



**THE LEGAL REGIME FOR THE EXPULSION
OF FOREIGN CITIZENS IN THE
MOZAMBICAN LEGAL SYSTEM: A VERSED
ANALYSIS IN LIGHT OF THE FAILURE TO
COMPLY WITH LEGAL AND
CONSTITUTIONAL PROCEDURES LEADING
TO THE JUDICIAL AND ADMINISTRATIVE
EXPULSION OF FOREIGNERS BY THE
COMPETENT ENTITIES**

**O REGIME JURÍDICO DE EXPULSÃO DE
CIDADÃOS MOÇAMBICANA: ESTRANGEIROS NA
ORDEM JURÍDICA UMA ANÁLISE VERSADA À
LUZ DA INOBSERVÂNCIA DOS PROCEDIMENTOS
JURÍDICO-CONSTITUCIONAIS CONDUCENTES À
EXPULSÃO JUDICIAL E ADMINISTRATIVA DOS
ESTRANGEIROS PELAS ENTIDADES
COMPETENTES**

**EL RÉGIMEN JURÍDICO DE EXPULSIÓN DE
CIUDADANOS EXTRANJEROS EN MOZAMBIQUE:
UN ANÁLISIS A LA LUZ DE LA INOBSERVANCIA
DE LOS PROCEDIMIENTOS JURÍDICO-
CONSTITUCIONALES CONDUCENTES A LA
EXPULSIÓN JUDICIAL Y ADMINISTRATIVA DE
EXTRANJEROS POR LAS ENTIDADES
COMPETENTES**

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ABSTRACT

The present study deals with the Legal Regime for the Expulsion of Foreigners in Mozambique, a very current topic, especially the

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expulsion of foreigners, as the coercive removal of individuals from territories outside their jurisdiction, observing all legal procedures for staying or leaving for reasons duly substantiated by the authorities with powers to carry it out. However, in Mozambican jurisdiction, it is incumbent upon the Minister who oversees the area of migration, specifically that of the Interior, on behalf of the Government to order the administrative expulsion, pursuant to paragraph 1 of article 40 of Decree No. 108/2014, of 31 December, which approves the regulation of Law No. 23/2022 of 29 December, the legal regime for Foreign Citizens and establishes the respective rules for entering, staying and leaving the country, as well as their rights, duties and guarantees and establishes the respective norms for entering, staying and leaving the country. Furthermore, in the Mozambican legal order, there are two types of expulsions, namely: administrative and judicial expulsion. Under the terms of number 2 of article 40 of Decree number 108/2014, of December 31, the foreign citizen covered by the administrative expulsion measure, if he so wishes, may file an appeal with the Administrative Court, without suspensive effects, in order to safeguard its permanence.

Keywords: Legal Regime. Expulsion. Foreigners. Migration. Human Rights.

RESUMO

O presente estudo, versa sobre o regime o Regime Jurídico da Expulsão de Estrangeiros em Moçambique, uma temática bastante atual mormente, entende-se por expulsão de estrangeiros, como o afastamento coercivo de indivíduos em territórios não da sua jurisdição, observando todos os procedimentos legais para permanência ou saída por razões devidamente fundamentadas pelas autoridades com competências para o efetivar. Contudo, na jurisdição Moçambicana, compete Ministro que superintende a área de migração, concretamente o do Interior, em representação do Governo ordenar a expulsão administrativa, nos termos do preceituado no n.º 1 no artigo 40 do Decreto n.º 108/2014, de 31 de Dezembro, que aprova o regulamento da Lei n.º 23/2022 de 29 de Dezembro, o regime jurídico do Cidadão Estrangeiro e fixa as respectivas normas de entrada, permanência e saída do País, bem como os seus direitos, deveres e garantias e fixa as respectivas normas de entrada, permanência e saída do País. Ademais, existe na ordem jurídica Moçambicana, existem dois tipos de expulsões, a saber: a expulsão administrativa e a Judicial. Nos termos do n.º 2 do artigo 40 do Decreto n.º 108/2014, de 31 de Dezembro, o cidadão estrangeiro abrangido pela medida de expulsão administrativa, querendo, pode interpor um recurso junto ao Tribunal Administrativo, sem efeitos suspensivos, de modo a salvaguardar a sua permanência.

