

MOBILITY AND RIGHTS IN THE PORTUGUESE-SPEAKING WORLD

A Lusophone Citizenship in Bits and Pieces

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1 INTRODUCTION

Enhanced international mobility has been a goal of the Community of Portuguese Language Countries since its inception in 1996. The Community (hereinafter, CPLP) was established to foster cooperation among states which have Portuguese as official language, also known as Lusophone states – Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, and São Tomé and Príncipe (founding members), Timor-Leste and Equatorial Guinea (admitted in 2002 and 2014, respectively). Despite the geographic dispersion and significant disparities in levels of socioeconomic and institutional development among the member states, there was always much emphasis on a sense of community and belonging, with CPLP appearing as the institutionalisation of a pre-political reality based on affection,¹ as the ‘political face’ of the Lusophone world,² and the like. CPLP’s Constitutive Declaration³ made abundant references to the bloc’s historic ties and distinctive identity, while stressing the need to strengthen the solidarity and fraternity bonds among all Lusophone peoples through *inter alia* the promotion of measures designed to facilitate the mobility of member states’ citizens within the CPLP area.

1 See e.g. L.F. Lopes & O. dos Santos, *Os Novos Descobrimentos: Do Império à CPLP – Ensaios sobre História, Política, Economia e Cultura Lusófonas*, Coimbra, Almedina, 2006, p. 34; F. Lucas Pires, *Schengen e a Comunidade de Países Lusófonos*, Coimbra, Coimbra Editora, 1997, pp. 36-37.

2 See J.A.G. Marques, ‘O Direito, a Lusofonia e Macau’, *Scientia Iuridica*, Volume LVI, No. 311, 2007, p. 423. Needless to say, CPLP is hardly a mirror of the Portuguese-speaking world. As it is an organisation of independent states, it leaves out its member states’ diasporas and the Portuguese-speaking communities in e.g. Galicia (Spain), Macao (China) and Goa (India). On the other hand, by including states where Portuguese is spoken by a very small part of the population, it covers many people who do not understand or speak Portuguese at all, let alone rely on it for their identities. For a criticism of the use of the term ‘Lusophone’, which overemphasizes Portugal’s influence with disregard for the linguistic and cultural diversity of the African states, see M. Cahen, ‘What Good is Portugal to an African?’, in S. Lloyd-Jones & A. Costa Pinto (Eds.), *The Last Empire: Thirty Years of Portuguese Decolonization*, Bristol, Intellect Books, 2003, pp. 86-88. On the diversity of the Lusophone world, see E. Lourenço, *A Nau de Ícaro Seguido de Imagem e Miragem da Lusofonia*, Lisbon, Gradiva, 1999, pp. 178-179.

3 Constitutive Declaration of the Community of Portuguese Language Countries, Lisbon, 17 July 1996.

CPLP's founding texts – the Constitutive Declaration and the Statutes⁴ – do not make an explicit connection between the two, but it did not take long for 'mobility and citizenship' to become a prominent topic on CPLP's agenda,⁵ largely prompted by and in tandem with discussions about a 'Lusophone citizenship.' Praia's 1998 Declaration took notice of legal and academic initiatives at domestic level – most prominently, the adoption by Cape Verde of the Lusophone Citizen Status Act, in 1997⁶ – and requested an in-depth analysis of possible avenues for developments at CPLP level.⁷ In 2000, the Council of Ministers meeting in Maputo established a working group to devise ways to facilitate intra-CPLP mobility and ensure equality of social and political rights among 'CPLP citizens.'⁸ Mobility proved easier to address than rights, however, in spite of expectations to the contrary. A set of five mobility agreements (short-term visas, fee waivers, etc.) was signed during the Brasília summit of 2002, followed by an agreement on students' visas in 2007 and a general mobility agreement in 2021, while the draft Framework Convention on the status of CPLP citizen never garnered consensus among the member states. Portugal's proposal to institute a 'Lusophone Citizen Charter', announced in 2015, was met with scepticism and seems to have been abandoned for the time being.⁹

'Lusophone citizenship' continues to be part of CPLP parlance but is used mostly as a figure of speech to refer to (special) rights enjoyed by member states' nationals in the territory of other member states. Only Cape Verde and (since 2008) Guinea-Bissau¹⁰ recognise the status as such in their domestic laws, and the trail of failed attempts does not bode well for the possibility of establishing a separate legal status at CPLP level, either as Lusophone or CPLP citizenship. There have, nevertheless, been important legal developments over the years, and there is a considerable number of ways in which mobility and rights are accessible to member states' nationals in the CPLP area, under multilateral or bilateral agreements and domestic provisions. This chapter pieces together the statuses (formally) enjoyed by member states' nationals when moving in the CPLP area and compares the content of those statuses to that which is expected from Lusophone citizenship, as indicated in draft treaties, policy documents and academic debates on the

4 Statutes of the Community of Portuguese Language Countries, Lisbon, 17 July 1996.

5 With its own dedicated entry on CPLP's website. Available at www.cplp.org/id-2767.aspx, last accessed on 23 February 2022.

6 Approved by Law No. 36/V/97 of 25 August 1997.

7 Praia Declaration, II CPLP summit, Cape Verde, 17 July 1998, para. 7.

8 Resolution on Citizenship and Movement of Persons in the CPLP Area, Maputo, 18 July 2000.

9 The proposal was included in the Portuguese Government's Programme for 2015-2019. After re-election, in 2019, the Government shifted focus from the recognition of Lusophone citizenship to the conclusion and implementation of the Agreement on Free Movement and Mobility in the CPLP, which came to be signed at Luanda's summit in July 2021.

10 Guinea-Bissau's Lusophone Citizen Status Act – largely copied from its Cape Verdean counterpart – was approved by Law No. 7/2008 of 27 May 2008.

topic. For context, the analysis is preceded by a brief look into CPLP history and the origins of the concept of Lusophone citizenship.

2 CPLP'S STRUGGLE FOR RELEVANCE VIS-À-VIS ITS MEMBER STATES AND THEIR PEOPLES

Born of a desire to defend and promote the Portuguese language in the world, and heralded as a community of friendship and affection, CPLP has always aimed to go beyond mere symbolism or sentimentality and become a relevant political actor in the world stage and in the lives of the peoples of its member states. In 1996, the Constitutive Declaration and the Statutes presented CPLP as a 'privileged multilateral forum' for the member states to align their political and diplomatic stances in international *fora* and cooperate on a wide range of areas, in the interest of the social and economic development of their peoples. Interparliamentary cooperation – first formalised with the Constitutive Declaration of the Forum of Portuguese Language Parliaments, in 1998 – led to the addition of a Parliamentary Assembly to CPLP's structure in 2007. Since 1999, CPLP has deployed electoral observation missions to Angola, Equatorial Guinea, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and Timor-Leste. It has also been involved in successive mediation efforts in Guinea-Bissau, since the country's 1998-1999 civil war.¹¹ Judicial cooperation led to the institution of a CPLP Judicial Network in 2005, and to a series of agreements covering e.g. transfer of convicts, extradition, and legal aid. A Human Rights Network was set by agreement among the member states' Ombudsmen and Human Rights Commissions in 2013. To name just a few 'community-building' initiatives. Throughout, a key concern has been to bring the CPLP closer to the peoples of the member states, as stated in the Declaration on a New Strategic Vision for CPLP (2016-2026), echoing a key talking point behind constitutional developments in the European Union (EU).

It might be said that the odds of CPLP thriving were fairly good, given that there was already an extensive net of bilateral and multilateral cooperation agreements on which to build, as well as enough similarities among the partners' legal systems to warrant talk of a 'Lusophone *ius commune*.'¹² There were general and sector-specific bilateral cooperation agreements going back to the 1970s, involving the future CPLP-partners in all possible combinations, such as the 1971 Convention on Equality of Rights and Obligations between

11 On CPLP's first incursion as peace-broker in Guinea-Bissau, where it played a crucial role despite ending up supplanted by ECOWAS, see N. MacQueen, 'A Community of Illusions? Portugal, the CPLP and Peacemaking in Guiné-Bissau', *International Peacekeeping*, Volume 10, No. 2, 2003a, pp. 13-21.

12 See M.L. Amaral, 'Será Necessária uma Harmonização das Constituições para dar Efectividade ao Exercício dos Direitos de Participação Política?', in VVAA, *Estatuto Jurídico da Lusofonia*, Coimbra, Coimbra Editora, 2002, p. 87.

the Brazilian and the Portuguese and the 1975 General Cooperation Agreement on Migration between Cape Verde and Portugal. Also, in 1979, the African Portuguese Language countries (PALOP) had established an intergovernmental organisation to cooperate e.g. on economic, legal, consular, cultural, technical and scientific matters. A closer precursor of multilateral cooperation involving all founding members of the CPLP was the creation of the International Institute for Portuguese Language, in 1989. Over time, the special ties with Portuguese-speaking countries were enshrined as guiding principle of international relations in the Constitutions of Cape Verde, Mozambique, Portugal, São Tomé and Príncipe, and Timor-Leste.

Many of the bilateral and multilateral agreements entered into since the 1970s cover legal and judicial cooperation, which – together with cooperation in the field of higher education and legal training – helps explain the similarities found among the legal systems of Portuguese-speaking countries. Legal advisors, judicial actors, law professors, researchers and law students have crisscrossed the Lusophone world in all directions, creating a fertile ground for reciprocal influences and legal transplants. The similarities are particularly striking when we compare the laws of Portugal with those of the PALOP and Timor-Leste, given the influence exerted by the Portuguese 1976 Constitution on the Constitutions of these countries¹³ and the fact that, at independence, all African countries kept large sectors of the former colonial legal system in place, including the Portuguese 1966 Civil Code, 1961 Civil Procedure Code, and 1967 Civil Registration Code, all of which have been amended over the years but remain in force to this day.¹⁴ Although Portugal's law appears

13 An influence often remarked on in Portuguese academia, but also acknowledged by academics from other CPLP member states. See e.g. J. Bacelar Gouveia, *As Constituições dos Estados de Língua Portuguesa*, 2nd ed., Coimbra, Almedina, 2006, pp. 16-19; C. Blanco de Moraes, 'Tópicos sobre a Formação de uma Comunidade Constitucional Lusófona', in A. Varela *et al.* (Eds.), *AB VNO AD OMNES: 75 Anos da Coimbra Editora 1920-1995*, Coimbra, Coimbra Editora, 1998, pp. 59-72; J.C. Fonseca, 'Do Regime de Partido Único à Democracia em Cabo Verde: As Sombras e a Presença da Constituição Portuguesa de 1976', *Themis. Revista da Faculdade de Direito da UNL*, 2006, pp. 81-118. Although not so apparent, the similarities between the Portuguese and the Brazilian Constitutions (of 1976 and 1988, respectively) are also deemed relevant by authors of both countries. See Bacelar Gouveia, 2006, p. 13; P. Bonavides, 'Constitucionalismo Luso-Brasileiro: Influxos Recíprocos', in J. Miranda (Ed.), *Perspectivas Constitucionais: Nos 20 Anos da Constituição de 1976*, Volume II, Coimbra, Coimbra Editora, 1997, pp. 19-53; M.G. Ferreira Filho, 'Constitucionalismo Português e Constitucionalismo Brasileiro', in J. Miranda (Ed.), *Perspectivas Constitucionais: Nos 20 Anos da Constituição de 1976*, Volume II, Coimbra, Coimbra Editora, 1997, pp. 55-69.

14 As for Timor-Leste, there was initially some confusion as to which law (Portuguese or Indonesian) should be considered as having been in force on the eve of the country's independence (19 May 2002) for the purposes of its continued application until replacement by Timorese legislation. The Timorese Parliament clarified matters in favour of Indonesian law, with Law No. 10/2003 of 7 August 2003. The Indonesian Civil Code remained in force until 2011, when it was repealed by Law No. 10/2011 of 14 September 2011, which approved Timor-Leste's Civil Code, remarkably similar to the Portuguese one. Similarities with Portuguese law are also visible in the Civil Procedure Code, approved by Decree-Law No. 1/2006 of 21 February 2006. There is yet no Timorese Civil Registration Code. Our comments do not apply to Equatorial Guinea, which was colonised by Spain and whose legal system is similarly influenced by Spanish law.

to be the most influential in the group, there are clearly other dynamics at play, as can be seen e.g. in the Cape Verdean influence over legal developments in Guinea-Bissau, and in the competing influences exerted by Brazil, Cape Verde, Mozambique and Portugal on Timor-Leste's legal system.¹⁵ There are also important differences between Portugal's legal system and those of its CPLP counterparts (such as the role of customary law in the PALOP and Timor-Leste or the common-law-turn in Brazilian public law) that advise against reading too much into the similarities among the laws in the books.¹⁶ The existence of a 'common legal heritage' – to cite Article 1 of the Constitutive Declaration of the Forum of Portuguese Language Parliaments – is, in any case, taken for granted in CPLP's official discourse and is hardly disputed in the literature.¹⁷

Commonalities aside, however, CPLP proved to be a very tough sell. Although Portugal took a deliberate backseat during the Brazilian-led negotiations that resulted in the creation of the organisation in 1996, CPLP was born under the suspicion of a neo-colonial agenda on Lisbon's part and met with reluctance from the African partners, in particular, Angola and Mozambique.¹⁸ Lyrical raptures about a common history and culture, with its white-washing of colonialism and echoes of Lusotropical myths,¹⁹ did not help matters.

15 See P. Jerónimo, 'East Timor (Timor-Leste)', in O. Vonk (Ed.), *Nationality Law in the Eastern Hemisphere: Acquisition and Loss of Citizenship in Asian Perspective*, Oisterwijk, Wolf Legal Publishers, 2018, pp. 434-437.

