

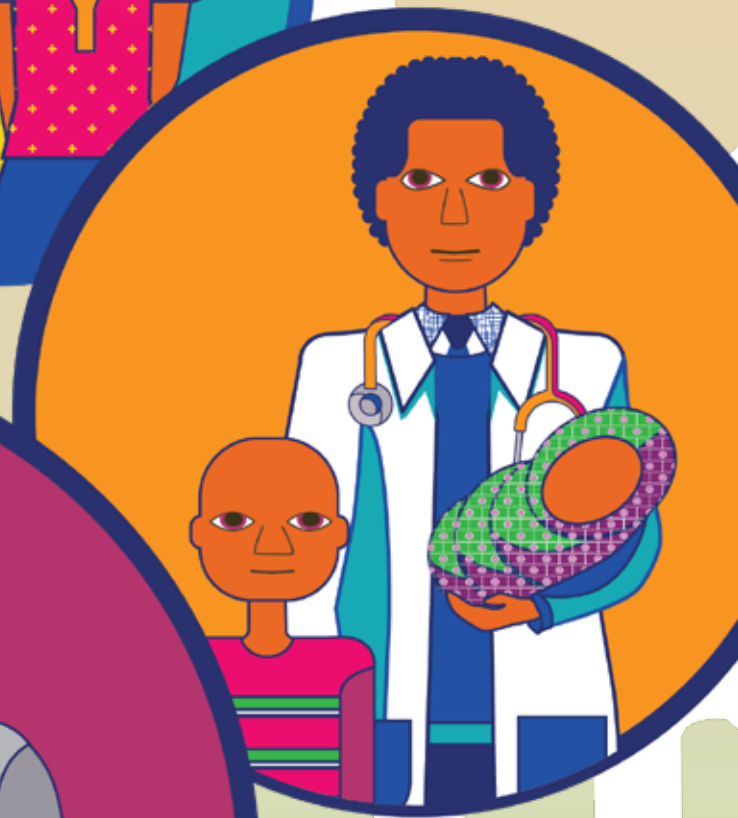
SOCIAL PROTECTION AND MIGRANT WORKERS IN THE INFORMAL ECONOMY

For more detailed information see: ILO Guide on Extending social protection to migrant workers, refugees and their families, Forthcoming 2021.



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“We need to reinvigorate social protection policies to fully play their role as a means to achieve equity and social justice and as a key element of the future of work that we want. Ensuring the effective portability of social security rights and benefits for international migrants seems to us to be crucial.”
- Guy Ryder, Director-General of the ILO, 2018



While responding to increased demand for labour from globalised labour markets, international migration poses significant challenges for international migrant workers and their families in terms of social protection coverage. Indeed, migrant workers face multiple disadvantages in working conditions, including limited legal rights, discrimination, social exclusion, and lack of social protection.

Social Protection is **one of the four strategic objectives of the Decent Work Agenda** that defines the core work of the ILO. Its recently adopted two-dimensional strategy for the extension of social protection aims at building comprehensive social security systems in line with national priorities and resources. The horizontal dimension consists of the **rapid implementation of National Floors of Social Protection**, guided and further strengthened by the Social Protection Floors Recommendation, 2012 (No. 202), while vertical dimensions seek to **progressively ensure higher levels of protection**, in line with the Social Security (Minimum Standards) Convention, 1952 (No. 102) and more advanced ILO standards.

Although “everyone as a member of society has the right to social security” (Universal Declaration of Human Rights (1948), art. 22), in reality, compared to nationals working their entire lives in one country, migrant workers face huge challenges in exercising their right to social security. They can be denied access or have limited effective access to social security coverage in their host country because of their status, nationality or the insufficient duration of their periods of employment and residence. Their access may further be restricted due to lack of knowledge about and awareness of their rights and obligations. At the same time, they can lose their entitlements to social security benefits in their country of origin because of their temporary absence.

The objective 22 of the Global Compact for Safe, Orderly and Regular Migration (GCM), includes provisions on social protection, which build on the principles of **non-discrimination** and **equality of treatment** and provides a cogent framework for governments to pursue implementation at the national level. Objective 22 of the GCM calls amongst other for:

- › The **establishment of national social protection systems**, including social protection floors for nationals and migrants, in line with the ILO Recommendation 202 on Social Protection Floors;
- › The **conclusion of bilateral, regional or multilateral social security agreements** to ensure the portability of social security rights and benefits;
- › The **inclusion of social protection provisions in labour agreements**.