Palavras-chave: Regime Jurídico. Expulsão. Estrangeiros. Migração. Direitos Humanos.

RESUMEN

El presente estudio versa sobre el Régimen Jurídico de la Expulsión de Extranjeros en Mozambique, una temática bastante actual. Se entiende por expulsión de extranjeros el alejamiento coercitivo de individuos en territorios que no son de su jurisdicción, observando todos los procedimientos legales para la permanencia o salida por razones debidamente fundamentadas por las autoridades competentes para su ejecución. Sin embargo, en la jurisdicción mozambiqueña, corresponde al Ministro que superintende el área de migración, concretamente el del Interior, en representación del Gobierno, ordenar la expulsión administrativa, en los términos previstos en el n.º 1 del artículo 40 del Decreto n.º 108/2014, de 31 de diciembre, que aprueba el reglamento de la Ley n.º 23/2022, de 29 de diciembre, el régimen jurídico del Ciudadano Extranjero y establece las respectivas normas de



entrada, permanencia y salida del País, así como sus derechos, deberes y garantías. Además, en el ordenamiento jurídico mozambiqueño existen dos tipos de expulsiones, a saber: la expulsión administrativa y la judicial. Según lo dispuesto en el n.º 2 del artículo 40 del Decreto n.º 108/2014, de 31 de diciembre, el ciudadano extranjero sujeto a la medida de expulsión administrativa, si así lo desea, puede interponer un recurso ante el Tribunal Administrativo, sin efectos suspensivos, con el fin de salvaguardar su permanencia.

Palabras clave: Régimen Jurídico. Expulsión. Extranjeros. Migración. Derechos Humanos.

INTRODUCTION

Expulsion is an accessory measure substantiated in the coercive removal of a foreign citizen within a given legal order, in accordance with legal procedures. Furthermore, for the enforcement of this punitive measure, the competent authorities must initiate the due expulsion process, taking into account the grounds for the commission of any type of legal crime (through the practice of intentional crime). The classical definition of the expulsion of foreign citizens is simple, it consists of forcibly removing (Nogueira, 2020) from the national territory an individual who does not hold the nationality of that place, for reasons of maintaining national security or public order.

However, under paragraph b) of article 4 of Decreto n.º 108/2014, de 31 de Dezembro, in Mozambique, the implementation of migration measures related to the enforcement of expulsion measures and prohibition of entry or exit of foreigners falls under the responsibility of the national migration services. Thus, it is also incumbent upon these services to determine, in the preparatory proceedings, the decisive facts for expulsion or loss of resident foreigner status. Nevertheless, the weak surveillance of borders constitutes a phenomenon that contributes to the disorderly entry of foreign citizens who do not meet the legal requirements for their stay in Mozambique. Moreover, the requirement for residence visas, which is a fundamental condition for the stay of any foreign citizen in Mozambique, is not rigorously observed.

1 BASIC CONCEPTUALIZATION CONDUCTIVE TO MIGRATION AND HUMAN MOBILITY

Migration constitutes one of the processes of displacement of people from one place to another, which may occur within or outside a legal or territorial order. Furthermore, migrations are essential to the process of globalization (Martine, 2005), reinforcing its human dimension, a process that highlights economic and social inequalities and drives migratory demand for better living and working conditions. Currently, except in cases of armed conflicts and natural disasters, globalization and its relation to inequalities (Ramos, 2020) are the main causes of international migrations.

Moreover, migrations have a structural and permanent character in the global economy, constituting one of the essential factors in the process of development and social transformation worldwide. However, the increase in human mobility at the global level raises questions regarding human rights, citizenship rights and the integration of migrants, social awareness, the governance and sovereignty of States, new forms of global regulation and European construction, thereby requiring the adjustment of public policies.

2 THE VISA AND HUMAN MOBILITY

2.1 The entry and settlement of foreign citizens in Mozambican territory

The entry of a foreign citizen into the national territory is carried out through the presentation, at border posts, of the legally required documents, which include the visa (Cossa, 2023) (except in cases of exemption) and means of subsistence, which may be waived upon presentation of a statement of responsibility for food and accommodation issued by a national citizen or a foreign resident in the national territory.