16 See P. Jerónimo, *Lições de Direito Comparado*, Braga, ELSA-UMinho, 2015, pp. 52-59.

17 Besides the references listed in footnote 13, see P. Canelas de Castro, 'A Comunidade dos Países de Língua Portuguesa – para um Discurso Jurídico sobre a sua Identidade e um seu Programa de Acção', in VVAA, *Colóquio de Direito Internacional: Comunidade dos Países de Língua Portuguesa*, Coimbra, Almedina, 2003, pp. 90-92; Amaral, 2002, p. 87.

18 See L.A. Santos, 'Portugal and the CPLP: Heightened Expectations, Unfounded Disillusions', in S. Lloyd-Jones & A. Costa Pinto (Eds.), *The Last Empire: Thirty Years of Portuguese Decolonization*, Bristol, Intellect Books, 2003, pp. 67-75; N. MacQueen, 'Re-Defining the 'African Vocation': Portugal's Post-Colonial Identity Crisis', *Journal of Contemporary European Studies*, Volume 11, No. 2, 2003b, pp. 195-197; Lopes & dos Santos, 2006, pp. 24-25.

19 Lusotropicalism can be summarised as the view according to which Portugal's colonialism was unique in that it relied more on miscegenation than on oppression, thanks to the Portuguese ability for intercultural interactions. This view (which of course glosses over the fact that 'colonisation through love' often equalled rape and that the 'less vigorous' colonising style was mostly the result of lack of resources on the part of the colonial administration) was advanced by Brazilian sociologist Gilberto Freyre in the 1930s and used by Portugal's *Estado Novo* regime to validate its presence in Africa and South-East Asia well into the 1970s. On the topic, see e.g. B. Feldman-Bianco, 'Portugueses no Brasil, Brasileiros em Portugal: Antigas Rotas, Novos Trânsitos e as Construções de Semelhanças e Diferenças Culturais', in M.I. Ramalho & A.S. Ribeiro (Eds.), *Entre Ser e Estar: Raízes, Percursos e Discursos da Identidade*, Porto, Edições Afrontamento, 2002, p. 147; A. Margarido, *A Lusofonia e os Lusófonos: Novos Mitos Portugueses*, Lisbon, Edições Universitárias Lusófonas, 2000, pp. 6-28; J. Mormul, 'The Community of Portuguese Language Countries (CPLP) and the Luso-African Identity', *Politeja*, No. 68, 2020, pp. 204-208. The myth has been debunked but retains some grip over the collective imagination. Echoes can be found not only in the official discourse of CPLP and (some of) its member states, but also in the narratives of migrants circulating in the CPLP area. See L. Abadia et al., 'Interwoven Migration Narratives: Identity and Social Representations in the Lusophone World', *Identities: Global Studies in Culture and Power*, Volume 25, No. 3, 2018, pp. 345-346, 352-354.

And the same can be said of Portugal's insistence in positioning itself as a privileged bridge between Europe (or the EU) and the Atlantic (i.e., Africa and Latin America);²⁰ even though this may well be regarded as a 'self-image booster' that is ultimately harmless.²¹ Mistrust and resentment persist and resurface at critical junctures, as is the case whenever Portugal takes a stance on a partner's human rights record.²² From the get-go, the member states had differing views about what CPLP could and should be, which helps explain the 'minimum common denominator' option for a forum (with limited competences and resources) instead of a supranational organisation, and also the ensuing oscillations in the member states' commitment to and involvement in CPLP's activities.²³ That CPLP has managed to survive and expand over the years, in spite of constant criticism from all quarters and frequent announcements of its imminent demise, is itself a remarkable feat. It continues, nevertheless, to be largely invisible in the world stage – where it is dismissed as a mere cultural organisation²⁴ – and to be reproached for its untapped potential in areas such as economic cooperation, human rights and international migration.²⁵

A key challenge for CPLP's affirmation is arguably the fact that it overlaps and competes with regional organisations which often have a stronger pull over its member states.²⁶ All of CPLP's African member states are members of the African Union, having joined the organisation shortly after independence, and cooperate as a bloc under the PALOP framework since 1979.²⁷ Brazil is a founding member of Mercosur and of the Organisation of American States (OAS). Portugal is a member of the EU and of the Council of Europe.

20 See P. Jerónimo, *Identidade, Cidadania, Alteridade: Portugal ainda entre a Europa e o Atlântico*, PhD thesis published as e-book by CADMUS, European University Institute, 2008, pp. 10, 26-29; Cahen, 2003, pp. 91-93.

21 See Santos, 2003, pp. 76-77, for whom "there is very little indication that a neo-colonial attitude is implied" in Portugal's political and geostrategic affirmation policy's use of its own language.

22 Something which Portugal has been abjectly shy in doing. For a criticism of Portugal's frequent complacency vis-à-vis its partners' human rights abuses, see Cahen, 2003, pp. 92-93.

23 See Santos, 2003, pp. 71-73, 76-77; MacQueen, 2003a, pp. 9-10; Mormul, 2020, pp. 192, 199.

24 See Mormul, 2020, pp. 199-200, 202; MacQueen, 2003a, pp. 15-16.

25 On CPLP's untapped economic potential, see Mormul, 2020, pp. 192, 196. On the (exaggerated) expectations about CPLP's role as a human rights organisation, see P. Jerónimo, 'A Comunidade dos Países de Língua Portuguesa, Hoje: Fará Sentido Tratá-la como uma Organização de Direitos Humanos?', in M. Monte *et al.* (Eds.), *Estudos em Homenagem ao Professor Doutor Wladimir Brito*, Coimbra, Almedina, 2020, pp. 1301-1324.

26 See D.M. de Castro Alves, 'Interculturalismo e Cidadania em Espaços Lusófonos: A CPLP – Fundamentação Político-Cultural e os Três Anos e Meio da História de sua Formação', in M.B. Rocha-Trindade (Ed.), *Interculturalismo e Cidadania em Espaços Lusófonos*, Lisbon, Publicações Europa-América, 1998, p. 26; Mormul, 2020, pp. 201-203.

27 Also, Angola and Mozambique are founding members of the Southern Africa Development Community (SADC), Cape Verde and Guinea-Bissau are members of the Economic Community of West African States (ECOWAS), Angola, Equatorial Guinea and São Tomé and Príncipe are members of the Economic Community of Central African States (ECCAS), Cape Verde, Equatorial Guinea, Guinea-Bissau, and São Tomé and Príncipe are members of the International Organisation of La Francophonie, and Mozambique is a member of the Commonwealth.

Timor-Leste has made clear its intention to join the Association of Southeast Asian Nations (ASEAN).²⁸

While the special ties with Portuguese-speaking countries are enshrined in the constitutions of several CPLP member states, they are not the sole international ties to be granted that status, and it is worth noting that the Constitution of the largest CPLP member state not only does not mention the Lusophone ties, but explicitly vows to pursue the integration of the Latin American peoples, with a view to the formation of a Latin-American community of nations.²⁹ Of course, it should not be assumed that all competing allegiances fare better than CPLP.³⁰ Somewhat paradoxically, Portugal is the CPLP member state with the strongest commitment elsewhere, in spite of also being the most invested in CPLP's success. The tension between Portugal's European and Atlantic vocations is a recurrent topic of discussion, with fears that membership of the EU will isolate Portugal from the rest of the Lusophone world, but also hopes that it will work to the advantage of CPLP and its member states, with new opportunities for inter-regional cooperation.³¹ Central to these discussions is the potential effect of the rules governing the Schengen Area on any plans to ease intra-CPLP mobility and advance a Lusophone citizenship. Not surprising, considering that, under Article 136(2) of the 1990 Convention Implementing the Schengen Agreement of 14 June 1985, Portugal is not allowed to conclude agreements simplifying or abolishing border checks with one or more third states without the prior agreement of

28 See J.C. Cardoso, 'Is Timor-Leste Ready to Join ASEAN?', *The Diplomat*, 27 August 2021. Available at <https://thediplomat.com/2021/08/is-timor-leste-ready-to-join-asean/>, last accessed on 23 February 2022.

29 Article 4, single paragraph, of the 1988 Constitution of Brazil. Significantly, the principle is restated in Article 3 (XIV) of Brazil's 2017 Migration Act, adopted by Law No. 13.445 of 24 May 2017.

30 For one, the PALOP organisation always struggled to mobilise its member states and operate in any meaningful way. As for the other African organisations, it has been noted that the level of commitment shown by CPLP member states is variable and not particularly high across the board. See e.g. the Africa Regional Integration Index, where only Mozambique ranks as a high performer, while Angola, Cape Verde and Guinea-Bissau always rank as low performers, Equatorial Guinea ranks average, and São Tomé and Príncipe ranks average or low depending on the organisation. Available at: www.integrate-africa.org/, last accessed on 23 February 2022. See also Mormul, 2020, pp. 202-203. Brazil's commitment to Mercosur, while seemingly stronger than to CPLP, has wavered over the years, and Mercosur itself has faced (like CPLP) the risk of being no more than the proverbial empty shell. See M.E. Carranza, 'Can Mercosur Survive? Domestic and International Constraints on Mercosur', *Latin American Politics and Society*, Volume 45, No. 2, 2003, pp. 67-103; M.G. Saraiva, 'Brazilian Foreign Policy Towards Latin America During the Lula Administration: Caught Between South America and Mercosur', *Revista Brasileira de Política Internacional*, Volume 53, 2010, pp. 151-168.

31 It is often pointed out that Portugal's Lusophone ties enhance its status vis-à-vis the EU and vice-versa. As noted by Santos, 2003, pp. 70-71 and 79, Portugal's *rapprochement* with its former colonies in Africa was partly due to the need to improve its chances of being admitted as a member state of the European Economic Community (EEC), and it was Portugal's membership of the EEC that made the prospect of a Luso-centred intergovernmental organisation palatable to Brazil and the PALOP. For a staunch defence of the potential synergies between the EU and CPLP, see Lucas Pires, 1997, pp. 9-15, 35-40.

the other EU member states; and that, except for Brazil and Timor-Leste,³² all CPLP member states are (black)listed as third countries whose nationals are required to be in possession of a visa when crossing the external borders of the EU member states.

3 LUSOPHONE CITIZENSHIP AS A DESCRIPTOR AND A GOAL

3.1 *The origins of the concept*

As a concept, Lusophone citizenship is at least as old as CPLP itself. It is said to have been first used in August 1996 by José Luís Jesus, then Cape Verde's Secretary of State for Foreign Affairs and Cooperation, during a summer school on interculturalism and citizenship in Lusophone spaces,³³ but the term had already been doing the rounds in Portuguese academia for a while, to refer to the privileged status granted by Article 15(3) of the Portuguese Constitution to nationals of Portuguese-speaking countries.³⁴ At a conference in Brazil, earlier that same year, Portuguese politician and law professor Francisco Lucas Pires had made the case for a Lusophone citizenship based on similar grounds as EU citizenship, i.e. dependent on the nationality of the member states but also autonomous to the extent that it would be a status recognised in the whole CPLP area.³⁵ José Luís Jesus' proposal was seemingly less ambitious, since it did not envision the institution of an autonomous status of equal rights and obligations, but merely the identification of a range of rights that could be progressively recognised by each CPLP member state to the nationals of the other

32 While the exemption enjoyed by Brazil and Timor-Leste nationals applies only for stays of no more than 90 days in any 180-day period. Regulation (EU) 2018/1806 of the European Parliament and of the Council, of 14 November 2018, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification). When it advanced the proposal for a Lusophone Citizen Charter in 2015, the Portuguese government dismissed the EU constraints with the argument that these do not apply to residence permits, which the member states are free to grant to third country nationals under whatever conditions they see fit and which subsequently entitle its holders to access the territory. As stated then, Portugal is free to grant residence permits to the nationals of its CPLP partners and is willing to do it under conditions of reciprocity. See e.g. 'Portugal quer liberdade de circulação e residência entre países lusófonos; Brasil enxerga ideia com cautela', *BBC Brasil*, 18 December 2015. Available at: www.bbc.com/portuguese/noticias/2015/12/151217_portugal_circulacao_paises_rm, last accessed on 23 February 2022.

33 See J. Leitão, 'Génese e Dinâmica da Cidadania Lusófona', in M.B. Rocha-Trindade (Ed.), *Interculturalismo e Cidadania em Espaços Lusófonos*, Lisbon, Editora Europa-América, 1998, p. 41.

34 See J.J. Gomes Canotilho & V. Moreira, *Constituição da República Portuguesa Anotada (Artigos 1.º a 107.º)*, Volume I, 4th rev. ed., Coimbra, Coimbra Editora, 2007, pp. 359-360.

35 See Lucas Pires, 1997, pp. 37-38.

member states, in order for Lusophone citizens to enjoy special treatment vis-à-vis other foreigners when moving within the CPLP area.³⁶

Subsequent political and academic debates on the topic have made use of both understandings of the concept (sometimes interchangeably), so that ‘Lusophone citizenship’ is as often used with the meaning of an autonomous legal status (to be instituted at CPLP level) as it is used as synonymous with a common set of rights granted to Lusophone foreigners by the domestic laws of the CPLP member states.³⁷ There are those who pursue the parallel with EU citizenship and call for a supranational citizenship status,³⁸ while others argue that CPLP has not yet reached a level of integration that would justify the institution of new (supranational) rights, calling instead for the member states to extend certain rights originally reserved for their nationals to the Lusophone foreigners residing in their territories.³⁹ What seems to be clear is that, for the purposes of these debates, Lusophone citizens are those who have the nationality of one of the CPLP member states⁴⁰ and not those who identify as speakers of Portuguese.⁴¹

Either as a separate status or as a set of rights, Lusophone citizenship is expected to entail – much like EU citizenship – freedom of movement of persons in the CPLP area and equality of rights with the nationals of the CPLP-member state of residence. Another similarity with the EU standard is the expected provision of diplomatic protection and consular assistance to Lusophone citizens by the authorities of CPLP member states in the territory of third countries.⁴² There are also calls for the recognition of political rights, some of which aim to go further than what is achieved at EU level by taking cue from the Brazil-Portugal Convention on Equality of Rights and Obligations, which covers the right

36 See J.L. Jesus, ‘Direitos de Cidadania no Espaço Lusófono’, in M.B. Rocha-Trindade (Ed.), *Interculturalismo e Cidadania em Espaços Lusófonos*, Lisbon, Editora Europa-América, 1998, pp. 64-65.