Why extend social protection to migrant workers?

African migrant workers within the continent, as those abroad, are confronted to enormous challenges in accessing social security benefits, particularly considering that social protection coverage of African nationals is very low. The increase of African migration flows to the Gulf and the Middle East in recent years with limited access to social protection (e.g. mainly end-of-service benefits and health care) is a serious concern for policy-makers in the region.

- › Social security is a human right and African migrant workers should have access to it and benefit from an equality of treatment with nationals wherever they work.
- › Increasing social security coordination between countries of origin and destination through bilateral and multilateral social security agreements and the ratification of relevant international Conventions should be a high priority of social policy as the well-being of millions of migrant workers and their families is at stake.
- › Furthermore, the portability of social security benefits does not only bear significance for African migrant workers and their families, but undoubtedly facilitates the free movement of labour within and across economic zones and is, therefore, indispensable for the proper functioning of integrated labour markets.
- › Overcoming the difficulties faced by African national and migrant workers and their families with respect to social security coverage is an important challenge that needs to be addressed urgently but is also an opportunity to reduce inequalities, ensure inclusive growth and foster social cohesion.

The Global Compact for Safe, Orderly and Regular Migration and the Protection of Migrant Workers:

Objective 22 of the Global Compact for Safe, Orderly and Regular Migration, encourages countries to “Establish mechanisms for the portability of social security entitlements and earned benefits”.

Africa is the continent where the greatest proportion of the population does not have access to social protection and adequate health care, and where human needs are largest.

Legal obstacles and practical barriers faced by migrant workers in accessing social protection

The main legal obstacles faced by African migrant workers in the formal or informal economy are primarily linked to the principles of territoriality and nationality. The principle of territoriality, restrains the application of social security legislation to the country in which it has been enacted, directly affecting all migrant workers who may not only lose coverage under the national social security system of their country of origin, but also risk having limited or no coverage in their country of employment. On the other hand, whereas a number of countries recognize the equality of treatment for national and foreign workers, the principle of nationality in social security legislation often leads to less favourable treatment of non-nationals as compared to national workers.

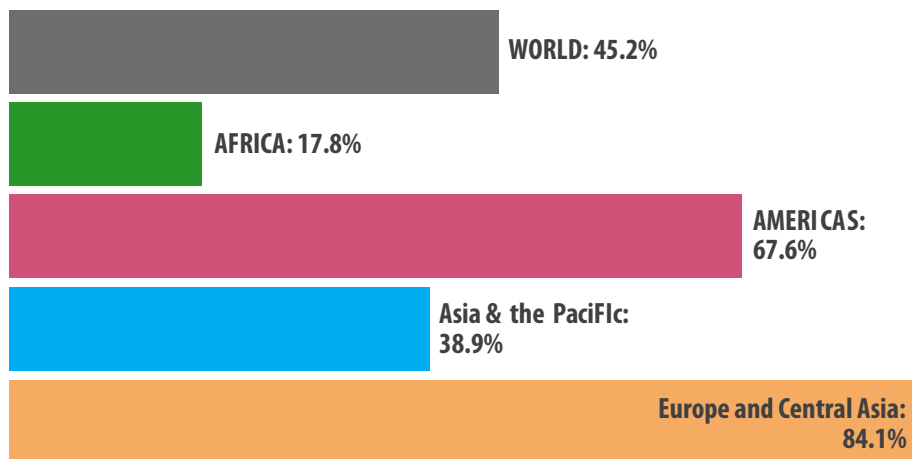
A non-exhaustive list of legal obstacles includes:

- › The exclusion from social protection schemes can be due to the non-fulfillment of certain **conditions** such as the minimum duration of employment or residence periods or a minimum number of contributory years.
- › Certain **categories of workers** may also be legally excluded from social protection such as domestic workers, self-employed workers, or agricultural workers, affecting migrant workers as well as nationals.
- › **Migrants with an irregular status** are usually excluded from social security laws and agreements.
- › **Migrants working in the informal economy** are also often legally excluded from social protection schemes, such as contributory social insurance schemes.
- › The **absence of bilateral or multilateral social security agreements**, prevent migrant workers from maintaining acquired social security rights or rights in the course of acquisition, when moving from one country to another.
- › The **lack of legal enforcement** of national laws as well as social security agreements is also an important challenge.

