreement between FRELIMO and Portugal, to exercise legislative and executive functions and ensure *inter alia* respect for the principle of non-discrimination based on race, ethnicity, religion or gender; and a Joint Military Board, with equal representation of FRELIMO and of the Portuguese Armed Forces, in charge of monitoring the cease fire scheduled for 8 September 1974 (§§ 3-5, 8-9). The Accord did not specify the implications of independence for the citizenship status of Mozambique's inhabitants. It included a provision stressing Portugal and FRELIMO's commitment to eradicate any traces of colonialism and to promote a 'true racial harmony', in which FRELIMO's commitment to a policy of non-discrimination was said to mean that the 'quality of Mozambican' would not be defined by the colour of the person's skin, but by the voluntary identification with the aspirations of the Mozambican nation (§ 15). This same provision added that special agreements would regulate, on the basis of reciprocity, the status of the Portuguese citizens residing in Mozambique and of the Mozambican citizens residing in Portugal. Nothing was said about whether or not the individuals who had been born in Mozambique would be allowed to retain their Portuguese citizenship.

At the time, except for the children of foreign diplomats, all individuals who had been born in Mozambique were Portuguese citizens, per Article 1 of the 1959 Portuguese Nationality Act,<sup>26</sup> even though this formal status was scarcely understood, let alone exercised, by the majority of the population. Not only did the Portuguese colonial administration have a very limited reach outside the main urban centres, but also, up until 1961,<sup>27</sup> Mozambican colonial society had been divided by law into three separate racial/civilizational categories: (a) the white settlers, European born and their offspring, who were full citizens; (b) a small group of Indians<sup>28</sup> and black or mixed raced 'assimilated natives' (*assimilados*), socialised through education and employment in the colonial administration, who enjoyed individual rights theoretically on a par with full citizens; and (c) the large majority of black 'unassimilated natives', the indigenous population *sensu stricto*, to whom specific statutes applied and who did not enjoy equal civil or political rights (Silva 2012: 132-135; Silva 2009: 174-175, 185-186; Sumich 2013: 106; Manby 2018b: 56-57). Most individuals born in Mozambique under Portuguese colonial rule would, in any case, lose their Portuguese citizenship shortly after Mozambique became formally independent, due to the entry into force of infamous Decree-Law no. 308-A/75, of 24 July 1975,<sup>29</sup> which assumed that the persons born or domiciled in an overseas territory turned independent would

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was allowed a seat at the negotiations table was criticised for ignoring the political parties and movements existing in Mozambique at the time. A group of conservative white settlers claiming to be the Movement for a Free Mozambique (*Movimento de Moçambique Livre*) stormed into and occupied the *Rádio Clube* radio station and the airport on the day of the signature of the Lusaka Accord. Four days of violence ensued, with clashes between the white settlers and the African population of the capital, resulting in hundreds of deaths (Machava 2015: 53-55, 62-80).

<sup>26</sup> Law no. 2098, of 29 July 1959; text available at <https://dre.pt/application/conteudo/431607> [01.03.2019].

<sup>27</sup> Or, better yet, 1971, which was the year when all mentions to indigenous peoples were finally deleted from the 1933 Constitution.

<sup>28</sup> In the social hierarchy of Mozambican colonial society, Indians were ranked immediately under the whites, but relations between the Indians and the Portuguese deteriorated after 1950, when the arrival of new white settlers from continental Portugal heightened economic competition, and broke into outright hostility in 1961, when India reclaimed Goa, leading to the expulsion of all those holding Indian passports (Sumich 2013: 107).

<sup>29</sup> Text available at <https://dre.pt/application/conteudo/530841> [01.03.2019].

acquire the citizenship of the new state and so deprived them of Portuguese citizenship *ex lege* (save for a few exceptions), with no regard to whether or not they wished to keep Portuguese citizenship and/or would become stateless as a result (Ramos 1976: 140-141).

## 2.2. Membership criteria in the First Republic (1975-1990)<sup>30</sup>

In preparation for independence, FRELIMO's Central Committee approved, on 20 June 1975, both the Constitution of the Popular Republic of Mozambique and the Nationality Act, to enter into force at zero hours of the 25<sup>th</sup> of June 1975. True to its Marxist ideological blueprint, the Constitution defined Mozambique as a popular democracy where power belonged to the peasants and factory workers brought together and guided by FRELIMO, which was to act as the leading force of society and the state (Articles 2 and 3). The defence and consolidation of national unity were among the Popular Republic's main goals (Article 4), which translated *inter alia* in a commitment to the 'promotion and development of the national personality and culture' and to the dissemination of information about the 'Mozambican culture' abroad (Article 15). The universalistic (as opposed to 'tribalistic') spirit of the Constitution was expressed in the provision that all citizens would be entitled to the same rights and bound by the same obligations, irrespective of colour, race, sex, ethnic origin, place of birth, religion, education, social standing and profession (Article 26 § 1), and that any act designed to hinder social harmony, to create divisions or privilege based on any of those criteria was to be punished by law (Article 26 § 2). Furthermore, the Constitution stressed the importance of gender equality, by making women's emancipation one of the essential tasks of the state and by prescribing that women were equal to men in rights and obligations, an equality of status applicable throughout the political, economic, social and cultural fields (Article 17). If this were not enough, Article 29 prescribed that in Mozambique women and men enjoyed the same rights and obligations, and that this principle was to guide all of the state's executive and legislative action.<sup>31</sup>

In spite of this attention to gender equality, the Nationality Act<sup>32</sup> approved on the same day as the Constitution included provisions which discriminated on the basis of gender, often to the detriment of women. Children born abroad to a Mozambican mother would only be entitled to Mozambican citizenship if the mother had participated in the liberation struggle as part of FRELIMO, whereas children born abroad to a Mozambican father were *ipso facto* Mozambican citizens (Article 8). Only foreign women, not foreign men, were able to acquire

<sup>30</sup> We follow here a common mapping of Mozambique's constitutional evolution into two phases: the First Republic (1975-1990), marked by Marxist influence and a single-party system, and the Second Republic (1990 until the present), marked by the openness to the market economy, the endorsement of the rule of law and the introduction of a multi-party system. See e.g. Macuacua (2019a: 2).

<sup>31</sup> The text of the 1975 Constitution is available at <http://cedis.fd.unl.pt/wp-content/uploads/2016/02/CONST-MOC-75.pdf> [24.03.2019]. The 1975 Constitution was amended on several occasions, first by decision of FRELIMO's Central Committee (27 February 1976; 29 August 1977), later by Act of the National Assembly (Law no. 11/78, of 15 August 1978; Law no. 1/84, of 27 April 1984; Law no. 4/86, of 25 July 1986). Most of the amendments were surgical and focused on organisational aspects (e.g. hierarchy of provincial bodies, number of members of the National Assembly, creation of the office of Prime Minister) or on symbolic aspects, such as the description of the national flag. The most important amendment during this period was that of Law no. 11/78, which made explicit the goal of moving towards Socialism and reorganised the state powers accordingly, following the 1977 party congress in which FRELIMO rebranded itself as a vanguard workers' party (Newitt 2002: 198). None of the amendments altered the provisions covered by our analysis. The texts of the constitutional amendments are published in Rodrigues et al. (2006: 37-61).

<sup>32</sup> The text of the 1975 Nationality Act is available at [https://macua.blogs.com/files/leinacionalidade3\\_75.pdf](https://macua.blogs.com/files/leinacionalidade3_75.pdf) [24.03.2019].

Mozambican citizenship on the grounds of marriage to a Mozambican citizen (Article 10), while Mozambican women who married foreign citizens after independence would automatically lose their Mozambican citizenship [Article 14 (1) (e)]. These provisions were eventually repealed and replaced by gender neutral ones, but overall the 1975 Nationality Act set remarkably durable criteria which continue to be part of the citizenship regime, as is the case with the *ius soli* and *double ius soli* criteria for attribution of Mozambican citizenship by birth. As was to be expected on the eve of independence, the 1975 Nationality Act rewarded the participation in the liberation struggle and suspected dual citizens, two features that proved resilient over the years until they were finally eliminated by the 2004 Constitution.

The 1975 Nationality Act differentiated between ‘citizenship by origin’ (*nacionalidade originária*), which was granted on several grounds besides birth (Articles 1 to 9), and ‘citizenship acquisition’ (*aquisição da nacionalidade*), treated in a separate section, which covered only acquisition on grounds of marriage and naturalisation (Articles 10 to 13).

Per Article 1 (1) of the 1975 Nationality Act, Mozambicans by birth were those born in Mozambique who either: (a) were born to a father or mother also born in Mozambique (*double ius soli*); (b) were born to unknown or stateless parents or to parents of unknown citizenship; (c) were domiciled in Mozambique on the date of independence; or (d) established their domicile in Mozambique within 90 days after independence.<sup>33</sup> Those born in Mozambique and there domiciled on the date of independence who were children of foreign parents would not have Mozambican citizenship if they or their legal representatives declared their wish not to be Mozambican [Article 1 (2)] within 90 days after the date of independence [Article 1 (3)]. Nothing being said within this deadline, they were Mozambican citizens by birth.

All individuals born in Mozambique after the proclamation of independence were Mozambican citizens (*ius soli*), save for the children of foreign parents when either the father or the mother was in Mozambique in the service of his/her respective state (‘diplomatic exception’) [Article 2 (1) and (2)]. Individuals born to foreign parents in Mozambique after independence were entitled to Mozambican citizenship, sufficing that they declared their wish to be Mozambican citizens, either by themselves if over 18 years of age or by their legal representatives if under that age [Article 2 (3)]; the deadline for the declaration was 90 days counting from the date of birth or from the 18<sup>th</sup> anniversary, depending on who made the declaration [Article 2 (4)]. The phrasing of Article 2 (3) could be read as meaning that even children born in Mozambique to foreigners in the service of their state could obtain Mozambican citizenship by declaration if they so wished, but the Nationality Regulation adopted by Decree no. 3/75, of 16 August 1975, narrowed the scope of the provision by prescribing that the declaration referred to in Article 2 (3) of the Nationality Act should mention that, at the time of birth, none of the parents had been in Mozambique in the service of their respective state [Article 8 (1) of Decree no. 3/75].<sup>34</sup>

According to Article 4, individuals who met the legal requirements for attribution of Mozambican citizenship by birth, but who had not been granted the status due to option made by their legal representatives, were entitled to Mozambican citizenship provided that they

<sup>33</sup> The same provision prescribed that, in duly justified cases, the President of the Republic could grant citizenship by origin to individuals who established their domicile in Mozambique at a later date.

<sup>34</sup> The rule of interpretation governing the interplay between the Nationality Act and Decree no. 3/75 is *Lex posterior derogat legi priori*, i.e. a later law repeals an earlier law, since both legal acts can be considered to be on the same hierarchical level, the first adopted by decision of FRELIMO’s Central Committee and the second by the Popular Republic’s Council of Ministers, which was in effect controlled by FRELIMO.

declared their wish to be Mozambican citizens after turning 18 and within one year after reaching majority, i.e. within one year after turning 21 years of age.<sup>35</sup>

Individuals not covered by these provisions were nevertheless entitled to Mozambican citizenship by origin on other grounds. Per Article 5, individuals domiciled in Mozambique on the date of independence and who had resided in Mozambique for at least 20 years were entitled to Mozambican citizenship provided that they declared, within 90 days after independence, their wish to be Mozambican. Also, per Article 6, Mozambican citizenship was attributed to individuals younger than 40 years of age who were domiciled in Mozambique on the date of independence and who had resided in Mozambique for a period of time of more than half their age, provided that they (or their legal representatives) declared their wish to be Mozambican citizens, within 90 days after independence. However, individuals covered by Articles 5 or 6 would be denied Mozambican citizenship if they had been leading members of colonial-fascist political organisations, officials or informants of foreign political police forces, or if they had been convicted by court ruling for crimes against the Mozambican people or decolonisation (Article 7).

*Ius sanguinis a patre* was established in Article 8 (1), which prescribed that the children of a Mozambican father, even if born abroad, were Mozambican citizens. Article 8 (2), however, recognised as Mozambican citizens the children born abroad to a Mozambican father or to a Mozambican mother who participated in the liberation struggle as a member of FRELIMO. The reference to ‘Mozambican father’ in Article 8 (2) is perplexing, since it contradicted Article 8 (1) and made it redundant. If Article 8 (2) covered both the cases in which the Mozambican parent of children born abroad was the father and those in which the Mozambican parent was the mother, as the letter of the law suggested, then Article 8 (1) would be pointless and the scope of *ius sanguinis* would be much narrower than what appeared in a first reading. The Nationality Regulation ‘clarified’ this point by ignoring the reference to ‘Mozambican father’ in Article 8 (2) and treating this provision as applying only to cases of children born abroad to a Mozambican mother (Article 11 of Decree no. 3/75).

As a residual category, Article 3 attributed Mozambican citizenship to individuals who (i) had participated in the liberation struggle integrated in FRELIMO’s structures, (ii) declared their wish to be Mozambican, and (iii) expressly renounced any other citizenship. Furthermore, Article 9 established that, on proposal from FRELIMO’s Military and Political Committee, the President of the Republic could grant citizenship by origin to individuals who, while not falling under Articles 1 to 8, had rendered relevant services to the cause of the Mozambican revolution, provided that they expressly renounced any other citizenship.

