



Social Protection for Migrant Workers and their families in ECOWAS States

THE ECOWAS GENERAL CONVENTION ON SOCIAL SECURITY



#RIGHTSMIGRATETOO

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Extending access to social protection and portability of benefits to migrant workers and their families

BACKGROUND

Social security is a basic human right. However, in reality, migrants face huge challenges in exercising their rights to social security, compared to nationals working their entire lives in one country. Migrant workers can be denied access or have limited effective access to social security coverage in their host country because of their status, nationality or the insufficient duration of their employment and residence. At the same time, they can lose their entitlements to social security benefits in their country of origin because of their temporary absence. Thus, it is essential they have the knowledge and awareness of their rights to social security and the various provisions protecting and promoting these rights.

To overcome these barriers, the ECOWAS General Convention on Social Security was drafted in 1993. It was subsequently adopted by the ECOWAS Ministers of Labour and of Social Affairs in December 2012, and by the Authority of Heads of State as a Supplementary Act to the Revised ECOWAS Treaty in 2013. The Convention is based on the principles of equal treatment between migrant workers and nationals of the host country and largely inspired by ILO Conventions, in particular: Social Security (Minimum Standard) Convention, 1952 (n° 102), Equality of Treatment (Social Security) Convention, 1962 (n° 118) and Maintenance of Social Security Rights Convention, 1982(n° 157).

It is applicable to the key branches of social security and covers, in practice, migrant workers employed in the formal sector of ECOWAS Member States, members of their families and their survivors during their stay in a Member State. The Convention guarantees the portability of social security rights of migrant workers, the accumulation of acquired rights through totalling periods of employment or contribution, and the payment of benefits abroad.

To enhance social security for migrant workers and their families in ECOWAS, the ECOWAS Commission is working with partners, notably the ILO, to increase awareness and knowledge of the Convention and support its implementation by ECOWAS Member States. In particular, ILO is implementing a project on Extending social protection access and portability of benefits to migrant workers and their families in selected RECs in Africa. The project is funded by the European Union. It aims at strengthening the Regional Economic Communities' capacities to promote social security, as well as drive the implementation of regional frameworks on the extension of social protection to migrant workers and their families.



THE ECOWAS GENERAL CONVENTION ON SOCIAL SECURITY IS BASED ON THE PRINCIPLE OF EQUALITY OF TREATMENT BETWEEN MIGRANT WORKERS AND CITIZENS OF THE HOST COUNTRY.



IT GUARANTEES THE PORTABILITY OF RIGHTS FOR MIGRANT WORKERS.

THE CONVENTION APPLIES TO:

1. Workers that are nationals of ECOWAS countries and who have been working in an ECOWAS country
2. Refugees or Stateless persons who are working in and live in an ECOWAS country and that have paid contributions to a social security fund.
3. Family members and/or beneficiaries of the workers mentioned above
4. Workers who are contributing and/or have contributed to a social security scheme in a host country

It is important to note that social security rights are not automatic.

Appropriate steps need to be taken, in line with the Convention, to maintain social security rights already acquired or in the course of acquisition. Registration and payment of benefits to a mandatory social security scheme is KEY to protect the migrant workers social security rights protected under this Convention. Social protection and immigration practitioners and professionals should inform migrant workers of their social security rights and the steps necessary to secure them during the whole migration cycle.

THE SCOPE OF THE ECOWAS CONVENTION ON SOCIAL SECURITY:

The Convention outlines important aspects that define rights, entitlements and obligations for migrant workers and their employers.

It applies to the following social security benefits:



DISABILITY



FAMILY



SURVIVORS



UNEMPLOYMENT



MATERNITY



OCCUPATIONAL DISEASES AND WORK-RELATED ACCIDENTS



OLD AGE



HEALTH CARE AND SICKNESS

IMPORTANT ARTICLES YOU SHOULD KNOW

UNDERSTANDING THE SCOPE OF THIS CONVENTION

Definitions, Scope and Coverage

1–4 These articles provide the definitions to all the relevant terminology of the convention. They also define the scope and specify the persons covered.

Consequence of this Convention on Other Conventions Governing Social Security

5 This convention replaces previous conventions concluded between ECOWAS Member States. However, if a previous Convention in force, is more favorable, then the concerned Member States may continue to apply it.