In addition a number of **practical obstacles** may also prevent migrant workers from accessing social protection benefits, these include amongst others: a lack of information or knowledge on one's rights, complex and lengthy administrative procedures, language and geographical barriers, lack of representation, organization, and effective social dialogue, limited access to justice and a dearth of data on migrant worker' access to social security entitlements.

Figure 1 shows SDG indicator 1.3.1: **Population covered by at least one social protection benefit in Africa** as being **less than 17.8%**

(ILO World Social Protection Report 2017-19)



ILO standards and tools to safeguard the social security rights of migrant workers and their families

The **Convention on Social Security (Minimum Standards)**, 1952 (No. 102) Part XII of Convention No. 102 (article 68) is devoted to equality of treatment of non-national residents.

Equality of Treatment (Social Security) Convention, 1962 (No. 118) sets forth the equality of treatment principle between national and non-national workers and their families.

ILO migrant-specific instruments

Migration for Employment Convention, 1949 (No. 97) establishes the principle of equality of treatment in respect of social security (article 6).

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) addresses migrant workers in irregular situations and their rights to equality of treatment in respect of rights arising out of past employment with regards to remuneration, social security, and other benefits (article 9).

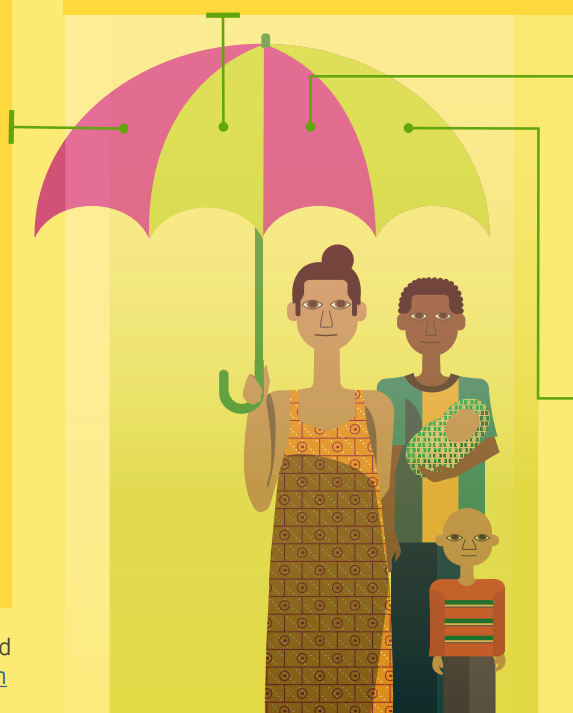
Maintenance of Social Security Rights Convention 1982 (No. 157) calls for the maintenance of rights in the course of acquisition by providing for the totalisation of qualifying periods completed in different countries.

ILO migrant-specific instruments

The ILO Multilateral Framework on Labour Migration (2006) calls for the conclusion of social security agreements to ensure the portability of social security entitlements

Maintenance of Social Security Rights Recommendation, 1983 (No. 167) sets out in its Annex a Model Agreement for the Coordination of Bilateral or Multilateral Social Security Instruments.

Social Protection Floors Recommendation, 2012 (No. 202) sets four basic social security guarantees for all residents and children



Additional ILO resources can be found at: <http://www.ilo.org/labourmigration>

5 BASIC PRINCIPLES - SOCIAL SECURITY OF MIGRANT WORKERS

In view of the vulnerability of migrant workers, the International Labour Conference (ILC) has adopted general instruments on migrant workers. In addition, general social security Conventions explicitly or implicitly set forth the principle of equality of treatment between nationals and foreign workers. Other ILO standards that address the issue of the social security of migrant workers in a global manner are the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157). Conventions Nos. 118 and 157 therefore establish a system based on a number of basic principles, and primarily equality of treatment, the maintenance of acquired rights and the maintenance of rights in the course of acquisition.