According to Article 10, foreign women married to Mozambican citizens would be entitled to acquire Mozambican citizenship, provided that they (i) renounced their previous citizenship, (ii) declared their wish to be Mozambican, (iii) established domicile in Mozambique, and (iv) offered political and moral guarantees of integration into Mozambican society.

The Government could grant Mozambican citizenship by naturalisation to foreigners who, on the date of the application, met the following requirements: (a) resided habitually and legally in Mozambique for at least five years; (b) were 21 years or older; and (c) offered

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<sup>35</sup> At independence, it was decided that the Portuguese Civil Code, approved by Decree-Law no. 47344, of 25 November 1966, would remain in force, and, under Article 122 of the Code as it was in force in 1975, civil majority was attained at 21. The age threshold most commonly used by the 1975 Nationality Act is 18 years of age, but there are a few references to the ‘age of majority’, as is the case in this Article 4. The age of majority for civil purposes was (and continues to be) different from the age of majority for political purposes, which was/is set at 18 years of age.

political and moral guarantees of integration into Mozambican society (Article 11). With the act of naturalisation, Mozambican citizenship could also be granted to the unmarried underage children of the naturalised foreigner (Article 13), who would be entitled to renounce their Mozambican citizenship after turning 18, and within one year after coming of age, if they proved to have another citizenship [Article 13 combined with Article 14 (1) (d)].

Mozambican citizenship could be lost by renunciation or withdrawn against the citizen's will, irrespective of whether or not the loss would lead to statelessness. No distinction was made between citizenship by origin and acquired citizenship for this purpose. Under Article 14 (1), Mozambican citizenship could be lost on one of the following grounds: (a) voluntary acquisition of a foreign citizenship; (b) agreement to perform any services to a foreign state without the Government's permission;<sup>36</sup> (c) declaration of the wish not to be Mozambican, by those who had another citizenship, within 90 days after independence or of the acquisition of the foreign citizenship, or, alternatively, behaviour as foreigners; (d) declaration of the wish not to be Mozambican, by those who acquired Mozambican citizenship as a result of declaration made by their legal representatives, after turning 18 years of age and within one year after reaching majority, provided that they proved to have another citizenship; and (e) marriage to a foreign man after independence. Article 15 added 'indignity' as a further ground for loss of Mozambican citizenship, by prescribing that, by decision of the Council of Ministers, the Government could decree the loss of Mozambican citizenship for national indignity to individuals who had exercised or came to exercise activities contrary to the interests of the Mozambican people.

As mentioned earlier, the 1975 Nationality Act was regulated by Decree no. 3/75, of 16 August 1975,<sup>37</sup> which created a national service for citizenship registration within the Central Registry Office (Article 1) and made registration mandatory for most cases of attribution and for all cases of acquisition [Article 2 (2)]. It prescribed that, when registration was mandatory, proof of citizenship was to be made by means of a citizenship certificate or of a birth registration certificate that included mention to the citizenship status [Article 3 (1)]. Those whose citizenship registration was not mandatory could, in any case, be asked to prove fulfilment of the requirements for citizenship attribution when applying for rights or positions reserved to Mozambican citizens [Article 3 (2)]. Individuals born in Mozambique were presumed Mozambican citizens, except if their birth registration included any mention to the contrary [Article 4 (1)]. The assumption would also not apply to those born in Mozambique to foreign parents after independence and to those born in Mozambique before independence but not domiciled there on the date of independence nor within 90 days after that date [Article 4 (2)].

Article 7 of Decree no. 3/75 prescribed that the declaration of the wish not to be Mozambican under Article 1 (1) of the Nationality Act and the declaration of the wish to be Mozambican under Article 4 of the Nationality Act were to be made before any official of the Civil Registry Office and recorded in the birth registration of the interested party.

Per Article 9 of Decree no. 3/75, the registration of citizenship obtained under Article 3 of the Nationality Act was made by presenting a declaration of the wish to be Mozambican and a document issued by FRELIMO's Political and Military Committee. Per Article 10 of Decree no. 3/75, the registration of citizenship obtained under Articles 5 and 6 of the Nationality Act was made by presenting a declaration of the wish to be Mozambican and

<sup>36</sup> Article 14 (2) added that those who, on the date of independence, had agreed to perform any services to foreign states without the Government's permission would have a 90-days deadline to legalise their situation.

<sup>37</sup> Text available at <http://citizenshiprightsafrika.org/wp-content/uploads/2019/03/Mozambique-Decreto-3.1975.pdf> [27.03.2019].

proof of domicile by means of a certificate attesting the residence in Mozambique at the date of independence and of a declaration under oath which included, to the extent possible, the date when the signatory settled domicile in Mozambique, the localities where he or she had lived and the entities for which he/she had rendered services, where applicable. If the undersigned was or had been a civil servant for 20 years or more, a statement issued by the respective services would suffice. Per Article 11 of Decree no. 3/75, the registration of citizenship obtained under Article 8 (1) of the Nationality Act was made by presenting the birth registration certificates of the interested party and of his or her father, while the registration of citizenship obtained under Article 8 (2) was made by presenting the birth registration certificates of the interested party and of his or her mother, plus a document issued by FRELIMO's Political and Military Committee. Per Article 13 of Decree no. 3/75, the registration of citizenship acquired on the grounds of marriage was made by presenting the marriage certificate, the declaration of the wish to be Mozambican and proof of domicile as established by Article 10 of Decree no. 3/75.

Per Article 14 (1) of Decree no. 3/75, those interested in acquiring Mozambican citizenship by naturalisation had to submit an application addressed to the Minister of Interior (*Ministro do Interior*), with full name, date of birth, civil status, filiation, citizenship, place of birth, place of current residence and activity developed in Mozambique. Furthermore, the application had to be accompanied by a birth registration certificate, proof of habitual and legal residence in Mozambique for a minimum period of five years, and a criminal record or similar document [Article 14 (2)]. The applicants wishing that their unmarried underage children also acquired Mozambican citizenship had to enclose the children's birth registration certificates and, if the children were over 18 years of age, a declaration by the children agreeing to the naturalisation [Article 14 (3)]. The application was to be submitted at the Central Registry Office and from there sent to the Ministry of Foreign Affairs for an opinion on the merits of the application and possible repercussions for the relations between Mozambique and the state from which the applicant was a citizen, to be issued within six months. From the Ministry of Foreign Affairs the file would then be forwarded to the Minister of Internal Affairs who presented it to the Council of Ministers with his or her own opinion on whether or not the requirements for naturalisation were met [Article 14 (4)].

Per Article 16 of Decree no. 3/75, the loss of Mozambican citizenship resulted from the verification of any of the causes listed in Article 14 of the Nationality Act following a procedure instructed by the Central Registry Office by order of the Minister of Justice. Any person and all authorities had the obligation to report to the Government all facts pertaining to any citizen which could lead to loss of citizenship, by indicating or providing corroborating evidence (Article 17 of Decree no. 3/75). The procedure would not be completed without having informed the interested party and giving him or her the opportunity to submit his or her defence within 60 days [Article 18 (1) and (3)]. No procedure was required if loss resulted from declaration by the interested party or from marriage, in which cases the decision belonged to the Minister of Justice who ordered the registration of the loss [Article 18 (4)]. No procedure was required also for cases of loss for indignity, the registration being made *ex officio* following the publication of the Council of Ministers' decree [Article 18 (5)].

Many individuals entitled to Mozambican citizenship under the 1975 Nationality Act did indeed renounce it in the immediate aftermath of independence. Some moved abroad, while others remained in Mozambique but used their foreign citizenship in order to be allowed to transfer their salaries abroad, a 'traffic in citizenship' for which many were expelled from the country. The FRELIMO-run Government issued a '24/20 decree' giving those in possession of foreign or dual citizenship 24 hours to renounce all other ties and apply

for Mozambican citizenship or leave the country carrying no more than 20 kilos of personal possessions (Sumich 2013: 108).

FRELIMO's nation-building plans were focused on breaking with tradition and on promoting a modern Mozambican identity that would accommodate all ethnic, racial, regional and religious groups (Chabal 2002: 56). This involved the creation of a 'new Mozambican man', free from divisive regional and ethnic loyalties, and entirely committed to the party's modernising socialist agenda. As Sumich (2013: 103) points out, full Mozambican citizenship was premised on loyalty to FRELIMO and ownership of a party membership card became the concrete symbol of being Mozambican. Those who did not conform were labelled 'enemies of the people' and punished accordingly, including by compulsive internment in re-education camps where they had to work in the fields during the day and attend courses on Marxism-Leninism in the evening (Paredes 2014: 149-151; Sumich 2013: 100, 108). FRELIMO's draconian measures soon alienated large segments of the population, particularly in rural areas, due to the party's relentless hostility towards traditional authorities, which it saw as backward and utterly incompatible with the construction of a modern socialist nation-state (Chabal 2002: 56, 69, 99; Newitt 2002: 196, 199; Santos 2006: 48, 64-65). RENAMO, the rebel group raised and armed by the Rhodesian intelligence and sponsored by apartheid South Africa to destabilise Mozambique's left-wing regime (Newitt 2002: 209-210; Macamo 2017: 207; Chabal 2002: 76, 132), was able to exploit the growing discontent among the rural populations and infiltrate large areas of the country as the civil war progressed into the 1980s (Chabal 2002: 28, 69, 100).

Although the country was engulfed in a highly disruptive civil war, which paralysed the government, cut communications and forced thousands to flee to urban centres or to neighbouring countries (Newitt 2002: 212; Golooba-Mutebi 2004: 1-3), in the early 1980s, many of those who had renounced their Mozambican citizenship in 1975 returned to Mozambique and asked FRELIMO to take them back into the fold. This prompted the first amendment to the 1975 Nationality Act, by Law no. 2/82, of 6 April 1982,<sup>38</sup> which introduced the possibility of reacquisition of Mozambican citizenship. The introductory text of Law no. 2/82 explained the reasoning behind the amendment, in an elaborate exercise in gloating and affirmation of the moral high ground. It started by stressing that the Nationality Act was a key legal and political instrument for the assertion of the 'total and complete independence' of the Mozambican people, and that it had been adopted with the goal of consolidating the sense of belonging to the Mozambican motherland. In order to eliminate all traces of colonialism – it added –, FRELIMO's Central Committee had excluded the possibility of a Mozambican having dual citizenship and had made no provision for the reacquisition of Mozambican citizenship once it was lost on one of the grounds prescribed by law. Those who, 'still tied by the umbilical cord to the colonial metropolis' and without thinking, had renounced 'their true citizenship' when the revolutionary and 'mental decolonisation' process begun, later came to realise 'the severity of their actions' and had asked leave to return to Mozambique, alleging inability to adapt to the foreign country that they had chosen. 'The party' – the explanation went on – 'did not ignore the situation and, in the spirit of clemency that had been its tradition, authorised the return to the country of hundreds of individuals who had requested it'. Since, however, the law did not foresee the reacquisition of citizenship, these individuals' citizenship status remained undefined. In line with the spirit of the 'clemency measure' adopted vis-à-vis these individuals – i.e. to forgive their serious mistake, to allow their return to the motherland, and to allow them to reacquire

<sup>38</sup> Text available at <http://www.mint.gov.mz/images/pdf/MINT/Lei%20n%C2%BA.%20%202.82,%20de%2006%20de%20Abril-Lei%20de%20Requisi%C3%A7%C3%A3o%20de%20Nacionalidade.pdf> [28.03.2019].



Mozambican citizenship –, the Permanent Commission of the National Assembly established that the Council of Ministers would have the power to grant Mozambican citizenship to those who, having lost it, applied for reacquisition and met the following requirements: (a) established domicile in national territory; and (b) offered political and moral guarantees of reintegration into Mozambican society. The Council of Ministers was also given the power to decide, if serious motives so justified, that the reacquired citizenship would have the same effects as citizenship by origin.

Around this time, FRELIMO's leadership started to realise that it had to 'temper its socialist ambitions' (Chabal 2002: 117) and move toward a mixed economy, in order to boost industrial production and obtain foreign aid from the West (Sumich 2013: 109; Newitt 2002: 213; Macamo 2017: 207). In 1984, Mozambique joined the International Monetary Fund (IMF) and the World Bank<sup>39</sup>, and was admitted among the African Caribbean and Pacific states covered by the Lomé Convention with the European Union. Also in 1984, Mozambique signed the Nkomati Accord with South Africa,<sup>40</sup> a pact of non-aggression by which both countries agreed to stop giving military support to the 'rebel movements' (RENAMO and ANC) on each side (Newitt 2002: 213). Although South Africa failed to meet its end of the agreement, the Nkomati Accord was followed by widespread international condemnation of RENAMO's extreme violence (Chabal 2002: 85). FRELIMO, on its part, was increasingly keen to put an end to the civil war, but it was necessary to wait for the end of apartheid in South Africa, in 1990, to see RENAMO convert, under pressure from Pretoria, into a political organisation prepared to negotiate peace with the FRELIMO government (Chabal 2002: 86, 118, 132).

