





# Mozambique Labour Migration Review

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# FOREWORD

The Southern Africa Migration Management (SAMM) project represents a collaborative effort embodying the ONE-UN approach, uniting the expertise and resources of four prominent UN development and/or humanitarian agencies: the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), and the United Nations High Commissioner for Refugees (UNHCR).

The SAMM project is dedicated to improve labour and mixed migration management in the Southern Africa and Indian Ocean region. By focusing on South-South migration flows, the project aims to uncover and enhance the positive spillover effects of international migration on regional integration and economic development (e.g. recognising the positive contribution of migrant workers to economic growth).

The SAMM project first produced a Labour Migration Stocktaking Report for the SADC region. Labour Migration Reviews (LMRs) are complementary tools aimed to enhance the capacity of Ministries of Labour, Employers' and Workers' Organizations to engage in tripartite dialogue and influence evidence-based policy formulation and implementation for fair labour migration governance. LMRs include information on at least, seven key labour migration thematic areas:

- 1. Gender-responsive labour migration policies and/or strategies;
- 2. International labour standards and national legislation on the protection of migrant workers, as well as advocacy on the contribution of migrant workers to development;
- 3. Bilateral labour migration agreements (BLMAs) across the region and with third countries;
- 4. Fair recruitment and decent employment for migrant workers including regulatory legislation on Private Employment Agencies (PEAs), and strengthening of Public Employment Services (PES);
- 5. Social Security Portability of Benefits for migrant workers through the SADC Guidelines on the Portability of Social Security Benefits;
- 6. Skills mobility (skills anticipation, skills profiling, skills matching, skills transfer and recognition of qualifications of migrant workers), as well as support to the SADC Qualifications Framework;
- 7. Labour migration statistics (indicators, module, inclusion in labour market information systems, etc).

The ILO believes that this publication will provide valuable insights and contribute significantly to the ongoing efforts to improve labour migration governance effectively in the SADC and IOC region. We extend our gratitude to all partners and stakeholders for their unwavering support and commitment to this crucial endeavour.

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# ACKNOWLEDGEMENTS

The authors would like to thank colleagues at the ILO (International Labour Organization), particularly Ms. Gloria Moreno-Fontes, Mr. Theo Sparreboom, Mr. Jesse Mertens, and Ms. Hareeta Cunniah for their review and critical feedback during each stage of the research project.

We would also like to express our gratitude to Ms. Makungu Baloyi, SAMM Communications Officer for assisting with the production process and the dissemination of the report.

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# **1 INTRODUCTION**

Mozambique is traditionally viewed as a major source country for migrants, especially to countries such as South Africa. However, it is also a significant destination for migrants from neighbouring countries such as Malawi and Zimbabwe. Mozambique's rapid post-colonial economic development in recent decades has also led to migration from countries outside the region, including Portugal, India, Pakistan, and China (Akesson, 2020; 2021; Matos, 2009). The country has also become a destination for asylum-seekers and refugees (Patricio & Peixoto, 2018; Raimundo, 2020), as well as a transit and temporary stay country for mixed migrants from the Horn of Africa travelling on the 'Southern Route' to South Africa (Matsinhe et al., Most recently, its strategy of extractive industry and mega-project 2018). development has led to an increased influx of skilled migrants from countries such as Brazil and China (Amanor and Chichava, 2016; Cezne & Wethal, 2022; Cezne & Honke, 2022; Kirshner & Power, 2015; Toews & Vézina, 2022), as well as irregular migrants from neighbouring countries (Kachena & Spiegel, 2019). As Raimundo (2023) notes, "countless international migrants have entered the country by road, air, and sea in search of gold and forestry resources, while large companies came to explore oil, gas, forests, and coal." This has been called 'project-induced migration.' Mozambique does not yet have a labour migration policy but is reportedly developing such a policy. Its migration policies, and especially strategies to monitor borders and manage irregular migration, have been discussed in several studies (Danane, 2021; Raimundo, 2009).

# 2 MIGRATION DATA SOURCES

The main data sources for migration to Mozambique include the following:

- UNICEF Migration and Displacement Country Profile (MCDP) (UNICEF, 2023)
- UN DESA Migrant Stock by Origin and Destination 2019 Update
- UNHCR Operational Data Portal for updates on refugees and asylum seekers in Mozambique <a href="https://data.unhcr.org/en/country/moz">https://data.unhcr.org/en/country/moz</a>
- INE (Instituto Nacional de Estatistica). *IV Recenseamento Geral da População- Moçambique 2017, Resultados Definitivos* (Maputo, 2019).

# 3 MIGRATION PROFILE

#### 3.1 Migrant Stock

Mozambique has become a destination for increasing numbers of international migrants. UN DESA migrant stock shows that in 1990, the country had around 122,000 migrants (Table 1). The latest data for 2019 shows an increase to nearly 335,000. The number of migrants from SADC countries has followed the same trend from 96,000 in 1990 to 269,000 in 2019. Nevertheless, according to UN DESA the percentage of SADC migrants in the total migrant stock has remained relatively constant, hovering around 80% throughout the period from 1990 to 2019.

	Total	SADC	% SADC
	Migrants	Migrants	Migrants
1990	122,332	96,492	78.9%
1995	168,256	132,722	78.9%
2000	195,702	154,376	78.9%
2005	264,679	208,794	78.9%
2010	306,471	241,768	78.9%
2015	321,794	257,852	80.1%
2019	334,665	269,161	80.4%

Table 1 - Migration Trends and Share of SADC Migrants, 1990-2019

As of May 2024, there were a total of 24,000 refugees and asylum seekers in Mozambique (Table 2). Almost three-quarters come from the Democratic Republic of Congo (DRC) (39.5%) and Burundi (35.1%) with smaller numbers from Rwanda (14.3%) and Somalia (8.7%). Additionally, Mozambique is a transit country along the migration route from East and Horn of Africa to South Africa. Some migrants seek asylum in Mozambique, while many others continue to South Africa (Migrants-Refugees, 2021). However, the numbers of transit migrants are not known.