1. **Equality of treatment:** By virtue of the principle of equality of treatment, non-national workers must benefit in the host country from the same conditions as nationals in terms of coverage and entitlement to social security benefits.
2. **Maintenance of acquired rights and the provision of benefits abroad:** The maintenance of acquired rights permits migrant workers to receive benefits which are due to them from a State, even when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant workers, is intended to ensure them real equality of treatment and not just legal equality. In the case of long-term benefits (particularly invalidity, old age and survivors' benefit, and annuities paid as a result of an employment accident or an occupational disease), there is a direct obligation to maintain acquired rights, in the sense that it is not dependent on the conclusion of an agreement between the States concerned. With regard to short-term benefits, the obligation to maintain acquired rights is indirect. States have to endeavour to participate in schemes for the maintenance of these rights.
3. **Maintenance of rights in course of acquisition:** The maintenance of rights in the course of acquisition makes it possible to add together periods of coverage of migrant workers under the social security legislation of the various countries in which they have lived.
4. **Applicable legislation:** The States concerned have to determine by common agreement the applicable legislation, in accordance with certain principles set out in the Convention itself. The applicable legislation is normally that of the State in which the persons concerned carry out their occupational activity or, in the case of persons who are not active, in which they are resident.
5. **Administrative assistance and assistance to persons:** Convention No. 118 provides that States parties shall afford each other

administrative assistance free of charge with a view to facilitating the application of the Convention and the implementation of their respective social security legislation. The matters covered by Conventions Nos. 118 and 157 are very complex. With a view to facilitating the conclusion of agreements between the States concerned and their coordination at the international level, the Maintenance of Social Security Rights Recommendation, 1983 (No. 167) contains model provisions in annex for the conclusion of bilateral and multilateral social security instruments.

In Africa, over the past years, important progress has been made on regional integration with the adoption of free movement protocols at regional and sub-regional levels. Access to social protection across borders is a key pillar of **regional integration processes**. Ensuring fair and effective labour migration and the extension of social protection to migrant workers are at the heart of many national, sub-regional and regional policy frameworks. The **AU Revised Migration Policy Framework for Africa** include important guidance for member states on how to extend social protection to migrant workers and this is also true in SADC labour migration action plan (2020-25), adopted in March, 2020.

THE ILO'S APPROACH

1. **To promote the ratification and application of ILO Conventions and Recommendations** containing standards relevant to migrant workers and their social protection, notably equality of treatment, can be incorporated into domestic law. This will imply that social security laws, regulating both social insurance and social assistance schemes, cover migrant workers.
2. **To support the conclusion of social security agreements (bilateral/multilateral):** treaties which coordinate the social security schemes of two or more countries to provide equality of treatment in respect of social security, as well as access to and preservation and/or portability of social security elements (ILC 2011 Conclusions), using the Annex of the Maintenance of Social Security Rights Recommendation, 1983 (No. 167) as a model Agreement for the coordination of bilateral or multilateral social security instruments.
3. **To promote the inclusion of social security provisions in temporary labour migration programmes or bilateral labour agreements (BLAs)** using the Annex of the Migration for Employment Recommendation, 1949 (No. 86) as a model agreement.
4. **To support unilateral measures:** countries of employment can unilaterally provide equality of treatment between nationals and non-nationals as regards social security coverage as well as the payment of benefits abroad. Also, countries of origin can implement a number of measures to ensure a certain level of social protection to their

The ILO's Approach

Social protection policies are vital elements of national development strategies to reduce poverty and vulnerability across the life cycle and support inclusive and sustainable growth. (ILO 2017).

nationals working abroad. Unilateral measures can also include the support to the **establishment of national social protection floors (SFP)** to ensure basic social security guarantees to all, including migrants and their families.

5. **To support complementary measures addressing the administrative, practical, and organizational obstacles faced by migrant workers.**

ILO provides technical advice/expertise and capacity building on all the policy options just cited but also on:

- › the drafting or revision of national legislation and policies and the establishment of national Social Protection Floors based on social dialogue
- › the formulation of national social protection policies and legal frameworks that extend coverage to migrant workers and their dependents in line with international standards and good practices
- › the establishment of a knowledge base (including statistics) on social security for migrant workers to support evidence-based policymaking and capacity building
- › the costing and financing of social protection schemes and reforms (e.g. fiscal space analyses), including those related to the extension of social protection to migrant workers and their families

Last but not least, it is important to recall that **social partners should be actively involved** in the planning, design, and monitoring of all the above policy options. Social dialogue and consultations can permit to identify gaps in migration and social security policies in sending, transit and receiving countries, and supports the consideration of the specific needs of migrant workers and their families, which is key for the design of migrant-sensitive policies and measures. Social dialogue and greater representation of migrant workers can help build consensus on migrant workers' social protection, ensure more sustainable extension strategies and forge stronger social cohesion.