Before that, in 1987, the 1975 Nationality Act was amended a second time, by Law no. 16/87, of 21 December,<sup>41</sup> mainly with the purpose of repealing the provisions which discriminated against women, as explained in the introductory text to the Act. Article 8 (1) now recognised as Mozambican citizens the children born abroad to a Mozambican father or a Mozambican mother, provided that they or their legal representatives declared their wish to be Mozambican and that they renounced any other citizenship. Per Article 8 (2), children born abroad before independence to a Mozambican father or mother who had taken part in the liberation struggle as members of FRELIMO were also entitled to Mozambican citizenship by origin, with no further requirements. The automatic loss of Mozambican citizenship for women who married foreign men, prescribed by Article 14 (1) (e), was replaced by the loss of Mozambican citizenship for anyone who did not expressly renounce the foreign citizenship acquired by marriage, which did not eliminate gender discrimination, as women were most likely to acquire their husbands' citizenship by marriage, but had the advantage of providing a safeguard against statelessness.<sup>42</sup> Furthermore, Law no. 16/87 gave the women who had lost their Mozambican citizenship under the original version of the 1975 Nationality Act the opportunity to reacquire it either by proving that they had not acquired another citizenship or by expressly renouncing their foreign citizenship if they had [Article 20 (1)]. Per Article 20 (2), the reacquisition had the effect of returning the beneficiaries to the legal status they had had before losing their Mozambican citizenship.

<sup>39</sup> The first structural adjustment program designed by the IMF and the World Bank was signed in 1987 (Santos 2006: 40).

<sup>40</sup> Agreement on Non-Aggression and Good Neighbourliness between Mozambique and South Africa, signed on 16 March 1984; available at <https://peacemaker.un.org/mozambique-southafrica-nkomati84> [12.05.2019].

<sup>41</sup> Available at <https://www.refworld.org/pdfid/448596164.pdf> [27.03.2019].

<sup>42</sup> Besides, Law no. 16/87 left untouched the provision in Article 10 according to which only foreign women (not men) were entitled to acquire Mozambican citizenship on the grounds of marriage to a Mozambican citizen.

Aside from the gender equality related amendments, Law no. 16/87 added new naturalisation requirements to the list in Article 11, incorporated the reacquisition regime set by Law no. 2/82 as the new Article 16, and made some minor formal adjustments to the text of a couple of other provisions in the Nationality Act. Article 11 (c) now read that applicants for naturalisation had to offer political and moral guarantees of integration into Mozambican society, could not fall under one of the categories in Article 7 (i.e. leading members of colonial-fascist political organisations, officials or informants of foreign political police forces, convicts for crimes against the Mozambican people or decolonisation) nor have been convicted for crime against the security of the people and the Popular State. Differently from the regime set by Law no. 2/82, the new Article 16 (2) set as a general rule that citizenship reacquisition would have the same effects as acquired citizenship, while admitting that the Council of Ministers could determine that the reacquisition produce effects as citizenship by origin when ponderous reasons so required.

The changes made to the Nationality Act led to the amendment of the Nationality Regulation by Decree no. 5/88, of 8 April 1988, which added rules for registration of citizenship reacquisition, made minor changes to the wording of some of the provisions (e.g. to ensure gender equality) and to the sequence in the naturalisation procedure, and renumbered Articles 20 to 34. According to the new Article 20, the procedure for reacquisition of Mozambican citizenship under Article 16 of the Nationality Act (i.e. the ‘standard’ reacquisition regime) was the same as for naturalisation, while the procedure for reacquisition of Mozambican citizenship by women who had lost it as a consequence of marriage to foreign men (under Article 20 of the Nationality Act) consisted only in the presentation of either proof that they had not acquired a foreign citizenship or proof that they had acquired a foreign citizenship combined with a declaration renouncing to that foreign citizenship.

Questions arose as to who would be competent to decide on the applications for reacquisition under the new regime. Minister of Justice Ussumane Aly Daúto issued a Ministerial Order (*Despacho*) on 18 September 1988<sup>43</sup> to provide clarity on the issue. The Order stressed that Article 20 of the Nationality Regulation made a clear distinction between the cases of reacquisition under Article 16 of the Nationality Act and the cases of reacquisition under Article 20 of the Nationality Act. For the first type of cases, Article 14 of the Nationality Regulation was to apply, which meant that the interested party was required to submit an application addressed to the Minister of Interior, that the Central Registry Office would prepare the file and send it to the Ministry of Foreign Affairs for an opinion, and that the Minister of Interior would then decide on the application. This procedure was not required for the second type of cases, i.e. those of reacquisition of Mozambican citizenship by women who had lost their citizenship as a result of marriage to foreign men. In these cases, the women interested in reacquiring their Mozambican citizenship only had to request it at the Central Registry Office and prove that they either had not acquired a foreign citizenship or that, having acquired a foreign citizenship, they had renounced it. The Central Registry Office would then *ex officio* register the reacquisition of Mozambican citizenship.

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<sup>43</sup> Published in the Official Journal on 5 October 1988.

### 2.3. Membership criteria in the Second Republic (1990 to the present)

Confirming the ideological change of course initiated in the mid-eighties, FRELIMO officially abandoned single-party socialism at its fifth party congress in 1989 (Newitt 2002: 220), and Mozambique entered a new phase in its constitutional history, characterised by a move away from Marxist influence and towards a multi-party democratic regime under the rule of law. The preamble to the 1990 Constitution, adopted by the National Assembly on 2 November 1990,<sup>44</sup> explained the new ‘definitions and developments’ in the constitutional framework as justified by the institutional and democratic experience acquired in 15 years of independence, and by the resolve of the Mozambican people to ‘organise political life in a spirit of responsibility and pluralism of opinion’, with stress on fundamental rights and freedoms as keystones for a socially fair society, and on equality and the rule of law as pillars of democracy.

Under the 1990 Constitution, Mozambique was no longer presented as a Popular Republic in which the power rested with the factory workers and with the peasants and where FRELIMO was the sole guiding force for society and state.<sup>45</sup> Articles 1 and 2 identified the Republic of Mozambique as an independent, sovereign, unitary and democratic state committed to social justice, where sovereignty belonged to the people. Periodic elections and referenda were explicitly mentioned as forms by which the Mozambican people was to exercise its political power (Article 30), and political parties were recognised as a fundamental instrument for the citizens’ democratic participation in the governance of the country (Article 31). The 1990 Constitution also included an extensive list of fundamental rights, comprising civil and political rights as well as economic, social and cultural rights (Articles 66 to 106).

An important change introduced by the 1990 Constitution was the inclusion of an extensive set of substantive provisions on the grounds for attribution, acquisition, loss and reacquisition of Mozambican citizenship. With the openness to cultural difference and tradition came proposals for a racialized definition of the true Mozambican citizen,<sup>46</sup> but the National Assembly acting as constituent legislator did not depart much from the criteria set by the 1975 Nationality Act, as last amended in 1987. The elevation of the citizenship provisions to constitutional rank had great symbolic value and the legal implication of making them prevail over conflicting provisions set by ordinary legislation, past or future.<sup>47</sup> Per Article 200 of the 1990 Constitution, constitutional provisions were to prevail over all other normative provisions in the legal system. The ordinary legislation in force prior to the adoption of the 1990 Constitution was allowed to remain in force, by Article 203 of the 1990 Constitution, but only to the extent that it did not contradict the provisions in the

<sup>44</sup> Text available at <http://www.cconstitucional.org.mz/Legislacao/Constituicao-da-Republica> [28.03.2019]. The 1990 Constitution entered into force on 30 November 1990.

<sup>45</sup> FRELIMO had ceased to be the leading force of society and the state with Decree no. 18/90, of 28 August 1990, which had amended the party’s legal statute to make it an infra-constitutional entity separated from the state (Macuacua 2019b: 4-5).

<sup>46</sup> Reminiscent of earlier schisms in FRELIMO’s history, during the discussion of the 1990 Constitution, Hama Thai, a FRELIMO veteran, fought for a narrow definition of ‘the original Mozambican citizen’ to cover only those who had been treated as natives (*indigenas*) during the colonial regime, with the exclusion of whites, Indians, mulattoes and ‘assimilated’ blacks (Sumich 2013: 101).

<sup>47</sup> This option to constitutionalise the citizenship regime was criticised by Portuguese constitutional lawyer Jorge Bacelar Gouveia (2004: 120-122) for its potential rigidity. During the constitutional amendment procedure that would result in the adoption of the 2004 Constitution, Gouveia recommended – to no avail – that Mozambique reversed course and followed the Portuguese model of referring to ordinary legislation the rules on citizenship attribution, acquisition, loss and reacquisition.

Constitution. The 1975 Nationality Act and the 1975 Nationality Regulation were therefore allowed to remain partially in force.

The 1990 Constitution included a separate chapter on citizenship, subdivided in five sections – citizenship by origin (Articles 11-20), acquired citizenship (Articles 21-23), loss of citizenship (Article 24), reacquisition of citizenship (Articles 25-26) and miscellaneous (Articles 27-29). The provisions on citizenship by origin replicated the criteria set by the Nationality Act, with some adjustments in phrasing and structure. Article 11 decoupled the two hypotheses of Article 1 (1) (d) of the Nationality Act by listing as separate grounds for attribution of citizenship to individuals born in Mozambique the fact that they had established domicile in Mozambique within 90 days after the proclamation of independence [Article 11 (1) (d)] and the fact that the President of the Republic had already granted them Mozambican citizenship by origin [Article 11 (1) (e)].<sup>48</sup> Article 13 eliminated the reference to FRELIMO when recognising as Mozambicans the individuals who had participated in the liberation struggle and were not covered by other legal provisions, provided that they declared their wish to be Mozambicans and expressly renounced any other citizenship. Article 17 made it clear that the requirement of being under 40 years of age referred to the date of independence. The main innovation vis-à-vis the attribution regime in the Nationality Act was the introduction of a provision for the automatic and unconditional attribution of Mozambican citizenship to children born abroad to a Mozambican father or mother who was abroad in the service of the Mozambican state (Article 18). All other children born abroad to Mozambican parent(s) continued to be required to expressly renounce any foreign citizenship as condition to be attributed Mozambican citizenship (Article 19).

The 1990 Constitution introduced several changes to the naturalisation regime. Article 22 innovated by (a) adding the obligation to renounce any previous citizenship, (b) raising the residence requirement to 10 years, (c) lowering the age requirement to 18 years, and (d) referring to ordinary legislation the definition of the requirements and guarantees to be met by applicants.<sup>49</sup> This reference to ordinary legislation meant that Article 11 (c) of the 1975 Nationality Act remained in force, requiring applicants to offer political and moral guarantees of integration into Mozambican society, to not have been leading members of colonial-fascist political organisations, officials or informants of foreign political police forces, nor convicts for crimes against the Mozambican people or decolonisation, and to not have been convicted for crime against the security of the people and of the state. Furthermore, Article 23 narrowed the scope of the provision which allowed the children of naturalised citizens to also acquire Mozambican citizenship, since it only recognised as entitled the ‘unmarried children under the age of 18’, and not the ‘underage’ children, which would have meant those up to 21 years of age.

The provision on loss made a couple of significant changes, by eliminating indignity as grounds for loss and by narrowing the type of services rendered to a foreign state that could justify depriving someone of his or her Mozambican citizenship. Per Article 24 (b) of the 1990 Constitution, in order to be grounds for citizenship deprivation it was now necessary that the service rendered was likely to harm the best interests of the nation or the sovereignty of the state. Article 24 (c) kept the provision for loss by individuals who held a foreign citizenship and either declared their wish not to be Mozambican or behaved as foreigners, but set no deadline for the declaration. While the 1990 Constitution remained hostile to dual

<sup>48</sup> Although this provision could be considered to cover all cases in which the President had granted citizenship by origin, Article 20 nevertheless added an explicit mention to cases in which the President had granted Mozambican citizenship by origin for relevant services rendered to the national liberation cause.

<sup>49</sup> A similar reference to ordinary legislation was made by Article 21 (d) of the 1990 Constitution for the acquisition of Mozambican citizenship by foreign women on the grounds of marriage to Mozambican men.

citizenship and demanded renunciation to foreign citizenship on several occasions, it no longer included in the list of grounds for loss the omission of express renunciation to a foreign citizenship acquired by marriage. Instead, Article 24 (e) prescribed that Mozambican citizenship would be lost by those who expressly renounced it; a provision arguably redundant vis-à-vis Article 24 (c).

Of the provisions on reacquisition, only Article 25 – on general reacquisition – innovated vis-à-vis the regime set by the 1975 Nationality Act. Besides the residence and integration requirements, applicants now had to renounce any previous citizenship [Article 25 (1) (a)]. The integration requirement was not spelled out in the constitutional provision, which merely referred to ordinary legislation the definition of the requirements and guarantees to be met by the applicants. As the law stood at the time, Article 16 of the Nationality Act applied, which meant that applicants had to offer political and moral guarantees of reintegration into Mozambican society. Regarding the effects of reacquisition, Article 25 (2) of the Constitution also departed from the regime set by the Nationality Act. Instead of limiting citizens with reacquired citizenship to the status of citizens by acquisition, Article 25 (2) now prescribed that reacquisition would return former citizens to the citizenship status that they held before the loss.

In the miscellaneous section, Article 27 prescribed that a foreign citizenship held by individuals who, under Mozambican law, were Mozambicans would have no legal effects in Mozambique.<sup>50</sup> Article 28 referred to ordinary legislation the regulation of the registration and proof of citizenship acquisition, loss and reacquisition. Article 29 excluded citizens with acquired citizenship from access to the diplomatic, military or equivalent careers, and referred to ordinary legislation the conditions for the exercise of public functions or private functions of public interest by Mozambican citizens with acquired citizenship and by foreigners. Outside of the chapter on citizenship, the 1990 Constitution only differentiated between citizens by origin and citizens by acquisition for the purposes of determining eligibility for the office of President of the Republic. Under Article 118 (3) (a) and (b), only Mozambican citizens by origin whose parents – both the father and the mother (Gouveia 2004: 41) – were themselves Mozambican citizens by origin were entitled to run for the office of President.

