

# **Worker-friendly Explanation of ECOWAS General Convention on Social Security**

*Being presentation at sub-regional meeting on “ECOWAS Protocols for West African Trade Unions” held at Treasure Suites and Conference Centre, Abuja.*

**Iduh L. Onah\***

## **Introduction**

The ECOWAS General Convention on Social Security was drafted in 1993. On December 7, 2012, it was adopted at the Conference of Ministers of Labour and Social Welfare in Dakar, Senegal. At the 43<sup>rd</sup> Ordinary Session of ECOWAS Heads of State and Government held in Abuja from July 17-18, 2013, it was adopted as a Supplementary Act to the Revised ECOWAS Treaty of 1993.

Although there is a reference to social security protection for migrant workers under Article 17 of the 1996 Supplementary protocol, the adoption of the convention outlining details of categories of benefits formally stepped up the realisation of the free movement protocol from the realm of theory to practice.

In addition, the adoption of the convention was a progressive demonstration of the principle of equal treatment that the ECOWAS Treaty promised nationals of member states as community citizens.

To further consolidate the realisation of that objective, the convention went further to stress the need for the harmonisation of labour laws and social security institutions of ECOWAS’ member states.

Based largely on ILO and UN conventions, the General Convention of Social Security makes social security not only a basic right but also empowers migrants who work in the sub-region to exercise their right to social security in their countries of origin or residence.

The relevant ILO Conventions on migrant workers and that of UN on social security include the following:

*\* Onah works with Organisation of Trade Unions of West Africa (OTUWA)*

- 1.) Social Security (minimum standards) Convention, 1952 (n° 102);
- 2.) Equality of Treatment (social security) Convention, 1962 (n° 118);
- 3.) Maintenance of Social Security Rights Convention, 1982 (n° 157).
- 4.) UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### **ECOWAS Social Security Convention**

The ECOWAS General Convention on Social Security covers national and non-national workers of member states and members of their families. The Convention right from the onset envisaged and indeed canvassed not only the accumulation of acquired rights through periods of employment under either voluntary or mandatory contributory regimes, but also the payment of those benefits in countries of residence or through flexible portability within the ECOWAS sub-region.

### **Core Provisions of the Convention**

The Convention contains 66 Articles which deal broadly with the application and administration of social security coverage for West African migrant workers within the ECOWAS sub-region.

Structured as a general legal framework to guide member states in their framing and application of social protection to suit national peculiarities, the convention can be broken into three broad categories, namely; general provisions and scope of application; special provisions governing the various aspects of benefits, and general administrative matters and procedures for benefit claims.

A notable provision in the convention is the establishment of the “Committee of Experts on Social Security” with the power of setting it up invested in the ECOWAS Commission under **Article 44, paragraph 1**.

On composition of the Committee of Experts, **Article 44, paragraphs 2 and 3** state as follows:

*2. The Committee shall comprise two representatives of each Contracting Party, including the National Director responsible for Social Security and a representative of institutions that operate national compulsory social security schemes. Where there are several national institutions responsible for the management of compulsory contributory social security schemes, the ECOWAS Commission shall invite the heads of these institutions to meetings of the Committee of Experts.*

*3. The Committee shall receive technical assistance from the International Labour Office and from any other technical partner.*

The Convention also has three annexes. Under Annex 1, the member states are listed as Competent Authorities, Annex 2 lists the “Competent Institutions and Benefits”, and Annex 3 outlines the “Institutions designated by the competent authorities as responsible for issuing a certificate of temporary employment abroad.”

Although structured in the above format, the segments are inter-related and therefore complement one another in reading and general provisions and scope of application.

### **General provisions and scope of application**

**Under Article 2**, paragraph 1, migrants are entitled to social protection on the following grounds:

- a) Disability benefits;
- b) Old age benefits (pensions or retirement benefits);
- c) Survivors' benefits;
- d) Occupational diseases and work-related accidents;
- e) Family benefits;
- f) Maternity benefits
- g) Health care and Sickness benefits;

## h) Unemployment Benefits

**Paragraph 2 of Article 2** pins access to social protection on mandatory contributions by both employees and employers.

**Under Article 4**, persons covered or protected by the convention include the following:

- 1.) Migrant workers who are community citizens in ECOWAS member states.
- 2.) Migrant workers who are enrolled in the social security scheme in their country of residence.
- 3.) Family members and/or beneficiaries of the workers mentioned above.
- 4.) A refugee or stateless person living in an ECOWAS country who is covered by contributions paid to a social security fund.

**Article 6** stresses the “equality of treatment” of migrant workers (who are community citizens) to that of nationals of host member states. This is complemented by Article 9, which states that social security benefits that go naturally to national workers also automatically apply to migrant workers.