Mozambique has ratified the 1951 Geneva Convention with some reservations (Migrants Refugees, 2021). However, the country has generous policies as refugees receive similar rights to those of Mozambique citizens (Migrants Refugees, 2021). The only restriction is the limitation of the rights of refugees and asylum seekers to freedom of movement and choice of residence as refugees are banned from residing in the capital city, Maputo (Migrants Refugees, 2021)

Source: Compiled from UN DESA data

Country of origin	Total	% of total
DRC	9,492	39.5%
Burundi	8,420	35.1%
Rwanda	3,440	14.3%
Somalia	2,096	8.7%
Cabo Verde	396	1.6%
Others	163	0.7%
Total	24,007	100%

Table 2 - Refugees and Asylum Seekers by Country of Origin

Source: UNHCR Operational Data Portal as of May 31, 2024

#### 3.2 Countries of Migrant Origin

The UN DESA Migrant Stock by Origin and Destination Tables contain information about the countries from which migrants originate. These tables help understand the diversity of migrants' country of origin and the share of the migrants from different SADC countries in Mozambique. The top three SADC countries from which Mozambique receives migrants are Zimbabwe (36.3% and 29.2% of all migrants), Malawi (23.4% and 18.8%), and Angola (14.6% and 11.7%). These three countries therefore account for over three-quarters of SADC migrants and over 60% of total migrants in Mozambique. According to UN DESA, there are also 20,000 South Africans and 17,000 people from the Seychelles in Mozambique. The latter figure seems patently incorrect.

	No of SADC Country Migrants	% of SADC Migrants	% of Total Migrants
Zimbabwe	97,699	36.3%	29.2%
Malawi	62,854	23.4%	18.8%
Angola	39,224	14.6%	11.7%
South Africa	20,239	7.5%	6.0%
Seychelles	16,997	6.3%	5.1%
DRC	11,497	4.3%	3.4%
Lesotho	7,869	2.9%	2.4%
Tanzania	7,449	2.8%	2.2%
Zambia	5,333	2.0%	1.6%
Total	269,161	100%	80.4%

#### Table 3- SADC Origin Countries, 2019

Source: Compiled from UN DESA data

Mozambique is also home to a diverse population of migrants, with people coming from many different countries around the world. Most non-SADC migrants are of African origin, accounting for over 90 percent of the total migrant population (Table 4). The major non-SADC African source countries are Kenya, Cabo Verde, Nigeria, and Burundi. The major Asian source countries are India and Pakistan, although it is likely that the Chinese population is under-represented in the UN DESA data (Jafar, 2017). UN DESA also claims that there are less than 5,000 Portuguese in Mozambique, which is very likely an undercount given significant Portuguese investment in the country since 2000 (Åkesson, 2020, Matos, 2009).

	Total Migrants	% of Total
Africa (Non-SADC)		
Kenya	24,863	7.4%
Cabo Verde	6,843	2.0%
Nigeria	5,375	1.6%
Burundi	3,121	0.9%
Sub-Total	40,202	11.9%
Asia		
India	2,464	0.7%
Pakistan	1,417	0.4%
Sub-Total	3,881	1.2%
Europe		
Portugal	4,565	1.4%
Sub-Total	4,565	1.4%
Other		
Other South	4,214	1.3%
Other North	12,642	3.8%
Sub-Total	16,856	5.0%
Total	65,504	19.5%

Table 4 - Non-SADC Countries of Migrant Origin, 2019

Source: Compiled from UN DESA 2019 update

The 2017 Census provides a very different snapshot of the migrant population from the UN DESA data and is probably more reliable since it relies on an actual count rather than statistical projections (INE, 2019). First, according to the Census, there are 142,000 migrants in the country (compared to UN DESA's 269,000). Second, the Census suggests that Malawi not Zimbabwe is the major source of migrants. While both agree that the number of Malawians in Mozambique is 60-65,000, the Census reports only 15,000 Zimbabweans (compared to the 98,000 Zimbabweans according to UN DESA). Third, UN DESA suggests that Kenya and Seychelles are significant source countries, neither of which are significant according to the Census. Fourth, UN DESA lists Cabo Verde, Nigeria, the DRC and Lesotho as significant source countries, while the Census does not list them at all (although they might be in the "Other" category). Fifth, the Census records a Chinese population of around 1,300 whereas UN DESA does not list migrants from China at all. The Census shows that 88% of the migrant population are from African countries, primarily neighbours Malawi, Zimbabwe, South Africa and Tanzania.

	Total Migrants	% of Total	
Africa			
Malawi	65,295	45.9	
Zimbabwe	15,083	10.6	
South Africa	14,698	10.3	
Tanzania	10,083	7.1	
Burundi	3,418	2.4	
Zambia	2,388	1.7	
Rwanda	1,626	1.1	
Other	12,694	8.9	
Sub-Total	116,205	88.0	
Asia			
India	3,349	2.4	
China	1,346	0.9	
Pakistan	1,259	0.9	
Sub-Total	5,954	4.2	
Europe			
Portugal	5,560	3.9	
Other European	1,624	1.1	
Sub-Total	7,184	5.0	
Other			
Unidentified	3,384	2.8	
Total	142,261		

Table 5 - Migrant Origin Countries (2017 Census)

Source: Compiled from INE (2019)

# 3.3 Age and Sex Distribution of Migrant Population

UNICEF's Migration and Displacement Country Profile for 2023 provides an age and gender population pyramid comparing migrants to non-migrants in Mozambique in 2020 (Figure 2). The data shows a marked contrast between the country's local population and the migrant population. The local population is dominated by youth and children under the age of 20 and each succeeding adult age group has a declining proportion of both males and females. The migrant population pyramid is shaped very differently and is heavily dominated by working age men and women aged between 25 and 40.