Meanwhile, peace talks between FRELIMO and RENAMO had started in July 1990 with the mediation of the Italian lay brotherhood of Sant'Egidio (Newitt 2002: 221). A General Peace Agreement for Mozambique was signed in Rome, on 4 October 1992, between Joaquim Chissano, President of the Republic of Mozambique, and Afonso Dhlakama, President of RENAMO, under the chairmanship of the Italian Government and in the presence of representatives of Zimbabwe, Botswana, Kenya, South Africa, Malawi, United States, France, Portugal, United Kingdom, the Organisation of African Union, and the United Nations.<sup>51</sup> The General Peace Agreement covered *inter alia* the criteria and arrangements for the formation and recognition of political parties, including the provision that RENAMO would immediately commence its activities as a political party (Protocol II); the general principles that should guide the drafting of the Electoral Act and the conduct of the electoral process for the legislative and presidential elections (Protocol III); provisions on military questions, including the formation of the Mozambican Defence Force and the withdrawal of foreign troops from Mozambican territory (Protocol IV); guarantees, including the timetable

<sup>50</sup> Which replicated the provision in Article 18 of the 1975 Nationality Act, as amended by Law no. 16/87.

<sup>51</sup> The text of the Agreement is available at

[https://peaceaccords.nd.edu/sites/default/files/accords/Mozambique\\_Peace\\_Agreement.pdf](https://peaceaccords.nd.edu/sites/default/files/accords/Mozambique_Peace_Agreement.pdf) [23.04.2019]. The Agreement was approved by the Mozambican National Assembly with Law no. 13/92, of 14 October 1992, and entered into force on 15 October 1992, the agreed deadline for the ceasefire.

for the conduct of the electoral process (Protocol V); and the cessation of the armed conflict, including an operational timetable for the ceasefire (Protocol VI).

The Agreement did not include provisions on the attribution, acquisition, loss or reacquisition of Mozambican citizenship. It did however prescribe that Mozambican refugees and displaced persons would not forfeit any of the rights and freedoms of citizens for having left their original places of residence and that they would be registered and included in the electoral rolls together with other citizens in their places of residence [Protocol III § IV (c) and (d)]. The Agreement explicitly required that political parties and the Mozambican Defence Force be made up exclusively of Mozambican citizens [Protocol II § 2 (d) and Protocol IV § I (i) (2) respectively]. As for the electoral universe, the Agreement prescribed that Mozambican citizens 18 years of age and over would have the right to vote, conditional on their registration in the electoral rolls, and the Parties to the Agreement committed to encourage all Mozambican citizens 18 years of age and over to register and to exercise their right to vote; eligibility to stand for election was set at 18<sup>52</sup> years of age for the legislative election and at 35 years of age for the presidential election [Protocol III § V (2), (5) and (6)].

As foreseen in the General Peace Agreement, Joaquim Chissano addressed a letter to the UN Secretary-General, on 4 October 1992, requesting the United Nations' participation in monitoring and ensuring the implementation of the Agreement and in assisting the Government by providing technical assistance for the general elections and in monitoring these elections.<sup>53</sup> On 13 October 1992, the UN Secretary-General appointed Aldo Ajello as his interim Special Representative to oversee UN activities in Mozambique and two days later, coinciding with the entry into force of the General Peace Agreement, the interim Special Representative and a team of 21 military observers arrived in the country.<sup>54</sup> The complexity of the task at hand – and the lessons learned from the failed peace process in Angola (Newitt 2002: 223) – led the Security Council to establish a United Nations Operation in Mozambique (ONUMOZ), mandated *inter alia* to monitor the ceasefire, coordinate humanitarian assistance (to refugees, internally displaced persons, demobilised military personnel and the affected local population), provide technical assistance and monitor the electoral process.<sup>55</sup>

Under the terms of the General Peace Agreement, legislative and presidential elections were to be held simultaneously not later than 15 October 1993. This deadline soon proved to be unrealistic due to various delays in the implementation of the military aspects of the Agreement, which the UN Secretary-General considered indispensable for the creation of the conditions in which a successful election could take place. A revised timetable scheduled

<sup>52</sup> The Agreement added however that the parties had agreed on the desirability of raising the minimum age to 25 for the first general legislative elections as a transitional measure. This solution did not make its way to the 1993 Electoral Act, which kept the age requirement at 18 (Article 195 of Law no. 4/93, of 28 December 1993).

<sup>53</sup> The letter is enclosed with the text of the General Peace Agreement, available at [https://peaceaccords.nd.edu/sites/default/files/accords/Mozambique\\_Peace\\_Agreement.pdf](https://peaceaccords.nd.edu/sites/default/files/accords/Mozambique_Peace_Agreement.pdf) [23.04.2019].

<sup>54</sup> The appointment of an interim Special Representative and the despatch to Mozambique of a team of military observers was authorised by the UN Security Council in its Resolution 782, of 13 October 1992, S/RES/782 (1992), available at [https://undocs.org/S/RES/782\(1992\)](https://undocs.org/S/RES/782(1992)) [23.04.2019]. In March 1993, Aldo Ajello was appointed as Special Representative of the Secretary-General for Mozambique. Information available at <https://peacekeeping.un.org/sites/default/files/past/onumozFT.htm#General> [23.04.2019].

<sup>55</sup> Resolution 797, of 16 December 1992, S/RES/797 (1992), available at <http://unscr.com/en/resolutions/797> [23.04.2019]. ONUMOZ was initially established to run until 31 October 1993, but its mandate was extended multiple times until it formally came to an end at midnight on 9 December 1994, the date of Joaquim Chissano's inauguration as President of the Republic. The Mission continued to carry out residual functions until the end of January 1995, when it was finally liquidated. Information available at <https://peacekeeping.un.org/sites/default/files/past/onumozFT.htm> [23.04.2019].

the elections for October 1994, with voter registration expected to take three months (April-June 1994). On 26 March 1993, the Mozambican Government circulated among RENAMO and other political parties a draft Electoral Act to govern the first multiparty general elections, but the discussions of the draft broke down several times over issues such as the composition of the National Elections Commission and voting rights for expatriate Mozambicans. The Electoral Act was finally approved by the National Assembly on 9 December 1993<sup>56</sup> and, after promulgation by the President of the Republic, was published in the official journal as Law no. 4/93, of 28 December 1993.<sup>57</sup>

Law no. 4/93 recognised electoral capacity to Mozambican citizens of both sexes who at the date of the election were aged 18 years or over, who were regularly registered as electors and were not affected by any of the incapacities prescribed by law<sup>58</sup> [Article 10 (1)]. Mozambican citizens not ordinarily resident in Mozambique were recognised electoral capacity for the parliamentary election [Article 10 (2)], but not for the presidential election, a difference in treatment which was criticised as illogical and contrary to the principle of universal suffrage enshrined in the 1990 Constitution (e.g. Gouveia 2004: 42-43). Per Article 11 (1), Mozambican citizens resident abroad were entitled to exercise their right to vote in the parliamentary election at the diplomatic representation of the Republic of Mozambique in their area of residence, provided that they were registered and that they met one of the following requirements: (a) to be an emigrant and to maintain Mozambican citizenship at the date of the elections, and to have emigrated from Mozambique over one year prior to the date of the beginning of the electoral registration; (b) to be on a state or public service mission recognised as such by the competent authorities, or to reside as a spouse or child of a person in these circumstances; or (c) to be in the service of legally constituted national institutions or entities. Article 11 (2) and (3) provided however for the possibility of the National Elections Commission failing to reach an agreement on voting arrangements for Mozambican citizens living abroad and prescribed that, if that was to occur – as indeed came to be the case<sup>59</sup> –, the electoral acts would not take place outside the country and the three mandates belonging to the electoral constituency of the Mozambican communities abroad would be redistributed among the provincial electoral constituencies.

On 11 April 1994, the President of the Republic announced that the general elections would take place on 27 and 28 October.<sup>60</sup> On the 1<sup>st</sup> of June, the National Elections Commission begun the complex process of voter registration, which was initially expected to be completed by the 15<sup>th</sup> of August but was eventually extended until the 2<sup>nd</sup> of September.<sup>61</sup>

<sup>56</sup> Information available at <https://peacekeeping.un.org/sites/default/files/past/onumozFT.htm#General> [23.04.2019].

<sup>57</sup> An unofficial English version of the 1993 Electoral Act is available at <https://www.ifes.org/sites/default/files/el00093.pdf> [23.04.2019].

<sup>58</sup> Article 12 of Law no. 4/93 listed the electoral incapacities: (a) having been disqualified in a definitive sentence passed in a court of law; (b) being commonly known to be insane, being interned in a psychiatric institution or declared insane by a medical board; (c) having been sentenced to imprisonment for a malicious common law crime and not having yet completed the sentence; and (d) having been remanded in custody by a court order.

<sup>59</sup> Further Report of the Secretary-General on the United Nations Operation in Mozambique, S/1994/1002, of 26 August 1994, § 19, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/343/66/PDF/N9434366.pdf?OpenElement> [23.04.2019]. Mozambicans in the diaspora had to wait until the 2004 general elections to be allowed to vote from abroad for the first time.

<sup>60</sup> Presidential Decree no. 1/94, of 11 April 1994.

<sup>61</sup> The extension was necessary because of the ‘serious logistical problems encountered during the initial phases of the registration process and the need to allow refugees and demobilized soldiers more time to register’. See Further Report of the Secretary-General on the United Nations Operation in Mozambique, *cit.*, § 19.

All individuals of duly confirmed Mozambican citizenship,<sup>62</sup> residing in the country or abroad, and who would reach 18 years of age by the polling day, were subject to electoral registration, per Article 39 of Law no. 4/93. Article 58 (1) prescribed that citizens entitled to vote were to be registered with their full name, parentage, date and place of birth, and complete address of their ordinary place of residence. The registration should also record the number and issuance agency of the identity card or passport when presented by the citizen or when its number could be determined, even if its validity had expired [Article 58 (2)]. If the citizen entitled to vote did not possess an identity card or a passport, his/her identity was to be established by one of the following means: (a) any other document containing a recent photograph, signature or fingerprint, normally used for identification purposes, e.g. driver's licence, residence card, work card, military census card, military identity card or demobilisation document; (b) recognition of the citizen's identity by the registration brigade; (c) testimonial evidence given by two citizens entitled to vote, registered at the same registration centre, or by religious, traditional or other bodies; (d) individual civil registration document, birth certificate or other adequate legal document [Article 58 (3)]. Electoral registration outside the country was to be based on one of the following documents: a Mozambican passport or identity card; or a current identification document of resident alien issued by the country of residence (Article 59). At the moment of registration, the citizens received a voter's card containing a photograph, the registration number, the registration centre and its geographical area, the name of the elector, date and place of birth, signature or fingerprint, and, whenever possible, the number and issuing agency of the identity card or passport [Article 61 (1)]. The registration process had some initial hiccups,<sup>63</sup> but in the end a total of 6,396,061 voters were registered, representing 81% of an estimated eligible population of 7,894,850.<sup>64</sup>

With the holding of the presidential and legislative elections on 27 to 29 October 1994, the Mozambican peace process was said to be completed.<sup>65</sup> These were the first multi-party elections since independence, with 14 parties and coalitions running in the legislative election and 12 candidates in the presidential election. In spite of the fact that RENAMO announced its withdrawal from the poll on the eve of the elections, raising fears that the electoral results would not be accepted, the elections were conducted in a peaceful and orderly manner, had a very high voter turnout (87.9%), and were deemed by international observers (e.g. UN, OAU, EU) to have been free and fair. The elections returned the same government and president to office. FRELIMO won the presidency and a 44.3% majority in the National Assembly, with 129 seats against the 109 seats of RENAMO, which eventually agreed to participate in the elections, and the 12 seats of the Democratic Union – *União*

<sup>62</sup> Article 56 (2) prescribed that, when doubts existed about an individual's Mozambican citizenship, he or she had to present, within a period of 15 days, the necessary confirmation, on which the acceptance of the registration was dependent.

<sup>63</sup> There were technical errors such as the improper filling in of registration forms, registration books and voter cards, which were attributed to the lack of clear instructions and inadequate training of registration personnel. Furthermore, RENAMO and other political parties raised allegations of fraud in the electoral process, complaining *inter alia* that foreigners were being registered as voters. According to the UN Secretary-General, the technical problems were duly addressed and did not hinder the election process, while most complaints were not substantiated. See Further Report of the Secretary-General on the United Nations Operation in Mozambique, *cit.*, § 21.

<sup>64</sup> Progress Report on the United Nations Operation in Mozambique, S/1994/1196, of 21 October 1994, § 4, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/411/21/PDF/N9441121.pdf?OpenElement> [23.04.2019].

<sup>65</sup> Final Report of the Secretary-General on the United Nations Operation in Mozambique, S/1994/1449, of 23 December 1994, § 6, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/515/76/PDF/N9451576.pdf?OpenElement> [23.04.2019].



*Democrática* (UD).<sup>66</sup> With small variations,<sup>67</sup> the following general elections of 1999, 2004, 2009 and 2014 would produce similar electoral results (Silva 2016: 34-35), leading critics to complain that Mozambique is basically an ‘elected single-party state’ (Sumich 2013: 100).