37 Other uses of the term occur, with only tangential links to the topic at hand. For instance, the Portuguese government strategic plan for 2017 (approved by Law No. 41/2016 of 28 December 2016) equated Lusophone citizenship with measures designed to bring CPLP closer to civil society organisations and Lusophone diasporas in third countries, as well as with academic research into environmental sustainability and the protection of the seas. Another example is the use of Lusophone citizenship to refer to the protection of Galician ties to the Lusophone world and of Galicia’s Lusophone status vis-à-vis Spain. See A. Banhos Campo, ‘É Possível a Construção duma Cidadania Lusófona na Galiza?’, *Boletim da Academia Galega da Língua Portuguesa*, No. 9, 2016, pp. 53-62.

38 See e.g. C. Urbano de Sousa, ‘Cidadania e Mobilidade no Espaço Lusófono’, 2015, pp. 2-3. Available at: <http://hdl.handle.net/11144/1346>, last accessed on 23 February 2022.

39 Along the lines of the Commonwealth citizenship, as instituted by the British Nationality Act 1981. See J. Pereira da Silva, *Direitos de Cidadania e Direito à Cidadania*, Lisbon, Observatório da Imigração/ACIME, 2004, pp. 59, 69.

40 See J. Leitão, ‘Standard Mínimo de Direitos da Lusofonia’, in VVAA, *Estatuto Jurídico da Lusofonia*, Coimbra, Coimbra Editora, 2002, p. 130.

41 Which, as noted earlier, would mean the inclusion of persons who are not nationals of CPLP member states, such as Galicians and Goans, but also the exclusion of many who hold the nationality of a CPLP member state without actually speaking or understanding Portuguese.

42 See Canelas de Castro, 2003, p. 71.

to participate in local and national elections, and the right to hold public office, including access to the judicial career.⁴³ Another aspect often included in the content of a prospective Lusophone citizenship is the facilitated access to the nationality of the CPLP-member state of residence. José Luís Jesus, for instance, argued for the attribution of the nationality of the CPLP-member state of residence to the children born to Lusophone parents in the territory of that state,⁴⁴ a solution later enshrined in Article 4 of Cape Verde's Lusophone Citizen Status Act. Similarly, Portuguese international lawyer Paulo Canelas de Castro recommended that states set less stringent naturalisation requirements for candidates originating from CPLP member states,⁴⁵ as was at the time the case with Portugal's Nationality Act.⁴⁶ It has also been argued that Lusophone citizens should enjoy safeguards against extradition to third countries, via the definition of a common extradition regime at CPLP level.⁴⁷ Regarding social rights, it is generally acknowledged that the disparities in levels of socioeconomic development among the member states prevent the establishment of a robust set of common rights, equally enforceable anywhere in the CPLP area, but there have nevertheless been calls for a 'minimum Lusophone standard of rights' – drawn from the equidistant model set by the UN 1966 Covenant on Economic, Social and Cultural Rights – to include protection to families and children, social security, health, education, and equality in the enjoyment of social rights.⁴⁸ Considering Lusophone migrant workers

43 That is the view taken by M. Aguiar, 'Comunidades Lusófonas: Migrações e Cidadania', in M.B. Rocha-Trindade (Ed.), *Interculturalismo e Cidadania em Espaços Lusófonos*, Lisbon, Editora Europa-América, 1998, pp. 105-107. Wladimir Brito is more restrained, arguing instead for a combination of a general regime with a common minimum standard of political rights (the rights to obtain information from the public administration, to vote and be elected on local elections, and to exercise the political activities associated with the voting rights), and a special regime of political rights, that would expand on the general regime to reflect the 'excellent relations' between the states of nationality and residence, including the rights to participate in national elections, to hold public office of a political nature, to take part in court juries, to join political parties and associations, etc. See W. Brito, 'A Cidadania Lusófona: Condição Necessária da Afirmção Política da Multiculturalidade Lusófona', *A Questão Social no Novo Milénio*, Coimbra, CES, 2004, pp. 9-14.

44 See Jesus, 1998, pp. 65-66.

45 See Canelas de Castro, 2003, p. 71.

46 Following the 1994 amendment to Portugal's Nationality Act (Law No. 37/81 of 3 October 1981), the residence requirement for naturalisation was of six years for nationals of Portuguese-speaking countries and of ten years for all other applicants. A similar distinction was made for the purposes of attributing Portuguese nationality to children born in Portugal to foreign parents. In 2006, a new amendment to the Nationality Act eliminated the distinction, setting a five-year residence requirement for attribution and a six-year residence requirement for naturalisation. The 'privileged regime' in force between 1994 and 2006 failed to impress critics, however, since it was less favourable than the two-year residence required by Spain for the naturalisation of Latin-American foreigners, including Brazilians. See J.F. Pinto, *Da CPLP à Comunidade Lusófona*, Lisbon, Academia das Ciências de Lisboa, 2016, p. 11.

47 See Canelas de Castro, 2003, p. 71.

48 See W. Brito, 'Que Direitos Sociais? Um Standard Minimum Lusófono de Direitos Sociais?', in VVAA, *Estatuto Jurídico da Lusofonia*, Coimbra, Coimbra Editora, 2002, pp. 120-122.

in particular, there have furthermore been calls to ensure the recognition of professional qualifications, the portability of pensions and opportunities for circular migration.⁴⁹

Like José Luís Jesus in 1996, most commentators have over time agreed on a gradual approach to the unfolding of Lusophone citizenship, considering the above-mentioned socioeconomic disparities, but also the member states' international obligations in other *fora*, which are often invoked to advise caution and justify, in particular, the adoption of 'realistic' immigration policies.⁵⁰ The 'promise of a Lusophone citizenship' has, in any case, been treated with a considerable dose of optimism in the literature, in spite of the setbacks in the political and legal fronts. The possibility of instituting a Lusophone citizenship in a not-so-distant future is believed on the grounds that CPLP member states have extensive experience with multilateral and bilateral agreements which recognise citizenship rights in the Lusophone area,⁵¹ and that the constitutions of many of these states both privilege the ties with Portuguese-speaking countries and establish a principle of equal treatment between their nationals and foreign residents.⁵²

3.2 *Legal developments at CPLP level*

There is no mention of a common citizenship status in CPLP's founding texts, although it is clear that mobility and rights were very much on the founders' minds, if we consider the stated goals to (i) ease mobility for member states' nationals in the CPLP area, (ii) address the problems faced by immigrant communities in their host countries, and (iii) strengthen cooperation in the field of immigration policies. As noted earlier, the idea of instituting a Lusophone citizenship to match the Lusophone community and bring CPLP closer to the peoples of the member states was soon endorsed by political leaders and, following Cape Verde's 'bold'⁵³ initiative of establishing the status on its own, led to the creation of a working group to study possible avenues for legal developments at CPLP level. The working group went on to produce most of the mobility agreements that make up CPLP's 'citizenship acquis' but, as foretold, failed to deliver on the Lusophone citizenship status.

49 See Urbano de Sousa, 2015, p. 8.

50 See e.g. speech by the President of the Portuguese Parliament, João Bosco Mota Amaral, at the III Forum of Presidents of Portuguese Speaking Parliaments, Praia, Cape Verde, 19 November 2002.

51 See Leitão, 1998, pp. 42-59; Pereira da Silva, 2004, pp. 71-73.

52 See R. Medeiros, 'Constitucionalismo de Matriz Lusófona: Realidade e Projecto', *Observatório da Jurisdição Constitucional*, Volume 4, 2010/2011, p. 56; C.L.A. Rocha, 'Os Direitos de Cidadania no Brasil, no Mercosul e na Comunidade de Língua Portuguesa', in VVAA, *Estatuto Jurídico da Lusofonia*, Coimbra, Coimbra Editora, 2002, pp. 411-459; Leitão, 2002, p. 133; Pereira da Silva, 2004, pp. 26-27, 70-71; Brito, 2004, p. 14.

53 See Brito, 2004, p. 14.

A proposal for a Framework Convention on the Status of Lusophone Citizen was put forward by Portugal in 2001⁵⁴ and approved by the working group in April 2002, after some adjustments in language, such as the replacement of ‘Lusophone citizen’ by ‘CPLP citizen.’ The Council of Ministers meeting in Brasília the following July expressed concerns about the compatibility of the proposed text with the constitutions of some of the member states and returned the draft to the working group for further reflection.⁵⁵ With some intermissions, the draft Framework Convention continued to be formally on the agenda until 2011,⁵⁶ when the subject was finally dropped.

The draft Framework Convention was inspired by previous bilateral agreements between Portugal and some of its CPLP partners, namely those with Brazil (1971, 2000), Cape Verde and Guinea-Bissau (1976),⁵⁷ and incorporated many of the rights called for in the literature, with the notable omission of freedom of movement⁵⁸ and facilitated access to the nationality of the state of residence. The draft approved in 2002 only foresaw the recognition of the ‘status of CPLP citizen’ to the nationals of CPLP member states in possession of a residence permit, and this was later changed to ‘*permanent* residence permit’ following a proposal from Brazil.⁵⁹ The status was to be automatically withdrawn if the beneficiary lost the resident permit under terms prescribed by law or lost the nationality of his or her member state of origin without acquiring the nationality of another CPLP member state. A general principle of equal treatment with the nationals of the member state of residence was

54 Final Statement of the VI Ordinary Meeting of the CPLP Council of Ministers and Resolution on citizenship and movement of persons in the CPLP area, São Tomé and Príncipe, 31 July 2001. The full text of the draft Framework Convention is included in J. Leitão, *Estudo sobre Cidadania e Circulação no Espaço da CPLP*, n/d, pp. 8-11. Available at: www.cplp.org/id-2767.aspx, last accessed 23 February 2022.

55 Resolution on citizenship and movement of persons in the CPLP area, Brasília, 30 July 2002. Reportedly, Angola and Mozambique were concerned with the inclusion in the draft Framework Convention of rights not recognised to foreigners by their constitutions, in particular political rights. The working group continued its reflection on the draft while waiting for the member states to conduct the domestic legal reforms that would allow the adoption of the document. See A. de Vasconcelos, ‘Integração Aberta e Cidadania’, *Estratégia*, No. 20, 2004, pp. 169-180; Leitão, n/d, pp. 8, 14-16.

56 The draft Framework Convention was last mentioned in the Final Statement of the XVI Ordinary Meeting of the CPLP Council of Ministers, Luanda, 22 July 2011.

57 See Leitão, n/d, pp. 17-23.

58 Which drew predictable criticism for leaving out the basic condition for the exercise of the other rights listed. See Urbano de Sousa, 2015, pp. 4-5. The draft Framework Convention included a provision on movement of persons (Article 15), but this merely established that member states would adopt measures designed to facilitate mobility of CPLP citizens, by means of multilateral or bilateral agreements and within the limits set by their domestic laws and by their international obligations vis-à-vis regional organisations and networks of which they were members.

59 According to Article 1(1) of the 2002 draft, CPLP citizens were the nationals of any CPLP member state, but Article 2(1) prescribed that CPLP citizens in possession of a residence permit issued by ‘one of the other member states’ were to be recognised the status of CPLP citizens by the competent authorities of that state. Article 2(2) further added that the status of ‘resident CPLP citizen’ would be equally recognised to the dependent family members of the CPLP citizen if they had the nationality of one of the member states. See Leitão, n/d, pp. 8-9, 15-16.

established with the usual caveat for rights reserved by the member states' constitutions to their own nationals and an additional caveat for 'rights inherent to regional integration processes,' which was later explained as designed to prevent CPLP citizens from participating in European Parliament elections.⁶⁰ The status comprised the following rights: (i) right to an identification document for internal use in the state of residence; (ii) right to vote and be elected, and correlated political rights, including the right to exercise political activities in national political parties of the state of residence, in proportion to the voting rights enjoyed; (iii) right to diplomatic and consular protection from the authorities of any of the CPLP member states in the territory of third countries where the respective state of origin is not represented; (iv) right to create associations and foundations; (v) right to private property and safeguards against expropriation; (vi) right to protection of investments on a par with the nationals of the state of residence; (vii) right to equal tax treatment with the nationals of the state of residence; (viii) right to equal treatment with the nationals of the state of residence in what regards the exercise of cultural, religious and social rights, civil rights, economic and professional rights, the application of labour and social security legislation, the possibility to pursue any industrial, commercial, agricultural or artisanal activity, the exercise of liberal professions, the recognition of academic diplomas, and the possibility to obtain and manage public concessions, permits or administrative licences; (ix) right to benefit from work conditions identical to those granted to the nationals of the state of residence in the exercise of a professional activity; (x) right of access to public functions in the state of residence; (xi) right to equal treatment with the nationals of the state of residence in access to health services, education and the courts; and (xii) right to continue to receive any pensions, subsidies or income earned in one member state after taking up residence in the territory of another member state.

The draft Framework Convention was full of caveats and clawback clauses (i.e., references to the domestic laws of the member states or to terms to be set by international agreement), which severely limited the reach of its provisions, but this effort to assuage the member states' concerns was ultimately to no effect. The goal to institute a CPLP citizenship status (or 'charter', to cite Portugal's 2015 proposal)⁶¹ does not seem to have been entirely abandoned, however, given the renewed talk in recent years about

60 See Leitão, n/d, pp. 8, 16, 20. It had been reported that Brazilians residing in Portugal were voting in European Parliament elections and there were discussions in the literature as to whether this was covered by the equality status established by the Brazil-Portugal convention and/or was compatible with EU law. See Lucas Pires, 1997, p. 44.