**Under Article 7**, the Convention states that previous protection entered and completed by migrant workers in other ECOWAS countries will be taken into account when enrolling into a new coverage in another ECOWAS country.

The Convention also takes into account (**Article 8, paragraph 2**) a situation where a migrant worker who is a national of an ECOWAS country but worked or is working in a non-ECOWAS country, but enrolled under a social security scheme in that country: that migrant worker’s benefits are assumed to be covered either by a bilateral or multilateral agreement between the migrant’s country of residence and that of his/her country of origin or ECOWAS.

**Secondly, Article 8**, paragraph 1, also states that the migrant worker’s family would still be entitled to social protection even if they are not residing with him/her in the host country from where payment of benefits would originate.

**While Article 10, paragraph 1**, states that migrant workers are entitled to several benefits of the same kind for the same period of compulsory insurance; paragraph 2 however restricts migrants from making claims in two countries concurrently. In other words, a migrant is only entitled to make claims in either home country or country of work, even if that migrant worker is entitled to benefits in both.

The provisions of **Article 11, paragraph 1**, states that migrants are subject to the laws of only one country at a given time. In addition, paragraph 2 stresses the fact that the law under which a migrant is working in covers that migrant.

Article 12, however places some exceptions to the application of **Article 11** by exempting the employees of international transport companies and staff of diplomatic missions or consulates from coverage in the country of residence. Thus, a staff of a diplomatic mission is subject to the law of his/her own country, just as an employee of an airline or ship whose headquarters is located in a member state but spends much of his/her working time moving from one member state to the other.

In addition, a migrant worker who is expected to be under employment in a country other than his/her country of origin for less than 6 months is exempted from coverage in the country of temporary residence.

**Article 16** provides that previous social security coverage from an ECOWAS member state can be depended on to help a migrant qualify for enrolment and benefits when that migrant moves into another member state where the laws of that country require minimum insurance periods in order to qualify for certain benefits. In other words, previous insurance period acquired in other ECOWAS countries can be accumulated to qualify a migrant in a new country of residence.

### **Special Provisions Governing Benefits**

The Articles under special provisions stipulate the categories or conditions for benefits and the guidelines under which payment may be made.

The categories for benefits include:

1. Occupational injuries and diseases
2. Family and maternity benefits

3. Disability benefits;
4. Old age benefits;
5. Survivors' benefits;
6. Health care and Sickness benefits;
7. Unemployment Benefits

**Articles 26-33** outline provisions in terms of occupational injury and diseases as follows:

- The general principle is that the laws of the country where the institution providing the benefits is located will be applied regardless of migrant's residential status. This is particularly so with respect to accidents in ECOWAS member states and accidents on the way to work in an ECOWAS member state.
- A migrant worker is paid benefits for an occupational disease by last country of work, even if s/he had worked in several ECOWAS member states.
- A migrant who suffered an occupational accident or disease and is receiving benefits in the country of work, may be entitled to those benefits for a limited time when s/he returns to country of origin depending on existing national social security laws.
- A migrant worker may be provided with benefits such as prosthetic appliances by an issuing institution in a member state of his choice other than country of residence upon approval.
- A migrant worker is entitled to benefits of cost of transportation in the event of accident. If deceased as a result of the accident, survivors are entitled to be paid the cost of transportation of the body to place of burial or country of origin (apart from other benefits).
- If a migrant worker is already receiving benefits as a result of an occupational disease and his/her condition worsens, s/he is entitled to

receive additional benefits from original institution if s/he has not worked in another liable occupation. However, a migrant is entitled to supplementary benefits if s/he switches occupation that further aggravated the illness.

- Calculation of cash benefits is based on records of previous earnings and/or the number of members of the family who may be residing in another ECOWAS member state. In doing this, family members will be treated equally as nationals of the country issuing these benefits.

### **Types of Occupational Injuries covered**

- An accident at work is defined as “an accident arising from, or in the course of, work in any capacity and any location, with or without a worker’s fault as an employee.”
- An occupational disease is a work-related disease recognised in social security laws, and may include “morbid manifestations of acute or chronic intoxication of a worker regularly exposed to some toxic agents,” and “microbial or parasitic infections that may be contracted because of work.”
- A commuting accident is an accident occurring on worker’s transit to and from work.

### **Family and maternity benefits**

**Articles 35-37** make provisions for family and maternity benefits.

The convention defines family benefits as “any benefits in kind or in cash, including family allowances, to offset family maintenance costs with the exception of pensions or benefit increases provided for the family members of the beneficiaries of these pensions or benefits.

On the other hand, the convention defines family allowances as “regular cash benefits granted according to the number and age of children.”