Another important component of the peace process was the return and reintegration of Mozambican refugees, as well as of internally displaced persons and demobilized military personnel. At the end of ONUMOZ’s mandate, in December 1994, the UN Secretary-General estimated that out of a target population of 6.5 million, approximately 4.3 million people had returned to their original areas of residence, which included 1.1 million former refugees, 3 million internally displaced people and around 200,000 ex-combatants and their dependants.<sup>68</sup> According to a previous report by the UN Secretary-General, 40% of the original (1.5 million) refugee population had left camps in neighbouring countries by January 1994, most of them spontaneously.<sup>69</sup> The Office of the United Nations High Commissioner for Refugees (UNHCR) organised repatriation programmes from Swaziland, Zambia, Zimbabwe, Malawi, Tanzania and South Africa, in cooperation with local authorities and the International Organization for Migration (IOM).<sup>70</sup>

With the peace process closed and a multi-party National Assembly in place, calls begun for a ‘profound revision’ of the constitutional framework. The 1990 Constitution had been adopted in the context of a single party system and had not been substantially amended following the signature of the General Peace Agreement (Gouveia 2004: 105). The two amendments of 1992<sup>71</sup> had made only minor changes to the electoral regime and the 1996 amendment<sup>72</sup> had been limited to provisions on local government. After five years of experience as a pluralistic and democratic regime, the time was deemed ripe and the procedure for a fourth constitutional amendment was put in motion, with the creation at the National Assembly of an *ad hoc* commission to study the amendments to be made to the Constitution (Gouveia 2004: 106). The three parties represented in the National Assembly – FRELIMO, RENAMO and UD – submitted their proposals, which Gouveia (2004: 107) reputed to be the result of a ‘serene reflection about the Mozambican constitutional question’ and well-grounded in the Mozambican ‘civic and political conscience’ with little recourse to imported solutions. On the basis of the three proposals, the parties agreed on a constitutional amendment bill which was then submitted to public discussion, first in the city of Maputo and then spread out to the different provinces, to get input from civil society (Gouveia 2004: 107-108).<sup>73</sup> The Constitution was adopted by the National Assembly on 16 November 2004 and

<sup>66</sup> Final Report of the Secretary-General on the United Nations Operation in Mozambique, *cit.*, §§ 7-9.

<sup>67</sup> In the 1999 and 2004 elections only FRELIMO and RENAMO elected MPs, and in 2009 elections the third party slot was taken by a new party MDM – Mozambique Democratic Movement (*Movimento Democrático de Moçambique*) – (Sanches 2014: 53-55).

<sup>68</sup> Final Report of the Secretary-General on the United Nations Operation in Mozambique, *cit.*, § 23.

<sup>69</sup> Report of the Secretary-General on the United Nations Operation in Mozambique, S/1994/89, of 28 January 1994, § 25, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/047/14/PDF/N9404714.pdf?OpenElement> [23.04.2019].

<sup>70</sup> Report of the Secretary-General on the United Nations Operation in Mozambique, S/1994/89, *cit.*, § 25; Report of the Secretary-General on the United Nations Operation in Mozambique, S/1994/511, of 28 April 1994, § 41, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/196/62/PDF/N9419662.pdf?OpenElement> [23.04.2019].

<sup>71</sup> Law no. 11/92, of 8 October 1992, and Law no. 12/92, of 9 October 1992. Published in Rodrigues et al. (2006: 201-204).

<sup>72</sup> Law no. 9/96, of 22 November 1996. Published in Rodrigues et al. (2006: 205-208).

<sup>73</sup> In the meantime, a fourth ‘partial’ amendment to the 1990 Constitution was necessary once it became apparent that the constitutional amendment process would not be completed before the end of the mandate of the MPs in the National Assembly and of the President of the Republic. FRELIMO, RENAMO and UD agreed to extract from the proposals deposited with the National Assembly those concerning the electoral regime and

entered into force on 21 January 2005 following the validation of the results of the 2004 general election.<sup>74</sup>

The 2004 Constitution is said to have been scarcely innovative vis-à-vis the 1990 Constitution (Gouveia 2017: 238). Its preamble seems to confirm this, since it refers to the 1990 Constitution as having introduced democracy and the rule of law, and to the 2004 Constitution as merely ‘reaffirming, developing and deepening’ the fundamental principles of the Mozambican state, i.e. sovereignty, democracy, rule of law, pluralism, party system and respect for citizens’ fundamental rights and freedoms. The changes introduced to the citizenship regime were, however, quite extensive and significant, with the acceptance of dual citizenship, the establishment of gender neutral rules for acquisition of citizenship by marriage, and the elimination of involuntary deprivation as grounds for loss. The 2004 Constitution also streamlined the categories of ‘citizenship by origin’ and ‘acquired citizenship’, finally making citizenship by origin synonymous with citizenship by birth and moving all other cases to the now broader category of acquired citizenship, in line with the common practice among Lusophone countries. The full extent of the regime will be detailed in the next section.

As a closing note on the political and constitutional evolution of Mozambique so far, it should be mentioned that violence was resumed by RENAMO in 2012 and that the country was again engulfed in armed conflict in 2014 following RENAMO’s rejection of that year’s electoral results. Afonso Dhlakama’s main demand was that RENAMO be allowed to appoint the governors of the provinces where it had won the majority of the vote, a demand which was rejected by the FRELIMO majority in parliament with the argument that it had no legal basis, since the 2004 Constitution only provided for the election of provincial assemblies, not provincial governors (Macuacua 2019c: 2; Macamo 2017: 202-203). Peace talks between RENAMO and the government started in 2015. In December 2017, the President Filipe Nyusi decided to engage directly with Afonso Dhlakama and the agreement they reached resulted in a *sui generis* constitutional amendment (Macuacua 2019c: 2-3), presented orally to the nation on 7 February 2018 and subsequently endorsed by the National Assembly with the adoption of Law no. 1/2018, of 12 June 2018. The next elections are scheduled to take place on 15 October 2019 and, for the first time, Mozambicans will not only elect the President of the Republic and the MPs, but also the governors of the country’s eleven provinces, who are no longer appointed by the central government.

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introduce them immediately as a minor amendment. Law no. 9/98, of 9 December 1998. Published in Rodrigues et al. (2006: 209-210).

<sup>74</sup> Information available from the website of the Mozambican Constitutional Council, at <http://www.cconstitucional.org.mz/Legislacao/Constituicao-da-Republica> [14. 04.2019]. Although the 2004 Constitution introduced special guarantees to preserve its text against frequent amendments (Articles 299-304), it has already been amended twice, first by Law no. 26/2007, of 16 November 2007, secondly by Law no. 1/2018, of 12 June 2018. None of the amendments made changes to the citizenship provisions. All versions of the 2004 Constitution are available at <http://www.cconstitucional.org.mz/Legislacao/Constituicao-da-Republica> [28.03.2019].

### 3. Current citizenship regime

A distinctive feature of Mozambican citizenship law continues to be the fact that most of its ground rules are set by the Constitution and not by ordinary legislation. Like its predecessor, the 2004 Constitution establishes substantive criteria for citizenship attribution, acquisition, loss and reacquisition, while referring to ordinary legislation the rules on registration and proof of citizenship acquisition,<sup>75</sup> loss and reacquisition (Article 34), and the definition of the guarantees and requirements to be met by applicants who wish to acquire or reacquire Mozambican citizenship [e.g. Article 26 (1) (b)]. As the law now stands, the legislative acts which supplement the constitutional provisions are the 1975 Nationality Act, as amended by Law no. 16/87, and the 1975 Nationality Regulation, as amended by Decree no. 5/88.

Per Article 305 of the 2004 Constitution, only the provisions in the 1975 Nationality Act and in the 1975 Nationality Regulation that do not contradict the Constitution remain in force, which requires some interpretation – not always straightforward – as to what is in fact contradictory or merely supplementary. One key aspect of the new regime which has been mired in confusion is dual citizenship (Manby 2016: 46, 49), which the 2004 Constitution clearly allows, but which still appears as grounds for citizenship deprivation in the 1975 Nationality Act. The 2004 Constitution does not expressly prescribe that dual citizenship is allowed, but makes it abundantly clear by no longer requiring that naturalisation applicants renounce their previous citizenship and by no longer listing the voluntary acquisition of a foreign citizenship as grounds for deprivation. The fact that the anti-dual-citizenship provisions in the 1975 Nationality Act have not yet been expressly repealed is immaterial, given that these provisions became unconstitutional – thereby invalid, per Article 2 (4) of the Constitution – when the 2004 Constitution came into force. Equally immaterial to the determination of whether or not Mozambican law allows dual citizenship is Article 33 of the Constitution, according to which no legal effects are to be recognised to a foreign citizenship held by someone who is also a Mozambican citizen.<sup>76</sup> The provision in Article 33 is a standard conflict of laws rule for cases of dual citizenship and it does not mean that dual citizenship is not allowed. Its only effect is to forbid Mozambican citizens who also hold a foreign citizenship to invoke this citizenship when in Mozambique and/or when interacting with Mozambican authorities.

Another possible point of contention results from the fact that the list of grounds for attribution of Mozambican citizenship in the 2004 Constitution is shorter than that of the 1975 Nationality Act and could be interpreted as meaning that the extra grounds in the Nationality Act continue to apply in addition to those listed in the Constitution. The phrasing used by the Constitution indicates however that the list of grounds is exhaustive, so the only conclusion admissible is that any extra grounds listed by the Nationality Act have been repealed with the entry into force of the 2004 Constitution. That is the case e.g. with the recognition as Mozambican citizens of those born in Mozambique during colonial times and who returned to Mozambique within 90 days after the date of independence [Article 1 (1) (d) of the Nationality Act], and of those who took part in the liberation struggle as members of FRELIMO and expressly renounced any other citizenship (Article 3 of the Nationality Act).

<sup>75</sup> It should read ‘attribution and acquisition’, since registration is also possible (albeit not mandatory in most instances) for citizenship by birth, i.e. attributed instead of acquired.

<sup>76</sup> In a 2012 interview on Mozambican television, a pundit mistakenly referred to this provision as proof that dual citizenship was not allowed in Mozambique. The recording of the interview is available at <https://www.youtube.com/watch?v=uX7PFzRODqs> [28.03.2019], under the title ‘Análise: Revisão da lei de nacionalidade moçambicana’.

While it is arguable that many of the questions associated with the interplay between the Constitution and the Nationality Act are easily addressed with recourse to classic hermeneutical tools of the civil law tradition, it would certainly be advisable – for legal certainty sake – for the Mozambican legislator to adopt a new Nationality Act to repeal both the 1975 Nationality Act and the 1975 Nationality Regulation.

Among the aspects missing from the current legal framework, one that is crucial is judicial review of administrative decisions in matters of citizenship, e.g. decisions which dismiss a naturalisation application or refuse to register a citizenship acquisition or attribution (Gouveia 2004: 122). The current regime only provides for an administrative appeal to the Minister of Justice, in cases where a civil registry official refuses to comply with a registration request (Article 23 of the Nationality Regulation). Furthermore, as the law stands, except for citizenship acquired by naturalisation, the Minister of Justice can annul citizenship registrations at any time on the grounds that the legal requirements for attribution, acquisition, loss or reacquisition have not been met, and the interested parties are only entitled to be informed and to submit their defence before the decision is rendered [Article 22 (1) and (2) of the Nationality Regulation]. Also, the registration of citizenship acquired by marriage can be annulled without informing the interested party and with no right to appeal whenever the authorities deem that he or she does not offer moral and political guarantees of integration into Mozambican society [Article 22 (3) of the Nationality Regulation].

### 3.1. Modes of attribution and acquisition of Mozambican citizenship

***Attribution based on birth in Mozambique to a father or a mother born in Mozambique:*** Continuing Mozambique’s long tradition of double *ius soli*, Article 23 (1) (a) of the Constitution recognises as Mozambican citizens those born in Mozambique to a father or a mother also born in Mozambique. Read in conjunction with Article 24, which establishes a broad and unconditional *ius soli* rule for those born in Mozambique after independence, with the usual diplomatic exception, the practical relevance of Article 23 (1) (a) is now limited to individuals born before independence to a mother or a father also born in Mozambique. For those born in Mozambique after independence, the birth in the territory suffices for the attribution, so the parents’ birth in Mozambique becomes irrelevant.

The Nationality Regulation does not require registration of those who are citizens by birth under this provision [Article 2 (2) *a contrario*], but prescribes that they may be asked to prove that they meet the requirements for attribution of citizenship by birth when exercising rights or applying for offices reserved for Mozambican citizens [Article 3 (2)]. Per Article 4 (1) of the Nationality Regulation, Mozambican citizenship is assumed for all individuals born in Mozambique, provided that their birth registration does not include any mention to the contrary.

***Attribution based on birth in Mozambique to stateless parents, parents of unknown citizenship and unknown parents:*** Article 23 (1) (b) of the Constitution recognises as Mozambican citizens those born in Mozambique to stateless parents or to parents of unknown citizenship. In what appears to be a typo, this provision uses two terms which are synonymous when referring to the unknown citizenship of the parents (*de nacionalidade desconhecida ou incógnita*) and ends up leaving out the cases in which the parents themselves are unknown. While the typo should certainly be corrected at the earliest opportunity – for the sake of consistency, if nothing else –, it is probably of no consequence

in practice, either because the provision is being interpreted as if it read ‘of unknown parents’ or because it is being supplemented by the corresponding provision in the 1975 Nationality Act, which recognises as Mozambican citizens the individuals born in Mozambique to stateless parents, parents of unknown citizenship and unknown parents [Article 1 (1) (b)].

