



**#RightsMigrateToo**

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

**BILATERAL AND MULTILATERAL SOCIAL SECURITY  
AGREEMENTS INVOLVING CONTRACTING PARTIES  
TO THE ECOWAS GENERAL CONVENTION ON  
SOCIAL SECURITY**

**MODULE 6**

# Acknowledgements

This toolkit was developed as part of the interventions of the ILO project *Extending social protection access and portability of benefits to migrant workers and their families in selected RECs in Africa*, funded by EU through the ICMPD.

The training modules were developed by Aly Cissé (1, 2, 3 and 7) and Cheikh Tidiane Tounkara (4, 5 and 6). The conceptual scope and outline of the modules were developed by Andrew Allieu and Victoire Umuhire of the ILO.

Technical review of the modules was undertaken by Andrew Allieu and Victoire Umuhire of the ILO and Miriam Boudraa and Charles Knox-Vydmanov of the ITCILO. Celine Peyron Bista, Clara Van Panhuys, Samia Kazi Aoul and Nienke Raap of the ILO provided valuable comments at various stages in the development of the modules.

The pedagogic approach to the toolkit was developed by Miriam Boudraa and Leonardo Vargas Talamantes.

Translation of the modules was undertaken by Claudia Borgo, Eva Bruno and Barbara Zanotti.

Design and layout was completed by Tsitsi Amanda Kabasa, Ginnette Ng and Carolina Rodriguez, Dilucidar.

Publisher

The ILO Regional Office for Africa (ILO ROAF) and  
The International Training Centre of the ILO (ITCILO)

July 2019

# CONTENTS

<b>Acknowledgements</b>	<b>2</b>
<b>Learning objectives</b>	<b>4</b>
<b>Introduction</b>	<b>4</b>
1. Reminder of the ILO's normative work on the social protection of migrant workers	<b>4</b>
2. Features of international social security conventions	<b>6</b>
3. Principles and objective of bilateral social security agreements	<b>8</b>
4. Process of negotiation and conclusion of social security agreements	<b>9</b>
<b>Conclusion</b>	<b>14</b>
<b>Key Learning Points</b>	<b>15</b>
<b>Test your knowledge</b>	<b>16</b>
<b>Training Activities</b>	<b>18</b>
Training Activity I: Practical case	<b>18</b>
Training Activity II: Brainstorming	<b>20</b>



## Objectives

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

- ▶ Improve their knowledge of the function of bilateral and multilateral social security agreements within the framework of the ECOWAS General Convention on Social Security;
- ▶ Understand the main stages and features of the procedures for negotiating bilateral and multilateral agreements;
- ▶ Focus on the key provisions and guiding principles of the coordination of social security systems;
- ▶ Appreciate the challenges Member States face in the setup of regional cooperation initiatives;
- ▶ Highlight the need to promote new opportunities to develop bilateral and multilateral agreements in the ECOWAS region in order to guarantee the protection of the right to social security provisions and benefits of migrant workers and the effective application of the General Convention on Social Security.

## Introduction

The international legal system on social security is essentially made up of two types of international instruments: **normative conventions and coordinating conventions**.

Normative conventions, most often set up by international organizations, define the basic standards with which national social security systems must comply. These instruments apply to the countries that ratify them.

As we have already seen in previous modules, several multilateral normative conventions have been negotiated and adopted worldwide under the auspices of the International Labour Organization (ILO).

With respect to coordinating conventions, they are intended to ensure the effective protection of migrant workers through the national legislation of Contracting Parties.

The instruments coordinating social security systems are drawn up based on principles outlined in normative instruments, whether they are made between several countries (multilateral agreements) or two countries (bilateral agreements).

This category of conventional instruments includes the **ECOWAS General Convention on Social Security**, the General Convention of the European Union, the Social Security Convention of the Economic Community of the Great Lakes Countries (ECGLC), that of the Central

### 1. Reminder of the ILO's normative work on the social protection of migrant workers

It should be noted that since its creation in 1919, the ILO has attached high priority to the protection of migrant workers. Thus, Article 427 of the Treaty of Versailles, which laid the foundations for the ILO in 1919, provides that "*The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein*". Similarly, the ILO has enshrined in the Preamble of its Constitution the obligation to improve "*protection of the interests of workers when employed in countries other than their own*".

The ILO has thus played a key role in the development of the normative framework for the social protection of migrant workers through the adoption of the main social security conventions governing the issue.

The protection of migrant workers by the ILO was inaugurated in 1939 with Convention no. 66 concerning the Recruitment, Placing and Conditions of Labour of Migrants for Employment. As this convention never took effect due to the Second World War, it was replaced by Convention no. 97 of 1st July 1949 concerning Migration for Employment, regulating protection during migration (recruitment, travel and reception) and residence (social protection, working conditions).