ILO'S RECENT WORK ON SOCIAL PROTECTION FOR AFRICAN MIGRANT WORKERS

ILO-ICMPD-EU project “Extending social protection access and portability of benefits to migrant workers and their families in selected RECs (ECOWAS, EAC, SADC) in Africa (2018-20)”

The overall objective of the action is to extend decent work and social protection to migrant workers and their families, by strengthening the Regional Economic Communities' capacities (ECOWAS, EAC and SADC) to provide, as well as drive the implementation of regional frameworks on the extension of social protection to migrant workers and their families. This project was implemented as part of the Joint Labour Migration Programme (JLMP) which was developed with the full cooperation and involvement of Africa's RECs by the AUC, the ILO, IOM and UNECA and adopted by African head of States in 2015.

2015-2020 ILO Key achievements

- › **Improved capacity of the AUC, RECs and regional social partners to effectively coordinate and contribute to regional and sub-regional social protection programmes for migrant workers** in both, the formal and informal sector;
- › **Improved implementation of ECOWAS General Convention on Social Security** by ECOWAS Member States through an ECOWAS administrative arrangement;
- › **EAC's capacity and knowledge base enhanced** to advance the regional coordination and protection framework as per Common Market Protocol to improve migrant workers' access to social protection;
- › **SADC's capacity and policy instruments on social security, including portability of rights strengthened;**
- › **ILO is supporting 30 national institutions in Africa to develop and publish periodic/regular data on social protection for migrant workers through the Social Security Inquiry (SSI) Migrant Module to collect statistics for migrant workers;**
- › **ILO is providing technical support to the AUC and IGAD on the development of Guidance on Bilateral Labour Agreements including social protection provisions;**
- › **With ILO support, Cape Verde adopted a social pension including returning migrants;**
- › **Technical notes drafted for 5 BLAs¹ and annexed model employment contracts, with specific inputs on social protection;**

1 For Ethiopia (draft BLA with Bahrain and UAE) Ghana (BLA and model employment contract with Qatar); Madagascar (draft model BLA with Lebanon, Kuwait and Saudi Arabia), Qatar (draft model BLA, model employment contract for domestic workers, model contract for migrant workers).

ITC/ILO project “Supporting the Social and Professional Reintegration of North African Return Migrants” (SURE) with financial support from the European Union implemented from 2018 to 2019 with the financial support of the European Union.

- › Support to the negotiation of bilateral social security agreements between Morocco and neighbouring countries

IOM-ILO–ECOWAS project “Support to Free Movement of Persons and Migration in West Africa (FMM)” implemented from 2017 to 2021 - funded by the 10th European Development Fund

- › Provision of policy-advice, awareness-raising and capacity-building on the implementation of the ECOWAS General Convention on Social Security² that was adopted in 2012 with the technical support of the ILO.
- › Support the establishment and effective functioning of the ECOWAS Committee of Experts on Social Security (CESS) and its Technical Working Groups responsible for the effective implementation of the Convention. This includes support to design and disseminate administrative, policy/institutional and regulatory frameworks, monitoring and reporting frameworks and IT tools to facilitate coordination and exchange between social protection institutions to enhance the portability of social security in the region.
- › Roll-out of the general and ToT trainings on social protection of migrant workers, developed for ECOWAS;
- › Roll-out communication actions on extending access to social protection targeted at migrant workers and their families as well as staff of social protection agencies and relevant actors in the ECOWAS region.

ILO project “Improving the Governance of Labour Migration and Protection of Migrant Workers’ Rights in Egypt, Tunisia, and Morocco” (IRAM) implemented from 2014 – 2017 with financial support from the Swiss Development Cooperation (SDC).

- › Provision of policy-advice, capacity-building and advocacy tools on improving North African migrant workers’ social protection;
- › Study on Bilateral Labour and Social Security Agreements in North Africa.

² Capacity Building Toolkit on the ECOWAS General Convention on Social Security, <https://www.itcilo.org/resources/ecowas-capacity-building-toolkit>





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<https://www.ilo.org/africa/areas-of-work/labour-migration/lang--en/index.htm>

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