As a safeguard against statelessness, Article 23 (1) (b) of the Constitution is, in any case, insufficient since it does not cover individuals whose foreign parents are known but are unable to transmit their citizenship to their children under the citizenship laws of their country of origin (Manby 2016: 49). With the widening of *ius soli* in the 2004 Constitution, individuals born in Mozambique after independence are (in theory) no longer at risk of being stateless, since they will be recognised as Mozambican citizens by birth under Article 24. The omission in Article 23 (1) (b) remains relevant only for the attribution of citizenship by birth to individuals born in Mozambique before independence.

The Nationality Regulation does not require registration of those who are citizens by birth under Article 23 (1) (b) of the Constitution, but prescribes that they may be asked to prove that they meet the requirements for attribution of citizenship by birth when exercising rights or applying for offices reserved for Mozambican citizens [Article 2 (2) *a contrario* and Article 3 (2)]. Per Article 4 (1) of the Nationality Regulation, Mozambican citizenship is assumed for all individuals born in Mozambique, provided that their birth registration does not include any mention to the contrary.

***Attribution based on birth in Mozambique combined with residence in Mozambique at the time of independence and absence of option for another citizenship:*** Article 23 (1) (c) of the Constitution recognises as Mozambican citizens those who, having been born in Mozambique, were domiciled in the country on the date of independence and did not opt, either expressly or tacitly, for another citizenship. This provision is designed to cover all individuals who in the past obtained Mozambican citizenship under Article 1 (1) (c) of the 1975 Nationality Act, i.e. those who were born in Mozambique to foreign parents, had their domicile in Mozambique on the date of independence and did not declare their wish not to be Mozambican within 90 days after the date of independence.

According to Article 4 (1) of the Nationality Regulation, Mozambican citizenship is assumed for all individuals born in Mozambique, provided that their birth registration does not include any mention to the contrary. The Nationality Regulation does not require registration of those who are citizens by birth under Article 23 (1) (c) of the Constitution, but prescribes that they may be asked to prove that they meet the requirements for attribution of citizenship by birth when exercising rights or applying for offices reserved for Mozambican citizens [Article 2 (2) *a contrario* and Article 3 (2)]. Proof of domicile in Mozambique on the date of independence is to be produced according to Article 10 (2) of the Nationality Regulation, i.e. by means of a certificate attesting the residence in Mozambique on the date of independence and of a declaration under oath which includes, to the extent possible, the date when the signatory established domicile in Mozambique, the localities where he or she lived and the entities for which he/she rendered services, where applicable. If the undersigned is or has been a civil servant for 20 years or more, a statement issued by the respective services will suffice.

***Attribution based on birth abroad to a Mozambican father or mother in the service of Mozambique:*** Article 23 (2) of the Constitution recognises as Mozambican citizens those born abroad to a Mozambican father or to a Mozambican mother provided that the Mozambican parent is abroad in the service of the state.<sup>77</sup> This provision reciprocates the ‘diplomatic exception’ that is common in countries which adopt *ius soli* as the main criterion for citizenship attribution [see Article 24 (2) of the Constitution] and is based on the ‘extraterritorial fiction’ according to which the Mozambican diplomatic missions are considered to be part of Mozambican territory. That explains why the attribution in this case is automatic, by mere effect of the law, whereas the attribution to children born abroad to a Mozambican parent not in the service of the state is conditional upon a declaration of the wish to be Mozambican [Article 23 (3)].

The provision’s roots in diplomatic practice do not mean, however, that the term ‘service’ should be interpreted narrowly to only cover diplomatic functions. It should instead be interpreted broadly to cover any activity performed in a foreign country as a representative of Mozambique, including travels abroad as holders of offices or public positions (e.g. a courtesy visit to a foreign country by the President of the Republic or other office holder) or as members of official sports organisations or athletes representing Mozambique in athletic competitions. This broad interpretation of the term ‘service’ is consistent with the way the term is used in the Nationality Regulation for the cases of children born in Mozambique to foreigners in the service of their state (Article 5 of the Nationality Regulation).

For Article 23 (2) of the Constitution to apply, the birth must occur at a time when the Mozambican father or the Mozambican mother is abroad in the service of Mozambique. It should be irrelevant if the Mozambican parent was already domiciled abroad for personal reasons before the start of the exercise of public functions, the same way that it should not matter if he or she ceases to exercise such functions at a later date. The child’s date of birth is also the date of reference to determine whether the father or the mother are Mozambican citizens for the purposes of Article 23 (2). Even if the Mozambican parent loses his or her Mozambican citizenship later, that fact does not hinder the attribution of Mozambican citizenship by birth under Article 23 (2).

Since this ground for attribution was only introduced in Mozambican citizenship law with the 1990 Constitution, it is not prescribed for in the Nationality Act nor in the Nationality Regulation. By analogy with the provisions in the Act and the Regulation regarding the attribution of citizenship on the basis of birth abroad to a Mozambican citizen, it may be argued that registration of the attribution is mandatory and that proof of citizenship is made by means of a citizenship certificate or of a birth registration certificate which mentions the attribution of citizenship, per Articles 2 (2) and 3 (1) of the Nationality Regulation. By the same token, the registration of citizenship obtained under Article 23 (2) of the 2004 Constitution is made before the Central Registry Office in accordance with Article 11 of the Nationality Regulation with the necessary adaptations, which means that it requires the presentation of the birth registration certificates of both the child and his or her Mozambican parent, and of a document issued by the Mozambican diplomatic or consular

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<sup>77</sup> The actual phrasing of Article 23 (2) is not so straightforward, however, due to the use of the expression ‘even if born abroad’, which suggests that the birth abroad is only one of the hypotheses covered by the norm. This oblique phrasing is common in *ius sanguinis* provisions, but seems to be out of place here. Article 23 (2) should simply read ‘born abroad’, since its purpose is clearly to recognise as Mozambican citizens the children born abroad to Mozambican parent(s), not the children born in Mozambique to Mozambican parents. With the adoption of a broad *ius soli* rule for all births occurred in Mozambique after independence, the Mozambican citizenship of the parents is naturally only relevant in cases of births occurred abroad.

services attesting that the Mozambican parent(s) is or are abroad in the service of Mozambique [by analogy with Article 5 (2) of the Nationality Regulation].

***Attribution based on birth abroad to a Mozambican father or mother combined with declaration of the wish to be Mozambican:*** Article 23 (3) of the Constitution widened the scope of *ius sanguinis* by recognising as Mozambican citizens the children born abroad<sup>78</sup> to a Mozambican father or to a Mozambican mother (not in the service of the state), with the sole requirement that they expressly declare their wish to be Mozambican, either by themselves, if older than 18 years of age, or through their legal representatives, if younger. It is no longer required that they renounce any other citizenship, as was the rule under the 1990 Constitution and as is still the letter of Article 8 (1) of the Nationality Act. As mentioned earlier, the 2004 Constitution eliminated all provisions requiring renunciation to any foreign citizenship as condition to obtain Mozambican citizenship, either by attribution or by acquisition. The clear intention of the 2004 constituent assembly was to reform the citizenship law so as to allow dual citizenship. Therefore, the section in Article 8 (1) of the Nationality Act that required renunciation to any foreign citizenship became unconstitutional and was implicitly repealed with the entry into force of the 2004 Constitution.

Article 23 (3) of the Constitution does not set a deadline for the declaration of the wish to be Mozambican by the child or by his or her the legal representatives. Read in conjunction with Article 25 of the Constitution,<sup>79</sup> however, it is possible to conclude that the deadline for the child is one year after turning 21 years of age. In the absence of any specific deadline for the declaration by the child's legal representatives, it can be argued that this declaration can be made at any time while the child is underage. In our view, however, a systematic interpretation of the Constitution would recommend the application by analogy of the deadline set in Article 24 (4) to the declarations made by the legal representatives of children born in Mozambique to foreign parents who are in Mozambique in the service of their country. In this case, the deadline for the declaration by the legal representatives is of one year after the birth of the child. Although the 2004 Constitution was a clear improvement in terms of legislative technique, there are still some unnecessary redundancies, inconsistencies and omissions in the text that should be corrected by constitutional amendment. This is one such case. There is no apparent reason to have both Article 25 and Article 24 (4), since they address the same issue and in similar terms.<sup>80</sup> Article 25 applies to the cases in which individuals meet the requirements for citizenship attribution but did not obtain it due to option made by their legal representatives, i.e. due to the fact that their legal representatives did not make the required declaration in due time. It should cover both instances in which declarations by legal representatives are mentioned as requirement for citizenship attribution – Article 23 (3) and Article 24 (3) –, but that is not the case because Article 24 (4) sets the deadlines for the declarations to be made under Article 24 (3). In our opinion, one way to streamline the chapter on citizenship by birth in the Constitution would

<sup>78</sup> As is the case with Article 23 (2), this provision uses the phrasing ‘even if born abroad’, instead of the more straightforward and accurate ‘born abroad’. See comments in the previous footnote.

<sup>79</sup> Under the heading ‘On the grounds of majority’ (*Por maioria*), Article 25 of the 2004 Constitution recognises as Mozambican citizens those who fulfil the requirements for attribution of citizenship by birth but did not obtain Mozambican citizenship due to their legal representatives’ inaction while they were underage, provided that they declare by themselves their wish to be Mozambican citizens, within one year after turning 21 years of age.

<sup>80</sup> With the difference that the deadline for the declaration made by the child is set at one year after the child turns 18, in Article 24 (4), and at one year after the child turns 21, in Article 25.

be to add a paragraph 4 to Article 23 with the same text as Article 24 (4) and to eliminate Article 25 altogether.

While a positive action is required from the interested party, state authorities have no discretion in the attribution of Mozambican citizenship under Article 23 (3) of the Constitution. The declaration of the wish to be Mozambican is made before any Civil Registry official and is added to the interested party's birth registration, per Article 7 of the Nationality Regulation. Applying, with the necessary adaptations, the provisions in the Nationality Act and the Nationality Regulation concerning the attribution of citizenship on the basis of birth abroad to a Mozambican citizen, it is possible to conclude that the declaration of the wish to be Mozambican must include the interested party's full name, age, civil status, profession, place of birth, residence and current citizenship; the full name, civil status, place of birth and residence of the interested party's parents; and the purpose of the declaration; and be accompanied by the birth registration certificate of the interested party and of his or her parents [Articles 11 and 21 (1) and (5) of the Nationality Regulation]. If the child is an orphan awaiting a judicial decision on tutelage or adoption, the Social Services are competent to make the declaration of the wish to be Mozambican on behalf of the child [Article 11 (2) of the Nationality Regulation]. The registration of the attribution under Article 23 (3) of the Constitution is mandatory and proof of citizenship is made by means of a citizenship certificate or of a birth registration certificate which mentions the attribution of citizenship [Articles 2 (2) and 3 (1) of the Nationality Regulation].

***Attribution based on birth in Mozambique after independence, with diplomatic exception:*** Article 24 (1) and (2) of the Constitution recognises as Mozambican citizens by birth all individuals born in Mozambique<sup>81</sup> since independence, with the exception of those born to foreign parents if any of the parents was/is in Mozambique in the service of his or her country. For the exception to apply, both parents have to be foreigner and at least one of them must be in Mozambique in the service of his or her country at the time of birth, even if the residence in Mozambique started for reasons other than the service to a foreign country.

The diplomatic exception in Article 24 (2) reflects a general principle of international law according to which states should not impose their citizenship on the children of foreign diplomats born in their territory. Since 2004, the exception is no longer as strong as before,<sup>82</sup> since Article 24 (3) allows children born in Mozambique to foreign parents in the service of their country to obtain Mozambican citizenship by origin sufficing that they declare their wish to be Mozambican after they turn 18, whereas under the 1975 Act and the 1990 Constitution this possibility was reserved for those born in Mozambique to foreign parents not in the service of their country.

As noted earlier a propos Article 23 (2), the term 'service' is to be interpreted broadly, to cover not only diplomatic and consular functions, but also other official missions. This much is made clear by the provisions in the Nationality Regulation which apply to cases that

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<sup>81</sup> Taking the example of Brazil, another Lusophone country with a strong *ius soli* tradition, it can be said that the reference to Mozambique as place of birth covers not only what is materially located within Mozambican borders, but also Mozambican territorial waters, Mozambican military aircraft and ships wherever they may be found, and Mozambican commercial aircraft and ships if the birth occurs at high sea (Jerónimo 2016: 19).

<sup>82</sup> Until 2004, the children born in Mozambique to foreign parents in the service of their country were not entitled to obtain Mozambican citizenship by declaring their wish to be Mozambican. That much can be deduced from the provision in the Nationality Regulation which required that the declaration of the wish to be Mozambican by children of foreign parents expressly mentioned that none of the parents was in Mozambique in the service of their country at the time of birth [Article 8 (1) of the Nationality Regulation].



fall under Article 24 (2) of the Constitution. Per Article 5 (1) of the Nationality Regulation, the birth registration of children born in Mozambique to foreign parents one of which is in Mozambique in the service of his or her respective country must include mention to the ‘special situation of the parents’ in the identification of the child. Per Article 5 (2), if the child to be registered is not identified as the child of a career diplomat or consular agent, accredited before Mozambican authorities, the author of the registration must submit a document issued by the diplomatic or consular services of his or her country and confirmed by the Mozambican Ministry of Foreign Affairs that attests that the father or the mother of the child to be registered was in Mozambique in the service of his or her country at the date of the child’s birth.