The main ILO normative instruments still in force include:

- ▶ **Convention no. 102 concerning Minimum Standards of Social Security (1952)**, which binds signatory states to ensure equality of treatment in at least three of the following areas: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit.
- ▶ **Convention no. 97 (1949), concerning migrant workers (Migration for Employment)** defines migrant workers, deals with many questions concerning them (remuneration, accommodation) and also lays down, in the field of social security, the principle of equality of treatment in the following areas: employment injury, occupational illness, maternity, sickness, old age, death, unemployment and family responsibilities, and any other contingency covered by the national laws of the Contracting Party.

Recommendation no. 86 supplements it by pushing for, among other measures, equality of treatment in access to employment, protection against expulsion on economic grounds, and provides states with a model bilateral agreement which operationalizes the principles laid down in Convention no. 97.

- ▶ **Convention no. 118 concerning Equality of Treatment in Social Security (1962)** provides further details on the implementation of the principle of the equality of treatment of nationals and foreigners. Nonetheless, like other conventions, it is based on reciprocity: it only applies if the state the foreign national is from is also a signatory, unless they are a refugee.

Furthermore, this Convention does not provide any condition of lawful residence for its application (Article 4). Article 1 of the Convention defines the concept of residence as *de facto*, habitual and non-administrative residence. Consequently, the unlawfulness of the residence of a foreign national when they are covered by the Convention should not exclude them from equality of treatment as concerns social protection.

- ▶ **Convention no. 143 on Migrant Workers (Supplementary Provisions) (1975)**, represents a major milestone in the control of clandestine immigration and illegal work as well as a considerable expansion of equality of treatment of lawful migrant workers and national workers.
- ▶ **Convention no. 157 on the Maintenance of Social Security Rights (1982)**, and Recommendation no. 167, set out in detail the terms for the totalization of periods of contributions, employment, professional activity or residency to maintain the rights being acquired. The Convention also provides the terms for the maintenance of the rights acquired depending on the benefits considered and whether or not the member countries have a law in force relating to the branch concerned.

## 2. Features of international social security agreements

Whether they are multilateral or bilateral, social security conventions hold an important place among the applicable sources of law in view of the primacy of international law. To this end, their provisions prevail over contrary domestic provisions and grant migrant workers rights which are denied to them by the national provisions of Contracting Parties governed by the principles of territoriality and/or nationality.

National social security schemes do not only benefit persons residing in the national territory and, sometimes, nationals alone. But this principle is inadequate in view of the growing mobility of workers and the increase in international trade.

Exceptions have also been made, in the social security conventions that regulate the coordination of the domestic laws of state parties without amending them. This is the case of the ECOWAS General Convention on Social Security.

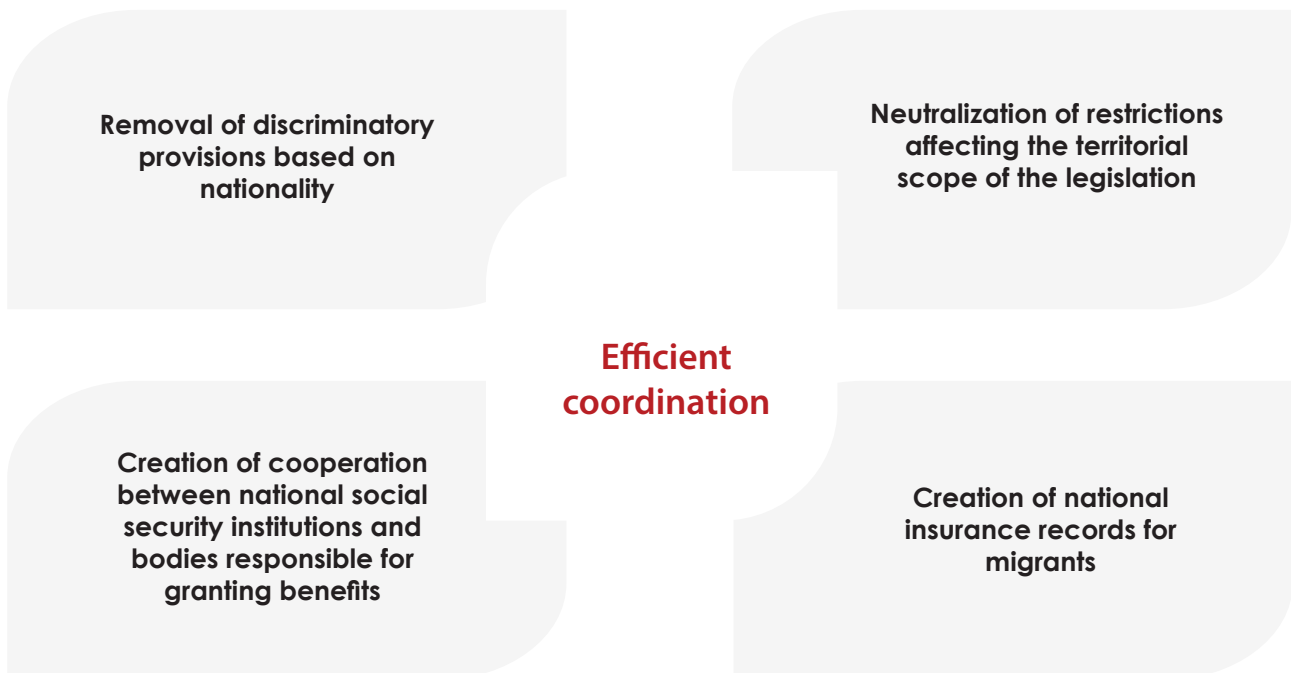
### 2.1. Objectives of multilateral social security agreements