Equality of Treatment Among Nationals of ECOWAS Countries

6 The Convention is based on the principle of equal treatment. This means that all workers that are nationals of an ECOWAS country will thus have the same rights and obligations under the law of any ECOWAS country party to this Convention.

7 If you are working in an ECOWAS country where admission to a voluntary insurance scheme requires the completion of a previous insurance period, any insurance period already completed in any ECOWAS country will be taken into account to fulfill that requirement.

Payment of Benefits Outside Country of Employment

8 If you are entitled to a benefit (for example, invalidity, maternity, sickness, unemployment, or pensions) in your country of employment (and where the institution that provides such benefits is based), but your family or beneficiaries resides in another ECOWAS country, the terms and conditions of the benefits should not change.

However, if you are from an ECOWAS country and work in a non-ECOWAS country and are in some way entitled to benefits, you will have to consult whether there is an agreement between the country where the entitlement is and the non-ECOWAS Country where you are working.

Review of Benefits

9 If an ECOWAS country passes laws and/or policies that provide for higher benefits, these benefits should apply to workers of any ECOWAS country provided they are working and/or covered in that country.

Non-accumulation of Benefits Same Kind and Same Insurance Period

10 The Convention can only confer or maintain the right to several benefits of the same kind for one and the same period of compulsory insurance in the case of invalidity, old-age, survivors or occupational disease. It should be noted that if you are entitled to a certain benefit in more than one country covered by the Convention, you cannot claim that benefit in both your home and work country.



Determining the National Law that Applies to You

11 In principle, only one national law should apply to a worker at a given time. Generally, it is the law of the country where the worker is performing the work that applies. However, there are some exceptions. For example, if you work at sea, the flag of the vessel generally indicates the governing laws or if you work for a Member State in diplomatic mission governed by the Convention, you are subject to the law of the Member State that employs you.

12 There are a few exceptions to Article 11, for example,

- A. Temporary workers (less than six months). If a worker is sent to another ECOWAS country to work for less than six months.
- B. International transport workers that may spend significant working hours on the move and in different countries, the laws that govern their benefits are generally those that apply to the country where employer/company has its headquarters.
- C. Other employees who perform their activities in more than one country will be under the law of the country where they reside if part of their work is in their country of residence.

Applicable Law for Voluntary Insurance

13 In principle the rules for mandatory insurance do not apply for voluntary insurance in terms of applicable law. Workers subject to voluntary insurance may choose their applicable law. However, if the worker is subject to the application of two or more MS laws where one would result in mandatory insurance as well as voluntary insurance, then the mandatory insurance should apply. However, in the case for old age, survivors and invalidity the accumulation of both voluntary and mandatory insurance period should be applicable.

14 ECOWAS countries may set up agreements that may make the specific rules concerning Article 11 and 13. It is important to enquire what specific agreements are in place.



COMMON RULES CONCERNING INVALIDITY, OLD AGE AND SURVIVORS' BENEFITS

On Coordination

15 If a worker has been subject to the governing laws of different ECOWAS countries alternately or successively, this Convention will help define the entitlements for the worker and his or her beneficiaries.

Accumulation of Insurance Period

16 Insurance periods can be accumulated across ECOWAS countries to help a worker qualify for benefits. Therefore, if the laws of a country require minimum insurance periods in order to qualify for a certain benefit, any previous insurance period in other ECOWAS countries are valid and can be accumulated.



Prorate Payment of Benefits

17 The institutions that are in charge of granting benefits will determine, based on the governing laws, if and how people apply for each type of benefit. The institution responsible will make necessary calculations to ensure all periods of insurance are duly considered and/or covered. To determine the actual amount payable, the institution should calculate a theoretical amount as if all the insurance periods eligible were fulfilled exclusively under its law. Thereafter, the actual amount payable will be based on the actual period of insurance or contribution completed under that law.

Basis for the Calculation of Benefits and the Consideration of Family Member

18 Different countries may have different ways of calculating benefits. Thus, this article is about establishes the basis for the calculation of benefits, including the consideration of family members.