Except for individuals born in Mozambique to foreigners in the service of their country, all other children born in Mozambique are entitled to Mozambican citizenship by birth, irrespective of whether their parents are Mozambican or foreigners, unknown, stateless or of unknown citizenship. The attribution is automatic, by mere effect of the law, even for children born to foreign parents not in the service of their country, who no longer need to declare their wish to be Mozambican, as was the case until 2004 under Article 12 (3) and (4) of the 1990 Constitution. Article 2 (3) and (4) of the 1975 Nationality Act, which required a declaration of the wish to be Mozambican and set a deadline for that declaration to be made, should therefore be considered as implicitly repealed with the entry into force of the 2004 Constitution.

The Nationality Regulation does not require registration of those who are citizens by birth under Article 24 (1) of the Constitution, but prescribes that they may be asked to prove that they meet the requirements for attribution of citizenship by birth when exercising rights or applying for offices reserved for Mozambican citizens [Article 2 (2) *a contrario* and Article 3 (2)]. Per Article 4 (1) of the Nationality Regulation, Mozambican citizenship is assumed for all individuals born in Mozambique, provided that their birth registration does not include any mention to the contrary. Article 4 (2) excepted from this assumption children born in Mozambique after independence to a foreign father and a foreign mother, but this exception is arguably at odds with the current citizenship regime’s broad and unconditional *ius soli* rule. Article 4 (1) should be enough to account for the cases falling under the diplomatic exception.

***Attribution based on birth in Mozambique after independence to foreign parents in the service of their country combined with declaration of the wish to be Mozambican:*** Breaking with the previous regime, Article 24 (3) of the 2004 Constitution recognises as Mozambican citizens by birth individuals born in Mozambique to foreign parents who, at the time of birth, were/are in Mozambique in the service of their country, provided that they (or their legal representatives, before they turn 18) declare their wish to be Mozambican. The declaration must be made within one year of the child’s birth, if made by the child’s legal representatives, or within one year after the child turns 18, if made by the child him or herself [Article 24 (4) of the Constitution].

The declaration is made before any Civil Registry official and must include the interested party’s full name, age, civil status, profession, place of birth, residence and current citizenship; the full name, civil status, place of birth and residence of the interested party’s parents; and the purpose of the declaration; and be accompanied by the birth registration certificate of the interested party [Article 21 (1) and (5) of the Nationality Regulation]. Once the declaration is made, it is added to the interested party’s birth registration (Article 7 of the Nationality Regulation) and he or she is immediately registered as Mozambican by birth, per

Article 8 of the Nationality Regulation, applied by analogy and with the necessary adaptations. As with all other cases of citizenship attribution in the 2004 Constitution, state authorities have no discretion.

***Acquisition based on marriage to Mozambican citizen:*** Departing considerably from the previous regime, Article 26 (1) of the Constitution entitles foreigners (men and women) who are married to Mozambican citizens for more than five years to acquire Mozambican citizenship, provided that they (a) declare their wish to acquire Mozambican citizenship, and (b) meet the requirements and offer the guarantees set by ordinary legislation. Stateless individuals who marry Mozambican citizens are not required to wait five years after the wedding to acquire Mozambican citizenship under Article 26, provided that they make the declaration and offer the guarantees required by law. Per Article 26 (2) of the Constitution, the annulment of the marriage or its dissolution do not hinder the Mozambican citizenship acquired by the spouse.<sup>83</sup>

The phrasing of Article 26 (1) – ‘Mozambican citizenship is acquired’<sup>84</sup> – suggests that state authorities have no discretion in granting Mozambican citizenship to spouses of Mozambican citizens if they meet the requirements. However, the open reference to ‘requirements and guarantees’ set by ordinary legislation gives state authorities plenty of leeway in the review of the applications made under Article 26 (1). Article 10 of the 1975 Nationality Act applies, with the necessary adaptations, i.e. with no gender discrimination and no requirement to renounce to previous citizenship. This means that the foreign or stateless spouses of Mozambican citizens are required to (i) establish their domicile in Mozambique, (ii) offer political and moral guarantees of integration into Mozambican society, (iii) not have had any involvement with fascist or pro-colonial political organisations, and (iv) not have been convicted for crimes against the Mozambican people and decolonisation or against the safety of the people and of the state. The need to offer ‘political and moral guarantees of integration into Mozambican society’ is vague enough to cover almost any pretext that the authorities may want to use to refuse the acquisition of Mozambican citizenship on grounds of marriage. There is no official information available on how Mozambican authorities interpret this requirement in practice. Relying on information obtained from the webpage of Mozambican lawyer Clayton Johnam, it would seem that, in order to offer guarantees of integration into Mozambican society, applicants are only required to prove that they have means of subsistence and a work contract, and to submit copy of their criminal records in Mozambique and in their country of origin.<sup>85</sup> The legal uncertainty surrounding this point is all the more problematic since, if Article 22 (3) of the 1975 Nationality Regulation is deemed to be applicable, the registration of citizenship acquired by marriage can be annulled, without informing the interested party and with no right to appeal, whenever he or she is considered by Mozambican authorities as not offering moral and political guarantees of integration into Mozambican society.

<sup>83</sup> As Gouveia (2004: 123) pointed out, this equivalency between annulment and dissolution does not seem to make much sense. The annulment usually means that the marriage was not validly entered into and therefore never had any legal effects. It seems odd that a foreigner who illegally marries a Mozambican citizen and then acquires Mozambican citizenship on the basis of that marriage gets to keep his or her Mozambican citizenship after the marriage is annulled.

<sup>84</sup> Especially if we compare it with the wording of Article 27 (‘naturalisation may be granted’).

<sup>85</sup> Clayton Johnam does not indicate, however, any primary sources to substantiate his analysis. See [https://www.linkedin.com/pulse/aquisi%C3%A7%C3%A3o-da-nacionalidade-mo%C3%A7ambicana-por-via-do-clayton-johnam?trk=related\\_article\\_AQUISI%C3%87%C3%83O%20DA%20NACIONALIDADE%20MO%C3%87AMBICANA%20POR%20VIA%20DO%20MATRIM%C3%93NIO\\_article-card\\_title](https://www.linkedin.com/pulse/aquisi%C3%A7%C3%A3o-da-nacionalidade-mo%C3%A7ambicana-por-via-do-clayton-johnam?trk=related_article_AQUISI%C3%87%C3%83O%20DA%20NACIONALIDADE%20MO%C3%87AMBICANA%20POR%20VIA%20DO%20MATRIM%C3%93NIO_article-card_title) [02.04.2019].

Registration of citizenship acquisition under Article 26 (1) of the Constitution is made in accordance with Articles 13 and 10 of the Nationality Regulation, with the necessary adaptations, which means that proof of domicile and a marriage certificate are required. Per Article 10 (2) of the Nationality Regulation, proof of domicile in Mozambique is done by means of a certificate attesting the residence in Mozambique and of a declaration under oath which includes, to the extent possible, the date when the signatory settled domicile in Mozambique, the localities where he or she lived and the entities for which he/she rendered services, where applicable. It is probable that the declaration under oath is no longer required to prove domicile in Mozambique. Clayton Johnam's list of documents needed to instruct applications under Article 26 (1) of the Constitution only mentions the residence certificate, with the clarification that it is usually issued by the municipal services of the applicant's place of residence. On the other hand, Johnam's list includes a declaration by the Mozambican spouse agreeing to the acquisition of Mozambican citizenship, which does not seem to have any legal basis.

**Acquisition by naturalisation:** According to Article 27 (1) of the Constitution, Mozambican citizenship may be granted by naturalisation to foreigners who, at the date of their application, meet the following requirements: (a) have resided legally and habitually in Mozambique for at least 10 years;<sup>86</sup> (b) are over 18 years of age; (c) know Portuguese or another Mozambican language; (d) are capable of providing for themselves; (e) have civic suitability (*idoneidade cívica*); and (f) meet the requirements and offer the guarantees set by ordinary legislation.

Article 11 of the 1975 Nationality Act applies only to the extent that the requirements listed in its paragraph (c) may assist in interpreting subparagraphs (e) and (f) of Article 27 (1) of the Constitution. Per Article 11 (c) of the Nationality Act, applicants must offer political and moral guarantees of integration into Mozambican society, must not have been involved in fascist or pro-colonial political organisations, must not have worked for a foreign political police force, and must not have been convicted for crimes against the Mozambican people and decolonisation or against the safety of the people and of the state. Both the Constitution and the Nationality Act use vague formulations – ‘civil suitability’, ‘political and moral guarantees of integration’ – which give considerable leeway to the Mozambican authorities when reviewing applications under Article 27 (1) of the Constitution. There is however no information available on how Mozambican authorities interpret these requirements in practice, as there is also no information about the means by which the Mozambican authorities assess the applicants' knowledge of Portuguese or Mozambican languages. The naturalisation notices published in the official journal do not include any justification for the decision to grant Mozambican citizenship besides the reference to the legal provisions applied, which, as noted earlier, continued to be the provisions in the 1975 Nationality Act and the 1975 Nationality Regulation well beyond the entry into force of the 2004 Constitution and as recently as 2015. There are, furthermore, no official statistics on the number of naturalisations requested and granted under the current (or the previous) citizenship regime.

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<sup>86</sup> For the purposes of naturalisation, it is immaterial whether foreigners resided in Mozambique as immigrants or as refugees. Mozambique is among the few countries which has expressly entered reservations to Article 34 of the 1951 Convention relating to the Status of Refugees indicating that it does not consider itself bound to grant to refugees facilities greater than those granted to other categories of aliens in general, with respect to naturalization laws. Consistent with this reservation, Mozambique's Refugee Act, adopted by Law no. 21/97, of 31 December 1997, expressly prescribes in its Article 12 (2), that, provided all legal requirements are met, naturalisation is to be granted to refugees on the same terms as to other foreigners (Manby 2016: 128, 131).

Mozambican authorities have discretion in their decision on whether or not to grant Mozambican citizenship by naturalisation. Competence lays with the Minister of Interior, per Article 12 of the Nationality Act. The procedure, as set by the 1975 Nationality Regulation, is as follows: applications are submitted at the Central Registry Office, with the indication of the applicant's full name, date of birth, civil status, filiation, citizenship, place of birth, place of current residence and activity developed in Mozambique, and accompanied by his or her birth registration certificate, proof of habitual and legal residence in Mozambique for a minimum period of ten years, and criminal record or similar document [Article 14 (1) and (2), with the necessary adaptations]. Other documents will be necessary to prove that applicants' meet the new naturalisation requirements introduced by the 2004 Constitution, such as capacity to provide for one's subsistence. The Central Registry Office organises the documentation received and sends the file to the Ministry of Foreign Affairs for an opinion on the merits of the application and on the repercussions that a positive reply may have for the relations between Mozambique and the applicant's state of origin. The opinion is to be issued within a six-month deadline, following which the file is sent to the Minister of Interior who, on delegation from the Council of Ministers, decides on the application after reviewing it and checking whether or not the naturalisation requirements are met [Article 14 (4)]. Once the naturalisation is granted and the naturalisation decree is published in the official journal, the Central Registry Office registers it *ex officio*, although the interested party is also entitled to request the registration by presenting a copy of the official journal in which the naturalisation decree was published (Article 15).

***Acquisition by unmarried children under 18 years of age, following acquisition by one of the parents:*** According to Article 28 of the Constitution, the administrative decision which grants Mozambican citizenship by naturalisation may also grant Mozambican citizenship to the applicant's children, provided that they are under 18 years of age and unmarried. The wording of Article 28 – 'may be granted' – suggests that Mozambican authorities have discretion in their decision on whether or not to grant Mozambican citizenship under this provision, but it would be at odds with the seemingly underlying goal of keeping parents and children united in the same citizenship status to deny the extension of the naturalisation to the applicant's children.

In any case, the extension of Mozambican citizenship to the children of naturalised citizens must be requested together with the naturalisation application and follows the same procedure. Article 14 (3) of the Nationality Regulation prescribes that the applicants wishing that their unmarried children under 18 years of age also acquire Mozambican citizenship have to enclose the children's birth registration certificate. Since the constitutional provision only covers children under 18 years of age, not under 21 years of age as the 1975 Nationality Act, the requirement that children over 18 years of age declare their agreement to the naturalisation no longer applies.

***Acquisition based on adoption by Mozambican citizen:*** According to Article 29 of the Constitution, foreign or stateless children<sup>87</sup> adopted by a Mozambican citizen acquire Mozambican citizenship. Children adopted by Mozambican citizen(s) are entitled to acquire

<sup>87</sup> The Mozambican Family Act – approved by Law no. 10/2004, of 25 August 2004 – sets different age limits for adoption, depending on the child to be adopted and on the person adopting. If the person adopting is the spouse or partner of the child's biological parent, the adoption can take place until the child turns 21 years of age, whereas orphan or abandoned children can only be adopted until they turn 14 (Article 395). Text available at <http://jafbase.fr/docAfrique/Mozambique/Lei%2010.2004%20-%20Lei%20da%20Familia.pdf> [03.04.2019].

Mozambican citizenship, which means that state authorities have no discretion and therefore cannot oppose nor deny the acquisition under this provision.

This ground for acquisition was only introduced by the 2004 Constitution and therefore is not covered by the regulatory provisions in the Nationality Regulation. In any case, it is to be assumed that, since the adoption is decreed by court decision (Article 389 of the Family Act), it should suffice that the adopting persons request the registration of their adopted children as Mozambican citizens, before the Central Registry Office, with presentation of copy of the court decision, their identification documents and the child's identification documents.

