

CONVENTION ON SOCIAL SECURITY BETWEEN MOZAMBIQUE AND PORTUGAL



AMINA ABDALA
INTERNATIONAL SENIOR ASSOCIATE
amina.abdala@tta-advogados.com

Decree 19/2011 of 6 December was published in the official Portuguese gazette (Diário of the República de Portugal) and approved the Convention on Social Security between the Portuguese Republic and Republic of Mozambique (the “Convention”). This document, which was signed in Lisbon on 30 April 2010, did not come into effect immediately in the Mozambican legal system, because it requires ratification by the Mozambican Parliament.

The Convention has not made any fundamental changes to the social security systems of each country. Instead, it maintains the systems in force in each country and limits itself to establishing a series of mechanisms to facilitate, coordinate and integrate both systems. This makes it possible to provide social protection to emigrant workers and their families, under conditions of equality and reciprocity between the two countries.



TÉLIO MURRURE
ASSOCIATE
telio.murrure@tta-advogados.com

The Convention is a response by both Governments to keep up with the growing exchange of workers. This growth has given rise to a series of challenges relating to social security benefits – for salaried workers and self-employed workers, including the schemes for voluntary maintenance of contributions – in the event of sickness, maternity, disability, old age and death.

Decree 19/2011 of 6 December was published in the official Portuguese gazette and approved the Convention on Social Security between the Portuguese Republic and Republic of Mozambique.

Five years have now passed since the Convention was signed, and the Assembly of the Republic of Mozambique (the Parliament) has taken the next step to put it into effect in the Mozambican legal system. It did this, on 9 November 2016, by approving the Decision that ratifies Convention on Social Security between Mozambique and Portugal.

The Convention has a number of guiding principles, in particular, the principle of equal treatment, which is set out in article 3. This principle is the basis for a significant reduction in the disparities and barriers that have the potential to prejudice Social Security beneficiaries in certain situations. However, article 7 of the Convention prohibits any improper accumulation of benefits and article 7(1) addresses the situation of various benefits of the same nature being paid for the same period.

As the application of the provisions of the Convention involves two countries, article 8 sets out the general rule to determine the legislation applicable in any given case. Under this article, people covered by the Convention are exclusively subject to the legislation of the Contracting State where they work. This rule applies even if their permanent residence in another State, or if the employer has its main place of business or domicile in this other State.

Five years have now passed since the Convention was signed, and the Assembly of the Republic of Mozambique (the Parliament) has taken the next step to put it into effect in the Mozambican legal system.



FLÁVIO MIRANDA - TIMOR

Lifestyle, 2003 (detail)

Acrílico e colagem s/ papel
(9) 29 x 21 cm

From the Collection of the PLMJ Foundation

However, the following rules determine the applicable law in exceptional situations:

- When a worker in salaried employment in the territory of a Contracting State in service of a company, on which he or she normally depends, is sent by this company to the territory of the other Contracting State, to work there on behalf of this company, that worker will continue to be subject to the legislation of the first Contracting State. This rule applies provided (i) that the expected duration of the work does not exceed 24 months, which may be extended for an equal period with the prior consent of competent authority of this Contracting State, and (ii) that the work has not been sent to substitute another person has ended their period of secondment¹.
- Workers who are members of staff of diplomatic missions and consular posts and their family members are subject to the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963².

¹ See article 9 of the Convention.

² See article 10 of the Convention.

Therefore, with the entry into force of the Convention, the Mozambican and Portuguese citizens covered by the personal scope of this instrument will begin to enjoy the advantages of integration and communicability of the social security systems. These advantages include:

- Conservation of rights that have been or are being acquired in respect of Mandatory Social Security
- Strengthening of the social protection for immigrant workers in the two countries
- An increase in the contribution base, with the influx of the contributions of Portuguese citizens into Mandatory Social Security, part of which is invested to guarantee the financial sustainability of the system
- Contributions being used to pay pensioners, in view of the principle of generational solidarity
- Minimisation of potential burdens on the State, with the social protection of foreign citizens who become unable to work because of old age or sickness, cannot meet the requirements for access to Social Security benefits.

These advantages take the following specific forms in relation to:

- **Sickness, maternity, paternity and adoption**

Article 12 of the Convention provides that, for the purposes of acquiring, maintaining or recovering the right to benefits, if a worker was successively or alternately subject to the legislation of the Contracting States, the insurance periods completed under the legislation of one of the Contracting State are added up, if necessary and as long as they do not overlap, as if they had been completed under that State's legislation.

■ **Invalidity, old age and death**

a) Articles 15 and 16 of the Convention provides that, in the Portuguese Republic, the competent authority must calculate the amount of the benefit under the applicable legislation, directly and exclusively based on the periods completed under this legislation;

b) Under articles 15 and 16 of the Convention, in the Republic of Mozambique, the benefit is calculated based on the total period and by establishing the proportion between the period completed under its own legislation and the total period.

■ **Death benefits**

Article 17 of the Convention provides that, for the purposes of acquiring, maintaining or recovering the right to death benefits, if the deceased worker was subject, successively or alternately, to the legislation of the Contracting States, the periods of insurance completed under the legislation of one of the Contracting States are considered by the other Contracting State, if necessary and as long as they do not overlap, as if they had been completed under the latter State's legislation.

The Convention brings multiple benefits, as it allows communicability between the social security systems of both countries.

■ **Unemployment benefits**

Under article 20 of the Convention, workers who are covered by the Portuguese legislation are entitled to the unemployment benefits provided for in this legislation, under the same conditions as Portuguese nationals.

■ **Benefits for family, disability and dependence expenses**

Article 21 of the Convention provides that workers who are covered by the Portuguese legislation are entitled, in relation to family members who are resident in the Republic of Mozambique, to the benefits provided for in this legislation as if they were resident in Portugal, provided they meet the requirements for these benefits to be granted.

■ **Benefits for accidents at work and occupational diseases**

Article 23 of the Convention provides that Mozambican workers who are covered by the Portuguese legislation are entitled to the benefits for accidents at work and occupational diseases provided for in this legislation, under the same conditions as Portuguese nationals.

The entry into force of this Convention brings multiple benefits, as it allows communicability between the social security systems of both countries. It also based on the various principles aimed at establishing and maintaining a single Social Security contribution career, regardless of whether the worker definitively leaves the country where he or she works and returns to his or her country of origin.

This newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to tta.geral@tta-advogados.com.

Edifício Millennium Park, Torre A, Avenida Vladimir Lenine, n. 174, 6º Dtº, Maputo, Moçambique
T. (+258) 84 3014479 . F. (+258) 21 303723 . E. tta.geral@tta-advogados.com . www.tta-advogados.com