Nevertheless, as Nócita Cossa (2023), understands it, entry into the national territory may be refused when the foreign citizen presents a passport (or equivalent travel document) that is invalid, expired, altered with indications of falsification, belonging to another person, or when the individual appears on the list of persons prohibited from entering, constitutes a danger or serious threat to public order, has been fined for violating migration laws, lacks proven means of subsistence, fails to present a return ticket to the country of origin, is an unauthorized or unaccompanied minor, among other reasons listed in the Law.

In these terms, under the Law (Cossa, 2023, p. 3), responsibility falls on the carriers that transport foreign citizens who do not meet the conditions enabling them to enter the country (Cossa, 2023), including responsibility for the citizen's re-embarkation within a short period of time, repatriation, food expenses, and any necessary assistance (Cossa, 2023) while the citizen remains in the national territory. However, it should be noted that such responsibilities are equally attributed to the individual who transports the foreign citizen (Cossa, 2023, p. 3) that does not meet the entry requirements.

3 THE VISA AS A FUNDAMENTAL PREMISE FOR THE EFFECTIVENESS OF MOBILITY

3.1 On the Materialization of Human Mobility

The visa is a document that enables its holder to receive permission to enter the national territory at the border post (Cossa, 2023, p. 3).

However, within the Mozambican legal order, we may find different types, namely:

- a) **Diplomatic, Courtesy, and Official Visa** (Cossa, 2023) – granted to the holder of a diplomatic, service, or ordinary passport, on a diplomatic visit or at the invitation of Mozambican authorities. It allows a stay of up to 30 days and is valid for two (2) entries;
- b) **Residence Visa** (Cossa, 2023, p. 4) – granted to a citizen who intends to establish residence in the national territory. It allows a stay of 30 days, extendable up to 60 days, and is valid for one entry;
- c) **Tourist Visa** (Cossa, 2023, p. 4) – granted to a citizen traveling for tourism or recreational purposes. It allows a stay of up to 90 days, either continuous or intermittent, within 12 months;
- d) **Transit Visa** (Cossa, 2023, p. 4) – granted to a citizen entering the country en route to another destination. It is issued for 7 non-extendable days;
- e) **Visitor Visa** (Cossa, 2023, p. 4) granted for purposes not justifying another type of visa. It is valid for 15 days, extendable up to 90 days;
- f) **Business Visa** (Cossa, 2023, p. 4) – granted for business prospecting, conducting scientific research, attending meetings, conferences, workshops, general assemblies, among other related events. It allows a stay of up to 90 non-extendable days and is valid for multiple entries;
- g) **Student Visa** (Cossa, 2023, p. 4) – granted for the purpose of attending an officially recognized educational institution in the national territory. It is valid for 12 months, extendable for as long as the reasons for its concession remain;
- h) **Work Visa** (Cossa, 2023, p. 4) – granted for the exercise of a remunerated or non-remunerated activity, in the interest of the State or on behalf of others, subject to the formalities of foreign labor contracting. It allows multiple entries and a stay of up to 1 year, extendable for an equal period in accordance with the contract;
- i) **Border Visa** (Cossa, 2023, p. 4) – granted to a citizen from a country where there is no diplomatic or consular representation of the Republic of Mozambique. It allows a stay of up to 30 non-extendable days and is valid for two (2) entries;
- j) **Temporary Stay Visa** (Cossa, 2023, p. 4) – granted to the foreign spouse and minor or dependent children of a foreign citizen holding a work visa or an investment activity visa. It is also granted to those entering the country for medical treatment, religious activity, or

voluntary service. It allows a stay of up to 1 year, extendable while the reasons for its concession persist;

- k) **Crew Member Transfer Visa** (Cossa, 2023, p. 4) – granted at maritime, air, or railway posts and allows for the transfer of crew members between the aforementioned means;
- l) **Sports or Cultural Activities Visa** (Cossa, 2023, p. 4) – granted to an accredited citizen and intended for participation in competitions or sports training, or in cultural activities. It allows a stay of 30 days, extendable up to 90 days, and is valid for one (1) entry;
- m) **Investment Activity Visa** (Cossa, 2023, p. 4) granted to the investor, representative, attorney, or head of the management body of the investing company, for the purpose of implementing an investment project valued at USD 500,000 or more, and allows the granting of a residence permit. It allows multiple entries and a stay of up to 2 years for projects valued at USD 500,000 or more, and up to 5 years, extendable, for projects valued at USD 50 million or more;
- n) **Visa for Humanitarian Assistance** (Cossa, 2023, p. 6) – granted to citizens entering the country at the invitation of government authorities, international organizations, and non-governmental organizations, in order to provide non-profit humanitarian work, within the framework of a state of emergency, public calamity, or other situations declared under the terms of the Constitution of the Republic and the law. It is valid for multiple entries and allows a stay of 90 days extendable for an additional 90 days (Moçambique, 2022) upon a duly justified request.