Table 6 shows the sex ratio for migrants by country of origin. Overall, the ratio is relatively balanced with 51% male and 49% female. However, the ratio varies considerably from country to country and no countries have the overall ratio, being either female or male dominated. The migrant population from some countries is over 50% female (shaded in the table). These include Mozambique's neighbours of Malawi, Zimbabwe, South Africa and Zambia. This suggests that women find it easier to migrate to Mozambique through common borders than women from non-contiguous countries. Most other African countries have a sex ration with 50-60% being male. Countries outside Africa, especially in Asia, are heavily male dominated. In the case of China for example, only 21% of migrants are female. Only one-third of migrants from India and Pakistan are female.

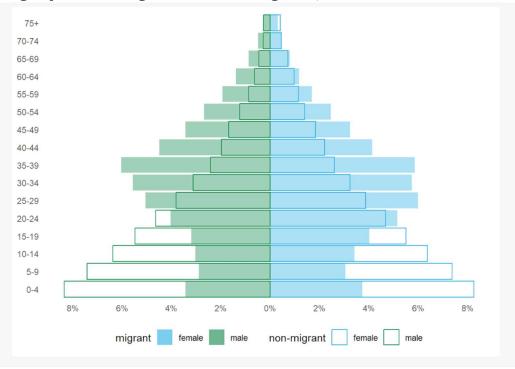


Figure 1 - Age Pyramid of Migrants and Non-Migrants, 2020

UNICEF (2023)

	Total	No. of	No. of		
	Migrants	Males	Females	% Male	% Female
Malawi	65,295	31,206	34,089	47.8	52.2
Zimbabwe	15,083	6,291	8,792	41.7	58.3
South Africa	14,698	6,771	7,927	46.1	53.9
Tanzania	10,547	5,875	4,672	55.7	44.3
Portugal	5,560	3,292	2,268	59.2	40.8
India	3,349	2,184	1,165	65.2	34.8
Burundi	3,418	1,927	1,491	56.4	43.6
Zambia	2,378	1,140	1,248	47.5	52.5
Rwanda	1,626	903	723	55.5	44.5
China	1,346	1,060	286	78.8	21.2
Pakistan	1,259	798	461	63.4	36.6
Other Africa	12,694	7,942	4,752	62.6	37.4
Other Europe	1,624	888	736	54.7	45.3
Other	3,384	2,103	1,281	62.1	37.9
Total	142,261	72,380	69,881	50.9	49.1

Table 6 - Sex of Migrant Population by Country of Origin

Source: Compiled from INES (2019)

# 3.4 Migrant Employment

Raimundo (2021) notes that the Mozambican government (including INES and Labour) do not share unpublished statistics on the grounds that this would be a breach of confidentiality. As a result, migrant employment statistics are scant. For example, ILOSTAT also does not contain any data on migrant stock for Mozambique. However, the Census report does provide an interesting rural-urban breakdown of where migrants are resident. As many as 62% of migrants are located in rural areas, which suggests they are probably involved in some form of agriculture. The urbanbased migrant population numbers around 54,000 and makes up the remaining 38%. These migrants are likely employed in the urban formal and informal sector in high and low skilled occupations (Muanamoha & Raimundo, 2017; Muianga. & Raimundo, 2023). The rural-urban ratio also varies significantly by country of origin. Most migrants from Asia reside in Mozambican urban centres. So do migrants from some African countries including Rwanda (78% urban), Burundi (55% urban) and South Africa (also 55% urban). On the other hand, migrants from most neighbouring countries are rural-based: for example, Zambian migrants are 91% rural, followed by Malawi (86% rural), Tanzania (68% rural), and Zimbabwe (56% rural). By contrast, only 28% of migrants from other African countries reside in rural Mozambique.

	Total Migrants	Urban	Rural	% Urban	% Rural
Africa					
Malawi	65,295	9,380	55,915	14.4	85.6
Zimbabwe	15,083	6,595	8,488	43.7	56.3
South Africa	14,698	8,111	6,587	55.2	44.8
Tanzania	10,547	3,377	7,170	32.0	68.0
Portugal	5,560	4,192	1,368	75.4	24.6
India	3,349	3,141	208	93.8	6.2
Burundi	3,418	1,874	1,544	54.8	45.2
Zambia	2,378	214	2,174	8.6	91.4
Rwanda	1,626	1,260	366	77.5	22.5
China	1,346	1,161	185	86.3	13.7
Pakistan	1,259	1,232	27	97.9	2.1
Other Africa	12,694	9,083	3,691	71.6	28.4
Other Europe	1,624	1,479	145	91.1	8.9
Other	3,384	2,699	685	79.8	20.2
Total	142,261	53,798	88,553	37.8	62.2

Table 7 - Rural and Urban Distribution of Migrant Population by Country of Origin

Source: Compiled from INES (2019)

# 4 POLICY AND LEGISLATIVE FRAMEWORK

#### 4.1 Constitution of Mozambique 2004 (Revised 2007)<sup>1</sup>

Title III of the Mozambican Constitution of 2004 (as revised in 2007) sets out the Fundamental Rights, Duties and Freedoms and includes the following, among others:

Article 35. Principle of Universality

All citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference.