The coordination of social security schemes in different countries aims to resolve the specific difficulties migrants face, particularly due to their status as foreigners.

The coordination instruments do not change the substance of the national social security system and have no effect on the amount of benefits or terms of allocation. They only apply to situations where there is a cross-border factor.

These instruments ensure equality of treatment for migrants. Although social security falls under national legislation, coordination is governed by international law and depends on cooperation between states.

To be efficient, this coordination assumes:



Social security agreements have the following objectives:



**Ensuring equality of treatment:**

persons subject to the legislation of contracting countries have, in the same situation, the same rights and obligations (right to the same benefits, same obligation to contribute to financing social security by paying contributions, etc.)



**Determining the applicable social security legislation:**

to avoid a person being subject to several social security legislations or not being subject to any legislation, the agreements set the rules to determine the legislation which will be applied



**Maintaining the rights acquired or being acquired:**

periods of insurance completed in contracting countries are totalized to grant entitlement to benefits or to calculate the amount of these benefits (e.g.: retirement pension)



**Guaranteeing the export of social security benefits:**

the residence condition for benefits to be granted is re

## 2.2. Scope of multilateral agreements

In addition, international social security conventions also determine their scope: **territorial scope** (the areas to which they apply), **material scope** (branches of social security covered), **personal scope** (persons to whom they apply: national workers, including foreign workers, or otherwise, carrying out their professional activity in the territory of the contracting parties, family members, independent workers, survivors, stateless persons, refugees, etc.).



They also set the rules to determine the applicable national social security laws, the competent institutions of each Contracting Party, the conditions for benefits to be granted, the rules preventing the overlap of benefits of the same kind as well as dispute settlement procedures.

## 3. Principles and objective of bilateral social security agreements

Multilateral social security instruments, both universal and regional, clearly demonstrate the importance of bilateral agreements and establish a framework for their conclusion.

### 3.1. Reminder of the legal bases of bilateral agreements

The need to make bilateral agreements between states to ensure the social protection of migrant workers is also enacted in the main ILO conventions and multilateral regional conventions. This is the case of the ECOWAS Convention.

#### a) ILO normative instruments

In particular, it should be noted that a model bilateral agreement is annexed to Recommendation no. 86, in which member states are invited, in paragraph 21, to “complete” Convention no. 97 and Recommendation no. 86 with bilateral agreements which mention the terms under which the principles contained in this convention and recommendation should be applied.

Paragraph 21 of Recommendation no. 86 effectively provides that Members should, in appropriate cases, complete the 1949 Convention concerning migrant workers (revised), and the preceding paragraphs of this recommendation, with bilateral agreements that mention the terms under which the principles contained in this Convention and Recommendation should be applied.

Nonetheless, it should be highlighted that although this annex issues provisions concerning the social protection of migrant workers, its focus is migration management. In addition, it dedicates important provisions to ensure the rights of lawful migrants (including refugees and displaced persons) as concerns access to employment, education, vocational training and the courts, the enjoyment of social rights, monitoring of living and working conditions, etc.

Similarly, Article 10 of Convention no. 97 provides for the conclusion of bilateral agreements “*for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention*” when the number of migrants going from the territory of one Member to the territory of another Member is quite large.

Article 15 of Convention no. 143 “*does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application*”.

