



#RightsMigrateToo

**EXTENDING SOCIAL PROTECTION TO MIGRANT WORKERS IN
THE ECOWAS REGION: A capacity building toolkit on the
ECOWAS General Convention on Social Security**

IMPLEMENTATION OF THE ECOWAS GENERAL
CONVENTION ON SOCIAL SECURITY:
COORDINATION OF MEMBER STATES NATIONAL

MODULE 5

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Learning objectives

By the end of this module, participants will be able to:

- ▶ understand the technical provisions on the guiding principles for the coordination of member states' national systems, as well as the provisions governing social benefits;
- ▶ review national systems in view of providing coordination to ensure the effectiveness of migrant workers social security rights within the ECOWAS area ;
- ▶ assess the issues related to the need and the urgency to ensure coordination of social security systems within the ECOWAS area, given the disparities that exist among them;
- ▶ analyze treaty-based provisions in order to provide migrant workers with avenues to file for redress and complaint procedures in view of safeguarding their rights;
- ▶ understand the mechanisms making the relationships among Contracting Parties competent institutions work, in particular on administrative, financial and pre-litigation matters;
- ▶ understand the role of the authorities which have an impact on the good implementation of the Convention.

Introduction

African social security schemes are often a legacy of the colonial period; hence, some differences are essentially related to their respective historical backgrounds. As a matter of fact, the social security systems of ECOWAS member states are the result of long traditions, deeply rooted in culture and in national preferences..

As a consequence, the ECOWAS General Convention on social security plays a central role in the process of creating an integrated social area. Its importance lies in its function designed to coordinate national systems and to promote the mobility of workers within member states, while still ensuring their social security coverage during and after their labour migration journey.

Its provisions on the coordination of social security do not replace national social security systems by introducing a unified and harmonized system of national social security codes; each member state is free to decide who is to be insured under its legislation, what benefits are granted and under what conditions, how such benefits are calculated and the basis, rate and frequency of payment of contributions to the compulsory pension schemes of its social protection system.

Coordination rules establish **common rules and principles** which must be respected by all national public authorities, social security institutions, courts and tribunals when applying national laws. In so doing, they ensure that the enforcement of different national laws does not penalize those workers who exercise their right to move and reside in any member state.

In other words, no one exercising the right to freedom of movement and to engage in paid employment within the ECOWAS area should be penalized versus a person who has always resided and worked in a single member state of that region.

Overall, **the Convention does not introduce new benefits and does not abolish national legislations**. So, by coordinating national schemes, its sole purpose is to protect the citizens or residents of the ECOWAS area who work, reside or stay in another member state of this Community.

In this context, the similarities that exist between the majority of ECOWAS national schemes are factors that facilitate the enforcement of the Convention. However, it is also important to take differences into account and, in particular, certain aspects of national legislations which have a negative impact on their compliance to the Convention.

1. Elements of further discussion on the guiding principles of the convention and on the ECOWAS administrative arrangement

1.1 Equality of treatment

As per Article 6, paragraph 1, of the Convention, the ECOWAS General Convention on social security establishes the principle of equality of treatment between nationals and non-nationals in all member states.

This is the main principle of social protection measures for migrant workers. It ensures that nationals of member states are treated equally, just like nationals, irrespective of the territory of the State where they reside and for any social security section. In compliance with this principle, and in terms of subjection and entitlement to social security benefits, the content of the Convention states that nationals of a member state are subject to the social security legislation of the host country, and enjoy the same rights and under the same conditions as nationals of that country.

However, paragraph 2 sets a limit to this principle, by recognizing that the rules on the participation of migrant workers in the administration and courts of social security fall within the scope of national legislations.

In the same line of thinking, it should be noted that the need to set a limit to benefits of the same kind, or to several benefits, relating to the same period of compulsory insurance, by the same insured, laid the ground for the introduction of provisions preventing the aggregation of benefits.

1.2. Elimination of territorial restrictions

The principle laid down in article 8 of the Convention, contributes to the construction of a Community social area. Its application extends the territorial scope of the Convention in order to protect the rights of migrant workers in the region.

According to this principle, the social benefits of a migrant worker can not be reduced, modified, suspended, removed nor forfeited by reason of the fact that the employed person, his family members or his survivors are resident in the territory of a Contracting Party other than that in which the institution liable for payment is situated (Article 8 (1)).

Consequently, a worker's entitlement to benefits under the legislation of a Contracting Party **remains valid** in the event of a change of residence and the exercise of a waged activity performed in the territory of any other Contracting Party.

As a matter of fact, this principle explicitly prohibits the recurrent practice of reimbursing employee's contributions when a worker decides to leave the country before fulfilling the conditions required to receive an old-age pension, and moves to another country to perform his professional activity.

1.3. Principle of non-aggregation of benefits

While advocating equality of treatment, articles 10 of the Convention and 6 of the Administrative Arrangement lay down the limits set to prevent possible abuses. These two provisions establish that, except for invalidity, old age and survivors' benefits which have been paid in compliance with the provisions of article 17, the Convention shall not have the effect of giving or maintaining the right to benefit from several benefits related to the same period of compulsory insurance.

The exception concerning invalidity, old-age and survivors benefits under the Convention is justified by the fact that, in these cases, **these are not different benefits, but different elements of a compound pension.**

In the case benefits combined with other benefits or other incomes, the beneficiary may be subject to reduction or suspension clauses provided for by the legislation of one of the Contracting Parties, even if such benefits or incomes were earned in another country. These reduction or suspension clauses shall not apply to invalidity, old-age, survivors' or occupational disease benefits paid by institutions belonging to two or more Contracting Parties.

1.4. Determination of the applicable law

a) The principle.

To avoid possible conflicts of law, Article 11 of the Convention states in its first paragraph that only one legislation is applicable; namely, that of the Contracting Party in whose territory where the professional activity is carried out. This article sets out three (3) broad rules for determining applicable law that relate to particular categories of migrant workers.

- ▶ Employees are covered by the legislation of the State **where they are employed**, even if they reside in the territory of another Contracting Party or if their employer is based or domiciled in the territory of another Contracting Party. This principle applies to service and housekeeping staff of diplomatic and consular posts;
- ▶ Seafarers with the status of employed persons are subject to the legislation of the Contracting Party owing the **vessel on board which they operate**;
- ▶ Officials and similar staff are subject to the legislation of the Contracting Party to which the administration employing them belongs to.

b) Exceptions.

Article 12 of the Convention sets some exceptions concerning **seconded waged workers**, waged workers employed in **international transports** and those who perform their activity in **several territories** of ECOWAS countries. CEDEAO.

Seconded waged workers

- ▶ These workers fall under the legislation of the contracting party where the enterprise they normally work for is located, providing that the duration of the work the worker has done on behalf of such enterprise in the new country of employment does not exceed six (6) months, renewable just once, providing that the competent institution of the country where the worker is seconded agrees.
- ▶ Secondment aims at avoiding frequent changes in the applicable legislation, in the case of short periods of secondment abroad; this is the reason why its duration is limited. It is granted by a request issued by the employer and submitted to its institution of reference, which then issues the employer a secondment certificate for the worker.

Waged workers employed in international transports

- ▶ Depending on the case, waged workers employed in international transports are subject to the legislation of the contracting party where their enterprise is based, as well as to the legislation of the contracting party where the enterprise has a branch office or a permanent representation, or to the legislation of the contracting party where they reside.

Other waged workers working in the several countries

- ▶ These workers are subject to the legislation of their country of residence if they perform part of their activities there, or if they come from several enterprises or employers with head office or domiciled in countries of different contracting parties.
- ▶ In other instances, they are subject to the legislation of the state where the head office of the enterprise is located, or where the employer is domiciled.

Seafarers

- ▶ Paragraph 2 of article 12 states some derogations to the provisions set out in paragraph 4 of article 11 of the seafarer Convention. These derogations consist in the application, by analogy, of secondment regulations applied to waged workers employed on a ship flying the flag of a contracting party, or working on the territory of such contracting party, and who are seconded to work onboard a ship flying the flag of another contracting party.
- ▶ As a matter of fact, these workers remain subject to the legislation applicable to the enterprise which has seconded such workers and tasked them to carry out a job on his behalf onboard that ship and this under the same conditions applied to other seconded waged workers.

1.5 Retention, aggregation of rights and *prorata temporis* distribution

a) Retaining acquired rights, as well as those in the process of being acquired

This principle is one of the **fundamental requirements of international coordination** in the field of social security. Borrowed from classical international law, it states that a worker cannot lose a right to a benefit simply because of his residence in a member state other than that in which he acquired it or could acquire it.

Retaining acquired rights or rights in the process of being acquired enables migrant workers to benefit from the benefits due to him by a State, even when he ceases to reside or work in its territory. This principle, which is essential to ensure social protection to migrant workers, aims at giving them real equality of treatment.

In several countries, the granting of social security benefits is subject to the completion of the required employment, insurance or residence period. Furthermore, some provisions enshrined in the national legislation may give rise to specific problems in the application to migrant workers. This is the case of qualifying periods for the entitlement to benefits, which would require them to complete a new qualifying period at each change of State of residence.

For example, a migrant worker would receive only a very small retirement pension in comparison to the one he would have been entitled to if he had contributed, throughout his career, to the social security system of only one country.