61 The details of the Portuguese proposal for a Lusophone Citizen Charter were not disclosed. According to the Portuguese government's programme for 2015-2019, which first presented the idea, the goal was to create a legal instrument for recognition of several rights to all citizens in the Lusophone space, such as freedom of movement and residence, recognition of academic and professional qualifications, exercise of political rights and portability of social rights.

‘progressively constructing a CPLP citizenship.’⁶² The phrase ‘CPLP citizens’ never ceased to be used loosely as synonymous with member states’ nationals anyway.⁶³ Furthermore, while the focus has remained on advancing intra-CPLP mobility (in small increments), CPLP’s ‘citizenship acquis’ goes beyond the mobility agreements, covering agreements on consular cooperation, judicial cooperation, legal aid, and social security, where important individual (citizenship) rights and safeguards can already be found.

Eight mobility agreements were signed under the CPLP umbrella so far. The first, signed in 2000, introduced a visa exemption for diplomatic, special and service passports.⁶⁴ Next came the five Brasília agreements of 2002 – still regarded as CPLP’s major achievement in spite of the difficulties in their implementation –, which introduced a fee exemption for the issuance and renovation of residence permits,⁶⁵ set common rules for the issuance of temporary visas for medical treatment,⁶⁶ set common maximum requirements for short-term visa applications,⁶⁷ introduced multiple-entry visas for certain categories of persons,⁶⁸ and prescribed the creation of special CPLP lanes for passport control at the main points of entry and exit.⁶⁹ In 2007, a new mobility agreement set common rules for the issuance of students’ visas.⁷⁰ Finally, in 2021, the member states agreed on the ‘cooperation framework’ for mobility issues, purportedly to ensure the full implementation of the Brasília agreements by establishing a flexible and variable system suited to each state’s specificities, so that mobility is facilitated in a gradual manner.⁷¹

62 Consider the Brasília Declaration of 1 November 2016, where the heads of state and government noted that intra-CPLP mobility is a key instrument for the deepening of the Community and for the progressive construction of a CPLP citizenship, while acknowledging the need to resume discussions on the topic, having due regard to the different realities of each member state. The point was repeated in the Declaration on Persons and Mobility in CPLP (*Declaração sobre as Pessoas e a Mobilidade na CPLP*), made in Santa Maria on 18 July 2018.

63 For a recent example, see Final Statement of the XXV Ordinary Meeting of the CPLP Council of Ministers, Praia, 9 December 2020.

64 Agreement on the suppression of visas for diplomatic, special and service passports, Maputo, 17 July 2000.

65 Agreement on the exemption of fees due for the issuance and renovation of residence permits for CPLP citizens, Brasília, 30 July 2002.

66 Agreement on temporary visas for medical treatment for CPLP citizens, Brasília, 30 July 2002.

67 Agreement on the establishment of common maximum requirements for the issuance of short-term visas, Brasília, 30 July 2002.

68 Agreement on multiple-entry visas for certain categories of persons, Brasília, 30 July 2002.

69 Agreement on the establishment of specific passport-control gates for CPLP citizens at points of entry and exit, Brasília, 30 July 2002.

70 Agreement on the issuance of visas for students national of CPLP member states, Lisbon, 2 November 2007.

71 Agreement on mobility among the CPLP member states, Luanda, 17 July 2021. The 2021 Agreement did not improve much (if at all) on the common rules set by the previous mobility agreements, since it did not move beyond the ‘minimum level of mobility’ represented by the visa exemption for holders of diplomatic, official, special and service passports, and extended the deadlines set for issuance of visas by the national authorities. All other forms of ‘CPLP mobility’ foreseen in the 2021 Agreement are to be set by additional partnership instruments, with the states enjoying freedom to decide which forms of mobility, for which persons and with which partner states. The main innovation is arguably the focus on the credibility and

Under these agreements, ‘CPLP citizens’ are recognised the following mobility rights: (i) right to enter, transit through, stay and leave the territory of any CPLP member state, for stays of no more than 90 days per each semester of the calendar year, without need for a visa, if they are holders of diplomatic, special or service passports (Article 1 of the 2000 Agreement);⁷² (ii) right to apply for a multiple-entry visa, with a minimum duration of one year, for stays of no more than 90 consecutive days per each semester of the calendar year,⁷³ if they are holders of valid common passports and are either businessmen/women, liberal professionals, scientists, researchers, sportsmen/women, journalists or artists (Article 1 of the 2002 Agreement on multiple-entry visas);⁷⁴ (iii) right to be exempted from paying the fees charged for the issuance or renovation of residence permits, save for the costs associated with producing the documents [Article 1 of the 2002 Agreement on exemption of fees and Article 24(1) of the 2021 Agreement]; (iv) right to not be charged more for ordinary administrative permits than nationals of non-CPLP member states [Article 24(3) of the 2021 Agreement]; and (v) right of holders of a CPLP resident permit to be recognised the same rights, freedoms and safeguards as the nationals of the host state and to enjoy equal treatment with regard to economic, social and cultural rights, in particular in access to education, work and health care, save for the rights reserved by the domestic law of the member states to their own nationals (Article 25 of the 2021 Agreement).

Without using the language of individual rights, the mobility agreements furthermore require that the states: (vi) speed-up the issuance of short-term visas (transit, tourism, business) for ‘CPLP citizens’ by requiring only a fixed common set of documents⁷⁵ and by issuing the visas within no more than seven days (Articles 1 and 2 of the 2002 Agreement on common maximum requirements); (vii) issue multiple-entry temporary visas for medical

authenticity of documents, which the states are responsible to ensure, and which are grounds for restricting entry or conditioning stay in the territory of the host countries.

72 The 90-day limit does not apply to holders of diplomatic, special or service passports who enter the territory in the exercise of diplomatic or consular functions. For them and their dependents, the duration of the stay is that of the official mission [Article 1(3) of the 2000 Agreement]. The 2021 Mobility Agreement includes a provision on visa exemption for holders of diplomatic, official, special and service passports, presenting the exemption as one of the ‘principles’ on which the agreement is based [Article 2(a)]. This should not be interpreted as a downgrade from individual right to principle, but simply as a restatement of what is the common minimum denominator on which the 2021 agreement was built, as mentioned in the agreement’s preamble with the phrase ‘minimum level of mobility that should exist among the member states’ citizens.’

73 The 90-day limit is without prejudice to more favourable regimes set by the domestic laws of the member states, and the duration of the stay may be extended provided a justification is presented (Article 1 of the 2002 Agreement on multiple-entry visas).

74 With the consular authorities of the member states having to issue the visa within a seven-day period (Article 2 of the 2002 Agreement on multiple-entry visas).

75 These are: two photographs; travel document valid for at least three months over the foreseen duration of the stay; proof of means of subsistence; two-way ticket; international vaccination certificate (Article 1 of the 2002 Agreement on common maximum requirements).

treatment, valid for up to two years and extendable for a minimum of one year (Articles 1 and 2 of the 2002 Agreement on temporary visas for medical treatment);⁷⁶ (viii) create specific passport-control lanes for privileged treatment of ‘CPLP citizens’, to be used in the same conditions as those designed for the nationals of the host country, to the extent possible (Article 3 of the 2002 Agreement on special CPLP lanes); (ix) issue visas to students accepted or enrolled in academic or professional training programmes longer than three months at recognised institutions of the host country, under a ‘common’ set of rules regarding documents required, time for issuance of the visa and conditions for renewal (Articles 3 and 4 of the 2007 Agreement);⁷⁷ (x) do not take more than 90 days for the issuance of ‘CPLP temporary stay visas’ (Article 15 of the 2021 Agreement) and 60 days for ‘CPLP residence visas’ (Article 21 of the 2021 Agreement).

During their stay in the territory of a CPLP member state of which they are not nationals, ‘CPLP citizens’ are required to comply with the legislation of that state, namely the laws on immigration (Article 2 of the 2000 Agreement). States may refuse entry or stay in their territories whenever ‘ponderous reasons’ (*razões ponderosas*) arise (Article 3 of the 2000 Agreement). States may restrict the entry or stay of ‘CPLP citizens’ for reasons connected with the need to safeguard order, safety or public health [Article 10(1) of the 2021 Agreement], as well as on grounds of founded suspicions as to the credibility and authenticity of the documents attesting eligibility for mobility [Article 10(2) of the 2021 Agreement]. States are entitled to require proof of means of subsistence (save for holders of diplomatic, official, special and service passports), with the possibility of accepting, as

76 Besides the documents usually required for issuance of temporary visas, per Article 3 of the Agreement, applicants must present: medical indication for the treatment; proof that the applicant either is capable of paying for the treatment and has the resources to provide for him/herself during the treatment, has a health insurance valid in the host country with coverage for the treatment at stake, certificate of health service foreseen in international agreement or another way of reimbursement when the treatment is provided by the national health system. The documents must be authenticated. Article 4 allows for the issuance of a visa under the terms of this Agreement in case a national of a CPLP member state is legally in the territory of another CPLP member state and his or her health does not recommend removal from the territory. If the health condition resulted from assault or trauma occurred after arrival in the territory of the host state and prevents removal to another country, the documents to be presented under Article 3 can be replaced by a medical report and a document attesting that the patient is under medical responsibility. The visa requests made under Article 4 may be submitted by the interested party’s spouse, adult child or legal representative.

77 The rules are not strictly common, since Article 4 allows for three instances in which it is left up to the states whether or not to require certain documents (i.e. medical certificates, criminal record, and medical insurance). The common requirements are: travel document valid for more than six months at the time of the application and never less than the intended period of stay; two photographs; document attesting acceptance of application or enrolment at recognised educational institution; proof of means of subsistence; and, in the case of underage or incapable applicants, authorisation by the person in charge of custody. Under Article 3, visa applications must be made within 30 days after notice of acceptance at recognised educational institution and must be decided within the shortest time possible and no later than 30 days. The visa has a minimum duration of four months and a maximum duration of one year. The continuance of studies allows for a visa-renewal application, which must be submitted no later than 30 days prior to the end of the validity of the original visa and be accompanied by proof of attendance and enrolment for the next academic period.

an alternative, a statement of responsibility by a national or a foreign resident (Article 11 of the 2021 Agreement). States have furthermore the prerogative of suspending the application of the mobility agreements on grounds of public order, national security, public health or international obligations.⁷⁸

The 2008 Agreement on Consular Cooperation⁷⁹ requires that, within their possibilities, CPLP member states ensure consular assistance and protection to the nationals of other CPLP member states in places where the latter do not have accessible consular representation (Article 2). Consular posts are required to promote, if so requested, the consular registration of nationals of partner states' nationals who reside or are present in their jurisdiction (Article 4), and to render assistance to the crew of vessels or aircraft carrying the flag of another CPLP member state, if requested by the respective captain or commander (Article 7). In case of necessity, states may ask each other to issue single-use travel documents valid for their nationals to return to their territories (Article 5). The states' consular agents may render assistance and, in exceptional circumstances, support the repatriation of partner states' nationals residing or present in their jurisdiction, upon request and provided there is proof that they lack resources (Article 6). They may also perform, in their jurisdiction and within their attributions, other functions on behalf of partner states' nationals, upon request and with the express consent of the competent authorities of the partner state in question (Article 8).

The 2005 Conventions on judicial cooperation in criminal matters provide a series of procedural safeguards that are worth noting, even though most safeguards are recognised equally to CPLP and non-CPLP citizens. The Extradition Convention,⁸⁰ for instance, recognises the right of persons facing extradition to enjoy all the rights and safeguards provided by the legislation of the requested CPLP member state, including assistance by a defender and, if necessary, by an interpreter (Article 8), but does not go so far as protecting CPLP citizens from being extradited to a third country,⁸¹ as called for in the literature. Where we find some form of 'CPLP rights' is in the Convention on the transfer of convicted

78 Article 6 of the 2000 Agreement, Article 4 of the 2002 Agreement on multiple-entry visas, Article 3 of the 2002 Agreement on exemption of fees, Article 4 of the 2002 Agreement on common maximum requirements, Article 6 of the 2002 Agreement on temporary visas for medical treatment, Article 5 of the 2002 Agreement on special CPLP lanes, Article 5 of the 2007 Agreement, and Article 34 of the 2021 Agreement. Article 5(3) of the 2007 Agreement safeguards in any case that the suspension will not hinder the continuation and completion of the studies of students already issued visas under the Agreement.

79 Signed in Lisbon, on 24 July 2008.

80 Signed in Praia, on 23 November 2005.

81 The state which requests the extradition is not allowed to re-extradite the person to a third state, except if the requested state so agrees after hearing the requested person or if he or she, having the right and the possibility to leave the requesting state, remains there for more than 45 days or returns there voluntarily (Article 7).

persons between CPLP member states,⁸² which is designed to promote resocialisation by giving convicted persons the opportunity to serve their sentences in their country of origin, and therefore applies primarily if not exclusively to nationals of CPLP member states.⁸³

The 2014 Agreement on Free Legal Aid⁸⁴ recognises to the nationals and habitual residents in the territory of a CPLP member state the right to enjoy the benefits of free and full legal aid in the territory of the other CPLP member states in the same conditions as that state's nationals and habitual residents (Article 2). The benefit of free justice consists of the exemption of all legal fees, taxes, *honoraria* and other expenses associated with the procedure, while free and full legal aid consists of the assistance provided by legal aid institutions of the CPLP member states, either in judicial or extra-judicial settings, in a consultative, preventive or contentious manner, on behalf of persons in need (Article 3). In case of transfer between states, the legal aid granted by one state is recognised and maintained in the other (Articles 5 and 6). All acts and documents pertaining to the request of legal aid are free of charge (Article 12).