#### b) ECOWAS General Convention on Social Security

The ECOWAS General Convention on Social Security provides that two or several Contracting Parties can (where applicable) make social security agreements based on the principles of the Convention. It also authorizes social security agreements that comply with its principles with third countries. This invitation is mentioned in several provisions of the Convention and the Administrative Arrangement. These include, for example:

- ▶ Article 8(2) of the Convention, which deals with the removal of territorial restrictions and its effect on the granting of benefits, provides that Contracting Parties shall settle, through bilateral or multilateral agreements, the payment of the benefits referred to in the preceding paragraph which are due to persons admitted to benefit from the provisions of this Convention, when such persons reside in the territory of a State that is a non-Contracting Party.
- ▶ Article 14, which sets out the exceptions to Articles 11-13 dealing with the applicable legislation, provides that the competent authorities of the contracting parties may by mutual agreement make exceptions to the provisions of Articles 11 to 13 in favour of the persons in question.



- ▶ Article 42(3) of the Convention concerning successive affiliation to a provident fund and a pensions institution, provides the possibility of the Contracting Parties determining the terms for the buyback of contribution periods by mutual agreement.
- ▶ Article 51 of the Convention which deals with the recovery of contributions and penalties in the territory of another Contracting Party, provides, in paragraph 2, that the terms of application between the Contracting Parties are subject to the conclusion of agreements by these parties. These agreements shall also concern the legal recovery procedure for sums owed to the competent institutions of the contracting parties.

### 3.2. Objective of bilateral social security agreements

The rise in and growing complexity of labour migration requires the international community to establish new tools to complement universal normative instruments and those intended to ensure, regionally, the coordination of the national systems of Contracting Parties.

This is the essential function of bilateral agreements that are intended to present the guiding principles of these multilateral instruments while taking into account the specific features of the two contracting countries by adapting them to national issues and specific groups of migrants.

In other words, bilateral agreements must comply with the fundamental principles laid down in the normative conventions of the ILO on the coordination of national social security systems.

Bilateral social security agreements have the purpose of coordinating the social security legislation of two states to guarantee the social rights of migrant workers.

This guarantee is essentially dealt with through the definition of a single social legislation applicable to workers to avoid both double-registration and non-registration with a scheme of one of the Contracting Parties as well as the application of the principle of equality of treatment of insured persons in the two states.

In addition, it ensures the waiving of residence rules for the benefit and export of certain benefits as well as taking into consideration, for entitlement to and calculation of benefits, periods of insurance completed in the other state (these periods are "totalized");

This guarantees the possibility for workers sent abroad to work in another state, as well as their accompanying dependents, to continue being registered, under certain conditions and for a limited time, with their original social security scheme, through the secondment procedure.

## 4. Process of negotiation and conclusion of social security agreements

Before focusing on the issues to be taken into consideration in the process of negotiating and concluding social security agreements, it would be useful to summarize the main rules governing the procedures most commonly used in international agreements.

### 4.1. Review of the main stages

La négociation et la conclusion d'un accord de sécurité sociale entre deux ou plusieurs États sont régis pThe negotiation and conclusion of a social security agreement between two or several states is governed by international law. The main stages up to entry into force are summarized below.



► Negotiation

At state level, the power to start negotiations belongs to the Executive which is represented by plenipotentiaries: persons who have officially received full powers to negotiate the agreement from the state.

Negotiation involves bargaining, proposals, discussions, counter-proposals and respective views through which the consent of the future Contracting Parties is formed on a text.

► Adoption and ratification

The signature of an agreement marks the end of the task of the plenipotentiaries. They conclude the negotiation stage and express the parties' willingness to comply with the conventional provisions at the end of the subsequent ratification and enactment under the constitutional provisions of the Contracting Parties which set the conditions for its entry into force.

In other words, the purpose of signing is so that the text cannot be changed thereafter. An authentic text is one that has become official. However, signing does not bind states.

Signatory states of an international agreement are only bound once they have ratified it. Ratification is carried out in each of the signatory states. It is the constitution of each state that determines the ratification procedure. Most often, a law authorizing ratification is passed by the legislative body.

Accession is a deed through which a state becomes a party to an international agreement when it was not among the signatory states to this treaty. However, for this to be possible, the treaty must be open, meaning that one of its provisions is an accession clause.