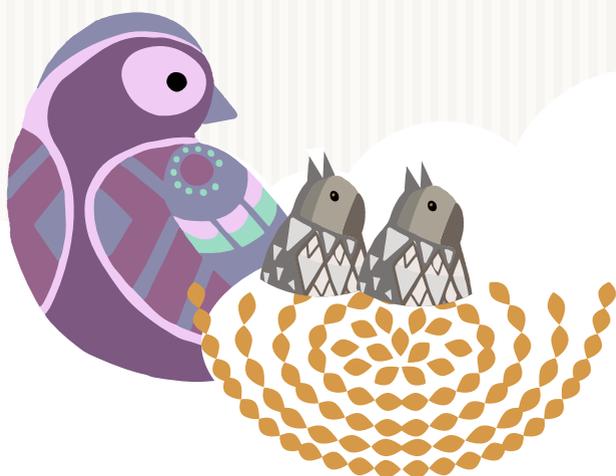
Periods Less Than 12 months

19 Defines what happens if a worker has been covered for less than one year of insurance under one law. Generally, a Member State is not bound to pay benefits if the insurance period is less than a year and no right has arisen from that period under the corresponding law. However, this period should be taken into account by other Member States when applying Article 17.

Benefits Becoming Payable Successively

20 If a person meets the legal requirements in one country but not in another — taking into account periods accumulated in other ECOWAS countries, then the amount of the payable benefits will be calculated using the method detailed in Article 17. However, if a person meets the conditions of at least two countries without having to accumulate periods from another country, then the payable benefits will solely be calculated based on the provisions in the national laws of that country. The method detailed in Article 17 will not be applied.

21 If a person is entitled to a higher amount solely under the law of an ECOWAS country, than if the benefits were calculated based on the provisions in Articles 16–20, then the institution of that country providing the higher amount will cover the difference.



Additional and Specific Rules for Invalidity

22 If an institution of an ECOWAS country decides on the degree of invalidity of a worker which could affect benefits, this decision will be valid in all countries.

23 Relates to what happens when an invalidity is aggravated and how to deal with these situations particularly if there are different countries and legislations involved.

24 Where there was suspension of invalidity benefits and the payment of these benefits are resumed, the worker should then refer to the institution(s) who previously provided those benefits. If after the suspension of invalidity benefits, the state of health of a worker, justifies the payment of further benefits, then these shall be calculated based on the Articles 16–21.

25 Invalidity benefits can be converted to old age benefits depending on the laws of the country under which they have been provided and in line with Articles 16–21.



RULES CONCERNING SOCIAL SECURITY BENEFITS

Occupational Injury and Diseases Benefits



26 When an occupational accident takes place in a different country, including when it occurs on the way to work, than the one in which the institution that provides the benefits is located, it shall be considered as having occurred in that latter country. This article also defines what happens when workers change their place of residence, in terms of what laws will apply and which institutions should bear the costs.

27 Workers who have suffered an occupational accident or disease and who are receiving benefits in the country where they worked or are covered, may be able to go back to their home country and continue to receive those benefits for a limited period of time, depending on the specific laws of those countries.

28 As per Article 27, major benefits, other than cash, such as prosthetic appliances, may in some cases be provided by an institution in a different country (e.g. the worker's home country) if this is all duly authorized.

29 If a worker is seriously injured or dies and needs to be transported back to his/her home country, there are specific rules according to the laws of the country which will bear these costs.

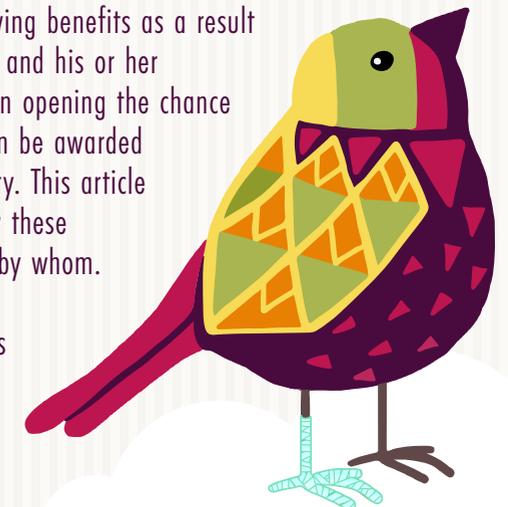
30 If a worker has suffered several injuries and or has had previous incapacities that were recognized in an ECOWAS country, the assessment of the degree of invalidity by another ECOWAS country will take these into account as if they had occurred in that country.