The 2015 Multilateral Convention on Social Security,⁸⁵ which applies to social pensions for disability, old age and death, as foreseen in the legislation of the member states,⁸⁶ establishes a principle of equal treatment with the nationals of the CPLP member state of residence (Article 4). The Convention provides for the portability of pensions, as they cannot be reduced, modified, suspended or suppressed exclusively on the grounds that the beneficiary resides in the territory of another state party [Article 5(1)]; and must be paid to beneficiaries residing in a third country in the same conditions and to the same extent as they are paid to state nationals residing in that third country [Article 5(3)]. Whenever the period of insurance, contribution or employment in a state party is not enough to meet the requirement to benefit from the pension, the periods of insurance, contribution or employment in other states party will be added-up to the extent necessary to ensure eligibility for the pension [Article 13(2)]. The exemptions or reductions of fees

82 Signed in Praia, on 23 November 2005.

83 The Convention requires that the transfer only occurs at the request of the convicted person and never without his or her express consent [Articles 2(2), 3(1)(d) and 7]; it also requires that the state of conviction informs convicted persons to whom the Convention may apply of the content of the Convention and gives them the form for the transfer request [Article 4(1)], and that, once the request is made, the state informs the convicted person in writing of all the measures and decisions adopted in its regard [Article 4(5)]. The state of execution is not allowed to aggravate or extend the penalty set in the state of conviction, nor deprive the convicted person of any right other than what results from the conviction [Article 9(2)]; it is also not allowed to convict the transferred person for the same facts for which he or she was convicted in the state of conviction (Article 13). The expenses associated with the transfer are supported by the state of execution, which is not allowed to claim reimbursement (Article 15).

84 Signed in Luanda, on 20 May 2014.

85 Signed in Dili, on 24 July 2015. The Convention is supposed to be complemented by an Administrative Agreement which has not yet been signed at time of writing.

86 The 2015 Convention is explicitly not applicable to health care, social assistance and non-contributory regimes [Article 3(3)].

established in the legislation of a state party for acts or documents required by that legislation apply to similar acts and documents required by the legislation of any other state party for purposes of this Convention [Article 16(1)]. The documents required for the application of this Convention do not need to be certified or authenticated by diplomatic or consular agents, provided that they are sent through a competent institution or liaison office [Article 16(2)]. The applications, documents or appeals submitted within a given deadline to the competent authorities of a state party are admissible as if submitted within the same deadline before the competent authorities of another state party whenever the beneficiary so requests (Article 17).

3.3 *Mobility and rights in multilateral and bilateral agreements*

Most of the individual rights and state obligations established by multilateral agreements at CPLP level can also be found in bilateral and multilateral agreements entered into by the CPLP member states both before and after signature of the respective CPLP instrument. The focus of this section will therefore be put on the individual rights and state obligations that are not yet recognised by and for all the member states, but which recognition contributes to the picture of a ‘variable geometry citizenship’ and may be taken as an indication of achievable goals for the whole of CPLP in a not-so-distant future.

In what regards *freedom of movement*, the nationals of some member states enjoy a visa exemption for ordinary passports, usually for stays of up to 90 days. That is the case of: (i) nationals of São Tomé and Príncipe in Angola and Angolans in São Tomé and Príncipe, whose 90-day stays may be extended for 30 days if justified by ponderous reasons;⁸⁷ (ii) nationals of São Tomé and Príncipe in Cape Verde and Cape-Verdeans in São Tomé and Príncipe traveling for tourism, visit or business, whose stays must not exceed 60 days per visit and 120 days for every calendar year;⁸⁸ (iii) Angolans in Mozambique and Mozambicans in Angola traveling for tourism, vacation, family visits, private business or transit, whose stays must not exceed 30 days, but may be exceptionally renewed once, if

87 São Tomé and Príncipe-Angola agreement on visa exemption for diplomatic, service and ordinary passports, Luanda, 22 December 2020, Article 2. The visa exemption does not give a right to stay for purposes of work, residence or studies [Article 2(3)]. The states party may refuse entry, at any time, if they justify the refusal (Article 3). As with all similar agreements, the beneficiaries of the visa exemption must comply with the laws and regulations in force in the host state during their stay in the territory (Article 4).

88 São Tomé and Príncipe-Cape Verde agreement on visa exemption for ordinary passports, Mindelo, 17 July 2019, Articles 1 and 2. The passport must be valid for at least six months at the time of entry in the country (Article 2). The beneficiaries must not take on any employment, paid or not, nor exercise any professional or commercial activity for personal profit, unless they are granted an authorisation by the competent authority (Article 4). The states parties are entitled to forbid entry or order the exit to *persona non grata* or inadmissible (Article 5).

justified by ponderous reasons;⁸⁹ (iv) Cape-Verdeans in Timor-Leste and East-Timorese in Cape Verde traveling for tourism, visit or business, for stays of 30 days extendable up to 90 days;⁹⁰ (v) Mozambicans in Cape Verde and Cape-Verdeans in Mozambique traveling for tourism, visit or business, for stays of 30 days extendable up to 90 days every 12 months;⁹¹ (vi) Brazilians in Portugal and Portuguese in Brazil traveling for artistic, cultural, scientific and entrepreneurial purposes, academic internships, journalism, sports or tourism, for stays of up to 90 days, extendable for 90 days, in accordance with the law of the host state, provided that the initial conditions for entry and stay continue to be met and the duration of the stay does not exceed 180 days per calendar year;⁹² (vii) Portuguese in Timor-Leste and East-Timorese in Portugal, traveling for culture, business, journalism or tourism, for stays of up to 90 days, extendable for 90 days;⁹³ and (viii) Angolans in Cape Verde and Cape-Verdeans in Angola, whose stays must not exceed 90 days, but may be extended upon request, provided that the formalities set by the host state's immigration law are met.⁹⁴ Furthermore PALOP nationals in Angola, Cape Verde, Guinea-Bissau, Mozambique and São Tomé and Príncipe may be granted visa exemptions if they have official documents attesting that they travel in official service mission or that they are economic agents travelling for business.⁹⁵

There are also a few agreements on the facilitation of visas for different purposes, including work. Brazil and Mozambique have committed to facilitate the entry and stay of each other's businessmen and women for purposes of researching investment and commercial opportunities, sign contracts, etc., through the expedited issuance of one-year

89 Angola-Mozambique agreement on visa exemption for ordinary passports, Luanda, 17 November 2017, Articles 2 and 3. The visa exemption does not give a right to stay for purposes of work, residence or studies [Article 3(2)], does not exclude formalities associated with the normal functioning of the immigration services, nor does it exclude the states' right to refuse entry or terminate the stay to persons considered inadmissible (Article 4).

90 Cape Verde-Timor-Leste agreement on visa exemption for ordinary passports, Dili, 21 July 2014, Articles 2 and 3. The passport must be valid for at least six months at the time of entry (Article 3).

91 Cape Verde-Mozambique agreement on visa exemption for ordinary passports, Maputo, 21 February 2014, Articles 2 and 3. The passport must be valid for at least six months at the time of entry in the country (Article 3).

92 Brazil-Portugal agreement on facilitation of movement of persons, Lisbon, 11 July 2003, Article 1(1). The beneficiaries are not authorised to exercise professional activities paid by the host state, save for per diem, scholarships and awards [Article 1(4)]. These provisions were repealed and replaced by the Agreement between the EU and Brazil on a short-stay visa waiver for holders of ordinary passports, signed on 8 November 2010, which allows stays for tourism and business purposes only for a maximum period of three months during a six month period.

93 Portugal-Timor-Leste framework cooperation agreement, Dili, 20 May 2002, Article 9. The visa exemption for Timor-Leste nationals was initially made conditional on the inclusion of Timor-Leste in the list of countries in Annex 2 of then Regulation (EC) 539/2001, now Regulation (EU) 2018/1806, mentioned earlier.

94 Angola-Cape Verde agreement on visa suppression, Luanda, 10 September 1997, Articles 1 and 2.

95 Amendment No. 1 to the PALOP agreement on visa suppression for diplomatic and service passports, S. Tomé, 10 March 1992, Article 1(1)(3).

multiple-entry business visas, for stays of no more than 90 days in each calendar year.⁹⁶ Angola and Brazil have committed to facilitate the issuance of ordinary visas (in Angola) and business visas (in Brazil) for multiple entries during a period of 24 months, allowing each other's nationals to stay up to 90 days (non-extendable), for each 12-month period.⁹⁷ Angola and Cape Verde have committed to facilitate the issuance of multiple-entry visas on ordinary passports for e.g. market research, academic purposes, and work.⁹⁸ Brazil and Portugal have committed to issue visas or work permits to each other's nationals travelling to render business services, for stays of up to 90 days, extendable for another 90 days, in accordance with their domestic laws, provided that the conditions for admission are still met and the stay does not surpass 180 days per year.⁹⁹ Portugal has committed to issue work visas to Cape Verde nationals who make proof of having a work contract (up to a year, extendable up to three years) registered with the competent services of the Portuguese Ministry for Qualification and Employment; the visa is valid for the duration of the work contract and is extended if the contract is renewed.¹⁰⁰

A *principle of equal treatment* with the nationals of the host state is a common feature in many of the agreements signed between or among CPLP member states over the years. The 2002 Agreement between Cape Verde and Guinea-Bissau on the Status of Persons and Assets establishes that, on a basis of reciprocity, Cape-Verdeans legally resident in Guinea-Bissau and Bissau-Guineans legally resident in Cape Verde enjoy equal rights and duties of a personal, cultural, economic and social nature with the nationals of the host state, namely: (i) free exercise of cultural, religious, economic and social activities; (ii)

96 Brazil-Mozambique protocol on facilitation of business visas, Maputo, 30 March 2015, Articles 1 to 4.

97 Angola-Brazil protocol on visa facilitation, Brasilia, 16 June 2014, Articles 1 and 2. The visas cover, among other purposes, market research, business meetings, signature of contracts and negotiation of investment projects (Article 3); they do not give the right to engage in any paid activity (Article 5). The visas are issued within 10 days (Article 4).

98 Angola-Cape Verde agreement on visa facilitation, Praia, 21 March 2012. The agreement differentiates among three types of visa: (i) short-term visas for multiple entries, in a period of 36 months, allowing stays (continued or intermittent) up to 90 days per semester – for market research, commercial contacts, investment negotiations, conferences and trainings; (ii) visas for academic, sports, cultural, scientific and technological purposes, valid for multiple entries, of short or long duration; (iii) long-term work visas, valid for multiple entries, for a period of 36 months, allowing continued stays of three to 36 months, extendable (Articles 2 and 3). The first two types of visas are to be granted within eight workdays, while the third type is to be granted within 15 workdays (Article 4) and renewals are to be issued within ten workdays (Article 5).

99 Brazil-Portugal agreement on facilitation of movement of persons, Lisbon, 11 July 2003. The visa is to be issued within 30 days (Article 1). Applications for longer-term-visas are to be processed under a summary procedure and not take more than 30 days (Article 2).

100 Cape Verde-Portugal protocol on temporary emigration of Cape-Verdean workers, Praia, 18 February 1997, Articles 1-3. If the hiring company goes bankrupt or is paralysed, Cape Verde nationals may be authorised to work for another company, provided that the requirements set by the protocol are met. If they do not get a new contract within 45 days, they have 15 days to leave Portugal (Article 4). Similarly, when the initial contract runs its full course but is not renewed, Cape-Verdean workers must return to Cape Verde within 15 days, after which their stay is considered illegal (Article 6).

enjoyment and exercise of civil rights in general, in accordance with the law in force; (iii) right to vote and be elected in municipal elections; (iv) possibility to instal and exercise any industrial, commercial, agricultural or artisanal activity; (v) free exercise of all liberal professions; (vi) possibility of obtaining and managing concessions, permits and administrative licences; (vii) access to all levels of education; and (viii) benefit from the application of labour and social security laws.¹⁰¹ Cape Verde has similar agreements with São Tomé and Príncipe, Angola and Portugal, minus the right to vote and be elected in municipal elections.¹⁰² The 2000 Friendship Treaty between Brazil and Portugal establishes an 'equality status' to be granted, upon request, to the Portuguese and the Brazilians who are habitual residents in Brazil and Portugal, respectively, and which entails equal rights and duties to the nationals of the host state, save for the rights expressly reserved by the constitution to the state's nationals.¹⁰³ The 1997 Agreement between Angola and Cape Verde on Exemption of Residence Fees entitles the nationals of the states parties legally residing in each other's territories, and their dependants, to access social services (e.g. healthcare, training and education at all levels) in the same conditions as those applied to the host state's nationals, and be issued a special identification card for the same fee as that which is charged for issuing national identity cards.¹⁰⁴ Several judicial cooperation agreements involving the PALOP and Portugal establish that the nationals of the states parties have access to the courts of the partner host state, benefit from legal aid and are entitled to request civil registration certificates and/or criminal records from the host state authorities under the same conditions as the host state's nationals.¹⁰⁵ Equality of rights and duties with the nationals of the host state is also a common feature of bilateral

101 Cape Verde-Guinea-Bissau agreement on the status of persons and assets, Praia, 5 October 2002, Article 4(1). The free exercise of professional activities does not include access to professional activities in the defence and public order sectors nor to the diplomatic career [Article 4(2)].

102 The agreement with São Tomé and Príncipe was signed in Praia, on 20 June 2001; the one with Angola was signed in Luanda, on 10 September 1997; and the one with Portugal was signed in Praia, on 15 April 1976.

103 Brazil-Portugal friendship, cooperation and consultation treaty, Porto Seguro, 22 April 2000, Articles 12, 14 and 15. The beneficiaries of the equality status are issued, for internal use, identity documents like those of the host state's nationals (Article 22). The equality status is withdrawn if the beneficiaries lose either their nationality or their residence permit in the host country (Article 16).