To mitigate this risk, retaining the rights in process of being acquired allows to combine together the contribution periods paid by migrant workers under the social security legislation of the different countries they resided in.

On the whole, the retention of rights supposes that these periods referred to several legislations **are combined together** and that the benefits **are prorated** among the institutions in question.

b) The principle of aggregation of periods

The aggregation of periods called out under Article 16 of the Convention ensures that migrant workers who have worked for a certain period of time in a member state could take this period into account in the country where they are applying for a benefit subject to internship, or to determine the amount of such benefit when it is based on completed periods of insurance. This rule allows migrant workers not to be penalized with respect to those who have spent their entire career in the same member state.

However, when a completed period of insurance under a compulsory scheme of one Contracting Party coincides with a completed period of insurance completed under a voluntary scheme of another Contracting Party, only the first one shall be taken into account.

Furthermore, if the time span during which some periods of insurance completed under the legislation of a Contracting Party can not be determined in a precise manner, it is assumed that those periods are not overlapping periods completed under the legislation of another Contracting Party and this is taken into account to the extent possible.

c) The prorata temporis principle.

According to this provision, in a given country, a worker receives the share of the national benefit proportional to the period of working activity he performed there.

With regard to retirement, the "aggregation-proratization solution allows people who have worked in two or more member states to retain the acquired pension rights".

In practice, a double pension payment must be made as follows in each of the member states in which the insured worker has acquired his rights:

- ▶ payment on the basis of periods and national regulations;
- ▶ coordinated payment in two stages. First, the benefit to which the insured could have been entitled to is calculated, taking into account all the periods completed in all the member states. Each State then proceeds to prorate the calculated amount to only pay the periods completed under its legislation.

Each national social security institution compares and pays the amount that is most advantageous for the insured person (national pension or proportionally coordinated pension).

1.6. Export of benefits

The Convention states that invalidity, old-age and survivors' benefits, annuities for industrial accidents or occupational diseases, death grants shall not be subject to any reduction, modification, suspension, removal nor forfeiture, simply because the beneficiary resides in the territory of a Contracting Party other than that in which the liable institution is located.

It provides for the payment of such due benefits in the territory of another Contracting Party under the legislation of any Contracting Party.

2. Main administrative, financial and fiscal provisions of the ECOWAS General Convention on social security

2.1. Provisions on the exercise and treatment of migrant workers' rights

a) Rules for processing benefit claims

To benefit from his social benefits, a migrant worker must send a request to the competent institution of his place of residence within a specified period of time, which will then contact the concerned institution or institutions. The accuracy of provided information must be supported by official documents attached to the application form. However, specific documents are required for each type of benefit.

- ▶ For **family allowances**, the worker must accompany his application with a certificate stating the periods of insurance or employment completed under the legislation of the Contracting Party to which he was previously subject to, and a family status issued by the competent civil status authorities in the territory of the Contracting Party where the family members reside, as well as any additional information required by the legislation applied by that institution.
- ▶ With regards to **maternity daily allowances**, the applicant must send her application to the institution of her place of residence or stay, in a timely manner, stating the date on which work stoppage started; she should also attach a certificate of work stoppage issued by the employer, as well as any other document required under the legislation of the competent State.
- ▶ For **sickness benefits** paid in kind, a worker must submit, to the institution of residence or stay, a document issued by the competent institution and, from the date in which incapacity for work started, a certificate of incapacity to work issued by the attending physician.
- ▶ In the case of **accidents at work**, the same documents required for sickness must be provided in order to claim daily allowances and benefits in kind. However, in order to benefit from the annuities, the migrant worker must accompany his application with the required supporting documents, drawn up on the forms provided for by the legislation of the competent State.
- ▶ With regards to **old-age benefits**, the application must be accompanied by the required supporting documents, drawn up on the forms provided for either by the legislation of the Contracting Party in which he resides or by the legislation of the Contracting Party to which he was last subject to.

In order to avoid delays in the transmission of such documents, which could prevent the applicant to meet the set application timelines, the submission date of an application, a declaration or an appeal addressed to the institutions or courts of any Contracting Party shall, for all practical purposes, be considered as the date of submission to the competent authorities.

Furthermore, the authorities and institutions of a Contracting Party cannot reject requests or other documents drawn up in an official language of another Contracting

b) Complaints and appeals filed by migrant workers

The Convention allows a worker to assert his rights before a competent body, either personally or through a representatives, in case of a dispute over his rights.

As a consequence, with respect to legal proceedings relating to the matters referred to in the Convention, Contracting Parties should treat migrant workers the same way as they would treat their own nationals.

As with applications, migrant workers' complaints and appeals may be lodged to the institution or jurisdiction of the Contracting Party in which they resides. These referrals must be made within the legal deadlines set by the national legislation.

Should the seized institution or court not be competent, it must without delay forward the case to the institution or court of the Contracting Party competent to deal with it. The date of filing with the incompetent institution or jurisdiction shall prevail and shall be binding on the second institution or jurisdiction.

2.2. Main provisions governing the relationships among competent authorities

a) Payment and reimbursement of benefits

The institution liable for paying a cash benefit in respect of the Community insured person residing or staying in the territory of another Contracting Party, shall declare the amount of the payment of the cash benefits in its own currency. It shall be released by a transfer at its own expense in the currency of the Contracting Party in whose territory the migrant worker resides or stays.

If the liable institution of one Contracting Party does not directly provides the benefits due to the beneficiaries residing in the territory of another Contracting Party, the payment of such benefits shall be made in the currency of the second competent institution.

In the event of a dispute between competent institutions or authorities of two or more Contracting Parties concerning either the applicable legislation or the determination of which institution should pay the benefits, the concerned migrant worker shall temporarily receive his benefits as provided for by the law applied by the institution of his current place of residence or, if the person concerned does not reside in the territory of one of the concerned Contracting Parties, the benefits should be paid according to the law of his last place of residence. After settlement of the dispute, the payment of his benefits will temporarily be the responsibility of the institution recognized as competent for the provision of such benefits.

The principle is based on the reimbursement by the institution of the competent State of the benefits provided by the institution of the country where the migrant worker resides or where the members of his family live. The modalities may be laid down in bilateral agreements between the Contracting Parties.

In any event, the Convention provides that in respect of the reimbursement of benefits provided by the institution of one Contracting Party on behalf of the institution of another Contracting Party, the debt must be expressed in the currency of the Contracting Party whose institution paid such benefits.

b) Clearance of accounts

Payments between competent institutions shall be cleared at the end of any payment period in order to determine the amounts actually paid to the beneficiaries or to their legal representatives or proxies, as well as still outstanding amounts.

The frequency and the procedures for republishing and do the clearance of the accounts are detailed in bilateral agreements.

c) Administrative assistance

According to article 46, member states shall provide each other with the administrative assistance required to facilitate the implementation of the provisions of the Convention and of their respective

legislation. Such assistance, which is in principle free of charge, is subject to the reimbursement of certain expenses resulting from special expenses, such as medical investigations or assessments, etc.

In its articles 51 and 52, the Convention promotes subrogation in matters of mutual administrative assistance between the competent institutions of the Contracting Parties. It covers the collection of contributions and penalties due to a competent institution and the appeal procedures against third parties in the event of damage caused or occurring in the territory of a Contracting Party other than the competent State.

- Collection of contributions

Article 51 of the Convention regulates the conditions for the recovery of contributions due to the institution of a Contracting Party when the person concerned is in the territory of another Contracting Party. The application of this article is subject to the conclusion of bilateral or multilateral agreements which may also regulate the judicial collection procedure.

- Appeal against third parties

Article 52 concerns the appeal in case of damage caused or occurring in the territory of a Contracting Party other than the competent State.

The first paragraph refers to the case in which a damage was caused or occurred in the territory of a Contracting Party other than the competent State, and in which the legislation applied by the institution providing the benefits states that it is subrogated in law to a damage distribution or that it has a direct right against the third party responsible for the such damage. This subrogation is recognized by each Contracting Party on the one hand, and if the institution has a direct right against the third party, that right is recognized by each Contracting Party.

The second paragraph concerns the application of regulations on the liability of the employer or his agents in the event of an accident at work or during commuting, in the territory of a Contracting Party other than the competent State. Taking into account that all the different national laws do not necessarily regard the employer or his agents as third parties, this paragraph provides that the Contracting Parties shall determine, by way of bilateral or multilateral agreements, regulations enforcing conditions on the employer's or his agents liability

2.3 Relationships among the competent authorities of Contracting Parties

In this paragraph, the obligation to provide mutual administrative assistance is extended, in view of applying the Convention to the relationships existing among authorities and institutions of other Contracting Parties.

Furthermore, competent authorities of Contracting Parties shall exchange all information concerning both the measures adopted for the enforcement of the Convention, and the changes occurred in their legislation, which may have a direct impact on the implementation of the Convention itself. Finally, they are encouraged to communicate directly with each other for the purposes of the implementation of the Convention, as well as with the beneficiaries.

a) Exemption or reduction of taxes, stamps and fees, and forms of deeds

Article 47 of the Convention extends the benefit of exemptions and reductions granted by the law of a Contracting Party to certain documents or similar deeds which the concerned person must produce under the law of another Contracting Party or the Convention.