31 If the calculation of cash benefits is based on average earnings, the competent institution shall determine those average earning exclusively based on earnings recorded during the contribution or insurance period completed in that country, in accordance to the laws of that country. However, if the calculation of cash benefits takes into account the number of family members, then the competent institution has consider family members residing in another ECOWAS country as if they were residing in the country in which the competent institution is located.

32 If a worker contracts an occupational disease under the legislation of two or more countries, there are specific provisions as to which laws apply for these benefits.

33 If a worker is already receiving benefits as a result of an occupational disease, and his or her conditions worsens, this may result in opening the chance for additional benefits that may even be awarded from an institution in another country. This article provides specific rules regarding how these additional benefits are granted and by whom.

34 This article defines the rules regarding refunds between institutions of different countries when such refunds are applicable.



Family and Maternity Benefits

35 When it comes to maternity and family benefits, if the laws of a country require a certain period of coverage to be eligible for a certain entitlement, the time accrued in other ECOWAS countries is valid.



36 Maternity benefits for workers that may be residing in a different country than the country providing the benefits, shall be payable in that other country. This article details how the benefits are paid and by whom.

37 If a worker has family living in a different ECOWAS country, they can still claim family benefits as if they were all in the same country.

Health Care and Sickness Benefits

38 This article outlines the rules that apply workers entitled to health care or sickness benefits during their stay in another country or if the worker moves again to other countries.

39 Defines the cases where there is no need for prior authorizations as referred to in Article 38.

40 The rules and benefits set forth in Articles 38 and 39 extend to the family members of the worker who is entitled to these family benefits.

Unemployment Insurance Benefits

41 If a worker is entitled to unemployment benefits in an ECOWAS country and moves to a different ECOWAS country, the article details the conditions qualifying the worker for the benefits and by whom they will be provided.



Maintenance of Rights Between Provident Funds and Pension Funds

42–43 Outlines the specific rules for transferring or recovering funds from provident funds to another provident fund or a pensions fund when people move to a different country and become subject to new laws. These articles outline how these cases are dealt with.

The Committee of Experts on Social Security: Set Up and Mandate

44–45 The ECOWAS commission will setup a Committee of Experts on Social Security. These articles outline the composition and tasks of that committee.

OTHER RELEVANT PROVISIONS

Mutual Administrative Assistance

46 This article is about how ECOWAS countries will provide each other with mutual administrative assistance, including information sharing, in the implementation of this convention.

Taxes/Fiscal Implications

47 Tax exceptions or reductions that are valid in one ECOWAS country for producing necessary certificates or documents are valid in the other ECOWAS countries as well.

Claim and Appeals

48 A person can submit a claim or appeal from their country of residence which is different from the country of work. There are rules and procedures set by the Convention to consider.

Medical Examinations

49 Medical examinations that may be requested in one country for certain coverage and benefits are also valid in other ECOWAS countries.

Financial Transfers and Payment Currencies

50 This article regulates the transfer of funds and the currency in which the payments must be made when an institution needs to pay a cash benefit to a beneficiary or refund an institution that is in another ECOWAS Country.

Rules Concerning Recovery of Contributions and Disputes

51 This article outlines how the recovery of claims or certain fines is done across ECOWAS countries.

52 This article defines the rules governing recourse procedures with respect to third parties in the case of injuries sustained.

53 This article outlines how to resolve a dispute between two or more ECOWAS countries regarding this convention with the support of the Committee of Experts on social security.

54 Refers to Annexes of this convention and on any future amendments made to them.

Transitional Rules and Final Provisions

55–63 Provides rules on entry into force of this Convention, Accessions of member states to this Convention, the duration of validity and denunciation, the depositary authority and notifications, administrative arrangements to this Convention.

These rules also outline that ECOWAS countries can conclude other social security agreements. Moreover, the provisions of this Convention do not jeopardize the obligations arising from any ILO conventions ratified by ECOWAS countries.



For more information, please visit:



https://www.ilo.org/africa/technical-cooperation/WCMS_646607/lang-en/index.htm