<sup>&</sup>lt;sup>1</sup> <u>https://www.constituteproject.org/constitution/Mozambique\_2007</u>

#### Article 36. Principle of Equality

Men and women shall be equal before the law in all spheres of political, economic, social and cultural life.

#### Article 39. Acts against National Unity

All acts intended to undermine national unity, to disturb social harmony or to create divisions or situations of privilege or discrimination based on colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, physical or mental ability, the marital status of one's parents, profession or political preference, shall be punished in terms of the law.

#### Article 43. Interpretation of Fundamental Rights

The constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights.

#### Article 44. Duties Towards One's Fellow Beings

All individuals shall have the duty to respect and consider their fellow beings without any form of discrimination whatsoever, and to maintain relations with them aimed at promoting, safeguarding and strengthening respect, mutual tolerance and solidarity.

#### Article 84. Right to Work

- Work shall be a right and a duty of every citizen.
- All citizens shall have the right freely to choose their profession.
- Forced labour shall be prohibited, except where the work is performed within the framework of penal legislation.

#### Article 85. Right to Retribution and to Safety at Work

- All workers shall have the right to fair remuneration, rest and vacation and to retirement in accordance with the law.
- Workers shall have the right to protection, health and safety at work.
- Workers may be dismissed only in the cases and in accordance with the terms provided for by law.

#### Article 86. Freedom of Professional Associations and Unions

- All workers shall have the freedom to organise professional associations or trade unions.
- Professional associations and trade unions shall be governed by the principles of democratic organisation and management, based on the active participation of their members in all of their activities, and on the periodic election of their bodies by secret ballot.
- Professional associations and trade unions shall be independent from employers, from the State, from political parties and from churches or religious denominations.

#### Article 88. Right to Education

- In the Republic of Mozambique, education shall be a right and a duty of all citizens.
- The State shall promote the extension of education to professional and continuing vocational training, as well as equal access to the enjoyment of this right by all citizens.

#### Article 89. Health

All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and protect public health.

#### Article 91. Housing and Urbanisation

All citizens shall have the right to a suitable home, and it shall be the duty of the State, in accordance with national economic development, to create the appropriate institutional, normative and infra-structural conditions.

Most of the rights, duties and freedoms set out in Title III are applicable to citizens only, including the right to work (Article 84). However, Article 85 (Right to Retribution and to Safety at Work) and Article 86 (Freedom of Professional Associations and Unions) are applicable to <u>all</u> workers, which presumably includes migrant workers.

#### 4.2 Other Legislation

- (a)Labour Law Arts.30, 31 et seq.
- (b)Law No. 4/2014, of 5 February, which creates the National Migration Service;
- (c)Decree No. 108/2014, of December 31, approving the Legal Regime applicable to foreign citizens

- (e) Law No. 7/2011, of January 11, which approves the Voluntary Labor Regime;
- (f) Decree-Law No. 2/2011, of 19 October, approving the employment of foreigners in the Public Service;
- (g) Decree-Law No. 2/2014, of December 2, establishing the contractual and special regime applicable to the Rovuma Basin Gas Project;
- (h)Decree no. 63/2011, of 7 December, approving the Regulation on the Hiring of Citizens of Foreign Nationality in the Oil and Mines Sector;
- (i) Law No. 23/2022 Legal Framework for the Entry, Stay and Leaving of Foreign Citizens
- (j) Decree No. 36/2016, of August 31, approving the Regulations on the Licensing and Operation of Private Employment Agencies, which was punctually revised by Decree 16/2018 of April 23, which guarantees the protection of national workers.

#### 4.2.1 Labour Law No. 23/2007<sup>2</sup>

The Object and Scope of the law are set out as follows:

- This law defines the general principles and establishes the legal framework applicable to individual and collective employment relationships, in respect of work rendered to an employer for remuneration.
- This law shall apply to the legal employment relationships between employers and employees, both national and foreign, in all fields of activity, who carry out their activity in Mozambique.
- This law shall also apply to the legal employment relationships between public corporations and their employees, provided that these are not State employees or employees whose relationships are governed by specific legislation.

The law is comprehensive and covers the following aspects:

- Protection of the dignity of employees
- Employment Contracts
- Rights and duties of employers and employees
- Disciplinary Proceedings
- Duration of Work (Working Hours)
- Remuneration
- Suspension and Termination of Employment
- Formation of Trade Unions and Employer Associations

<sup>&</sup>lt;sup>2</sup> New legislation (Labour Law, Law No. 13/2023) was published in the Official Gazette on 25 August 2023 and came into force in February 2024. However, the authors did not have access to the full version of the new legislation and this section is based on the law that has been in effect since 2007.

- Collective Bargaining
- Health and Safety
- Vocational Training
- Social Security

Articles 30 -33 specifically address matters pertaining to the employment of migrant and foreign workers, as follows:

#### Article 30 (Migrant Workers)

- 1. In the context of the free movement of persons and their settlement in foreign territories, migrant workers are entitled to protection from the competent national authorities.
- Migrant workers have the same rights, opportunities and duties as other workers in the foreign countries where they work, within the framework of governmental agreements signed based on independence, mutual respect, reciprocal interests and harmonious relations between the respective peoples.
- 3. Within the framework of its foreign relations with other countries, the State shall be responsible for defining the legal regime for migrant labour.
- 4. The State and public or private institutions shall be responsible for creating operational and suitable services responsible for providing migrant workers with accurate information about their rights and duties abroad and travel facilities, as well as the rights and guarantees they have on their return to Mozambique.