The extension of stay is a migratory act that enables the holder to remain in the national territory for a longer period, in accordance with the authorized time.

Furthermore, the Law establishes the requirements for obtaining a visa as well as the terms of exemption. Regarding visa cancellation, it is important to highlight that the responsibility for canceling a visa when the foreign citizen is already within the national territory lies with the Migration Services, while the cancellation of a visa prior to the entry of the foreign citizen into the national territory falls under the responsibility of the Diplomatic or Consular Missions of the Republic of Mozambique.

3.2 Types of Authorization for the Establishment of Residence of Foreigners in the Mozambican Legal System in Light of the New Legal Framework

The current legal framework in the Mozambican legal system grants different types of residence permits to foreigners, particularly to foreign citizens who are in Mozambique. According

to paragraphs 1 and 2 of Article 35 of Law No. 23/2022 of December 29, foreigners are authorized to reside through the issuance of the proper permit, which takes the following legal forms;

- a) *Temporary residence permit*
- b) *Permanent residence permit.*

Furthermore, **the temporary residence permit** (Moçambique, 2022), tem a validade de um (1) ano renovável por igual período, enquanto perdurarem as razões da sua concessão. Mormente, a autorização de residência temporária deve ser atualizada sempre que se verifique a alteração dos elementos de identificação nelas constantes, e cuja vigência se prologue por mais de dez (10) anos consecutivos, confere ao titular o direito à residência permanente, desde que se mantenham as razões que ditaram a primeira concessão.

In turn, **the permanent residence permit** (Moçambique, 2022) is granted upon request by the foreign citizen and is valid for five (5) years, renewable for equal periods. However, the permanent residence permit must be updated whenever there is a change in the identification elements contained therein.

4 EXIT OF FOREIGN CITIZENS, CURRENT LEGAL FRAMEWORK

4.1 Voluntary Exit

With regard to the exit of foreign citizens, it is understood that this legal procedure is carried out under the terms of paragraph 1 of Law No. 23/2022 of December 29, through any authorized border post, upon prior presentation of one of the documents provided for under paragraph 1 of Article 8 of the aforementioned law, and after the fulfillment of the legal formalities.

However, according to paragraph 2 of Article 44 (Moçambique, 2022), exit from the national territory may be voluntary or coercive. Nevertheless, coercive exit (Moçambique. Lei n. 23/2022, art. 44, n.º 3) occurs through the expulsion of the foreign citizen from the national territory.

4.2 Exit Prohibition

This legal procedure results from the provisions of Article 55 of Law No. 23/2022 of December 29, whereby exit may be prevented when the competent authority has official knowledge that, against the respective traveler or emigrant, there is an arrest warrant or exit prohibition issued by an authorized entity. In other words, this procedure may be enforced under the following legal circumstances:

- a) *There is a judicial decision prohibiting exit;*

- b) *The migration services have official knowledge that, against the traveler, there is an exit prohibition or arrest warrant issued by a competent entity.*

5 EXPULSION OF FOREIGN CITIZENS IN THE MOZAMBIKAN LEGAL ORDER: LEGAL PROCEDURES

5.1 The Expulsion of Foreign Citizens as a Coercive Mechanism of Removal

It is unnecessary, as Silva Vaz (2021:9) states, to say, however, that the fundamental principles of coercive removal or expulsion of foreign citizens are enshrined in the Constitution of the Republic.

However, expulsion by administrative authority applies in cases where the foreign citizen resides irregularly, is not the holder of a residence permit, and has submitted an asylum request which has been denied.

In the same vein, it may be noted that coercive removal or expulsion of foreign citizens in Mozambique essentially consists of an administrative or judicial act whose fundamental purpose is the removal from the national territory of a foreign citizen who has entered or remained in an irregular situation.