► Entry into force

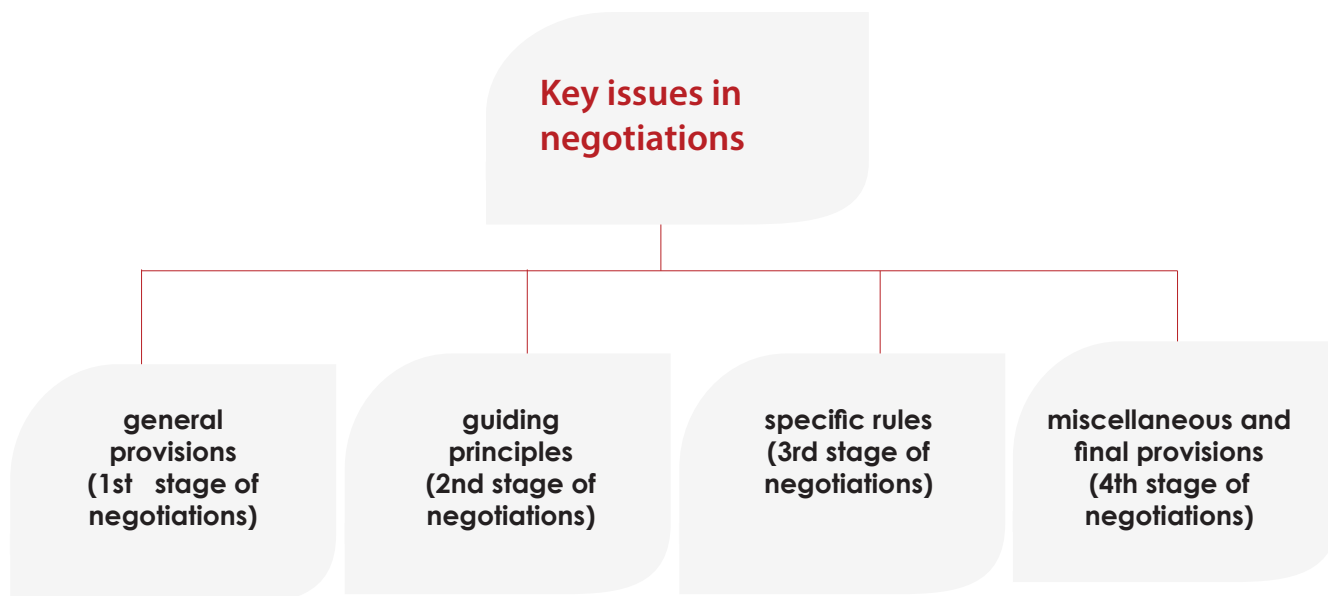
Generally, a social security agreement is the subject of an exchange of acts of ratification and their deposit with the ILO. If this is a multilateral social security convention adopted under the auspices of an international organization, a certain number of ratifications can be set for it to enter into force.

The Treaty establishing this international organization can also provide a simplified method of entry into force, once it is adopted by the competent authorities, without going through the long ratification procedures of State Parties. In this case, the entry into force shall be immediate after the adoption of an additional deed to the Treaty, as was the case of the ECOWAS General Convention on Social Security which entered into force upon its adoption by Heads of State.

## 4.2. Key issues in negotiations to conclude a social security agreement

The following is a review of the main technical points of negotiation between two or several Contracting Parties to a social security agreement that complies with and sets out the guiding principles of the ECOWAS Convention on the one hand and on the other, takes into consideration the specific features of the parties' schemes in negotiations.

Following the definition of technical terms, the main issues in the negotiation can be grouped into four main categories:



- ▶ General provisions (material and personal scope, rules preventing the overlap of benefits);
- ▶ Guiding principles (principles of equality of treatment and determination of the applicable legislation, the maintenance of acquired rights and the export of benefits);
- ▶ Specific rules on social benefits in the adopted material scope;
- ▶ and miscellaneous and final provisions (dispute resolution, entry into force, monitoring and accountability framework, termination).

### a) 1st stage of negotiations: General provisions

- ▶ Determination of the material scope

When they conclude a bilateral agreement, Contracting Parties must first agree on the risks it will cover. Although most bilateral instruments cover all or most branches of social security, some states can choose to limit the scope of their agreements to long-term benefits (invalidity, old-age and survivors' benefits).

Depending on the will of the Parties, bilateral instruments can apply simultaneously to contributory and non-contributory schemes (meaning schemes for benefits whose entitlement does not depend on a direct contribution by protected individuals or their employer) or only contributory schemes.

► Determination of the personal scope

This must be determined by negotiators with respect to two variations of the personal scope of an agreement. The first is general with the scope covering all persons subject to the social security legislation of one or both of the Contracting Parties (regardless of their nationality). The second is more restricted as it only applies to nationals of the Contracting Parties as well as refugees and stateless persons. In both cases, family members and survivors of protected persons are also included.

► Non-overlapping of benefits

This aims to prevent the person concerned being compensated twice for the same social risks. Each social security scheme effectively contains a certain number of rules or regulations intended to prevent the overlap of one benefit with other benefits or other earnings, or from the pursuit of professional activity.