These exemptions or reductions concern taxes, stamps and registry or registration fees. They are extended to similar documents to be produced in accordance with the legislation of any Contracting Party or of the Convention.

b) Procedures to settle disputes between Contracting Parties

Article 53 requires negotiation between the Contracting Parties for any dispute relating to the interpretation or application of the provisions of the Convention.

Should an amicable agreement not be reached, the parties appoint an Arbitration Commission composed of three ECOWAS member states. The decision rendered by this Commission is final and binding on the parties to the dispute.

Finally, if one of the parties to the dispute considers that the subject of the dispute is likely to be of interest to all the Contracting Parties, the Parties involved in the dispute, by mutual agreement or, failing that, one of them, will refer the matter to the Committee of Experts on social security for an opinion, which will be later on communicated to all the Contracting Parties.

3. Specific provisions of different categories of benefits

3.1 Invalidity, old-age and survivors' benefits : Provisions common to long-term benefit

They are enacted by articles 15 to 21 of the Convention, which provide that the old-age, invalidity and survivors' benefits shall be granted in accordance with the provisions of the chapter dealing with such contingencies, even where the beneficiaries could claim rights only under the provisions of the legislation of one or more of the Contracting Parties.

The arrangements for settling the benefits are as follows, even though a number of special situations may arise when calculating the theoretical amount depending on the specific features of the legislation

- ▶ Au terme des contrôles de l'institution compétente pour s'assurer que le travailleur At the end of the controls performed by the competent institution to ensure that the applicant worker is entitled to such benefits, article 16 prescribes the aggregation of periods of insurance to be taken into consideration for the acquisition, maintenance or service of the right to receive invalidity, old-age and survivors' benefits.
- ▶ The process is complemented by article 17 which specifies that benefits payable under the legislation of each Contracting Party shall be calculated as if all periods of insurance or residence had been completed under that legislation, at a prorata of the duration of the periods completed under that legislation with regard to the total duration of the periods completed under the legislation of all the concerned Contracting Parties.

Pursuant to the second paragraph of this provision, and after ascertaining that the person fulfils the conditions laid down in paragraph 1, each competent institution must determine the theoretical amount of the benefit as if the person concerned had completed his entire career under the sole legislation that it applies. Depending on the case, the theoretical amount is either the average gain or the ratio between the worker's gross earnings and the gross earnings of all insured people. However, if the institution provides non-contributory benefits the amount of which is independent of the length of the periods of residence completed, the theoretical amount referred to in paragraph 2 may be calculated on the basis of and up to the amount of full pension, as well as for old-age, invalidity and survivors' pensions. Finally, if the legislation provides for the improvement of benefits on the basis of family responsibilities, those of the migrant worker must be improved even if the members of his family reside in the territory of another Contracting Party.

Box 1 : Taking into account insurance periods of less than one year

Article 19 of the Convention concerns the payment of benefits where the duration of completed periods under the legislation of a Contracting Party does not exceed one year and under this legislation alone no right is covered for the benefit of that concerned worker.

These provisions prevent migrant workers in this situation to be deprived of benefits for those periods. The article seek not to allow competent institutions to increase the administrative work involved in the payment of small pensions, thereby speeding up the payment procedure.

Paragraph 1 calls out the principle that periods of insurance which do not reach one year shall not bear benefits from the competent institution of the concerned Contracting Party, if these periods alone do not give rise to any entitlement under the legislation of that party.

Paragraph 2 states that, for the purpose of aggregation, the institutions of a Contracting Party shall take into account periods of less than one year completed under the legislation of other Contracting Parties, notably with regard to the application of the provisions of article 17 of the Convention, with the exception of paragraph 4 concerning the reduction of the theoretical amount *prorata temporis*.

Finally, the last paragraph provides that where no right is open in any Contracting Party legislation for the periods completed under its own legislation because in any of them the period of one year has been attained, benefits are granted according to the legislation of the last Contracting Party, subject to the conditions under which the concerned person is satisfied, taking into account the provision of article 28.

Box 2 : Case in which the pre-requirements requested by all concerned legislations are not simultaneously fulfilled.

The principle of successive liquidation, called out under article 20 of the Convention, governs the possibility where the migrant worker does not simultaneously fulfil the conditions of entitlement under the various national laws to which he has been subject.

This is notably the case of the age of admission to old-age pension, which varies from one country to another, the number of contributions required, the length of the periods required to be entitled to a benefit, etc.

The provisions of this article allow for periods completed in the territory of a third party to be taken into account, even if the right is not yet available, when the number of years of insurance completed by the concerned person in the territory of the two Contracting Parties is not sufficient for benefit collection.

Finally, it should be noted that article 20 calls out several situations, each requiring a specific solution aiming at protecting migrant workers' rights by applying the aggregation principle and the *prorata temporis* division, depending on the case, or benefit payment from a single institution, should the worker meet all the conditions required by the legislation he applies to in order to receive a pension. Hence, in this last specific case, the interesting role played by the differential supplement aiming at improving the pension.

Box 3 : Differential supplement

The purpose of the differential supplement set out in article 21 of the Convention is to compensate for the loss to a migrant worker where benefits resulting from the application of a single national legislation, disregarding aggregation, would be higher than the sum of the benefit elements provided under the terms of the Convention.

Where the amount of the pension to which the insured person may be entitled under the legislation of a member state, without the application of the method of aggregation and « prorata temporis » apportionment, is greater than the total amount of pensions he gets with this method, the competent institution of that State must pay a supplement corresponding to the difference between these two amounts. This rule allows to guarantee the insured persons benefits corresponding to their real rights. This supplement shall be borne entirely by the competent institution of the Contracting Party, as according to that legislation the concerned person would claim a higher benefit.

3.2 Special provisions for disability benefits

The basic principle: the recognition of a state of invalidity by a competent institution of a member state is binding on all other institutions of the Contracting Parties

Furthermore, the date on which the worsening of the invalidity is ascertained, will be regarded as the date of occurrence (starting point of the rights). It is regulated by article 23 of the Convention which distinguishes two situations in the event of the worsening of an invalidity for which the concerned person receives benefits from one or more Contracting Parties' institutions.

If benefits are payable by a single Contracting Party, then two cases are possible:

- ▶ If a worker receives invalidity benefits and has not been subject to the legislation of another Contracting Party, the burden of invalidity worsening benefits shall be borne by the competent institution which has already paid benefits under this disability;
- ▶ If, on the other hand, the person concerned has been subject to the legislation of one or more Contracting Parties since he began receiving benefits, these benefits shall be granted to him in the light of the worsening, in accordance with the provisions of the aggregation and distribution prorata temporis approach.

3.3 Special provisions for industrial accidents and occupational disease benefits.

Articles 26 to 34 of the Convention govern the management of benefits related to industrial accidents and occupational diseases. In this respect, any accident at work or in the territory of the Contracting Parties shall be borne by the competent institution of the Contracting Party of the worker.

a) Payment of benefits related to accidents at work or occupational diseases occurred in a country other than that of the competent institution

The payment of benefits related to accidents at work and occupational diseases in the country of residence of the worker is the responsibility of the competent institution. However, benefits in kind are provided by the institution of the place of residence according to the rules it applies, as if the person concerned was affiliated with it. They give rise to reimbursement by the competent institution. As for cash benefits, they are paid by the competent institution, unless the institution entrusts the institution of the place of residence with this task while continuing to bear the burden.

b) Payment of short-term benefits in case of residence or stay outside the competent country

Benefits in kind and in cash to which such persons are entitled shall be paid in the territory of the Contracting Party where they are located and shall be borne by the competent institution which may delegate the payment and provision of such benefits to the institution of the place of stay or residence of the worker if:

- ▶ He has been authorized by the competent institution, after being admitted to receive such benefits, to transfer his residence there or to return there.
- ▶ He has been authorized by the competent institution to travel to the territory of a Contracting Party other than the competent State for the purpose of receiving appropriate care.

These provisions of article 27 of the Convention are intended to ensure the broadest protection for all migrant workers who are victims of an industrial accident and to provide them with the best conditions for care.

For this purpose, article 27 states that the authorization required for the continuation of benefits, in the case of transfer of residence or return of the victim to the territory of another Contracting Party, may not be refused when the displacement of the concerned person is not likely to compromise his state of health or the application of medical treatment.

Similarly, the authorization can not be refused to persons traveling to the territory of a Contracting Party other than the competent State, in order to receive appropriate care for their situation, when the care they need cannot be provided in the territory of the Contracting Party where they reside.

c) Exposure to the risk of occupational diseases in several States

Article 32 of the Convention governs this case through 4 paragraphs detailed hereunder:

- ▶ **When a migrant worker, who has been the victim of an occupational disease, is engaged in an activity likely to cause that disease to spread in more than one State Party to the Convention,** the benefits due to him or to his survivors shall be granted under the legislation of the last of those Parties where the right is open
- ▶ **If the illness was first medically diagnosed in the territory of the Contracting Party where the entitlement is open,** that condition shall be deemed to have been fulfilled in all case where that diagnosis was made in the territory of another Contracting Party.
- ▶ **If the occupational disease was diagnosed within a specified period after the cessation of the last activity likely to have caused it,** the competent institution shall take into account similar activities carried out under the legislation of other Contracting Parties, as if they had been exercised under the legislation which it applies.
- ▶ **If legislation makes the provision of occupational sickness benefits conditional on the performance of the activity which has caused the illness for a certain period of time,** the competent institution shall take into account the periods during which the activity was carried out under the legislation of other Contracting Parties.

d)) Worsening of an occupational disease

Article 33 states that in the event of the worsening of an occupational disease for which the migrant worker receives or has received benefits from the competent institution of a Contracting Party and makes a claim for the this worsening at an institution of another Contracting Party, 2 cases may arise:

- ▶ **Case 1 :** By analogy, with the worsening of an invalidity, that is, if no activity likely to cause or worsen the disease has been exercised under the legislation of another Contracting Party, the institution which has already paid benefits for that sickness shall bear the cost of the benefits, taking into account the worsening of the disease.
- ▶ **Case 2 :** If such activity has been exercised under the legislation of another Contracting Party, the institution which has already paid, or which pays benefits for the occupational disease, will continue to pay such benefits, notwithstanding the worsening of the disease, and the institution of the Contracting Party in which the person concerned carried on the activity likely to cause the worsening of the disease shall bear the supplement equal to the difference between the amount that would be due after the worsening of the disease according to the legislation that it applies, and the one that would have been due before the worsening of the disease, if the disease had occurred on its territory.