#### Article 31 (Foreign Workers)

- 1. Employers should create conditions for placing qualified Mozambicans in the more highly skilled jobs and in positions of management and administration of enterprises.
- 2. Foreigners performing occupational activities in Mozambique shall have the right to equal treatment and opportunities in relation to Mozambican workers, within the framework of the rules and principles of international law and in compliance with the reciprocity provisions agreed to between Mozambique and any other country.
- 3. Without prejudice to the preceding paragraph, the Mozambican State may reserve exclusively for national citizens certain functions or activities that are within the framework of those whose exercise by foreigners is restricted on grounds of public interest.
- 4. With the exception of the cases specified in the following paragraph, employers, whether national or foreign, may hire foreign nationals, whether as

employees or otherwise, when they have the relevant authorisation from the Minister of Labour or from entities to which the Minister has delegated this competency.

5. Employers may employ foreign nationals by giving notice of the employment to the Minister of Labour or an entity to whom the Minister has delegated this competency, subject to the following quotas and according to the enterprise classification established in article 34 hereof:

a) five per cent of the total number of employees, in large enterprises;

b) eight per cent of the total number of employees, in medium-sized enterprises;

c) ten per cent of the total number of employees, in small enterprises.

6. In investment projects approved by the Government which contemplate the employment foreign nationals in a smaller or greater percentage than foreseen in the preceding paragraph, work permits shall not be required, and it shall be sufficient for notice to be given to the Minister of Labour within fifteen days after the foreign national enters Mozambique.

#### Article 32 (Restrictions on the Employment of Foreigners)

- 1. Without prejudice to the legal provisions under which foreign citizens are allowed to enter and remain in Mozambique, the employment of foreign nationals who entered the country on diplomatic, courtesy, official, tourism, visitor, business or student visas is forbidden.
- 2. Foreign employees with temporary residence permits shall not remain in the national territory after the expiry of the period of validity of the contract under which they entered Mozambique.
- 3. The rules laid down in this subsection shall apply to the employment of stateless persons in Mozambican territory.

#### Article 33 (Conditions for Employing Foreigners)

- 1. Foreign employees shall have the necessary academic or vocational qualifications and may only be employed when there are no nationals having the same qualifications, or where such nationals are insufficient in number.
- 2. In cases where authorisation from the minister in charge of labour is required for the employment of a foreign national, the employer shall make an application stating the employer's name, head office and field of business, the identity of the foreigner to be employed, the duties they are to perform, the expected remuneration, their vocational qualifications with evidence thereof, and the duration of the contract. The contract shall be in writing and shall comply with the formalities laid down in specific legislation.

3. The mechanisms and procedures for employing foreign nationals shall be regulated by specific legislation.

According to the Agency for Promotion of Investment and Exports (APIEX), which was created in 2016, there are four legal mechanisms to consider for the establishment of an employment relationship with foreign employees, namely:

- Hiring under the Short-Term Regime;
- Hiring under the Quota Regime;
- Hiring under the Investment Project Regime (which is separate from Quota Regime); and
- Hiring under the Work Authorization Regime.

In addition to these foreign labour contracting mechanisms, the following special contracting regimes, which apply to certain regions or certain sectors of activity, must also be taken into account:

- Contracting regime applicable to Special Economic Zones and Industrial Free Zones;
- Contracting regime applicable to the Petroleum and Mining sectors; and
- Contracting regime applicable to the Liquefied Natural Gas Project in Areas 1 and 4 of the Rovuma Basin.<sup>3</sup>

# 4.2.2 Law No. 23/2022. Legal Framework for the Entry, Stay and Leaving of Foreign Citizens, approved by<sup>4</sup>

On January 28, 2023, the new Legal Framework for the Entry, Stay and Leaving of Foreign Citizens, approved by Law No. 23/2022 came into force. This Law sets the rules for entry, stay, and departure from the country, as well as the rights, duties and guarantees of foreigners.

As in the previous law, the new legal framework applies without prejudice to special laws, bilateral or multilateral agreements, international conventions to which the Mozambican state is a party. The law also establishes the possibility that under certain circumstances, namely when the interest of the State justifies, the Government may exempt citizens of certain countries from presenting entry visas. Another relevant issue has to do with the means of subsistence available to the foreign citizen. Although it is necessary to demonstrate the means of subsistence at the time the visa is requested, it has become mandatory to demonstrate it also when

<sup>&</sup>lt;sup>3</sup> <u>https://apiex.gov.mz/</u>

<sup>&</sup>lt;sup>4</sup> <u>https://www.tta-advogados.com/en/highlights/new-legal-framework-for-foreign-citizens/1245/</u>

the foreign citizen actually enters Mozambique. Regarding visas major changes are being implemented:

1. Entry visas: the granting of visas by embassies and consulates in Mozambique requires prior authorization from the Migration Services, except in the cases of diplomatic, courtesy and official visas which are issued by the Ministry that oversees the foreign policy area, which is currently the Ministry of Foreign Affairs and Cooperation.

1.1 Residence Visa: this visa remains valid for a single entry and stays for a period of 30 days, extendable to 90 days.

1.2 Tourist Visa: this visa continues to be granted to foreign citizens who come to the country for tourism or recreation and allows the holder to stay for a period of up to ninety days and this visa now allows its holder to use it interpolatedly (and not just continuously), during a period of 12 months, respecting the limit of 90 days.