There is an exception to the application of rules on the overlap of benefits received in the other Contracting Party, as concerns old-age, invalidity and survivors' benefits. International legislation on social security often requires rightly that long-term benefits are paid by several states, and thus each state pays a pension proportional to the time during which the beneficiary fell under its social security scheme.

**b) 2nd stage of negotiations: guiding principles of coordination**

► Equality of treatment

The cornerstone of social security agreements, this principle must feature prominently to ensure the equality of treatment of the people covered, both as concerns their liability and enjoyment of their right to benefits under the same conditions as nationals at their place of employment or residence in the territory of any Contracting Party.

Once this principle has been established, it is up to the plenipotentiaries to decide whether the persons covered can or cannot participate in social security administration or tribunals in all Contracting Parties.

► Determination of applicable legislation

Only one legislation is applicable: that of the Contracting Party in whose territory the migrant worker pursues their professional activity or resides. This principle establishes the applicability of the state's labour legislation (*lex loci laboris*) except in exceptional cases.

These exceptions relate to the secondment of the worker to another Contracting Party while remaining covered by the legislation of the Party they have left. On this point, negotiators can decrease or increase the duration of the secondment with respect to that set in the ECOWAS General Convention.

In addition, exceptions are made for persons employed in international transport, sailors and members of service personnel of diplomatic missions. The competent authorities of Contracting Parties may provide, by mutual agreement, exceptions to the rules determining the applicable legislation in favour of the parties concerned.

► Exportation of benefits

In the same way as equality of treatment, the payment of benefits abroad must be set up as a general rule so that the granting of benefits cannot be denied on the sole ground that the beneficiary does not reside in the territory of the competent institution but another Contracting Party. In other words, the payment of the benefit cannot be suspended, stopped, reduced or subject to other terms of allocation on the sole ground that the beneficiary resides in another Contracting Party.

### c) 3<sup>rd</sup> stage of negotiations: provisions concerning social benefits.

#### ► Old-age, invalidity and survivors' benefits

These benefits are governed by the principle of totalization and allocation on a *prorata temporis* basis as well as their free export.

Some national legislations only pay invalidity or survivors' benefit if the risk materializes (long-term work incapacity or death) in their territory. In other words, their legislation does not provide for the payment of any benefit if the person concerned dies in another country.

It would be useful as part of the negotiation to specify that if the risk occurs in the other Contracting Party, it must be considered to have occurred in the competent state.

#### ► Sickness and maternity benefits

The principle of totalization of periods of insurance governs the payment of benefits in kind and cash. If a Contracting Party subjects the right to benefits to the completion of a minimum period of insurance, it must take into account all the periods of insurance completed in the other Contracting Party. The periods of insurance are defined according to the legislation of the country where they are completed; some laws include periods of employment whereas others take periods of residence into consideration.

Consequently, the bilateral agreement should specify that totalization takes into account all periods of insurance, whether related to employment or residence.

Persons covered by the bilateral agreement are entitled to benefits in kind and in cash when they leave the territory of the competent state and move to the other Contracting Party. Does the granting of these benefits depend on the nature of residence in the other Party state and whether the person concerned is a temporary resident or resides permanently in this state?

These two specific cases must be clearly distinguished in the bilateral agreement as those who reside temporarily in the other Contracting Party only have the right to benefits in kind if their condition requires immediate medical attention.

Benefits in kind are then paid by the Contracting Party as part of its health care system, as if the person concerned is covered by it. The cost is reimbursed by the competent institution with which the insured person is registered. Nonetheless, the Parties can waive this reimbursement.

Another key point: the provision of more costly medical care (prostheses and devices such as pacemakers) are subject to the prior agreement of the competent state, unless if delaying care risks seriously endangering the life or health of the insured person.

Sickness and maternity benefits are also paid to those who, during temporary residence in the other Contracting Party, fall ill or are involved in an accident. These benefits are paid by the competent state, according to the rate set by it.

#### ► Benefits for work-related accidents and occupational diseases

The rules that govern sickness benefits are applied by analogy to work-related accidents.

Nonetheless, the export of these work-related accident benefits is more marked and the rules preventing overlap are weaker.

Finally, there is scope to consider that any accident on the way to work taking place in the territory of a Contracting Party other than the competent state will be treated as though it took place in the territory of the competent state.

► Family benefits

The main issues that concern family benefits relate to the principle of totalization and the receipt of family benefits even if family members reside in the territory of the other Contracting Party.

**d) ) 4<sup>th</sup> stage of negotiations: miscellaneous and final provisions**

This last stage of negotiations to conclude a bilateral agreement concerns miscellaneous and final provisions, dispute resolution, entry into force, the system for monitoring and accountability, termination procedures.