5.2 Administrative Expulsion

Administrative expulsion is provided for under Article 45 of Law No. 23/2022 of 29 December, which repeals Law No. 5/93 of 28 December. Thus, without prejudice to the provisions contained in international treaties or conventions, the Government may expel from the national territory a foreign citizen on any of the following grounds, as set forth in paragraph 1 of Article 45 of Law No. 23/2022 of 29 December:

- a) Irregular entry and stay in the country;
- b) Acting against national security, public order, or good morals;
- c) Witnessing illicit migratory activities and failing to report them to the competent authorities;
- d) Engaging in illicit migratory activities that threaten the interests and dignity of the Mozambican State or its citizens;
- e) Intervening in the political life of the country without being duly authorized by the Government;

- f) Disregarding the Constitution of the Republic and other national laws applicable to foreign citizens;
- g) Committing acts that would have prevented entry into the country, had they been previously known by the Mozambican authorities;
- h) Holding a work visa and becoming linked to another employer different from the one who originally contracted the worker;
- i) Having been sanctioned with a fine and failing to make payment within the established deadline;
- j) Failing to comply with the notification of voluntary departure from the national territory within the stipulated timeframe and;
- k) Having been sentenced to the accessory penalty of expulsion and reentering the country irregularly.

Furthermore, the expulsion process is of an urgent nature.

5.2.1 Obligations of the Foreign Citizen under Expulsion Proceedings

While the administrative expulsion process is ongoing, the foreign citizen (Moçambique, 2022) is obliged to:

- a) Declare their residence and not be absent from it without authorization from the migration services;
- b) Appear regularly and periodically before the migration services.

Furthermore, in the event of non-compliance (Moçambique, 2022) with any of the obligations provided above, the foreign citizen shall be detained, and the expulsion decision shall be executed immediately.

5.2.2 Expulsion Order

With regard to the expulsion order, it must constar (Moçambique, 2022):

- a) The grounds for the expulsion;
- b) A reference to the prohibition of entry into national territory for a period not less than 10 years.

5.2.3 Limitation on the Measure of Expulsion

Expulsion (Moçambique, 2022) shall not take place to a country where the foreign citizen may be persecuted for political, religious, racial, or ethnic reasons.

5.2.4 Appeal against the Administrative Expulsion Order

Against the administrative expulsion measure (Moçambique, 2022), the individual concerned may lodge an appeal before the Administrative Court, without suspensive effect, under the terms of the law.

5.3 Judicial Expulsion

Judicial expulsion (Moçambique, 2022), takes place within the Mozambican legal system and, without prejudice to the provisions of the criminal legal framework, the accessory penalty of expulsion is applied in the following cases:

- a) To a foreign citizen who is not a resident in the country and who has been convicted by a Mozambican court of an intentional crime with a sentence of more than six months of imprisonment;
- b) To a foreign citizen who has resided in the country for less than five years and has been sentenced to more than one year of imprisonment;
- c) To a foreign citizen who has resided in the country for more than five years and less than fifteen years and has been sentenced to more than two years of imprisonment;
- d) To a foreign citizen who has resided in the country for more than fifteen years and has been sentenced to more than eight years of imprisonment.

5.3.1 Competence for the Execution of the Judicial Expulsion Measure

Under Mozambican legislation, the execution of the judicial decision of expulsion of the foreign citizen from the national territory is the responsibility of the migration services (Moçambique, 2022).

Furthermore, the court sends to the migration services the certificates of the convictions (Moçambique, 2022) issued in criminal proceedings against foreign citizens.

The accessory penalty (Moçambique, 2022) of expulsion is always executed even if the foreign citizen is on parole.

5.3.2 Communication of Expulsion

The expulsion order is communicated to the competent authorities of the country of destination, as provided in Article 53 of Law No. 23/2022 of 29 December.

5.3.3 Expenses Related to Expulsion

With regard to expenses related to the expulsion of foreign citizens in the Mozambican legal system, whenever the individual cannot bear the expenses resulting from the expulsion, they shall be borne by the State (Moçambique, 2022).

Moreover, for the coverage of expenses arising from expulsion, appropriations for this purpose are included in the budget of the Ministry responsible for the area of migration, without prejudice to the use of funds from other institutions, in accordance with paragraph 2 of Article 54 of Law No. 23/2022 of 29 December, which establishes the legal regime of the foreign citizen.