104 Angola-Cape Verde agreement on exemption of residence fees, Luanda, 11 September 1997, Articles 2 and 3.

105 See e.g. the Cape Verde-Portugal legal and judicial agreement, Praia, 2 December 2003, Articles 4, 5, 81(3).

agreements on social security,¹⁰⁶ protection of foreign investment¹⁰⁷ and avoidance of double taxation.¹⁰⁸

Political rights are absent from most bilateral agreements, with the exception of the 2002 Agreement between Cape Verde and Guinea-Bissau on the Status of Persons and Assets, which recognises the right to vote and be elected in municipal elections [Article 4(1)(c)], and the 2000 Friendship Treaty between Brazil and Portugal, which broadly entitles the states parties' nationals residing in the other's territory to political rights after three years of habitual residence and with suspension of similar rights in their state of origin (Article 17).

Consular cooperation agreements signed among the PALOP in 1985 and by Portugal with Cape Verde and with Guinea-Bissau, in 1977 and 1979 respectively, widen *consular assistance* to expressly include the possibility of the states parties' consular authorities to receive passport requests from nationals of the other parties, and make it incumbent upon said consular authorities to act in defence of the interests of the other states' nationals in cases of succession *mortis causa* and of guardianship of minors, and to assist them in their interaction with third countries' authorities, including local courts.¹⁰⁹

Bilateral and multilateral agreements add to the *procedural safeguards* set at CPLP level by including a right to be compensated for travel expenses and losses incurred by persons summoned to appear as witnesses or experts before the courts of a state party and a right of beneficiaries of legal aid in one state party to continue to enjoy legal aid in the territory of another state party in cases of revision of foreign judgments or petition for alimony.¹¹⁰

106 Applicable to (i) Angolans in Cape Verde; (ii) Brazilians in Portugal; (iii) Cape-Verdeans in Angola and Portugal; (iv) Mozambicans in Portugal; and (v) Portuguese in Brazil, Cape Verde and Mozambique. The terms are standard. See e.g. Mozambique-Portugal social security convention, Lisbon, 30 April 2010.

107 Applicable to (i) Bissau-Guineans in Portugal; (ii) Cape-Verdeans in Equatorial Guinea, Portugal, and São Tomé and Príncipe; (iii) East-Timorese in Portugal; (iv) Equatorial-Guineans in Cape Verde; (v) Mozambicans in Portugal; (vi) Portuguese in Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Timor-Leste; and (vii) São Tomé and Príncipe nationals in Cape Verde and Portugal. See e.g. Cape Verde-São Tomé and Príncipe agreement on reciprocal promotion and protection of investments, New York, 27 September 2019.

108 Applicable to (i) Angolans in Cape Verde; (ii) Bissau-Guineans in Cape Verde and Portugal; (iii) Brazilians in Portugal; (iv) Cape-Verdeans in Angola, Guinea-Bissau, Equatorial Guinea, Portugal and São Tomé and Príncipe; (v) East-Timorese in Portugal; (vi) Equatorial Guineans in Cape Verde; (vii) Mozambicans in Portugal; (viii) Portuguese in Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and Timor-Leste; (ix) São Tomé and Príncipe nationals in Cape Verde and Portugal. See e.g. Cape Verde-São Tomé and Príncipe Convention on Prevention of Double Taxation and Tax Evasion, New York, 27 September 2019.

109 Consular cooperation agreement among the PALOP, São Tomé, 15 February 1985; Guinea-Bissau consular cooperation agreement, Bissau, 24 February 1979; and Cape Verde-Portugal consular cooperation agreement, Lisbon, 21 January 1977.

110 Included in the separate bilateral judicial agreements signed by Portugal with each of the PALOP, minus Equatorial Guinea. Cape Verde-Portugal agreement signed in Praia, on 2 December 2003; Angola-Portugal agreement signed in Luanda, on 30 August 1995; Mozambique-Portugal agreement signed in Lisbon, on 12 April 1990; Guinea-Bissau-Portugal agreement signed in Bissau, on 5 July 1988; Portugal-São Tomé and

Some bilateral agreements on judicial cooperation expressly prescribe that the states parties recognise each other's identification documents.¹¹¹ The 2000 Friendship Treaty between Brazil and Portugal goes significantly further than the CPLP standard, as it protects the Portuguese in Brazil and the Brazilians in Portugal from extradition to a third country (Article 18).¹¹²

With regard to *social rights*, besides the principle of equal treatment in access to employment, education and health services, already mentioned, it is worth noting that the portability of family pensions and pensions for work-related injuries or diseases, which are not covered by CPLP's 2015 Multilateral Convention on Social Security, is recognised via a series of bilateral agreements to: (i) Angolans in Cape Verde; (ii) Bissau-Guineans in Cape Verde; (iii) Brazilians in Portugal; (iv) Cape-Verdeans in Angola, Guinea-Bissau, Portugal, and São Tomé and Príncipe; (v) Mozambicans in Portugal; (vi) Portuguese in Brazil, Cape Verde and Mozambique; and (vii) São Tomé and Príncipe nationals in Cape Verde.¹¹³ Recognition of academic degrees and diplomas is foreseen, with some caveats, in bilateral agreements entered into by Brazil with Cape Verde, Portugal and São Tomé and Príncipe, as well as in a 1978 Cooperation Agreement between Cape Verde and São Tomé and Príncipe.¹¹⁴

3.4 *Lusophone entitlements in the domestic laws of CPLP member states*

As noted earlier, much of the optimism about the prospects of a 'Lusophone citizenship' stems from the fact that most CPLP member states already recognise rights to foreign

Príncipe agreement signed in Lisbon, on 23 March 1976, Article 7. The PALOP multilateral judicial cooperation agreement, signed in Bissau on 10 December 1987, adds a right to receive an advancement on the travel expenses to be incurred by persons summoned to appear as witnesses or experts before the courts of a state party.

111 See Article 120 of the Mozambique-Portugal agreement signed in Lisbon, on 12 April 1990; Article 121 of the Guinea-Bissau-Portugal agreement signed in Bissau, on 5 July 1988; Article 63 of the PALOP agreement signed in Bissau, on 10 December 1987; and Article 33 of the Portugal-São Tomé and Príncipe agreement signed in Lisbon, on 23 March 1976.

112 It should be noted, however, that Brazil and Portugal have in the meantime (3 November 2010) entered a multilateral agreement on simplified extradition with Argentina and Spain, which means that Brazilians in Portugal and Portuguese in Brazil will not be extradited to a third country except if that third country is Argentina or Spain.

113 See e.g. the Angola-Cape Verde convention on the social protection of workers, signed in Luanda, on 5 December 2008.

114 The agreement between Brazil and Cape Verde requires compliance with the legislation in force whereas the one between Brazil and Portugal only covers diplomas of higher education training programmes lasting more than three years and allows for non-recognition if there are substantial differences between the programmes in both countries. Brazil-Cape Verde cultural cooperation agreement, Brasília, 7 February 1979, Article 4; Brazil-Portugal Friendship Treaty, Porto Seguro, 22 April 2000, Articles 39, 41; Brazil-São Tomé and Príncipe cultural agreement, Brasília, 26 June 1984, Article 5(3); Cape Verde-São Tomé and Príncipe cultural, scientific and technical agreement, S. Tomé, 29 October 1978, Article 4.

residents in their constitutions, under a general principle of equal treatment with their own nationals. There are also several instances of actual or potential *favor iuris*¹¹⁵ towards Lusophone foreigners in the constitutions and ordinary legislation of some member states in matters of immigration, nationality, political rights *et al.*, which, for brevity reasons, will be the main focus of this section.

Angola's 2010 Constitution¹¹⁶ establishes that foreigners and stateless persons are entitled to fundamental (civil) rights, as well as to the protection of the state, save for access to public office, exercise of political rights, and enjoyment of other rights reserved to Angolan nationals by the constitution or ordinary law. Significantly, Article 25(3) of the Constitution opens the way for the recognition of Lusophone privileges by prescribing that the citizens of regional or cultural communities of which Angola is a member may be granted, by international convention and under conditions of reciprocity, rights not accessible to other foreigners, except for the right to vote and be elected to sovereign bodies. The 2019 Immigration Act¹¹⁷ reaffirms the principle of equal treatment¹¹⁸ while allowing for a more favourable access to Angolan territory for certain (unspecified) foreigners under international agreements on freedom of movement and passport or visa exemptions.¹¹⁹ An explicit (if partial) Lusophone privilege is visible in the 2016 Nationality Act, where it is established that the President of the Republic may sign bilateral agreements with the PALOP in order to arrange for the extraordinary regularisation by naturalisation of 'PALOP foreigners' who are habitually resident in Angola for more than ten years.¹²⁰ It may also be assumed that Lusophone foreigners are at an advantage vis-à-vis other foreigners when

115 See Canelas de Castro, 2003, p. 65.

116 Amended by Law No. 18/21 of 16 August 2021.

117 Approved by Law No. 13/19 of 23 May 2019.

118 Qualifying the limits set by the Constitution, Article 5 of the Immigration Act allows foreigners to exercise public functions that are of a predominantly technical character or consist of teaching or scientific research. Article 11 reaffirms that foreigners are not entitled to exercise any political activity nor interfere (directly or indirectly) in Angola's internal affairs, but Article 7 recognises their right to gather in meetings and to take part in demonstrations in accordance with the law in force, while Article 9 entitles them to join unions or professional associations, albeit not in a leadership position. The Act also recognises the rights to freedom of movement and choice of domicile, within the limits set by the constitution and ordinary legislation or imposed for public safety reasons, the right to education, and procedural safeguards on a par with Angolan nationals, including access to the courts, protection of private property and protection against expulsion and extradition.

119 Presidential Decree No. 56/18 of 20 February 2018 (as amended by Presidential Decree No. 150/18 of 19 June 2018) includes Cape Verde in the list of states whose nationals are exempted from visa when traveling to Angola on tourism for stays of up to 30 days each and up to 90 days per calendar year. Brazil, Portugal (as EU member state), São Tomé and Príncipe, and Timor-Leste are listed among the states whose nationals can apply for a tourism visa under a simplified procedure.

120 Law No. 2/16 of 15 April 2016. Article 7 is said to have been motivated by the large number of illegal immigrants from Cape Verde, São Tomé and Príncipe, and Guinea Bissau, who have been residing in Angola for many years and who are well integrated into Angolan society. Angola is yet to sign any agreement on the issue. See P. Jerónimo, *Report on Citizenship Law: Angola*, RSCAS/GLOBALCIT-CR 2019/4, April 2019a, p. 21. Available at: <https://cadmus.eui.eu/handle/1814/62284>, last accessed on 23 February 2022.

applying for naturalisation, since one of the requirements is sufficient knowledge of Portuguese. On the other hand, one of the drivers behind the 2016 Nationality Act was the goal to keep Portuguese nationals from circumventing immigration restrictions by (re)acquiring Angolan nationality on the basis of their (or their parents') birth in Angola during colonial times, which is why Article 34(1) and (2) excludes from the right to Angolan nationality foreigners born in Angola before independence and their descendants.¹²¹

Brazil's 1988 Constitution¹²² recognises equal civil rights to Brazilian nationals and foreign residents, establishing that all are equal before the law, without distinctions of any kind, and that nationals and foreigners are to be ensured the inviolability of the rights to life, freedom, safety and property, under the terms set by Article 5, i.e. in accordance with a long list of rights which includes classical civil liberties provisions, such as gender equality and the prohibition of torture, side-by-side with rights usually associated with citizenship, such as the right to enter the territory of the state and the right to petition public powers. The constitutional provisions on social rights make no mention to equality between nationals and foreign residents, but the 2017 Migration Act¹²³ leaves no doubt as to the applicability of the principle of equal treatment also to social, cultural and economic rights. The rights listed in the Migration Act do not exclude others that may result from treaties of which Brazil is a party¹²⁴ – including of course treaties entered in the framework of CPLP or with CPLP partners –, but Brazil's most privileged ties are with Latin America and Mercosur, as affirmed by the Constitution in Article 4, single paragraph, and by the Migration Act in Articles 3(XIV) and 111. The Constitution does include two instances of Lusophone privilege in matters of access to Brazilian nationality and political rights, when it (i) prescribes that foreigners originating from Portuguese-speaking countries are only required one year¹²⁵ of uninterrupted residence in Brazil and moral integrity to acquire Brazilian nationality by naturalisation, and (ii) allows for the attribution to Portuguese nationals with permanent residence in Brazil of the 'inherent rights' of Brazilian nationals, under conditions of reciprocity and with the exceptions set by the constitution. This means that the Portuguese residing in Brazil may enjoy a quasi-citizenship status, as acknowledged by Brazil's Federal Supreme Court on multiple occasions,¹²⁶ being entitled to participate

121 See Jerónimo, 2019a, pp. 3 and 20.

122 Last amended by Constitutional Amendment No. 111 of 28 September 2021.

123 Approved by Law No. 13.445 of 24 May 2017.

124 Article 30(2)(a) of the Migration Act makes a specific mention to treaties on residence and freedom of movement when listing the requirements for obtaining a residence permit.

125 As opposed to the four years required for ordinary naturalisation by Article 65(II) of the Migration Act.

126 The Court notes, however, that Article 12 § 1 of the Constitution does not operate automatically, since it is dependent on the acquiescence of the Brazilian state and on the request of the Portuguese national, who is furthermore required to meet the conditions set in the 2000 Friendship Treaty between Brazil and Portugal. See P. Jerónimo, *Report on Citizenship Law: Brazil*, RSCAS/EUDO-CIT-CR 2016/1, January 2016, p. 32. Available at: <https://cadmus.eui.eu/handle/1814/38885>, last accessed on 23 February 2022. It should also be noted that the previous law on immigration (Law No. 6.815 of 19 August 1980) made the Portuguese

in local and national elections and having access to all public offices except those of President and Vice-President of the Republic, President of the House of Representatives and of the Senate, Justice of the Federal Supreme Court, Defence Minister, officer of the armed forces and member of the diplomatic corps.