***Acquisition by facilitated naturalisation based on relevant services to the state:*** According to Article 27 (2) of the Constitution, foreigners who rendered relevant services to the Mozambican state may acquire Mozambican citizenship by naturalisation with dispensation of the residence and language requirements set by Article 27 (1) (a) and (c). The determination of whether a foreigner has rendered relevant services to the state is to be made 'under the terms set by ordinary legislation', which is far from clear. In any case, the competence to grant Mozambican citizenship under this provision rests with the Minister of Interior and the procedure to be followed is that of regular naturalisation, as governed by Articles 14 and 15 of the Nationality Regulation.

### **3.2. Modes of loss of Mozambican citizenship**

Since the entry into force of the 2004 Constitution, Mozambican citizens can no longer be deprived of their citizenship. Article 31 of the 2004 Constitution departed from the previous regime by eliminating all grounds for involuntary loss. With some redundancy, since both paragraphs are cases of renunciation and the hypothesis in paragraph (a) could perfectly well cover the specific case of paragraph (b), Article 31 prescribes that loss of Mozambican citizenship occurs when: (a) its holder, while being a citizen of another state, declares by the competent means his or her wish not to be Mozambican; and (b) its holder obtained Mozambican citizenship as a result of declaration made by his or her legal representatives and declares, within one year after turning 21, his/her wish not to be Mozambican, provided that he/she proves to hold another citizenship. If the deadline set by Article 31 (b) elapses, renunciation is still available at any time under Article 31 (a).

While the right to a citizenship is not expressly recognised as a fundamental right in the Mozambican legal system, as is the case e.g. in Angola, Mozambican citizenship is better protected, since it can no longer be withdrawn against its holder's will and renunciation is only allowed provided that it does not lead to statelessness. Contrary to what happens in Angola, Mozambican law never treated citizenship by birth and acquired citizenship differently for purposes of loss. Before 2004, both citizenship statuses could be lost against its holders' will and now none can be.

For the reasons already mentioned in this report, with the entry into force of the 2004 Constitution, the provisions on loss in the 1975 Nationality Act (Articles 14 and 15) were repealed and replaced by Article 31 and can no longer be applied in practice. As for the provisions in the 1975 Nationality Regulation, some were straight out repealed, since they refer to the procedure for deprivation [Articles 17 and 18 (1) to (4)], while others may still apply with the necessary adaptations. The declaration of the wish not to be Mozambican is

made at the Central Registry Office and must include the interested party's full name, age, civil status, profession, place of birth, residence and current citizenship, number and date of birth registration (if done in Mozambique); the full name, civil status, place of birth and residence of the interested party's parents; and the purpose of the declaration. It must furthermore be accompanied by the birth registration certificate of the interested party and by proof of possession of a foreign citizenship by means of a consular document issued by the respective state [Article 21 (1) and (5)].

### 3.3. Reacquisition of Mozambican citizenship

Since the entry into force of the 2004 Constitution, reacquisition of Mozambican citizenship is no longer conditional on renunciation to a foreign citizenship. Article 32 of the 2004 Constitution continues to set different rules for cases where loss resulted from marriage to foreign men under the previous regime vis-à-vis all other cases of loss. Women who lost their Mozambican citizenship as a result of marriage may reacquire it by expressing their wish to do so before the competent authorities [Article 32 (2)], while men and women who lost or lose their Mozambican citizenship on any other grounds may reacquire it, upon request, provided that they establish domicile in Mozambique and meet the requirements and offer the guarantees set by ordinary legislation [Article 32 (1)]. To the extent that it is still applicable, Article 16 of the Nationality Act adds that the guarantees to be offered are 'political and moral guarantees of reintegration into Mozambican society', a vague phrasing which, as we noted earlier, seems to be interpreted by the Mozambican authorities as requiring mostly that applicants have means of subsistence and a work contract and that they submit a copy of their criminal record.

The discretion enjoyed by state authorities in reviewing the applications for reacquisition is very different depending on whether the interested party invokes paragraph 1 or paragraph 2 of Article 32 of the Constitution. In the first case state authorities have wide discretion in their appraisal of whether or not applicants meet the integration requirements and other guarantees, whereas in the second case they have no discretion at all. Women who lost their Mozambican citizenship as a result of marriage to a foreign man are entitled to reacquire their citizenship and do not have to follow the general reacquisition procedure. Since renunciation to a foreign citizenship is no longer a condition for reacquisition, Article 20 (2) of the Nationality Regulation is mostly inapplicable. The only segment of Article 20 (2) which has not been repealed with the entry into force of the 2004 Constitution is that which establishes that the registration of the reacquisition is made *ex officio*. So, women interested in reacquiring Mozambican citizenship under Article 32 (2) of the Constitution only have to make a declaration to that effect before the Central Registry Office. According to Article 21 (1) of the Nationality Regulation, the declaration must mention the interested party's full name, age, civil status, profession, place of birth, residence and current citizenship (if applicable), number and date of birth registration (if done in Mozambique); the full name, civil status, place of birth and residence of the interested party's parents; and the purpose of the declaration.<sup>88</sup>

The general reacquisition procedure for cases falling under the hypothesis of Article 32 (1) of the Constitution is the same as for naturalisation, per Article 20 (1) of the Nationality Regulation. Applications are addressed to the Minister of Interior and submitted

<sup>88</sup> Furthermore, the declaration must be accompanied by the birth registration certificate of the interested party [Article 21 (5) of the Nationality Regulation].

at the Central Registry Office. They must indicate the applicant's full name, date of birth, civil status, filiation, citizenship, place of birth, place of current residence and activity developed in Mozambique, and be accompanied by the applicant's birth registration certificate, proof of domicile in Mozambique, and criminal record or similar document [Article 14 (1) and (2) of the Nationality Regulation, with the necessary adaptations]. The Central Registry Office organises the documentation received and sends the file to the Ministry of Foreign Affairs for an opinion on the merits of the application. The opinion is to be issued within a six-month deadline, following which the file is sent to the Minister of Interior who, on delegation from the Council of Ministers, decides on the application after reviewing it and checking whether or not the reacquisition requirements are met [Article 14 (4) of the Nationality Regulation]. Once the reacquisition is granted and the reacquisition decree is published in the official journal, the Central Registry Office registers it *ex officio*, although the interested party is also entitled to request the registration by presenting a copy of the official journal in which the reacquisition decree was published (Article 15 of the Nationality Regulation). As noted a propos the naturalisation procedure, the reacquisition notices published in the official journal do not include any justification for the decision to grant Mozambican citizenship besides a vague (and mistaken) reference to the legal provisions applied. If Ministerial Decrees no. 42/2008 and 43/2008, of 7 May 2008,<sup>89</sup> are any indication, Mozambican authorities are mistakenly invoking Article 16 of Law no. 16/87 (when they should be invoking Article 16 of the 1975 Nationality Act as amended by Law no. 16/87), refer to Article 14 of the Nationality Regulation without adding a reference to Article 20 (1) of the Regulation (by force of which Article 14 applies also to cases of reacquisition), and make no mention to Article 32 (1) of the Constitution, the provision that trumps all others.

According to Article 32 (3) of the Constitution, the reacquisition of Mozambican citizenship returns the interested party to the legal status held before the loss, so those who were citizens by birth will reacquire their status as citizens by birth, with all the perks attached. Article 16 (2) of the 1975 Nationality, which set as a general rule that reacquisition would only entitle its beneficiaries to 'citizenship by acquisition' status, has long been inapplicable, since it was implicitly repealed when the 1990 Constitution came into force.

### 3.4. Rights of citizens by birth and by acquisition

The 2004 Constitution widened the gap between citizens by birth and citizens by acquisition and their respective rights. According to Article 30 (1), citizens by acquisition are explicitly denied access to the diplomatic and military careers, as before,<sup>90</sup> but are also explicitly deemed ineligible as members of parliament, cabinet members and office holders in one of the sovereign powers (i.e. President of the Republic, National Assembly, Government, judicial courts and Constitutional Council, per Article 133 of the Constitution).<sup>91</sup> As was the

<sup>89</sup> Both granted Mozambican citizenship by reacquisition. The edition of the official journal in which the notices were published is available at

<https://www.ohchr.org/Documents/Issues/Mercenaries/WG/Law/Mozambique1.pdf> [17.04.2019].

<sup>90</sup> Article 29 (1) of the 1990 Constitution explicitly denied citizens by acquisition access to the diplomatic and military careers while opening the scope of the exclusion by adding the phrasing 'or equivalent'.

<sup>91</sup> This list is extensive and arguably at odds with the universality and equality principle enshrined in Article 35 of the 2004 Constitution, but there were calls for it to be even larger. That was the case with Portuguese constitutional lawyer Jorge Bacelar Gouveia (2004: 123), who argued that the list of offices out of reach for naturalised citizens should also include the police and the intelligence services.

case with the previous Constitution, Article 30 (2) refers to ordinary legislation the definition of the conditions under which Mozambican citizens by acquisition will be allowed to exercise public functions and private functions of public interest (*funções privadas de interesse público*). These provisions give the ordinary legislator ample constitutional coverage for differentiation between citizens by birth and citizens by acquisition, even though the same Constitution recognises in its Article 35 that all citizens are equal before the law, entitled to the same rights and bound by the same obligations.

Furthermore, there is one instance in which the Constitution also differentiates among citizens by birth. Article 146 (2) (a) restricts eligibility to the office of President of the Republic by reserving it to Mozambican citizens by birth who do not hold another citizenship. It is not clear whether this eligibility criterion is more or less restrictive than the one adopted by the 1990 Constitution, according to which only Mozambican citizens by birth born to parents who were also Mozambican citizens by birth were entitled to stand for election as President of the Republic [Article 118 (3) (a) and (b) of the 1990 Constitution]. It is, in any case, a more common eligibility criterion among African states, being enshrined in, among others, the Constitutions of Algeria, Cape Verde, Chad, Djibouti, Egypt and Equatorial Guinea (Manby 2016: 97).

#### 4. Current political debates and reforms

The 2004 Constitution was a clear improvement to Mozambique's citizenship regime, both in terms of substantive provisions – e.g. acceptance of dual citizenship, gender neutral rules for acquisition of citizenship by marriage, protection of citizenship against involuntary loss – and in terms of legislative technique, but there is still considerable room to further improve the constitutional framework, by introducing judicial review of citizenship related administrative acts and by eliminating typos, inconsistencies and unnecessary redundancies in the text [e.g. Articles 23 (1) (b), 24 (4) with 25, and 31 (a) and (b)]. However, as noted throughout this report, the main problem with the Mozambican citizenship regime is not in the Constitution, but in the fact that no new ordinary legislation has been adopted to regulate the constitutional framework set in 2004 and to repeal and replace the 1975 Nationality Act and the 1975 Nationality Regulation.

Many of the provisions in the 1975 Nationality Act and in the 1975 Nationality Regulation have been implicitly repealed with the entry into force of the 2004 Constitution. Nevertheless, in the absence of clear guidelines as to which provisions were actually repealed and which can be considered to remain in force as complementary to the constitutional provisions, civil registry officials are left to their own devices to interpret a complex legal framework and this has led to inconsistent practices at provincial and state level to the detriment of prospective Mozambican citizens. Besides, there are many aspects introduced to the citizenship regime by the 2004 Constitution which need regulation, such as the new naturalisation requirements of knowing Portuguese or another Mozambican language and of offering guarantees set by law. A new Nationality Act is therefore a top priority. In addition, as a matter of urgency, public officials working with citizenship related matters at central and provincial level should be provided clear guidelines as to the legal framework in force and be given proper training so that they understand the specific weight of the constitutional



provisions, which should be the main legal basis offered by any administrative decision recognising, granting or refusing citizenship attribution, acquisition or registration.

Birth registration and issuance of identity documents remain a point of concern, in spite of the successive campaigns promoted by Mozambican authorities over the years, which may in part be attributed to a deficient cooperation between the Ministry of Justice, in charge of overseeing the civil registry offices, and the Ministry of Interior, in charge of issuing identification documents (identity document and passport).<sup>92</sup> There are furthermore reports of thousands of individuals of Mozambican origin who are stateless or at risk of statelessness in border regions and in neighbouring countries. There are, unfortunately, no official or unofficial data estimating the number of persons under these circumstances, as there are no statistical data on any citizenship-related issues, such as the number of naturalisation applications submitted and granted or the number of cases of loss. In recent years, with the rise in immigration, the Mozambican authorities have voiced concerns about fraud and corruption in the application of the citizenship regime, in particular with the issuance of false documentation to foreigners bent on circumventing immigration restrictions. That was the main purpose stated for the 2012 failed attempt at revising the Nationality Act, and was also at the centre of the decision by the National Assembly to amend the Civil Registry Code in 2018 to establish a single identification number for every citizen.<sup>93</sup>

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<sup>92</sup> As reported in Mozambican media. See, e.g., the 2012 television interview mentioned earlier, available at <https://www.youtube.com/watch?v=uX7PFzRODqs> [28.03.2019], under the title ‘Análise: Revisão da lei de nacionalidade moçambicana’.

<sup>93</sup> Information retrieved from news item entitled ‘PR moçambicano promulga Lei de Revisão do Código do Registo Civil’, published on 7 November 2018, available at <https://www.dn.pt/lusa/interior/pr-mocambicano-promulga-lei-de-revisao-do-codigo-do-registo-civil-10145074.html> [09.05.2019].

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