In particular, the foreign citizen whose expulsion (Moçambique, 2022) expenses have been borne by the State (Moçambique, 2022) and who is later authorized to re-enter the national territory is obliged to reimburse the State double the amount spent.

Furthermore, the employer who has in their service a foreign citizen subject to the measure of expulsion is obliged to cover the expenses related (Moçambique, 2022) to such expulsion.

6 OF INFRACTIONS AND SANCTIONS

6.1 Migration infractions (Moçambique, 2022)

Under the terms of national legislation concerning the legal regime of foreign citizens, the following constitute migration infractions:

- a) Irregular entry and stay in the country;
- b) Use of false or forged documents;
- c) Use of false or forged visas;
- d) Failure to notify migration or police authorities of the loss of passport or residence permit;
- e) Illegal entry and exit on board vessels or aircraft;
- f) Failure to renew migration documents within the deadlines established by law;
- g) Failure to report changes in identification elements;
- h) Lack of lodging report;
- i) Transport of passengers without legal and complete documentation required for the formalization of entry into the country;
- j) Concealment of a foreign citizen who is in an irregular migration situation;

- k) Lack of residence permit;
- l) Provision of false statements for the purpose of issuing an entry visa or residence permit in favor of a foreign citizen;
- m) Failure by the carrier to report data on foreign passengers; and
- n) Entry or exit of vessels or aircraft without authorization and migration clearance, when destined for or coming from abroad.

6.2 Sanctions due to violation of legal procedures for the entry and exit of foreign citizens

In the Mozambican legal sphere, the infractions referred to in the current law are punished with a fine (Moçambique, 2022), under the terms of the regulation, without prejudice to the application of the measure of administrative expulsion or criminal liability.

6.3 Competence for the instruction of proceedings for migration infractions

Regarding the instruction of proceedings concerning violations of the Constitution of the Republic and other internal norms, it is the responsibility of the migration services (Moçambique, 2022) to conduct proceedings related to migration infractions arising from the law.

7 INTERNATIONAL HUMANITARIAN LAW AND THE NEED TO SAFEGUARD THE PERMANENCE OF FOREIGN CITIZENS

7.1 International Humanitarian Law, Humanitarian Assistance and the Implementation of the Refugee Status

International Humanitarian Law (Guedes; Adami, 2021) and international human rights law are two distinct yet complementary branches of law. Moreover, both concern the protection of life, health, and dignity. Likewise, in principle, international human rights law is constantly applied in times of war or armed conflict.

However, there is a need to safeguard the permanence of foreign citizens who remain in national territory as refugees² or as individuals fleeing armed conflicts or war. Furthermore, according to Article 32 of the Convention relating to the Status of Refugees, the Contracting States shall not expel (Genebra, 1951) a refugee who is lawfully in their territory except on grounds of

²Considering that the United Nations has repeatedly expressed its deep concern for refugees and that it has been striving to ensure for them the widest possible exercise of human rights and fundamental freedoms.

national security or public order. The expulsion of such a refugee shall only occur by virtue of a decision rendered in accordance with the process prescribed by law. Unless compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to justify themselves, to appeal, and to be represented for that purpose before a competent authority or before one or more persons specially designated by the competent authority. In addition, the Contracting States shall grant such a refugee a reasonable period to seek legal admission into another country. The Contracting States may apply, during this period, such internal measures as they deem appropriate.

7.2 Violation of Human Rights in the Context of the Coercive Expulsion of Foreign Citizens

According to some international treaties, governments may suspend certain norms in a public emergency situation that endangers the life of the nation, provided that such suspensions are proportionate to the crisis and their application is neither indiscriminate nor infringes another norm of international law, nor violates the human rights of citizens, whether nationals or foreigners, within the legal order. Nevertheless, there are norms that do not allow for any suspension, such as those related to the right to life, and those prohibiting torture or cruel, inhuman (Genebra, 1951, p. 11) or degrading treatment or punishment, slavery and servitude, as well as the retroactivity of criminal laws. Moçambique, although a signatory to various international conventions, faces within its State reports (Genebra, 1951, p. 11) of improper treatment³, torture, and the subjection of foreign citizens to mistreatment, even when holding residence permits, as reported by some non-governmental organizations. However, the recurrence of such cases leads us (Liga dos Direitos Humanos, 2004) to believe that this is a problem whose intervention proves urgent, insofar as it contradicts the provisions of the Constitution of the Republic and the international instruments on the matter, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and, above all, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or simply the Convention Against Torture. And there is no doubt regarding the determination that all executions perpetrated by State bodies (Liga dos Direitos Humanos, 2004, p. 4) or otherwise must be considered extrajudicial, unconstitutional, and violative of Human Rights.