3.4 Special provisions for maternity and family benefits.

These provisions are enacted by articles 35, 36 and 37 of the Convention which impose aggregation for the opening rights and set the rules governing daily allowances of working migrant women and that of family members.

- ▶ **Aggregation of rights.** Article 35 specifies that if a national law of a Contracting Party requires the completion of a period of insurance or employment (also known as "qualifying period") for the purpose of acquiring rights to family and maternity benefits, the competent institution of that party shall, for the purpose of aggregation, insurance or employment completed under the legislation of other Contracting Parties, be taken into account to the extent necessary to make use of it to enable insured persons to acquire the right to benefits under the legislation of the Contracting Party to which they are subject.
- ▶ **Maternity daily allowances.** Article 36 deals with the methods adopted to grant a daily allowance to female employees on maternity leave who stay or reside in the territory of a Contracting Party other than the competent State. In this case, cash benefits shall be paid by the competent institution or, after agreement between the competent institution and the institution of the place of residence, through the latter institution which may also provide medical supervision to mother and child.
- ▶ **Family allowances for family members residing outside the competent state.** Article 37 of the Convention states that if the members of the migrant worker's family live or reside in the territory of a Contracting Party other than the competent State, they shall be considered to be in the territory of the Contracting Party of the latter. As a consequence, the person concerned may receive family allowances provided for by the legislation of that State. In addition, they shall benefit from the social action of the competent institution of the Contracting Party in the territory they stay or reside. The same principle applies to all types of pensioners, surviving spouses and unemployed people.

3.5 Special provisions for medical care and health benefits.

Articles 38 to 40 deal with the situation of persons in need of benefits in the territory of a Contracting Party other than the competent State, more specifically in cases of temporary residence or transfer of residence abroad of the worker who has met the conditions of eligibility, taking into account the aggregation provided for in article 16 of the Convention. Three hypotheses are considered:

HYPOTHÈSE 1 :

a migrant worker requires urgent medical treatments during a temporary stay in the territory of another contracting party

3 HYPOTHESIS**HYPOTHESIS 2 :**

after having been approved to receive medical benefits, the migrant worker is then authorized by competent institutions to change his/her residence.

HYPOTHESIS 3:

the worker is authorized by the competent institution to go to another country in order to receive appropriate medical care.

In all these cases, the provision of benefits in kind and in cash shall be made in accordance with Article 38 for persons residing in the territory of a Contracting Party other than the competent State.

The authorization required for the concerned person to retain benefits after the transfer of residence is issued by the competent institution. It can only be refused for displacement not recommended for duly established medical reasons.

The authorization required for treatment in another country is also granted by the competent institution, which may refuse it only when the care in question can not be provided to the person concerned in the country of residence. It is not therefore a discretionary power of the competent institution.

Family members receive benefits in kind under the same circumstances and under the same conditions.

Cash benefits are provided by the competent institution, while those in kind are paid by the institution of residence at the expense of the first institution. Bilateral agreements may be concluded between the two institutions to govern their relations.

3.6 Special provisions for unemployment benefits.

Article 41 of the Convention calls out the principle of retaining the right to unemployment benefits, when an unemployed person who meets the conditions required by the legislation of one Contracting Party transfers his residence to the territory of another Contracting Party.

By transferring his residence to another member state, he is deemed to have fulfilled the probationary conditions and must submit an application within 30 days of the transfer of his residence.

Benefits are then paid according to the rules of its legislation; such benefits shall, however, be borne by the competent institution of the first Contracting Party.

By adopting the principle stating that benefits are provided by the institution of the place of residence, in accordance with the provisions of the legislation it applies, the purpose of the Convention is to enable people, in the State of their new residence, to benefit from the same benefits as the unemployed workers of that State, in view of the fact that their living conditions are the same and that they are also at the disposal of the labour market of that State.

The review of the main provisions of the Convention provides a normative framework for the coordination of national systems which, in the framework of this module, will provide a mirror image of national social security legislations to assess their compliance with the Community instrument.

4. Compliance with social security national legislations for the implementation of the ECOWAS General Convention on social security

4.1 Common features of ECOWAS national systems

Strong similarities exist between the national social insurance systems in terms of personal and material scope of application. Among these common points, it can be noted that:

- ▶ From the very onset, compulsory social security schemes in ECOWAS countries have been designed for the exclusive benefit of employed persons and their families, to protect them against the economic and social consequences of partial or total loss, temporary or definitive, of their earning capacity;
- ▶ In all ECOWAS countries, compulsory schemes cover old-age, occupational accident, occupational disease and survivors' benefits;
- ▶ Migrant workers generally enjoy the same benefits in the countries of employment as nationals during their period of employment and on retirement, providing they continue to reside there;
- ▶ Daily maternity leave allowances are envisaged by the national legislation. They are paid for 14 weeks in French-speaking countries, 12 weeks in some English-speaking countries and for 60 days in Portuguese-speaking ECOWAS countries. In addition, in case of illness resulting from pregnancy or delivery, the work stoppage may be extended up to 3 additional weeks;
- ▶ The family benefits branch is established in all French-speaking and Portuguese-speaking countries; which is not the case in English-speaking countries;
- ▶ All ECOWAS member countries provide mandatory coverage for old-age, disability and survivor benefits through public social security schemes, as well as coverage for work-related accidents and occupational diseases;
- ▶ Compulsory coverage of work-related accidents is instituted in all member countries and the management of this branch falls within the tasks of national social security bodies; except in Ghana and Cape Verde where it is provided by private insurance companies;
- ▶ The absence in all national legislation of a probationary period for the management of occupational accidents; this ents du travail ; ceci conformément aux normes internationales qui régissent la branche.

4.2 Main differences identified in national regulations on the provision of social benefits

The purpose of social protection schemes for migrant workers who fulfil legal requirements is to provide them with social benefits rights, irrespective of their country of employment or residence in the ECOWAS region.

With this in mind, it should be highlighted the low number of ratifications by ECOWAS countries of the relevant ILO Conventions concerning social protection for migrant workers; this further points out the inadequacy of legal instruments available to ensure the social protection of migrant workers in the region prior to the adoption of the Convention. For illustration purposes, we can note as follows:

- ▶ **Three (3) ratifications for Convention 102 of the ILO** setting a minimum standard for social security by ECOWAS member states: **Senegal** (22nd October 1962), **Niger** (9th August 1966) e **Togo** (7th June 2013);
- ▶ **Two (2) ratifications for Convention 97 of the ILO** on migrant workers, revised, 1949 : **Nigeria** (17th October 1960, except for the annexes I to III) and **Burkina Faso** (9th June 1961);
- ▶ **Four (4) ratifications for Convention 143 of the ILO** on migrant workers, additional provisions, 1975 : **Burkina Faso** (December 1977), **Guinea** (5th June 1978), **Benin** (11th June 1980) and **Togo** (8th November 1983).

Furthermore, coverage by social security health care bodies is at very early stage, especially in French-speaking countries. Indeed, only a minority of national social security schemes provide partial coverage and daily allowances during sick leave are not covered by these schemes. They remain a liability of employers who provide full or partial support according to their respective social policies and their means.

So, despite the similarities that have been mentioned, it is also important to be fully aware of the differences that exist in the national legislation governing the provision of social benefits

4.3 Differences in the family benefits branch

a) Les allocations familiales.

The family benefits branch is established only by the French-speaking and Portuguese-speaking national legislations of the Contracting Parties. However, they show significant regulatory differences with regard to traineeship, rates of family allowances and daily allowances for maternity leave, as well as the number of dependent children eligible for this benefit.

	Traineeship	Right to family allowances	Number of dependent children giving entitlement to family allowances	Age of dependent children
General rule in ECOWAS	Six (6) months in French-speaking countries	Family benefits are generally granted to workers active in the territory and in case employment contract is suspended	Capped at 4 children (Togo, Niger, Cape Verde, etc.)	It varies from 14 to 21 years (if they pursue their studies).
Specificities in some ECOWAS countries	Cape Verde: the right is acquired from the first day of work	Benin and Senegal: seconded workers retain their rights to family benefits Benin, Niger, Senegal, Burkina Faso: workers who are involuntarily unemployed are entitled to family benefits for a fixed period of time, ranging from 1 to 6 months Mali, Togo: family allowances are granted for dependent children upon retirement of the worker and to the widow Côte d'Ivoire, Niger : family allowances are granted to surviving spouses who have not remarried or is involved in no professional activity (Côte d'Ivoire, Niger).	Senegal : 6 children Côte d'Ivoire and Mali : all dependent children give entitlement to family allowances	Cap-Vert : 24 years of age in case of higher education. The age limit is abolished in some countries for children living with a disability

b) Daily allowances for employed women on maternity leave.