Cape Verde's 1992 Constitution¹²⁷ establishes a general principle of equal treatment in the enjoyment of fundamental (civil) rights between Cape-Verdeans and foreigners or stateless persons residing or simply present in the territory, with the usual exceptions for political rights and rights reserved to nationals by constitutional or legal provision.¹²⁸ Foreigners and stateless persons are allowed to exercise public functions of a predominantly technical nature, in accordance with the law, and, if resident in Cape Verde, may be granted the right to vote and be elected in local elections.¹²⁹ The Lusophone privilege, made unequivocal with the adoption of the 1997 Lusophone Citizen Status Act, is enshrined in Article 25(3) of the Constitution, where it is prescribed that nationals of Portuguese-speaking countries may be granted rights not recognised to other foreigners or stateless persons, save for eligibility to sovereign bodies, service in the armed forces and access to the diplomatic career. Contrary to other foreigners and to stateless persons, who are required a minimum residence in Cape Verde before they are entitled to vote and be elected in local elections, Lusophone foreigners only have to be 'legally established', i.e. domiciled, in Cape Verde to be able to exercise those rights, per the Electoral Code. The Lusophone Citizen Status Act further adds that Lusophone citizens domiciled in Cape Verde are entitled to exercise political activities in connection with their political rights. In matters of access to nationality, the Act prescribes that children born in Cape Verde to a Lusophone father or mother are entitled to Cape-Verdean nationality, and that Lusophone citizens may acquire Cape-Verdean nationality without being required to renounce their previous nationality. With regard to access to the territory, the Act does not go beyond

privilege more apparent, by explicitly allowing for the exercise of political activities that could constitute an in Brazil's public affairs and by prescribing that, from the long list of activities and prerogatives that were off limits to foreigners, only the Portuguese could take charge of media companies, own, build or command national ships, and render religious assistance to the armed forces and auxiliaries. The 2017 Migration Act, which repealed and replaced Law No. 6.815, makes no mention to special rights enjoyed by the Portuguese and the Migration Regulation, approved by Decree No. 9.199 of 20 November 2017, merely indicates that the procedure for requesting equality of rights under the 2000 Friendship Treaty is to be defined by decision of the Justice and Public Security Minister.

127 Last amended by Constitutional Law No. 1/VII/2010 of 3 May 2010.

128 The 2010 amendment to the Constitution added to the list of state's tasks the obligation to ensure that foreigners or stateless persons who reside in or transit through Cape Verde are treated in a manner compatible with international human rights standards and are able to exercise the rights which are not constitutionally or legally reserved to Cape-Verdean nationals.

129 The Electoral Code, approved by Law No. 92/V/99 of 8 February 1999 (last amended by Law No. 56/VII/2010 of 9 March 2010), requires a minimum age of 18 and a legal and habitual residence in Cape Verde of at least three years for registered foreigners and stateless persons to be entitled to vote in local elections, and a minimum five-year legal and habitual residence for them to be entitled to stand for election.

the minimum common denominator set at CPLP level, granting visa exemptions only to holders of diplomatic or service passports and to businessmen, liberal professionals, scientists, researchers and cultural agents, vouched for by credible organisations of CPLP member states, for stays of no more than 30 days;¹³⁰ besides waiving the fees due for the legalisation of stays in Cape Verde. The Act entitles Lusophone citizens with legally recognised domicile in Cape Verde to be issued a special identification card for internal use in Cape Verde, at the same cost as national identity documents. Besides reaffirming the general principle of equal treatment in the enjoyment of civil rights, the Act prescribes equality in the enjoyment of a few economic and social rights, namely, the right of establishment and access to private economic or professional activities, the right to invest in Cape Verde with the same safeguards, advantages and facilities as national investors, the right to be exempted from fees and taxes on a par with Cape Verdeans, the right to access public services (such as health, training, education, and justice), and the right to access credit and social housing under the same conditions as Cape-Verdean nationals. The Act also covers the portability of social pensions, by prescribing that Lusophone citizens have the right to receive transfers of pensions, subsidies or income earned abroad and to transfer to any CPLP member state where they take up habitual residence the pensions, subsidies or income earned in Cape Verde. As a final note on Cape Verde, it is worth mentioning that in 2010, when faced with the need to regularise the stay of thousands of foreigners illegally living and working in the territory, the Cape-Verdean authorities decided to conduct the regularisation process gradually and to start with the nationals of Guinea-Bissau, whose special treatment was justified by reference to the Lusophone reality, in particular that of the African Portuguese-speaking countries, and to the institution of the Lusophone Citizen Status.¹³¹

Equatorial Guinea's 1991 Constitution¹³² defers to ordinary legislation the definition of the rules governing the status of foreigners and only hints at an equal treatment between foreigners and nationals when requiring respect for Equatorial Guinea's institutions and the payment of taxes. The 2010 Immigration Act¹³³ similarly places a strong emphasis on foreigners' obligations and stays for the most part away from the language of equal rights, phrasing all its rights-provisions instead with the caveat that the rights are to be exercised under the terms prescribed by international treaty and/or domestic law. It establishes, in any case, that foreigners enjoy the fundamental rights and freedoms enshrined in the Constitution and that the provisions on the fundamental rights of foreigners are to be

130 Reciprocating Angola's Presidential Decree No. 150/18, mentioned in footnote 119, Cape Verde's Resolution No. 99/2018 of 24 September 2018 introduced an exemption of tourist visas for Angolan nationals traveling to Cape Verde for stays of up to 30 days per entry and 90 days per calendar year.

131 Decree-Law No. 13/2010 of 26 April 2010.

132 Last amended in 2012.

133 Organic Law No. 3/2010 of 30 May 2010.

interpreted in accordance with the Universal Declaration of Human Rights and with the human rights treaties of which Equatorial Guinea is a party.¹³⁴ Foreigners are explicitly recognised the following rights: (i) not to be deprived of their identity documents and to be issued a special identification document if authorised to stay in the country for more than six months; (ii) to move freely and choose their place of residence, (iii) to assembly; (iv) to join associations; (v) to education; (vi) to work and access social security; (vii) to health assistance; (viii) to family life, including family reunification; (ix) to access the courts, including legal aid and assistance by interpreter; and (x) to enjoy basic rights and procedural safeguards while in detention awaiting expulsion. There are no mentions to Lusophone privileges,¹³⁵ which is not surprising given that Equatorial Guinea is a late comer to the Lusophone bloc, but there is clearly room to introduce more favourable provisions for CPLP foreigners via international treaty, as indicated e.g. by Articles 1(3), 3(2) and 20(2) of the Immigration Act.

Guinea-Bissau's 1993 Constitution¹³⁶ establishes a general principle of equal treatment along the lines of what we find in the Cape-Verdean Constitution, with the important difference that it requires reciprocity for the recognition of rights to foreigners, does not allow for the possibility of recognising political rights and makes no mention to Lusophone privileges. Article 28 of the Constitution reads that foreigners (subject to reciprocity) and stateless persons residing or present in the territory enjoy the same rights and are subject to the same obligations as Bissau-Guinean nationals, except for political rights, access to public functions that are not of a predominantly technical nature, and other rights and obligations expressly reserved to Bissau-Guinean nationals by law.¹³⁷ The Constitution does allow, however, for the possibility of foreigners taking on public functions of a non-technical nature if so established by international agreement, and did not stand in the way of the adoption, in 2008, of the Lusophone Citizen Status Act, which replicates

134 It is not entirely clear however whether this reference works to expand or to limit individual rights, since Article 3(3) goes on to prohibit the use of different religious beliefs and cultural or ideological convictions to justify acts or behaviour contrary to that interpretation, which seems to indicate that the meaning of the provision is to require that foreigners respect international human rights standards even if these contradict their personal religious, cultural or ideological convictions.

135 Neither in the Immigration Act nor in the Nationality Act approved by Law No. 3/2.011 of 14 July 2011.

136 Officially, the Constitution in force is the one enacted in 1984, but the 1993 constitutional reform was so significant that the 1993 Constitutional Act is commonly referred to as a separate Constitution. The text was last amended in 1996, if we discount the temporary amendments made in 2008 and 2018 to allow general elections outside the four-year deadline set by the Constitution. See P. Jerónimo, *Report on Citizenship Law: Guinea-Bissau*, RSC/GLOBALCIT-CR 2021/17, September 2021, pp. 2 and 38. Available at: <https://cadmus.eui.eu/handle/1814/72703>, last accessed on 23 February 2022.

137 Guinea-Bissau has not yet adopted an Immigration Act to set the rules governing the entry, stay and exit of foreigners and stateless persons from the territory. It adopted a Refugee Status Act (Law No. 6/2008 of 27 May 2008) and has ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Resolution No. 6/2014, published in the official journal on 4 March 2015), but for the rest there are only scattered pieces of legislation on visas and travel documents.

almost word for word the provisions in its Cape-Verdean counterpart and therefore recognises *inter alia* that Lusophone foreigners domiciled in Guinea-Bissau have the right to vote and be elected in local elections (and to exercise political activities associated with that right), and that children born in Guinea-Bissau to Lusophone parents are entitled to Bissau-Guinean nationality.¹³⁸ The 2018 Local Electoral Act has in the meantime widened the possibility of recognising the right to vote and be elected in local elections to any foreign residents, under condition of reciprocity and according to terms set by international agreement.

Mozambique's 2004 Constitution¹³⁹ does not establish a principle of equal treatment between foreigners and nationals, and most of its rights-provisions are phrased by reference to nationals, not to all individuals. Although its establishment at constitutional level would arguably have been preferable, the principle is nevertheless present in Mozambique's legal system via the 1993 Immigration Act,¹⁴⁰ which phrases it in terms not dissimilar to those of the Cape-Verdean and Bissau-Guinean constitutions, albeit with a stronger stress on obligations. Article 4 of the Immigration Act reads that foreigners residing or present in Mozambique enjoy the same rights and are subject to the same obligations as Mozambicans, except for political rights and other rights reserved by law to Mozambican nationals. They are in particular required to (i) respect the Constitution, (ii) respect law and order and promptly comply with legal obligations, (iii) declare their residence, and (iv) provide information on their personal status whenever it suffers changes or when requested by state authorities.¹⁴¹ There is no hint of a Lusophone privilege in the Constitution or the Immigration Act, even if we can argue that Lusophone foreigners will have easier access to Mozambican nationality by naturalisation since knowledge of Portuguese is one of the naturalisation requirements.¹⁴² In any case, the Immigration Act opens the possibility for special regimes to be set by domestic law or international agreement.

138 The wording of Article 4 is the single instance where the Bissau-Guinean Act departs from its Cape-Verdean counterpart, since the latter only requires that one parent be Lusophone, not both. See Jerónimo, 2021, pp. 17, 20 and 24-25.

139 Last amended by Law No. 1/2018 of 12 June 2018.

140 Approved by Law No. 5/93 of 28 December 1993, amended by Decree No. 62/2014 of 24 October 2014, and regulated by Decree No. 108/2014 of 31 December 2014.

141 Decree No. 37/2017 of 31 August 2017, which regulates the mechanisms and procedures for hiring foreign workers, is similarly focused on obligations, stressing the need to ensure that foreigners do not take jobs away from Mozambicans and that, if hired for positions of higher technical complexity or managerial responsibility, they contribute to the training of Mozambican workers.

142 It should be noted in any case that the language requirement for naturalisation is knowledge of Portuguese or of a Mozambican language. See P. Jerónimo, *Report on Citizenship Law: Mozambique*, RSCAS/GLOB-ALCIT-CR 2019/6, May 2019b, p. 32. Available at: <https://cadmus.eui.eu/handle/1814/62966>, last accessed on 23 February 2022.

Portugal's 1976 Constitution¹⁴³ set the standard for the principle of equal treatment that came to be adopted by many of its African counterparts when it established that foreigners and stateless persons who reside or are present in Portugal enjoy the same rights and are subject to the same obligations as Portuguese nationals, save for political rights, the exercise of public functions of a non-predominantly technical nature, and the rights and duties reserved by the constitution or ordinary legislation to Portuguese nationals [Article 15(1) and (2)].¹⁴⁴ The remaining paragraphs of Article 15 add the possibility of instituting preferential treatment to some categories of foreign residents, under conditions of reciprocity, to allow the exercise of the right to vote and be elected in local elections, the exercise by EU citizens of the right to vote and be elected in European Parliament elections, and the recognition to nationals of Portuguese-speaking countries with permanent residence in Portugal of rights not accessible to other foreigners, with the exception of eligibility to the offices of President of the Republic, President of Parliament, Prime-Minister, and presidents of the supreme courts, service in the armed forces, and access to the diplomatic career. The 2001 Local Electoral Law¹⁴⁵ sets residence requirements for all foreigners (except EU citizens)¹⁴⁶ to be allowed to vote and be elected in local elections, with Lusophone foreigners being granted the privilege of being required one less year of residence than other foreigners, i.e. two years to vote and four years to be able to stand for election.¹⁴⁷ For participation in national elections – accessible only to Brazilians under the 2000 Friendship Treaty between Brazil and Portugal –, a three-year residence requirement applies.¹⁴⁸ The Lusophone privilege has known different expressions in ordinary legislation over the years, including in matters of nationality and access to the territory.¹⁴⁹ At present, it is visible in the rules that apply to naturalisation, since applicants

143 Last amended by Constitutional Law No. 1/2005 of 12 August 2005.

144 The principle of equal treatment is restated in several provisions of the 2007 Immigration Act (approved by Law No. 23/2007 of 4 July 2007, last amended by Decree-Law No. 14/2021 of 12 February 2021): for holders of residence permits for study or research, holders of the EU Blue Card, transferred employees, and holders of the EU long-term resident status.