The terms and conditions for entry into force are generally consistent with the procedures described previously.

The creation of a monitoring committee for the scheme must be provided, defining its missions (examination of accounts and annual report, draft notice given to employees, etc.) and its composition.

Each Contracting Party is entitled to resort to termination of the agreement. Nonetheless, it would be useful to provide a period after the termination date for it to take effect to allow the rendering and checking of accounts.

## Conclusion

The importance of the role played by bilateral agreements in ensuring that migrant workers benefit from the protections contained in the conventions should be highlighted.

In this context, it is important that the content of these agreements and schemes are communicated in a comprehensible manner to those who benefit from them. There is also a need to ensure that these agreements provide suitable monitoring of their application and access to delivery mechanisms, as well as social dialogue.



## Key Learning Points

- ▶ Whether they are multilateral or bilateral, social security conventions hold an important place among the applicable sources of law in view of the primacy of international law. To this end, their provisions prevail over contrary domestic provisions and grant migrant workers rights which are denied to them by the national provisions of Contracting Parties governed by the principles of territoriality and/or nationality.
- ▶ The international legal system on social security is essentially made up of two types of international instruments: normative conventions and coordinating conventions.
- ▶ Normative conventions, most often set up by international organizations, define the basic standards with which national social security systems must comply. These instruments apply to the countries that ratify them.
- ▶ Several multilateral normative conventions have been negotiated and adopted worldwide under the auspices of the International Labour Organization (ILO).
- ▶ With respect to coordinating conventions, they are intended to ensure the effective protection of migrant workers through the coordination of the national legislation of Contracting Parties.
- ▶ These coordinating instruments ensure equality of treatment for migrants. Although social security falls under national legislation, coordination is governed by international law and depends on cooperation between states.
- ▶ To be effective, this coordination assumes: the removal of discriminatory provisions based on nationality; the neutralization of restrictions affecting the territorial scope of the legislation; the creation of national insurance records for migrants; the institution of cooperation between national social security institutions and bodies responsible for granting benefits.
- ▶ Social security conventions have the following objectives: ensuring equality of treatment; determining the applicable social security legislation; maintaining the rights acquired or being acquired; guaranteeing the export of social security benefits.
- ▶ The need to make bilateral agreements between states to ensure the social protection of migrant workers is also enacted in the main ILO conventions and multilateral regional conventions. This is the case of the ECOWAS Convention.
- ▶ The rise in and growing complexity of labour migration requires the international community to establish new tools to complement universal normative instruments and those intended to ensure, regionally, the coordination of the national systems of Contracting Parties.
- ▶ This is the essential function of bilateral agreements that are intended to present the guiding principles of these multilateral instruments while taking into account the specific features of the two contracting countries by adapting them to national issues and specific groups of migrants.
- ▶ The key issues in negotiations to conclude a social security agreement can be grouped into four main categories: general provisions; guiding principles; specific rules on social benefits in the material scope adopted; and miscellaneous and final provisions.



## Test your knowledge

1. **The international legal system on social security is essentially made up of two types of international instruments: normative conventions and coordinating conventions.**
  - a. TRUE
  - b. FALSE
  
2. **The instruments coordinating social security systems are drawn up based on principles outlined in normative instruments, whether they are made between several countries \_\_\_\_\_ or two countries \_\_\_\_\_.**
  - a. multilateral agreements; bilateral agreements
  - b. bilateral agreements; multilateral agreements
  
3. **Coordination instruments change the substance of the national social security system and have an effect on the amount of benefits or terms of allocation. They only apply to situations where there is a cross-border factor.**
  - a. TRUE
  - b. FALSE
  
4. **The main objectives of social security conventions are: ensuring equality of treatment; determining the applicable social security legislation; maintaining the rights acquired or being acquired; guaranteeing the export of social security benefits.**
  - a. TRUE
  - b. FALSE
  
5. **International social security conventions determine their scope, mainly:**
  - a. the territorial and material scope
  - b. the territorial and personal scope
  - c. the territorial, material and personal scope



**6. Tick the statements that are FALSE:**

- a. Multilateral social security instruments, both universal and regional, demonstrate the importance of bilateral agreements and establish a framework for their conclusion.
- b. Multilateral social security instruments, both universal and regional, question the importance of bilateral agreements and establish a framework for their conclusion.
- c. Multilateral social security instruments, both universal and regional, completely replace bilateral social security agreements.
- d. The need to make bilateral agreements between states to ensure the social protection of migrant workers is also enacted in the main ILO conventions and multilateral regional conventions.