	Duration	Rate of daily maternity allowances	Calculation methods	Coverage of medical care and prescriptions
General rule in ECOWAS	Paid by the majority of national legislations for the whole duration of the leave set at max. 14 weeks		The salary considered by most legislations is the salary actually received at the time of suspension of work, except for allowances having the character of reimbursement of expenses	Only a few social security legislations ensure full coverage of the costs of childbirth in an approved health facility for employed women
Specificities in some ECOWAS countries	<p>The duration of traineeship giving entitlement to benefits may vary from country to country</p> <p>Côte d'Ivoire : 3 months</p> <p>Togo : 12 months</p> <p>Senegal : 6 months</p> <p>Ghana : 12 weeks</p> <p>Nigéria : 16 weeks (4 weeks before childbirth and 12 weeks after)</p>	<p>Burkina Faso, Senegal, Côte d'Ivoire and Mali: the daily maternity allowance is equal to the total amount of the average daily remuneration</p> <p>Togo, Benin and Niger: the daily maternity allowance is equal to half of the average daily remuneration, the other half being paid by the employer</p> <p>Niger: the employer covers just 50% of the daily allowance if the employee has worked for the company for at least 2 years</p> <p>Cape Verde: 90% of the remuneration for the last month of work or the average remuneration received during the last four months of employment, the most favourable solution for the insured being chosen</p> <p>Guinea Bissau: payable for 60 days; the employer must pay the difference between the last salary received by the insured and the benefits paid by his/her insurance scheme. Thereafter, allowances are paid within the framework of family benefits as part of the breastfeeding premium for 6 months for an amount of 1,500 escudos/month</p> <p>Nigeria : the employer pays the full salary to the employed woman during her maternity leave. It should be noted that the Pensions Reform Act dated 2004 allows the Nigerian Social Insurance Fund to introduce a social insurance programme for sickness and maternity, which will result in the employer paying only 50 per cent of the wage of an employed woman for 6 weeks before the expected date of childbirth and 6 weeks after childbirth.</p>	<p>Togo : the reference period is extended to the 3 months preceding absence from work. In all cases, the amount of the allowances is obtained by multiplying the daily allowance by the number of calendar days of absence from work</p>	<p>Niger, Côte d'Ivoire and Guinea Bissau: medical care for sickness resulting from pregnancy or childbirth</p>

4.4 Disparities in the regulations on occupational risks

All the legislations of the Contracting Parties shall ensure the coverage of insured persons who are victims of accidents at work declared within the prescribed time limits. To this end, the organizations provide benefits in cash and in kind.

However, significant differences are noted in this context for both temporary and permanent incapacity benefits and survivors' benefits.

a) Daily allowances for temporary incapacity

- ▶ *Effective date.* In some legislation (Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo), the daily allowance is effective as from the day following the first day of absence from work. The increase in daily allowances is due to a general increase in salaries. It takes effect on the effective date of the increase (Benin, Mali, Niger, Senegal). If the effective date of the increase is after the settlement date, it takes effect on the first day of the third (Mali) or fourth (Senegal) month of incapacity.
- ▶ *Calculation methods.* The daily allowance is calculated in different ways depending on the country:
 - **Ghana:** daily benefits are paid from the 6th day of temporary incapacity for a maximum period of 24 months.
 - **Sierra Leone:** in case of temporary incapacity: 66.7% of salary after a waiting period of 3 days and payment for a maximum of 96 days (as in Ghana). It is possible to pay compensation as a single payment. Medical expenses are covered.
 - **Gambia:** they are only paid if the duration of the incapacity is at least 5 days. The rate is 60% of salary for a maximum of 6 months. The cap on the calculation base is set at 1,500 Dalasi.
 - **Liberia:** a minimum period of 14 days of temporary incapacity is required for daily allowances to be paid retroactively and for as long as the incapacity lasts.
 - **Burkina Faso, Togo :** the daily allowance rate is set at 2/3 of the average daily remuneration.
 - **Mali :** the rate is 100% of the average daily remuneration.
 - **Côte d'Ivoire, Niger, Senegal:** the daily allowance rate varies according to the duration of the absence from work. It is equal to 50% of the average daily remuneration for the first 28 days and 2/3 from the 29th day.

b) Permanent incapacity benefits

- ▶ *Calculation of the permanent incapacity benefits.* Two calculation systems are in place in French-speaking countries:
 - **First group: Benin, Mali, Niger, Senegal:** the benefit is equal to the annual reference salary multiplied by the rate of incapacity previously reduced by half for the part of this rate that does not exceed 50% and increased by half for the part that exceeds 50%.
 - **Second group: Burkina Faso, Togo:** the total permanent incapacity benefit is equal to 85% of the average monthly salary of the work accident victim. Secondly, the partial permanent incapacity benefit is defined as being proportional to the benefit to which the work accident victim would have been entitled in the event of total permanent incapacity, depending on the degree of incapacity. The legislations of this group of countries provide for the single incapacity benefit, thereby specifying that the amount of the benefit for a second accident (for a person who has previously received a single incapacity benefit) is reduced by the amount of the said benefit. This reduction is effected in several steps, in as many annual instalments as the ones used to calculate the single benefit.

- **Sierra Leone:** in case of total permanent incapacity, a percentage of 56 months' salary is paid. If the incapacity is partial but permanent, the coverage is equivalent to 56 months' salary depending on the degree of incapacity.
 - **Nigeria:** in the event of total permanent incapacity, the benefit is equal to 90% of salary until the age of 55. If the victim is over 55, the incapacity pension is paid for 2 years only. In the event of partial incapacity and disfigurement, the pension is equal to 90% of the salary in regular payments. There is a possibility of combining work accident benefits with old-age, disability, and survivors' pensions.
 - **Gambia:** if the incapacity rate is less than 20%, the victim receives a one-off payment. The cap on the calculation base is set at 1,500 Dalasi.
 - **Ghana :** in the event of permanent incapacity, a single benefit equal to 96 months' salary is paid to the victim, with coverage of medical expenses.
- *Effective date.* Initial settlement: the benefit is effective on the date : the injury or the victim's conditions are stabilised ; death occurs (Senegal) ; or the day after death occurs or the injury is stabilised (**Benin, Mali**). In the event of aggravation: the revised benefit takes effect on the date on which the person's degree of incapacity worsens (**Benin, Burkina Faso, Niger, Senegal, Togo**).
- *In the event of alleviation :* the benefit is reviewed starting either from the day on which alleviation occurs (**Niger, Senegal**) or from the 1st day of the calendar month following notification of decision review (**Benin, Burkina Faso, Togo**). In case of full recovery: the benefit is suspended or withdrawn from the first day of the month following notification of the decision (**Benin, Niger**).

c) Survivors' benefits in the event of accidents at work (AT)

► Surviving spouse's pensions

In most countries, the surviving spouse's pension is proportional to the reference salary and is 30% (**Benin, Mali, Niger, Senegal, Togo**) or 50% (**Burkina Faso**).

In some countries, where several widows exist, the pension is equally divided between them (**Benin, Burkina Faso, Mali, Niger, Senegal, Togo**). Among English-speaking countries, only **Sierra Leone** provides for a plurality of widows. This distribution is irrevocable even in the event of death or remarriage of one of them.

Moreover, if the divorced or legally separated spouse had obtained alimony, life annuity is due up to the amount of said alimony and to a given threshold of the annual reference salary: 20% (**Niger, Senegal**) and 30% (**Mali**).

- In **Sierra Leone**, workers employed in farms with less than 25 staff, temporary workers, home-based workers, and domestic workers are excluded from coverage of accidents at work and occupational diseases (ATMP). The pension for the survivors of a deceased insured is a one-off payment of 42 months' income.
- In **Gambia**, survivors receive a lump sum payment of 120 months (with a floor of 100,000 Dalasi and a cap of 180,000 dalasi). Funeral expenses are covered by the Fund up to a maximum of 1,000 Dalasi in the event that there are no survivors.
- In **Liberia**, ATMP survivor pensions are 20% for the dependent widower or dependent or disabled widow. The pension for orphans is 6%; it is paid up to 21 years of age if they pursue their studies and without limit for children living with a disability ; the rate rises to 12% for double orphans. If there is no direct beneficiary (child or spouse), 20% of the pension is paid to ascendants or grandparents

► *Orphans' pensions*

The orphan's pension is generally calculated on the same basis as the widow/widower's pension. In some countries, double orphans receive a higher pension than single orphans. Therefore:

- double orphans: 15% (**Togo**), 20% (**Mali, Niger**);
- single orphans: 10%-fixed rate (Togo). In **Benin, Mali, Niger, Senegal**, rate is variable - 15% for one child, 30% for two children and 10% per child from three children on;
- in **Burkina Faso**, 40 % flat-rate is applied to all cases.