145 Organic Law No. 1/2001 of 14 August 2001, last amended by Organic Law No. 1/2021 of 4 June 2021.

146 This EU privilege vis-à-vis Lusophone foreigners is viewed by famed Portuguese constitutional lawyer Jorge Miranda as unconstitutional. See J. Miranda, *Manual de Direito Constitucional: Estrutura Constitucional do Estado*, Volume III, 4th ed., Coimbra, Coimbra Editora, 1998, p. 325.

147 Declaration No. 29/2021, published in the official journal on 25 March 2021, lists Brazil and Cape Verde as the Lusophone countries whose nationals are currently entitled to vote and be elected in local elections.

148 Indirectly set by Decree-Law No. 154/2003 of 15 July 2003, which regulates the implementation of the 2000 Friendship Agreement and requires three years of habitual residence for access to the status of equality of political rights. According to Opinion 72/2003 of the Attorney General's Office, participation in national elections includes the right to vote in Presidential elections. See Leitão, n/d, p. 20.

149 Decree-Law No. 231/98 of 22 July 1998, for instance, prescribed that nationals of Portuguese-speaking countries were eligible to manage private security companies, under conditions of reciprocity, and on a par with EU citizens and Portuguese nationals. Law No. 25/94 of 19 August 1994 amended the Nationality Act to set lower residence requirements for naturalisation and attribution of nationality by birth, as noted in footnote 46. Lusophone foreigners were granted privileged treatment in the procedures for extraordinary

from Portuguese-speaking countries are assumed to meet the language requirement [Article 6(1)(c) and (10) of the Nationality Act¹⁵⁰] without need to undergo the language test required from other foreign applicants, including EU citizens. The 2007 Immigration Act expressly safeguards the international agreements already entered into or to be signed with Portuguese-speaking countries, on a bilateral basis or in the framework of the CPLP,¹⁵¹ and stipulates the adoption of a simplified procedure for the issuance of residence visas for non-EU nationals participating in mobility programmes involving the CPLP. It can also be said to grant a comparative advantage to Lusophone foreigners applying for a permanent residence permit or a EU long-term resident status, since one of the requirements is knowledge of Portuguese. The 2007 Immigration Regulation¹⁵² allows for the presentation of certificates issued by educational institutions in Portuguese-speaking countries as proof of the fulfilment of the language requirement and introduces a few more Lusophone privileges on behalf of college students admitted to higher education institutions in Portugal.¹⁵³

São Tomé and Príncipe's 1990 Constitution¹⁵⁴ establishes the principle of equal treatment in terms similar to those found in the Cape-Verdean and Portuguese constitutions, minus the provision for Lusophone privileges. Foreigners and stateless persons residing or present in the country enjoy the same rights and are subject to the same obligations as São Tomé

regularisation of foreigners conducted under Decree-Law No. 212/92 of 12 October 1992, and under Law No. 17/96 of 24 May 1996. Law No. 97/99 of 28 July 1999 amended the 1998 Immigration Act to introduce a lower residence requirement (6 years instead of the standard ten) for Lusophone foreigners to be eligible for a permanent residence permit. Also, Decree-Law No. 39/98 of 27 February 1998, which created the Consultative Council for Immigration Affairs, established that the immigrant communities of Portuguese-speaking countries would be entitled to one representative per country whereas the non-Lusophone immigrant communities would all be represented by one person; this discrepancy has in the meantime been lowered with the recognition of the right to a separate representative for each of the three largest non-Lusophone immigrant communities in the country (currently the Ukrainian, Romanian and Chinese communities). Information available at: www.acm.gov.pt/pt/-/conselho-para-as-migracoes-cm-, last accessed on 23 February 2022.

150 Approved by Law No. 37/81 of 3 October 1981, last amended by Organic Law No. 2/2020 of 10 November 2020. Knowledge of Portuguese is also taken as indicative of the existence of effective ties with the national community for the purposes of attribution of Portuguese nationality to descendants of Portuguese nationals under Article 1(1)(d) and (3).

151 Article 84 adds a specific safeguard for the 2000 Friendship Treaty between Brazil and Portugal, since Brazilians who are granted equality status are entitled to a special identity document, whereas for all other foreigners the residence permit replaces the identification document for all legal purposes. Article 133(a) safeguards the special regime applicable to nationals of Portuguese-speaking countries with regard to access to public functions.

152 Regulatory Decree No. 84/2007 of 5 November 2007, last amended by Regulatory Decree No. 9/2018 of 11 September 2018.

153 They are exempted from the requirement to submit their applications in person and to enclose proof of means of subsistence when applying for a residence visa. Also, the opinion by the Foreigners and Borders Service (SEF), which is required for the issuance of visas under Article 53(1) of the Immigration Act, can be replaced by a communication to SEF.

154 Amended by Law No. 1/2003 of 29 January 2003.

nationals, save for political rights, access to public functions and other rights and obligations reserved to São Tomé nationals by law. Foreigners may only be authorised to exercise public functions of a predominantly technical nature, unless otherwise allowed by international agreement. Foreign residents may be recognised, under conditions of reciprocity, the right to vote and be elected in local elections; a possibility which is yet to be contemplated in São Tomé's local electoral legislation.¹⁵⁵ The 2008 Immigration Act¹⁵⁶ restates the principle of equal treatment, adding specific provisions for the recognition of freedom of movement and residence, the right of assembly and demonstration, and procedural safeguards, as well as to prohibit political activities, except if covered by reciprocity, and to list the obligations imposed on foreigners for their entry and stay in the territory. The Immigration Act is not applicable to PALOP nationals who were in São Tomé and Príncipe at the time of independence and have remained in the country thereafter, most likely because they are recognised as São Tomé and Príncipe's nationals as per Article 8 of the 1990 Nationality Act.¹⁵⁷ Lusophone foreigners have advantages when accessing the territory and applying to a permanent residence permit, as well as when applying for naturalisation. Article 25(1)(e) of the Immigration Act lists the nationals of CPLP member states among the categories of foreigners who enjoy an entry-visa exemption and Article 53(1)(c) requires proof of knowledge of Portuguese for the attribution of a permanent residence permit. Knowledge of Portuguese is also required for naturalisation by Article 10(1)(c) of the Nationality Act, albeit on a par with knowledge of national languages, and the 1991 Nationality Regulation exempts nationals of Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, and Portugal from the interview which is generally required to confirm the applicants' language knowledge.

Timor-Leste's 2002 Constitution does not establish a principle of equal treatment between foreigners and nationals, but the principle – phrased as 'principle of legality' – is present in the 2017 Asylum and Migration Act,¹⁵⁸ where Article 3 prescribes that foreigners in Timor-Leste enjoy the same civil rights and are subject to the same obligations as those ascribed to Timorese nationals by the constitution and the law, without prejudice to the legal limitations associated with their status as foreigners and to the rights reserved to Timorese nationals. Foreigners are not entitled to own land, as per Article 54(4) of the Constitution and Article 9(1)(b) of the Immigration Act. Furthermore, they are forbidden to take part in the political life and public affairs of Timor-Leste, render religious assistance to the defence and security forces (save in case of absolute urgency and under government

155 The current Local Electoral Act was approved by Law No. 09/2021 of 15 February 2021.

156 Approved by Law No. 5/2008 of 12 August 2008, amended by Law No. 5/2015 of 30 November 2015.

157 Approved by Law No. 6/90 of 13 September 1990. Under the heading 'acquisition on historical grounds', Article 8 establishes that all foreigners who resided in São Tomé and Príncipe on the day of independence (12 July 1975) are considered São Tomé and Príncipe nationals.

158 Approved by Law No. 11/2017 of 24 May 2017, amended by Law No. 10/2021 of 16 June 2021.

authorisation), interfere directly or indirectly in affairs of the state,¹⁵⁹ and to press or coerce any person, group or association to adhere to ideas or programmes of political parties or factions of any country. Articles 6 to 8 of the Immigration Act set the conditions under which foreigners are entitled to work and to join associations. Explicit obligations to carry identification documents and to inform the state authorities about changes to personal status are prescribed in Articles 4 and 5. The Immigration Act does not set any Lusophone privileges, but it does explicitly allow for ‘special regimes’ established by international agreements, in particular those already entered into or to be signed in the framework of CPLP. The 2002 Nationality Act¹⁶⁰ gives a comparative advantage to Lusophone foreigners by requiring knowledge of Portuguese (on a par with Tetum) for the acquisition of Timorese nationality by marriage and by naturalisation. The advantage is made more apparent by two 2018 Ministerial Diplomas which regulate the procedure for nationality acquisition by marriage and by naturalisation exempting the nationals of countries where Portuguese is an official language from the obligation to provide documentary evidence of their knowledge of Portuguese.¹⁶¹

4 CONCLUDING REMARKS

The puzzle is rather intricate, but it is not hard to see that there are many ways in which the nationality of a CPLP member state may work to migrants’ advantage when travelling, residing or working in the CPLP area, and also when in need of consular assistance in a third country where their state of nationality is not represented. As a minimum, all CPLP member states affirm the principle of equality of civil rights between their nationals and foreign residents, either in their constitutions or immigration laws, and most states extend the principle of equal treatment to cover a modicum of social and economic rights, including the rights to work, social security, private property, education and health. There is furthermore a generalised openness in CPLP member states’ legal systems to institute more favourable regimes at supranational level, and existing multilateral and bilateral agreements already cover the portability of social pensions, access to justice and legal aid, protection of foreign investments and tax equality with host states’ nationals. It can be

159 Article 9(2) of the Immigration Act clarifies that it shall not be considered as interference in affairs of the state the exercise of activities of a strictly academic character, foreign technical assistance commissioned by state institutions, and capacity-building programmes set by bilateral or multilateral agreement. Foreign judges and prosecutors may be recruited by Timor-Leste’s High Council for the Judiciary on a temporary basis, under the terms set by Law No. 1/2017 of 18 January 2017. One of the requirements for recruitment is that the foreign judge or prosecutor obtained his or her law degree from a university based in a civil law country, which includes (but is not limited to) all CPLP member states.

160 Approved by Law No. 9/2002 of 5 November 2002.

161 Ministerial Diplomas No. 13/2018 and No. 14/2018, both of 23 May 2018.

said that, for the most part, the content of the ‘CPLP citizen status’ – as devised in the draft Framework Convention – has become a fairly generalised minimum common denominator among CPLP member states.

Of course, there is the notable exception of political rights, where no significant headway has been made since the issue brought the discussions on the draft Framework Convention to a halt, almost two decades ago. Only Guinea-Bissau and São Tomé and Príncipe reformed their legal systems to explicitly allow foreign residents to vote and be elected in local elections, and in the case of São Tomé and Príncipe the constitutional amendment made in 2003 is yet to be reflected in the Local Electoral Act, even though a new Act was adopted in February 2021. Angola and Mozambique, which were the main advocates for the need to conduct constitutional reforms prior to the adoption of the Framework Convention, continue to exclude the possibility of recognising political rights to foreigners, despite having amended their constitutions as recently as August 2021 and June 2018, respectively; although in the case of Angola there may be room to introduce political rights for local elections via international treaty, since the constitution only excludes from the scope of such agreements the right to vote and be elected to sovereign bodies, not local authorities. As for Timor-Leste, its prohibition that foreigners take any part in the political life and public affairs of the country has only been made more assertive in the country’s immigration laws over the years.

The other key tenet of citizenship – freedom of movement – is similarly hindered by the lack of political will on the part of the member states. For all the talk of easing intra-CPLP mobility, the member states’ commitment to the goal has never been very convincing, even when it appeared to be at its most consensual, as was the case during the negotiations of the 2002 Brasília mobility agreements. It is true that, with the exception of Equatorial Guinea, all member states have entered agreements with some of its CPLP partners to institute visa exemptions on ordinary passports for short-term stays. Significantly, however, when it came to agree on a framework to ensure the implementation of the Brasília agreements, in 2021, the member states were not able to go beyond the ‘minimum level of mobility’ already set in 2000 (i.e. visa exemption for diplomatic, official, special and service passports), in effect lowering the bar from what was achieved in Brasília in 2002.

With regard to the facilitated access to the nationality of the host CPLP-member state, recommended in the literature but not included in the draft Framework Convention, it is arguably the domain where Lusophone preferences play a larger part, even if not consistently across the board. Several member states explicitly single out the nationals of all or of some Portuguese-speaking countries when regulating the attribution of nationality to children born in the territory to foreign parents or the acquisition of nationality by ordinary or extraordinary naturalisation. Besides, Lusophone foreigners enjoy the comparative advantages associated with easily meeting the language requirements for acquisition of

nationality by marriage and/or naturalisation. It should also be noted that, although the attribution of nationality to children born in the territory to Lusophone parents is only recognised as such in Cape Verde and Guinea-Bissau, the right to the nationality of the host state is likewise recognised to children born to foreign Lusophone parents in Brazil, Mozambique and São Tomé and Príncipe, via the application of the *ius soli* rule.

Needless to say, the legal puzzle pieced together in this chapter says nothing of how the rights are enjoyed and exercised in practice. It is no secret that there are serious difficulties in implementing even the low common denominator set by the 2002 Brasília agreements, as those difficulties were the ostensive rationale behind the recent move to take a step back and agree on a gradual multiple-velocity cooperation framework for intra-CPLP mobility. Also, for all the good that the explicit establishment of a principle of equal treatment represents, it is worth keeping in mind that the exact extent to which Lusophone migrants are able to enjoy civil and social rights on equal terms with the nationals of their host CPLP member state depends on the level at which the state ensures these rights to its own nationals, something which varies considerably from state to state, with some states having a notoriously poor human rights record.

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