The key issues highlighted with regard to family and maternity benefits include the following:

- That in a situation where the laws of a member state require a certain period to qualify for coverage or eligible for entitlement, the time accrued in other ECOWAS countries can be used.
- That a working migrant woman/mother resident or temporarily resident in a member state other than the state she is originally covered is entitled to receive maternity benefits in that territory in accordance with the legislation that applies there. In other words, the migrant mother is entitled to receive medical services or cash benefits for that purpose as if she were originally resident and enrolled in that state.
- That family members of a worker are entitled to family benefits even if they are resident in a state other than the employee.

### **Health care and sickness benefits**

This category of protection is contained in **Articles 38-40** of the convention. Here, there are two categories, namely benefits in kind (services) and cash benefits.

These articles stipulate that:

- In kind benefits (e.g. medical services) will be provided by the institution issuing workers benefits at your country of residence. Article 40 stipulates that benefits in kind also cover family members of migrants.
- Migrants are entitled to cash benefits in the country of residence as if they are nationals of that country.
- Migrants are entitled to sickness or cash benefits even if they move to another ECOWAS country and are able to satisfy the following conditions:
  - (i) The conditions in the laws of the country issuing the benefits,
  - (ii) If the health condition immediately requires benefits during the migrant's stay, and,

- (iii) If the migrant is authorised by the institution issuing the benefits to move to the other ECOWAS country to be given appropriate care for his health condition.
- Notwithstanding the above, authorisation for a migrant's move to a member state may be rejected if the move could compromise his/her health or medical treatment.

### **Unemployment benefits**

**Article 41** defines unemployment benefits and stipulates the requirements to getting the benefits.

Unemployment benefits “are benefits temporarily paid during the suspension of earnings when a migrant is unable to gain new employment,” if s/he is insured.

A migrant who is insured or entitled to unemployment benefits in an ECOWAS country but moves to a different ECOWAS country, must satisfy the conditions of the new country of residence in order to qualify for benefits there.

Upon satisfying the conditions of the new country of residence, the benefits will be provided by an institution there in accordance with the country's laws, but paid for by the original institution issuing the benefits.

### **General Administrative Matters**

**Articles 42-66** deal with general administrative issues, including the regulation of institutions, inter-state relations, medical examination, procedures for the determination of benefits and other financial protocols for claims and payment of benefits.

### **Obstacles/Challenges**

As noted earlier, the ECOWAS social security convention is designed to eliminate existential barriers impeding the comprehensive implementation of the free movement persons within the sub-region. However, like other many other lofty initiatives of ECOWAS, the convention has failed to yield the expected results mainly because of the lack of the desired political will to drive the implementation.

As indicated by a recent research<sup>1</sup> on the state of implementation of the convention, the major factors hindering progressive implementation include the following:

1. Unequal development of national social security systems between ECOWAS member states (some services cannot be offered in some states compared to the Country of Origin).
2. Insufficient administrative capacities in social security institutions (challenges in providing guarantees of accumulated rights and of enforcing actual transfer across countries).
3. Recognition of polygamous status (uneven across countries; may impact short-term benefits such as maternity and long-term such as survivor benefits).
4. Urgent need to develop a standard agreement template to link administrative bodies.
5. The restrictive nature of the voluntary continued insurance mechanism (hampers ability of some migrants to improve their old age benefits).

The research<sup>2</sup> also recommended the following measures:

1. Establish the Committee of Experts provided for in the final provisions of the Convention, which is the body in charge of driving forward the implementation of the Convention and ensuring proper regulation of its application;
2. Create a Technical Task Force comprising officials from ECOWAS, from the ILO FMM West Africa project and other experts to support the launching of the Committee of Experts' activities and assist in the

---

<sup>1</sup> *Guide for Policymakers on the Protection of Migrant Workers' Rights within the ECOWAS Region* ([www.fmmwestafrica.com](http://www.fmmwestafrica.com) June 2016)

<sup>2</sup> Ibid

establishment of coordination mechanisms between national insurance funds.

3. Ensure wide dissemination of the Convention and its Administrative Arrangement in all Member States, in particular among social partner organizations representing employers and workers.

## **Reference**

1. Supplementary Act A/SA.5/07/13 Relating to the General Convention on Social Security of Member States of ECOWAS; (ECOWAS, 2013)
2. Social Protection For Migrant Workers and their Families in ECOWAS States; (ILO Regional Office for Africa (ROAF), 2019)
3. ILO Convention on Social Security - Minimum Standards - C102 of 1952
4. C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)
5. Minimum Standards of Social Security: New International Convention, (Robert J. Myers, Social Security Bulletin, October 1952)
6. The International Convention on Migrant Workers and its Committee, Fact Sheet No. 24 (Rev.1); (United Nations, New York and Geneva, 2005)
7. Guide for Policymakers on the Protection of Migrant Workers' Rights within the ECOWAS Region; ([www.fmmwestafrica.com](http://www.fmmwestafrica.com) June 2016)