► *Pensions paid to foreign workers*

The provision of benefits is suspended when the foreign beneficiary no longer resides in the country, unless there is a reciprocal agreement or ratification of international conventions. However, upon the worker's definitive departure, some countries pay a lump sum « as a final settlement of all claims », thus leaving the worker in a precarious situation.

4.5 Differences in national legislation regulating old-age, disability, and survivors' benefits

In most English-speaking countries, provident funds prevail, while almost all ECOWAS French-speaking and Portuguese-speaking countries have pension schemes based on the defined-benefit pension system.

a) Age of entitlement and effective insurance periods

The age of entitlement varies according to the legislation: from 58 in Mali for salaried workers and 60 for voluntary insured persons, to 65 in **Cape Verde**.

In **Nigeria**, it is set at 60 for both men and women, with early retirement starting from 50. In **Burkina Faso**, entitlement is reached at different ages according to the professional category: 56 for factory workers, 58 for office workers, and 60 for managers.

In most cases, periods of effective compulsory insurance are taken into account for entitlement to benefits as well as periods during which the employment contract is deemed suspended for one of the reasons provided for in the Labour Code, as long as said periods have given rise to contributions. They account for 13 years in **Mali**, 15 years in Togo, and 20 years of registration in **Côte d'Ivoire**, and 5 years of insurance during the last 10 years of professional activity in **Niger**. In **Liberia**, it takes 100 months of insurance to get an old-age pension.

In **Sierra Leone**, the age of entitlement is 60, with a minimum contribution period of 180 months.

b) Methods of calculation of old-age pensions and early retirement pensions

In general, the monthly amount of old-age pension is the same as early retirement pension; depending on the legislation, it varies from 20% to 80% of the remuneration used as the basis for calculating the said reference pension.

In **Côte d'Ivoire, Mali** and **Senegal**, a deduction of 5% per year of anticipation is applied to the amount of the pension to which the insured would have been entitled at the standard retirement age.

In addition, except in these cases, if the total number of months of insurance and equivalent months exceeds a defined threshold, the legislations shall increase the rate of the standard pension for each 12-month period above that threshold, the rate of increase varying from 1% to 2% according on the legislation.

In **Sierra Leone**, old-age pension is equal to 30% of a worker's average monthly income for the first 180 months of coverage. The average monthly income is calculated on the basis of the top-60 months of contributions.

The pension is increased by 2% of the average monthly income for each additional 12-month period. The minimum pension is 50% of the national minimum wage. The maximum pension is 80% of the average monthly income. Early retirement pension is reduced by 4% per year of anticipation before the age of 60.

c) Calculation of disability pension

In most schemes, the amount of a disability pension is calculated at the same rate as an old-age pension. Increases in benefits are provided for in certain cases:

- ▶ *Third party assisting the beneficiary*: the increase is either 40% (**Benin, Mali, Niger, Senegal**) or 50% (**Burkina Faso, Togo**) of the amount of the pension, or 100% of the minimum wage. This increase may not be less than the minimum wage (**Benin, Mali, Niger**) or 70% of the minimum annual compensation wage (**Senegal**).
- ▶ *Third party assisting the pensioner*: the pension supplement for the assistance and care of the disabled pensioner by a third person is equal to 50% of the amount of the pensioner's basic pension (**Burkina Faso, Niger, Togo**).
- ▶ *Pensioners' dependents*: in **Côte d'Ivoire, Mali, and Senegal**, the supplement for dependent children is generally equal to 10% of the amount of the pensioner's basic pension. However, **Côte d'Ivoire** and **Senegal** limit this increase to 30% of the basic pension. In **Burkina Faso**, the supplement for dependent children is equal to the amount of family allowances.
- ▶ *Gross negligence on the part of the employer*: the amount of the increase for gross negligence on the part of the employer is fixed either by the competent court (**Côte d'Ivoire, Mali, Senegal**) or by the Fund in agreement with the victim and the employer (**Côte d'Ivoire, Senegal**).

d) Survivors' pensions and allowances

Almost all legislations express the amount of survivors' pensions as a percentage of the old-age pension (or early retirement pension or disability pension) to which the insured was or would have been entitled at the date of his/her death.

- ▶ *Surviving spouse's pensions*: it varies from 30% to 100% of the insured person's pension. In addition, apart from **Côte d'Ivoire**, the rate of the surviving spouse's pension is comprehensive, i.e., the pension amount is obtained by applying that rate ; in the event of a plurality of widows, it is distributed among them in equal shares for good.
- ▶ *Orphan's pensions*: the amount is set either per orphan (the most frequent case) or as an aggregate amount to be distributed among all orphans. In several legislations (**Benin, Niger, Togo**), double orphaned children receive more substantial benefits than single orphans.
- ▶ Specific benefits paid to survivors :
 - *Death benefit - pensions*: it is equal to one year of the reference salary used as the basis for calculating old-age pension. Its amount is increased by as many times the amount of the minimum wage as the number of dependent children the insured had at the time of his/her death.
 - *Single old-age allowance* (**Benin, Niger, Togo**): its amount is uniformly equal to the reference salary of the insured person multiplied by the number of 12-month insurance periods that s/he accrued.
 - *Personal contribution reimbursement* (**Mali, Senegal**): this only concerns contributions paid by the insured in respect of the pension branch. In Senegal, it also covers contributions paid by the insured after standard retirement age.

d) Limitation to the amount of pension benefits

In almost all legislations, the amount of old-age pension, early retirement pension, and disability pension may not be less than a defined proportion of the minimum wage (50% to 80% according to the legislation) or more than a specified rate of reference salary (50% to 80% according to the legislation).

In some cases, the cap on survivors' benefits only applies to orphan's pensions. In all cases, when the cap is exceeded, the amount of the pensions concerned shall be proportionately reduced on a permanent basis.

The amount of orphan's pension cannot be lower than the amount of family allowances (**Burkina Faso, Mali, Niger, Togo**).

e) Rules governing the overlapping of benefits

► Family allowances and ATMP benefits

Family allowances are maintained for the benefit of a recipient who has suffered an accident at work for the duration of his/her temporary incapacity (**Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Togo**).

Family allowances are maintained for the children of persons entitled to a permanent incapacity pension whose rate must be higher than a given threshold set either in the basic legislation (66% **Benin**, 65% **Togo**) or by decree (**Burkina Faso**). Family allowances are also maintained for beneficiaries of a survivor's pension (Benin, Burkina Faso).

► Family allowances and pensions

- Family allowances are maintained for the children of recipients of any kind of pension (**Burkina Faso, Mali, Togo**) and recipients of a single allowance to survivors (**Mali, Niger, Togo**).
- Overlapping of a survivor's pension and family allowances for the same children is not allowed (**Burkina Faso, Mali, Niger, Togo**).

► ATMP benefits and pensions

- *Benefits for the work accident victim and disability pensions:* if, following an accident at work, the victim is entitled to both permanent incapacity benefits and a disability pension, the latter is reduced up to the amount of the permanent incapacity benefits (**Benin, Burkina Faso, Niger, Togo**).
- *Survivors' benefits and survivors' pensions:* if, following the death of a worker as a result of an accident at work or an occupational disease, the survivors are entitled to specific benefits and a survivors' pension, the survivor's pension is reduced up to the amount of the benefits (**Benin, Burkina Faso, Niger, Togo**).
- *Overlapping of several benefits and/or pensions:* the benefits granted to the victim in compensation for accidents at work or occupational diseases may well overlap with disability or old-age pensions to which the persons concerned may be entitled without any kind of limitation (**Côte d'Ivoire, Senegal, Mali**).
- In **Senegal**, in the event that an orphaned child is entitled to benefits from two ascendants, only the most substantial benefit is granted to him/her. Similarly, when a widower loses two or more insured wives, only the largest widow's allowance is granted.
- In the event that an old-age pension and benefit overlap, the beneficiary may be entitled either to 100% of the higher amount and 50% of the other (**Benin, Niger, Togo**) or to 100% of both (**Burkina Faso**), depending on the country.

- *Special cases of prohibition or non-aggregation of benefits. In Burkina Faso and Togo, the widow's entitlement to family benefits cannot overlap with the provision of an orphan's pension or benefit.*

In conclusion, the review of national legislations reveals many differences as regards the conditions of eligibility, entitlement, rates and methods of calculating benefits. In addition, it should be noted that the uneven development of national schemes is likely to harm the interests of some migrant workers due to the implementation of the principle of reciprocity.

However, the differences in national legislations do not hamper their effective coordination. Indeed, the implementation of the Convention is a historic opportunity in that it will help to offset the differences identified.

In any event, the scaling up and refinement of the Community mechanism for coordinating national systems will ultimately lead to the removal of any legal, technical, and practical barriers arising from their detailed analysis, as they shift from coordination to harmonisation.

5. Organizational framework for monitoring and regulating the implementation of the ECOWAS General Convention on social security

The adoption of the General Convention on Social Security and its Administrative Arrangement is an important step forward in the construction of an integrated social space conducive to professional mobility within the region through the coordination of national social security systems in order to provide effective social protection to migrant workers.

Consequently, it is worth considering the reasons that, as of today, explain the ineffective implementation of this instrument. It is evident that the implementation of the Convention alone is by no means a sufficient condition for guaranteeing effective and satisfactory social coverage for migrant workers.