1.3 Business Visa: in a merely indicative reference, this visa - which does not entitle its holder to work and much less to reside in Mozambique - establishes that it can be granted for business prospecting, scientific research, participation in meetings, conferences, workshops, general meetings, contacts with companies and other similar events. It is granted for a nonrenewable period of 90 days and is valid for multiple entries.

1.4 Border Visa: regarding the granting of the border visa, under the new legal framework the holder of the border visa is entitled to two entries.

1.5 Work Visa: entitles their holder to dedicate themselves exclusively to the service of the employer that requested it, i.e., the employee cannot exercise an activity on behalf of another employer, even if it is unpaid. The extension of this visa is for a period not exceeding one year, even in cases where the Work Visa has a longer duration.

1.6 Temporary Stay Visa: this visa is granted to the foreign spouse and to minors or incapable children of the foreign citizen who holds a Work Visa or Visa for Investment Activity and allows its holder multiple entries and stay for a maximum period of one year, extendable while the reasons for its granting persist. The innovations in relation to the granting of this Visa have to do with the fact that it can now be granted to citizens who come to the country to exercise religious or volunteer activities, as well as for medical treatment.

1.7 Visa for Investment Activity: it is granted to the foreign citizen investor, representative, or Directors of the investing company, observing the legal

formalities of hiring foreign labour by the Diplomatic and Consular Missions of the Republic of Mozambique and is intended to allow its holder's entry into national territory for the purposes of implementing investment projects worth USD500,000 or more, and approved by the competent entity. The visa for investment activities allows its holder to stay in Mozambique for up to two years, extendable for an equal period. In cases of investment projects worth USD50 million or equivalent, the holder of the visa for investment activity can stay in Mozambique for up to 5 (five) years, extendable for an equal period, while the reasons for granting the visa persist. The holder of the visa for investment activity may if so desired, request for the respective household authorization to reside in Mozambique, which is valid for two or five years, renewable for an equal period, while the reasons for its concession persist.

1.8 Visa for Humanitarian Assistance: Through invitation from government authorities, nongovernmental organizations, and international organizations, for the purposes of non-profit humanitarian work, within the scope of the state of emergency or public calamity situation and others declared under the terms of the Constitution and the law, diplomatic and consular missions of the Republic of Mozambique may grant entry visas for humanitarian assistance. The Ministry of Interior no longer has the competence to authorize the granting of visas for humanitarian assistance. The visa for humanitarian assistance can also be issued at the crossing point upon presentation of a document issued by the entity responsible for disaster risk management and reduction. With a visa for humanitarian assistance, the foreign citizen can stay for 90 days in Mozambique without extension, and valid for multiple entries, extendable for the same period, but does not have the right to establish residence. Once the visa for humanitarian assistance has been issued, the foreign citizen cannot apply for a visa to work for non-governmental organizations. With the cessation of the reasons that justified the granting of the visa for humanitarian assistance, the foreign citizen has 15 days to leave Mozambique.

2. Visa Cancellation. The Migration Services are responsible for cancelling the visa when the holder is in national territory, and the diplomatic or consular missions of Mozambique must be informed. Before the visa holder enters the national territory, the cancellation of a visa is the responsibility of the Mozambican diplomatic or consular missions. It is also grounds for cancellation of a visa if its holder has been declared persona non grata (which is only verified in residence permits), as well as if the visa has been issued in an irregular manner.

3. Refusal of entry into Mozambique. Failure to pay fines on previous occasions for violation of migration laws is one of the grounds for refusing entry to the national

territory. Public health has also become a ground for refusal of entry. Carriers or individuals transporting foreign citizens who do not meet the conditions that would entitle them to enter the national territory are obliged to ensure their return, in the shortest possible time, to the point where they began using the means of transport. As long as no repatriation has taken place, carriers or individuals are subject to the payment of food and assistance expenses deemed necessary, including those for repatriation.

4. Residence permit. The temporary residence permit, which is valid for more than ten consecutive years, entitles the holder to a permanent residence permit, as long as the reasons that justified the first concession national territory for a period of more than one year, in the case of the holder of permanent residence, without prior written notification to the competent authorities.

5. Termination of the residence permit. In addition to other reasons duly established in the law, the residence permit ceases in cases of absence of the foreign national from the national territory for a period of more than 90 days, in the case of the holder of temporary residence, without prior written notification to the competent authorities, and absence of the foreign national from the national territory for a period of more than one year, in the case of the holder of permanent residence, without prior written notification to the competent authorities.

6. Administrative expulsion. The law foresees the following reasons for administrative expulsion: (i) to hold a work visa and to be bound to another employer different from the one that hired the employee; (ii) having been sanctioned with a fine and has not paid within the established period; (iii) has failed to comply with the notification of voluntary departure from national territory within the stipulated period; and (iv) has been sentenced to an additional penalty of deportation and has re-entered the country irregularly. The decision to expel the person concerned must state the reasons for the expulsion and mention a ban on entering national territory for a period of not less than ten years, and the person concerned may appeal to the Administrative Court against this measure, although this appeal will not suspend the effects of the decision.

7. Judicial expulsion. Without constituting an innovation, the penalty of deportation will be applied additionally: (i) to the foreign citizen not residing in the country who has been convicted, by a Mozambican court, of an intentional crime in the penalty of more than six months of imprisonment; (ii) to a foreign citizen who has resided in the country for less than five years and has been sentenced to more than one year in prison; (iii) to the foreign national who has resided in the country for more than five and less than fifteen years and has been sentenced to more than two years in prison;

(iii) to the foreign national who has resided in the country for more than five and less than fifteen years and has been sentenced to more than two years in prison; (iv) v) to the foreign citizen who has resided in the country for more than fifteen years, sentenced to a longer prison term.