**7. The ECOWAS General Convention on Social Security does not authorize the conclusion of bilateral social security agreements between Member States.**

- a. True
- b. False

**8. The rise in and growing complexity of labour migration requires the international community to establish new tools to complement universal normative instruments and those intended to ensure, regionally, the coordination of the national systems of Contracting Parties. This is the essential function of bilateral agreements.**

- a. True
- b. False

**9. The key issues in negotiating the conclusion of a social security agreement can be grouped into four main categories concerning:**

- a. General provisions;
- b. Guiding principles;
- c. Specific rules on social benefits in the adopted material scope;
- d. Miscellaneous and final provisions

**10. Which of the following statements are TRUE?**

- a. The non-overlap of benefits aims to ensure the person concerned is compensated twice for the same social risk
- b. The determination of the applicable legislation means that several legislative systems are applicable: that of the Contracting Party in whose territory the migrant worker pursues their professional activity or resides, and their country of origin.
- c. The principle of totalization of periods of insurance governs the payment of benefits in kind and cash. If a Contracting Party subjects the right to benefits to the completion of a minimum period of insurance, it must take into account all the periods of insurance completed in the other Contracting Party.
- d. The main issues that concern family benefits relate to the principle of totalization and the receipt of family benefits even if family members reside in the territory of another Contracting Party.



# Training activities

## Training activity I: Practical case



### Practical case: Negotiating a bilateral agreement



### Instructions for the trainer



### Tips

#### Objectives:

- ▶ Understanding the function of the negotiation mechanisms of bilateral social security agreements
- ▶ Putting the dynamics of negotiation into perspective
- ▶ Understanding the challenges countries can encounter during negotiation procedures

Divide participants into two groups. The first group will represent country A (country of origin) and the second group will represent country B (country of destination) in the negotiation of a bilateral social security agreement.

Then participants will work in groups of four, with two people representing country A and the other two country B.

The objective is to negotiate a bilateral social security agreement between the two countries in question and to highlight the main challenges encountered by the contracting parties (35 mins).

Country A	Country B
Country of origin of labour force	Country of destination of labour force
Labour force working in country B	Recruitment of labour from country A
National social security system covers 3/9 categories of benefits provided in ILO Convention no. 102	National social security system covers 7/9 categories of benefits provided in ILO Convention no. 102
ECOWAS General Convention on Social Security member state	ECOWAS General Convention on Social Security member state

Between these two countries, the principles of equality of treatment, totalization, reciprocity, and the determination of applicable legislation are still not complied with, and the implementation of coordination mechanisms on social security is still a persisting challenge.

Once the negotiation period is complete, the different groups will present their conclusions to the rest of the group.

Make copies of a document containing information on the provisions and benefits of ILO Convention no. 102, a list of principles for coordinating social security systems and the key issues to be taken into consideration during the negotiation process.

- ▶ Emphasize the role of promoting compliance with the coordinating principles of social security systems.
- ▶ Ask the group the following question: the two countries are ECOWAS members and signed the ECOWAS General Convention on Social Security - "is it important to promote bilateral negotiations to ensure the social protection of migrant workers?"
- ▶ The negotiating parties may or may not reach an agreement on social security.
- ▶ It is important to highlight the different conclusions of the groups, whether or not they reached an agreement, under what conditions and the points that were discussed most frequently.

**Materials**

- ▶ Writing material
- ▶ Post-it notes

**Time**

- ▶ Bilateral negotiations (35 mins)
- ▶ Final conclusions (15 mins)

## Training activity II: Brainstorming



### Brainstorming

#### Objectives:

- ▶ Understanding the role of bilateral social security agreements
- ▶ Putting into perspective the dynamics of the complementarity between bilateral and multilateral agreements.



### Instructions for the trainer

Divide participants into 4 working groups.

Pose the following questions so that the groups can start their brainstorming discussions. (25 mins)

1. Are bilateral social security agreements important to guarantee social protection for migrant workers?
2. How do bilateral agreements complement multilateral social security agreements?  
  
Do you know of examples of good practice in bilateral and multilateral cooperation?
3. In the ECOWAS framework, could the promotion of bilateral cooperation contribute to the objectives of the General Convention on Social Security? If yes, how?

At the end of discussions, the groups will present their conclusions in a plenary session. (10 mins)



### Tips

- ▶ Ensure the working groups have diverse participants.
- ▶ Encourage the active participation of all participants.



### Materials

- ▶ Writing material
- ▶ Post-it notes



### Time

- ▶ Group brainstorming (25 mins)
- ▶ Final conclusions (15 mins)



## 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

**Download all modules and related documents at the link below:**

<https://www.itcilo.org/en/areas-of-expertise/labour-migration/ecowas>