In this context, consideration should be given to the existing organizational framework designed to facilitate, support, and monitor the implementation of the Convention.

As part of this process, the following initiatives deal with the Committee of Experts on Social Security and the Liaison centre, essential to the achievement of the objectives pursued.

5.1. The Committee of Experts on Social Security

Its composition, powers, and mechanisms are defined by Articles 44 and 45 of Title V of the Convention.

Composed of 2 representatives per Contracting Party (the National Director of Social Security and a Director representing social security bodies), it is placed under the authority of the ECOWAS Commission, which may invite the heads of institutions from countries characterised by institutional plurality.

The Committee shall be responsible for dealing with any administrative matters or questions concerning the interpretation of the Convention or Administrative Arrangement provisions. It shall make proposals for the revision of both instruments as well as prepare any supporting documents necessary for the implementation of the Convention (forms, certificates, statements, etc.), including any guide intended to disseminate the provisions of the Convention and, in particular, to inform migrant workers of their rights.

Upon request of any Contracting Party, the Committee shall collect information on the legislations to which the Convention applies. As part of its activity, it receives technical support from the ILO.

The analysis of the provisions relating to the Committee calls for three (3) main remarks and related proposals.

a) The frequency of the meetings is specified neither by the provisions of the Convention nor by the provisions of the Administrative Arrangement.

It would thus be helpful to fill this gap so that this non-permanent body can ensure satisfactory monitoring of the implementation of the Convention.

Indeed, the implementation of a multilateral instrument for the coordination of national social protection systems aimed at ensuring the protection and effective enjoyment of the rights of migrant workers requires a monitoring mechanism suitable to guarantee that the provisions of the Convention are effectively implemented by all Parties, that the rights of beneficiaries are effectively fulfilled and that corrective measures to the ECOWAS Commission are timely proposed in order to address any identified obstacles and weaknesses.

b) Conventional texts do not provide information on the response by the Commission to the Committee's proposals

In the absence of any clarification on this point, and given that the meeting schedule has not been set forth, the Committee of Experts on Social Security should be merely considered as an advisory body. This status, though, is not very well suited to the difficulties and challenges involved in implementing a Convention binding 15 countries whose laws are so divergent.

It would have been useful to identify the issues on which the Committee's observations and proposals require response by the Commission within set deadlines in order to ensure proper monitoring and regulation throughout the implementation of the conventional coordination texts.

c) Lack of a mechanism to monitor the implementation of the Convention

The lack of a mechanism to monitor the implementation of the Convention by the competent institutions of the Contracting Parties is a weakness.

While migrant workers have access to national courts, the ECOWAS Court of Justice is not accessible to private individuals, who may seize it for cases of human rights violations.

As a result, there is no community judicial body accessible to complainants in the field of social security, as is the case with the European Convention on Human Rights. Nor is there a regular system of non-judicial monitoring through the submission of national reports on the implementation of the Convention, as is the case for the European Social Security Code and ILO Conventions for those Parties that have ratified them.

Monitoring the implementation of the Convention is an essential aspect to guarantee a minimum level of protection for all migrant workers and to ensure equality of treatment in all Member States of the Community. In the absence of an effective monitoring and enforcement mechanism, it is impossible to conclude whether a Member State is fully applying the provisions of the Convention.

5.2. The Regional Liaison Centre

Coordinating 15 national legislations requires setting up a Regional Liaison Centre whose main task will be to facilitate relations between the competent institutions of the Contracting Parties, namely technical operators responsible for the implementation of the Convention.

To this end, the Regional Liaison Centre will be in charge of concentrating all operations and information flows generated by the institutions of the Member States - national database on migrant workers, follow-up of benefit claims, complaints and appeals, and so on.

This would enable the Centre to compile a periodic statistical yearbook and report reflecting the actual implementation of the Convention through quantitative and financial data.

In this regard, the Regional Liaison Centre should be equipped with an IT platform that can ensure reliable, comprehensive, and transparent operations among the relevant institutions of ECOWAS Member States.

a) Rationale and characteristics of the Regional Liaison Centre IT platform

► Rationale for the establishment of a Regional Liaison Centre

The platform is intended to become the computer and information system available to the managers of social security bodies of the Contracting Parties to enable them to exchange information and handle workers' files in a quicker, more secure manner.

Indeed, social security institutions can use this platform to exchange information on migrant workers via soft copy/electronic documents.

As a result, all information that would otherwise have to be exchanged using around 100 hard copy/paper forms (taking into account the different language versions), will be processed electronically. In addition, staff of relevant institutions will be able to find the right recipient in homologue institutions of another ECOWAS country using a directory of national organizations hosted in the platform.

The purpose of the IT platform is to consolidate citizens' rights by computerising the coordination of national social security systems for case handling. As such, it should:

Ease and speed up	<ul style="list-style-type: none"> ► Calculation procedure ► Payment of social security benefits
Allow data checking	<ul style="list-style-type: none"> ► in a more effective way
Act as an interface between the schemes that is	<ul style="list-style-type: none"> ► more flexible ► more user-friendly
Allow a comprehensive collection of reliable statistical data on	<ul style="list-style-type: none"> ► the number of migrant workers ► the number of files received and processed by each competent institution ► the amounts of social security benefits, etc.

b) Main features of the IT platform

To a large extent, the successful implementation of the Convention shall be determined by the quality of the technical management of the benefits of migrant workers in the Community, the processes for handling benefits and the quality of data flows. Therefore, a proper approach to the information system is of paramount importance in view of the disparities in the national social security legislations and given the large number of Contracting Parties.

The quality of the information system is measured by its ability to handle the essential operations of the scheme in real time (reliability, security, and traceability of data), as well as to provide decision-makers with the data necessary for making decisions, both for management and for control purposes.

As such, the Regional Liaison Centre platform must be able to collect, store, and release all operations, while ensuring their traceability. To do so, its architecture will have the following main characteristics:

- ▶ A database of organizations with public access and an interface between agents to be used in the transmission of documents and as an online directory;
- ▶ The exchange of information on social security through structured electronic documents (SEDs) ;
- ▶ The use of a secured communication protocol ;
- ▶ Access points for all relevant institutions of the Contracting Parties ;
- ▶ A system allowing online transactions for the purpose of

c) Cautions to observe in the design of the management platform

The foregoing developments are justified in view of the crucial importance of the platform for achieving the objectives of the RSPC.

- ▶ *Providing a comprehensive review of the IT systems of the relevant institutions*

It would be advisable to carry out an inventory of all computer systems in use by the competent institutions of the competent Parties responsible for the Convention implementation in order to establish their technical compatibility with the IT platform of the Regional Liaison Centre.

- ▶ *Designing a platform master plan and management areas*

First, a master plan needs careful design as it is likely to closely affect the information system that stems from it – the quality of said system depends on the accuracy by which the activities, actions or programmes to which it applies have been defined.

In addition, the management areas need to be determined based on the contingencies and categories of migrant workers that constitute the material and personal scope of the Convention - that is to say that all management processes rely on a common data set.

- ▶ *Building interfaces between the platform and the computer systems of the institutions of the Contracting Parties*

As the Convention is being implemented by several social security bodies of the Contracting Parties, bridges must be built between these different implementations on the basis of specific protocols.

► *Ensuring system security*

Particular attention should be paid to aspects related to user definition, access and operating rights, backups, security monitoring, maintenance, etc.

► *Drafting and adopting system guidelines*

It would be beneficial to ensure an appropriate framework for the Regional Liaison Centre by providing it with operating and management rules.

To this end, it would be advisable to provide the Centre both with guidelines governing its organization, powers, and mechanisms, and with a technical manual on computer system procedures.

Conclusion

The effective implementation of the ECOWAS General Convention on Social Security will certainly constitute a major advance in the regional integration process. Its effectiveness will make it possible to put an end to the vulnerabilities that affect community migrant workers, thereby fostering professional mobility in West Africa.

Nevertheless, for this objective to be achieved through proper coordination of national systems, whose diversity should not constitute an obstacle, it would be helpful:

- To provide **training for the staff** of the ministries in charge of social security and the bodies responsible for ensuring coordination, so that they fully understand the terms and conditions of the provisions and mechanisms of the Convention as well as of the Administrative Arrangement and the implementation forms thereof.
- To ensure a wide-ranging **dissemination of the Convention**, specifically of the rights of migrant workers enshrined therein, as well as the ways and means by which they may be enjoyed and the procedures for challenging decisions to reject benefit claims.
- To set up a **liaison centre equipped with an appropriate computer platform** to connect the competent institutions of the Contracting Parties in a network with a view to controlling file pr
- **to refine the provisions on the Committee of Experts** with a view to enhancing its activity through a regular schedule of statutory meetings, and increasing its authority to monitor the implementation of the Convention by Member States and requiring response to its decisions and proposals by the ECOWAS Commission.

The ultimate goal is to lift the legal, technical, and practical barriers that emerge from the detailed analysis of national systems. To this end, it would be worth undertaking a harmonisation of national social security legislations through the development and adoption of a legal basis common to all Member States that lays down basic principles and minimum rules governing the provision of benefits.