A foreign citizen whose expulsion expenses, whether administrative or judicial, have been incurred at the expense of the Mozambican State and who is allowed to re-enter national territory is obliged to reimburse the State at double the amount spent.

8. Entry and Departure of Minors in Mozambique. Foreign citizens under 18 years of age, when not accompanied by their parents, must only enter or leave the national territory with written authorization, notarized by the parents or by whoever exercises parental power recognized by the competent authorities. In cases where the minor intends to enter or leave the national territory accompanied by one of the parents, it is required to present the authorization, with notarized recognition, expressing the other parent's consent regarding the minor's trip. The above-mentioned authorization translated into Portuguese.

9. Prosecution of Migration Offenses. For the purposes of imposing a fine, an official report is drawn up and the offender is notified to, within five days from the date of notification, pay voluntarily, complain or contest the account made. It is important to mention that the new legal framework added infractions that can be imputed to foreigners staying in the country. In effect, in addition to the offenses that are provided for in the previous legal framework, namely (i) clandestine migration, (ii) document forgery, (iii) lack of visa and accommodation form, (iv), change of domicile without communication and (v) failure to communicate changes in identification elements, the new legal framework provides for the following offenses: (i) failure to report to the migration or police authorities the loss of a passport or residence permit; (ii) failure to renew migratory documents within the time limits established by law; (iii) failure to communicate changes in identification elements; (iv) concealment of a citizen in an irregular migratory situation; (v) employment of a citizen in an irregular migratory situation; (vi) making false statements for the purpose of issuing an entry visa or residence permit to a foreign national; and (vii) failure by the carrier to report data on passengers of foreign nationality.

# 5 LABOUR MARKET INSTITUTIONS

## 5.1 National Immigration Service (SENAMI)<sup>5</sup>

The National Immigration Service (Serviço Nacional de Migração or SENAMI), is the government agency responsible for managing and regulating immigration and emigration in Mozambique.

- 1. Mandate and Responsibilities:
  - Immigration Control: SENAMI oversees the entry and exit of individuals at border posts, ensuring compliance with immigration laws.
  - Visa Issuance: The agency is responsible for issuing visas to foreign nationals who wish to enter Mozambique.
  - Residency Permits: SENAMI processes applications for temporary and permanent residency permits for foreigners living in Mozambique.
  - Enforcement: The agency enforces immigration laws and regulations, including the identification and deportation of illegal immigrants.
- 2. Border Management:
  - SENAMI operates border posts across Mozambique, including at major international airports, seaports, and land borders.
- 3. Legal Framework:
  - The operations of SENAMI are guided by Mozambique's immigration laws and policies.
- 4. Public Services:
  - SENAMI provides various services to the public, including processing applications for passports for Mozambican citizens, providing information on immigration procedures, and assisting with citizenship applications.
- 5. Challenges and Initiatives:
  - SENAMI faces challenges such as managing irregular migration, human trafficking, and ensuring efficient and fair processing of immigration applications.
  - The agency has undertaken initiatives to modernize its operations, including adopting new technologies to improve efficiency and enhance border security.

<sup>&</sup>lt;sup>5</sup> https://<u>senami.gov.mz</u>.

- 6. Regional and International Cooperation:
  - SENAMI collaborates with other immigration and border control agencies in the region and internationally to address cross-border issues, share information, and improve regional security.

#### 5.2 Migration Management System (SIMIGRA)

A system developed to manage and monitor labour migration implemented by the Ministry of Labour and Social Security for the hiring of foreign nationals and the registration of Mozambicans working abroad. SIMIGRA aims to generate reliable, comprehensive data on migration trends to inform policymaking and ensure efficient migration management. Its functions include the management of labour contracts, migration statistics, and the provision of information necessary for the generation of indicators and statistics related to migration phenomena. Launched in 2017, the Employment Portal is a platform for demand and supply management in the labour market, which is a mechanism to disseminate employment opportunities in the country of nationals in the diaspora.

#### 5.3 General Labour Inspectorate

The Labour Inspectorate monitors the legality of labour matters and will ensure that there is compliance by both parties being the employer and employee. Their powers extend to proving training in cases where they deem necessary. They have free access to all establishments that are subject to their supervising. The employers are obliged to provide them with all the necessary information that is required to carry out their functions. They cannot under any circumstances have a direct or indirect interest in the enterprises that are under their supervision. Fines will be payable for any violation that is reported by the Labour Inspectorate.

#### 5.4 National Labour Advisory Commission

The National Labour Advisory Commission is a tripartite structure that gives advice on restructuring and development policies and the participation of representative organizations of employers and workers.

#### 5.5 Labour Mediation and Arbitration Commission

The Labour Mediation and Arbitration Commission is responsible for resolving labour related disputes matters without going through courts.