³The phenomenon of torture, degrading treatment, and summary executions has been addressed by various international bodies in diverse contexts, according to the *LIGA DOS DIREITOS HUMANOS, Relatório Anual dos Direitos Humanos, Maputo, 2004*.

8 SCOPE OF COMPARATIVE LAW

8.1 The Case of Portugal

The expulsion of foreign citizens or coercive (Liga dos Direitos Humanos, 2004, p. 21-22) removal in Portuguese jurisdiction has an administrative nature in relation to foreigners who enter and remain illegally in Portuguese territory, and it takes on a judicial nature when it constitutes an accessory penalty or an autonomous measure applied to the foreigner who entered and remained legally in Portugal under the terms of Article 32(2) of the Constitution of the Portuguese Republic (Portugal, 2007), in conjunction with Articles 140, 151, and 158 of the Immigration Law. However, in the Portuguese legal system, there exists the concept of readmission. Moreover, in comparison with coercive removal, readmission presents an obvious difference, since readmission is a removal measure applied when foreign citizens are in an irregular situation and are covered by international conventions to which Portugal is a party.

If the foreigner to be readmitted is not covered by a readmission agreement, then Portugal will have to initiate a coercive removal procedure.

8.2 The Case of Brazil

In Brazil, the measure of expulsion operates under the provisions of Articles 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75 of Law No. 6.815 of August 19, 1980, in conjunction with Decree No. 86.715 of December 10, 1981, both of which constitute constitutional provisions pertinent to the statute of foreigners. Furthermore, in the Brazilian legal system, a foreigner is subject to expulsion if, in any way, they threaten national security, public (Brasil, 1980) or social order, public tranquility or morality, or the popular economy, or if their conduct renders them harmful to social coexistence and national interests. Under the terms of Article 70 of the aforementioned law, it is the responsibility of the Brazilian Minister of Justice, either ex officio or upon receiving a duly substantiated request, to order the initiation of an inquiry into the expulsion of the foreign citizen.

Thus, the foreigner whose detention becomes necessary, or who has served (Brasil, 1980) the time limit established under criminal law, shall remain under supervised freedom, in a place designated by the Ministry of Justice, and shall comply with the conditions of enforcement established for them.

CONCLUSION

Considering that the expulsion of foreign citizens must comply with legal procedures in the Mozambican legal system, we may draw the following conclusions:

- I. Regarding administrative expulsion, the government inhibits irregular entry and stay in the country, since the foreign citizen did not comply with legal requirements. Furthermore, the Government may expel any foreign citizen who threatens national security and public order, who has engaged in migratory activities considered illicit, or who disrespects the Constitution and other national norms.
- II. Regarding judicial expulsion, the Government may expel the foreign citizen who has been convicted by a Mozambican court of an intentional crime with a sentence exceeding six (6) months of imprisonment, or who has resided for more than five (5) years and has been sentenced to more than one year of imprisonment. Moreover, a foreign citizen may also be expelled from the national territory if convicted for more than two (2) years of imprisonment and having resided in the country for more than five (5) years and less than fifteen (15) years, or if having resided for more than fifteen (15) years and sentenced to more than eight (8) years of imprisonment.

With regard to infractions and/or sanctions, foreign citizens may be expelled for the use of false or falsified visas or forged documents, in accordance with the applicable legislation. Thus, these procedures must be observed within the constitutional framework, since Mozambique is a signatory to various treaties, protocols, and conventions; therefore, these must be respected in order not to undermine human rights, within the legal framework of international humanitarian law. The right to life and dignity cannot be questioned, as these are rights naturally enshrined within both domestic and international norms. As enshrined in the Constitution of the Republic, under Article 40, every citizen (national or foreign) has the right to life and to physical and moral integrity and may not be subjected to torture or cruel or inhuman treatment. Hence, the measure of expulsion must strictly comply with the prevailing norms, respecting both the fundamental law and the international conventions to which Mozambique is a signatory.

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