Key learning points

- ▶ the ECOWAS General Convention on Social Security plays a central role in the process of creating an integrated social area. Its importance lies in its function designed to coordinate national systems and to promote the mobility of workers within member states, while still guaranteeing their social coverage during and after their labour migration journey.
- ▶ **Coordination rules** establish **common rules and principles** which must be respected by all national public authorities, social security institutions, courts and tribunals when applying national laws.
- ▶ the Convention does not introduce new benefits and does not abolish national legislations. So, by coordinating national schemes, its sole purpose is to protect the citizens or residents of the ECOWAS area who work, reside or stay in another member state of this Community.
- ▶ As per Article 6, paragraph 1, of the Convention, the ECOWAS General Convention on social security establishes the principle of **equality of treatment** between nationals and non-nationals in all member states.
- ▶ To avoid possible conflicts of law, Article 11 of the Convention states in its first paragraph that only **one legislation is applicable**; namely, that of the Contracting Party in whose territory where the professional activity is carried out.
- ▶ The **guiding principles** of social security coordination mechanisms are as follows: equality of treatment ; elimination of territorial restrictions ; non-aggregation of benefits; determination of the applicable law ; retention, aggregation of rights and “*prorata temporis*” distribution; and export of benefits.
- ▶ The **aggregation of periods** called out under Article 16 of the Convention ensures that migrant workers who have worked for a certain period of time in a member state could take this period into account in the country where they are applying for a benefit subject to internship, or to determine the amount of such benefit when it is based on completed periods of insurance. **Prorata temporis** principle: according to this provision, in a given country, a worker receives the share of the national benefit proportional to the period of working activity he performed there.
- ▶ It should be highlighted the low number of ratifications by ECOWAS countries of the relevant ILO Conventions concerning social protection for migrant workers; this further points out the inadequacy of legal instruments available to ensure the social protection of migrant workers in the region prior to the adoption of the Convention.
- ▶ Strong similarities exist between the national social insurance systems of ECOWAS Member States in terms of personal and material scope of implementation.
- ▶ In all ECOWAS countries, compulsory schemes cover old-age, occupational accident, occupational disease and survivors' benefits.
- ▶ The family benefits branch is established in all French-speaking and Portuguese-speaking countries; which is not the case in English-speaking countries.
- ▶ The lack of a mechanism to monitor the implementation of the Convention by the competent institutions of the Contracting Parties is a weakness.
- ▶ Coordinating 15 national legislations requires setting up a Regional Liaison Centre whose main task will be to facilitate relations between the competent institutions of the Contracting Parties. In this regard, the Regional Liaison Centre should be equipped with an IT platform.



Test your knowledge

1. Tick any false statements:

The daily allowance is calculated differently depending on the country:

- a. Ghana: daily allowances are paid from the 6th day of temporary incapacity for a maximum period of 24 months.
- b. Sierra Leone : in case of temporary incapacity: 33.7% of salary after a waiting period of 3 days and payment for a maximum of 96 days (as in Ghana).
- c. Gambia : daily allowances are only paid if the duration of the incapacity is at least 5 days. The rate is 60% of salary for a maximum of 6 months.
- d. Mali : the rate is 100% of the average daily salary

2. In Burkina Faso, Senegal, Côte d'Ivoire and Mali, the daily maternity allowance is _____ the full average daily salary.

- a. higher than
- b. lower than
- c. equal to

3. In most English-speaking countries, pension schemes based on the defined-benefit pension system prevail, while almost all French-speaking and Portuguese-speaking ECOWAS countries have provident funds.

- a. TRUE
- b. FALSE

4. In conclusion, the review of national legislations reveals many differences as regards the conditions of eligibility, entitlement, rates and methods of calculating benefits. In addition, it should be noted that the uneven development of national regimes is likely to harm the interests of some migrant workers through the implementation of the principle of reciprocity.

- a. TRUE
- b. FALSE

5. The lack of a mechanism to monitor the implementation of the Convention by the competent institutions of the Contracting Parties is a weakness.

- a. TRUE
- b. FALSE

6. **Coordinating 15 national legislations requires setting up _____ whose main task will be to facilitate relations between the competent institutions of the Contracting Parties.**
- 15 national liaison centres
 - Several regional liaison centres
 - One regional liaison centres
 - Several regional liaison centres for the implementation of the General Convention
7. **Tick any TRUE statements**
- The Regional Liaison Centre will decentralize all operations and information flows generated by the institutions of the Member States.
 - The Regional Liaison Centre would be able to compile a periodic statistical yearbook and report reflecting the actual implementation of the Convention through quantitative and financial data.
 - The Regional Liaison Centre will be equipped with an IT platform shared with the relevant institutions of ECOWAS Member States.
 - The purpose of the IT platform of the Regional Liaison Centre is to consolidate citizens' rights by computerising the coordination of national social security systems for case handling.
8. **The Committee of Experts of ECOWAS General Convention on Social Security is composed of _____ representatives per Contracting Party ; it is placed under the authority of the ECOWAS Commission, which may invite the heads of institutions from countries characterised by institutional plurality.**
- 4
 - 2
 - 15
 - 3
9. **The Committee of Experts shall be responsible for dealing with any administrative matters or questions concerning the interpretation of the Convention or Administrative Arrangement provisions. Nonetheless, the Committee is not authorised to make proposals for the revision of those two instruments.**
- TRUE
 - FALSE
10. **The implementation of the Convention alone is by no means a sufficient condition for guaranteeing effective and satisfactory social coverage for migrant workers.**
- TRUE
 - FALSE
11. **In addition to providing all actors, particularly the staff of social security institutions with essential training activities to allow them become acquainted with Convention, Administrative Arrangement and Liaison mechanisms, a number of organizational and infrastructural conditions should be met for the effective implementation of the Convention.**
- TRUE
 - FALSE



Training activities

Training activity I – SWOT



Analyse
SWOT
analysis
(Strengths
-Weaknesses
-
Opportunities
- Threats)



Instructions
for the trainer



Tips



Materials



Time

Objectives:

- ▶ Identifying the strengths, weaknesses, opportunities and threats of the Regional Liaison Centre initiative.
- ▶ Having a thorough discussion on the specificities of the implementation of the ECOWAS Regional Liaison Centre and its IT platform.

Divide participants into 4 groups, each receiving an A2 handout showing a blank SWOT matrix (strengths, weaknesses, opportunities and threats).

Allow 35 minutes for SWOT matrix production, reminding them of the topic to be analysed: "Implementation of the ECOWAS Regional Liaison Centre".

Example of SWOT matrix:

Strengths	Weaknesses
Opportunities	Threats

Finally, the groups will have the opportunity to report their conclusions in plenary session (10 min).

- ▶ Encourage all participants to take an active part in group discussions.
- ▶ Participants should be encouraged to discuss innovative ideas, taking into account the positive and/or negative impact of the effective implementation of the Regional Liaison Centre initiative.
- ▶ Stress the role of the Regional Liaison Centre IT platform.

- ▶ A2 copies of SWOT matrix
- ▶ Writing materials

- ▶ 35 min for SWOT matrix production
- ▶ 10 min final conclusions.

Training activity II – 25/10



25/10 –
Group play

Objectives:

- ▶ Producing and organising ideas for the design of control mechanisms apt to ensure the implementation of the General Convention on Social Security.
- ▶ Comparing and constructively evaluating the different ideas proposed by the participants.



Instructions
for the trainer

Share the following question with the group:

What initiative could be put in place to implement a control mechanism apt to ensure the implementation of the ECOWAS General Convention on Social Security? What would be the first step in its implementation?

Procedure :

- ▶ 5 minutes: ask the question and invite each participant to write their answer on a cardboard sheet, indicating the first step in the implementation.
- ▶ 5 minutes: Participants discuss their ideas in pairs, and assign a score to their answers on a scale of 1 to 5, with 5 being the highest score. After retrieving and noting their colleague's card, each participant moves, interacts with the group and finds a new person with whom to share their idea and card.
- ▶ 15 minutes: 5 exchange sessions, with 5 cards to evaluate, in a time-scale that allows them to interact (and even joke) between each evaluation.
- ▶ 5 minutes: Move on to the scoring stage, and ask "Who got 25 points? 24 ? 23 ?". Invite participants with the highest scores to state the content of the idea and the first step in the implementation.
- ▶ 5 minutes: Make a short reporting back session by asking the group, "What did you notice about 25/10?"



Tips

- ▶ Encourage all participants to take an active part in group discussions.
- ▶ Participants should be encouraged to discuss innovative ideas, taking into account the positive and/or negative impact of the effective implementation of the Regional Liaison Centre initiative.



Materials

- ▶ A "recipe" sheet, a file or a cardboard sheet for each person.
- ▶ Writing materials



Time

- ▶ 25 min : "25/10" activity
- ▶ 10 min : final questions

EXTENDING SOCIAL PROTECTION TO MIGRANT WORKERS IN THE ECOWAS REGION: A capacity building toolkit on the ECOWAS General Convention on Social Security

Module 1: Social protection in ECOWAS: States, issues, challenges and policy responses

Module 2: Social protection for migrant workers: An overview

Module 3: Concepts and international standards on coordination of social security

Module 4: Introduction to the ECOWAS General Convention on Social Security: Origin, context, principles and key provisions

Module 5: Implementation of the ECOWAS General Convention on Social Security: Coordination of social security in the ECOWAS region

Module 6: Bilateral and multilateral social security agreements involving contracting parties of the ECOWAS General Convention on Social Security

Module 7: Gaps in the ECOWAS General Convention on Social Security

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