# 6 RATIFICATION OF INTERNATIONAL INSTRUMENTS

Mozambique has ratified 19 ILO conventions, all of which are in force.<sup>6</sup> With regard to fundamental rights covering all workers in the country, including migrant workers (regardless of migration status), the following Conventions have been ratified

	Convention	Title	Date	of
	Νο		Ratification	
Fundamental	C029	Forced Labour Convention, 1930	16 Jun 2003	
Conventions		(No. 29)		
	C087	Freedom of Association and	23 Dec 1996	
		Protection of the Right to		
		Organise Convention, 1948 (No.		
		87)		
	C098	Right to Organise and Collective	23 Dec 1996	
		Bargaining Convention, 1949		
		(No. 98)		
	C100	Equal Remuneration	06 Jun 1977	
		Convention, 1951 (No. 100)		
	C105	Abolition of Forced Labour	06 Jun 1977	
		Convention, 1957 (No. 105)		
	C111	Discrimination (Employment and	06 Jun 1977	
		Occupation) Convention, 1958		
		(No. 111)		
	C138	Minimum Age Convention, 1973	16 Jun 2003	
		(No. 138)		
	C182	Worst Forms of Child Labour	19 Nov 1999	
		Convention, 1999 (No. 182)		
	C187	Promotional Framework for	07 Nov 2019	
		Occupational Safety and Health		
		Convention, 2006 (No 187)		
Governance	C81	Labour Inspection Convention,	22 Mar 1965	
Conventions		1947 (No. 81)		
	C122	Employment Policy Convention,	23 Dec 1996	
		1964 (No. 122)		
	C144	Tripartite Consultation	23 Dec 1996	
		(International Labour Standards)		
		Convention, 1976 (No. 144)		

<sup>&</sup>lt;sup>6</sup>https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\_COUNTRY\_ID:10 2964

Mozambique has not ratified the following ILO conventions that are specifically related to labour migration or of particular significance in terms of the recruitment and employment of migrant workers:

- Migration for Employment Convention (Revised), 1949 (No. 97)
- Employment Policy Convention, 1964 (No. 122)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (N0. 189)
- Violence and Harassment Convention, 2019 (No. 190)

Mozambique ratified the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 15 March 2012.<sup>7</sup> In 2018, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families reviewed the implementation of the Convention.<sup>8</sup>

# 7 BILATERAL LABOUR AGREEMENTS 9

Mozambique has a Bilateral Labour Agreement with South Africa that dates back to 1964, and was revised in 2015 by an MOU (SATUCC, 2017). The agreement covers the improvement in status and conditions of migrant workers as well as social protection measures for legal migrant mineworkers. In addition to the BLA, a Joint Permanent Commission for Cooperation (JPC) between Mozambique and South Africa was established in 1994. However, the JPC was subsequently replaced by a Bi-National Commission (BNC) in 2011. There is no information available on labour migration agreements between Mozambique and other countries.

# 8 FAIR RECRUITMENT OF MIGRANT WORKERS

Decree 36/2016 of August 31, which approves the Regulation on the Licensing and Operation of Private Employment Agencies and was revised through Decree 16/2018 of April 23, lays out the laws, rules, and regulations relating to private recruitment (Government of Mozambique, 2018). Private employment agencies in Mozambique are subdivided into two groups: those recruiting abroad and those recruiting internally. The General Labour Inspectorate Labor organizes specific campaigns for private employment agencies.

<sup>7</sup> 

https://tbinternet.ohchr.org/\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=118&Lang=EN https://www.ohchr.org/en/press-releases/2018/09/committee-rights-migrant-workers-reviewsmozambiques-initial-report

<sup>&</sup>lt;sup>9</sup> For an extended analysis of the history and current form of the Mozambique-South Africa BLA, see Olivier (2016).

# 9 SKILLS RECOGNITION OF MIGRANT WORKERS

Mozambique has two sectoral qualifications frameworks:

- National Qualifications Framework for Higher Education (QUANQES, adopted by decree in 2010). To prepare for harmonisation with the new unified NQF (in consultation), a revised version of QUANQES is in an advanced stage of development and consultation.
- National Professional Qualifications Framework (QNQP, adopted by law in 2014, amended in 2016).

A process of consultation for the development of a new unified/comprehensive National Qualifications Framework (NQF) has been undertaken and it was expected that a new Act would be adopted in 2020. The draft Act of the new unified NQF defines seven objectives as follows:

- Facilitate clarity and articulation of all qualifications in an integrated framework and promote competency-based education.
- Establish coherence and transparency of qualification in the frame of the SNE and facilitate mobility and recognition of degrees and other qualifications.
- Define parameters to compare qualifications in the SNE.
- Facilitate horizontal and vertical mobility of holders of qualifications within the SNE.
- Ensure the portability of qualifications, mobility of learners and workers, and lifelong learning.
- Facilitate alignment of national qualifications with SADC Qualifications Frameworks and other qualifications in Africa and in the world.
- Facilitate the access to qualifications offered within the context of the SNE through processes of recognition of acquired competencies.

# 10 SOCIAL PROTECTION OF MIGRANT WORKERS IN MOZAMBIQUE

In terms of the Mozambican constitution (Article 6), all citizens are entitled to social protection, and this is provided for in Law 4/2007. The principles of social protection are set out in the Act, as follows:

- Principle of Universality enshrines the right of all citizens to be protected against equal risks and in an equal situation;
- Principle of Equality under the contributory regime, workers are entitled to a fixed rate and in the same proportion;

- Principle of Solidarity social protection proclaims the engagement of society for the benefit of the most disadvantaged in order to overcome their limitations and in order to transfer resources across generations;
- Principle of Decentralization social protection is provided by public law institutions or private law institutions or organisations, which are duly authorized by public authorities.

The social security system has three levels:

- Basic Social Security
- Mandatory Social Security
- Complementary Social Security

The mandatory social security covers employees as well as the self-employed, and covers national and foreign residents and their employers in Mozambique. However, compulsory enrolment in mandatory social security does not apply to resident foreign workers who are providing service in Mozambique, provided they can prove they are covered by the social security system of another country, without contradicting what is established in bilateral agreements. Mozambican workers abroad, who are not bound by international agreements, can register with the mandatory social security scheme, but they will fall into the category of self-employment persons.

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