

African Union, African Regional Bodies

## Constitution of the African Civil Aviation Commission

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Constitution of the African Civil Aviation Commission  
Contents

I General provisions ..... 2

II AFCAC structures ..... 5

III International relations ..... 9

IV Financial matters ..... 9

V Transitional and final provisions ..... 10

African Union

# Constitution of the African Civil Aviation Commission

Published

**Commenced**

*[This is the version of this document at 16 December 2009.]*

*[This Convention came into force provisionally on 11 May 2010, upon signature by fifteen (15) African States. It shall definitively enter into force upon ratification by fifteen (15) African States.]*

## PREAMBLE

**WHEREAS** civil aviation plays an important role in achieving the objectives of the African Union (AU) as enshrined in the Constitutive Act of the African Union adopted by the Heads of State and Government on 11 July 2000 in Lomé, Togo;

**WHEREAS** the development of safe and orderly air transport services into, within and from Africa is to be established on the basis of equality of opportunity and operated soundly and economically as envisaged in the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

**WHEREAS** the African Civil Aviation Commission (AFCAC) was conceived by the Constitutive Conference convened by the International Civil Aviation Organization (ICAO) and the Organization of African Unity (OAU) in Addis Ababa, Ethiopia in 1969 and became an OAU/AU Specialized Agency on 11 May 1978;

**WHEREAS** the Abuja Treaty of 3 June 1991 adopted by the Assembly of Heads of State and Government of the Member States of the OAU established the African Economic Community with the aim of *inter alia* deriving mutual benefit, coordination and integration of policies for the social and economic development of Africa more particularly in civil aviation;

**CONSIDERING** the Decision taken in Yamoussoukro, Cote D'Ivoire on 14 November 1999, relating to the implementation of the Yamoussoukro Declaration for the liberalization of access to air transport markets in Africa which was subsequently endorsed by the Assembly of Heads of State and Government of the OAU vide Decision AHG/OAU/AEC/Dec.1 (IV), adopted in Lomé, Togo, on 12 July 2000;

**RECALLING** the Ministerial Decision of the third African Union Conference of Ministers responsible for Air Transport adopted in Addis Ababa, Ethiopia on 11 May, 2007 and subsequently endorsed by the Assembly of Heads of State and Government in Accra, Ghana on 29 June 2007 entrusting AFCAC with the responsibility of being the Executing Agency for the Yamoussoukro Decision;

**CONVINCED** of the need for a common civil aviation policy capable of promoting the development of African airlines and enhancing African participation in international air transport;

**RECOGNIZING** that AFCAC should assist African States in supplementing the work of ICAO;

**THEREFORE**, We the African States **HAVE AGREED** to the following provisions:

BODY

## I General provisions

### Article 1 – Definitions

For the purpose of this Constitution the terms and expressions below shall have the following meaning:

"**Abuja Treaty**" means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on 3 June, 1991 and which entered into force on 12 May 1994;

"**AFCAC**" means the African Civil Aviation Commission as established in 1969 and referred to in Article 2 of this Constitution;

"**AFCAC Region**" shall refer to a geographical region of Africa, as defined by the African Union;

"**African State**" means an African State, member of the African Union or the United Nations;

"**Assembly**" means the Assembly of Heads of State and Government of the African Union;

"**AU**" means the African Union as established by the Constitutive Act of the Union;

"**Bureau**" means the AFCAC Bureau as described in Article 12 of this Constitution;

"**Chairperson**" means the Chairperson of the African Union Commission;

"**Constitution**" means this AFCAC Constitution as adopted by the Meeting of Plenipotentiaries held in Dakar, Senegal on the 16<sup>th</sup> of December 2009;

"**Executing Agency**" means the Body referred to in Article 9.4 of the Yamoussoukro Decision;

"**Executive Council**" means the Executive Council of Ministers of the African Union;

"**ICAO**" means the International Civil Aviation Organization created pursuant to the Chicago Convention, 1944 and which is the international body responsible for the regulation of civil aviation worldwide;

"**Member State**" means an African State which has signed or ratified/acceded to the AFCAC Constitution;

"**Monitoring Body**" means the Monitoring Body established by Article 9.2 of the Yamoussoukro Decision;

"**NEPAD**" means the AU New Partnership for African Development Programme;

"**Plenary**" means the Assembly of designated representatives of Member States of AFCAC whose functions are described in Article 10 of this Constitution;

"**RECS**" means the Regional Economic Communities as recognized by the AU;

"**Secretariat**" means the organ referred to in Article 14 of this Constitution;

"**Secretary General**" means the Secretary General of AFCAC as provided for under Article 14 of this Constitution;

"**Sub-Committee on air transport established under Article 9.1 of the Yamoussoukro Decision**" means the sub-sectoral Committee on air transport, the Body referred to in Article 3 of the Rules of Procedure of the Conference of Ministers of Transport, adopted by the Thirteenth Session of the Executive Council held in Sharm El Sheikh, Egypt, from 24 to 28 June 2008;

"**Yamoussoukro Decision**" means the Decision relating to the Implementation of the Yamoussoukro Declaration concerning the liberalization of access to air Transport markets in Africa done at Yamoussoukro on 14 November 1999.

## Article 2 – Establishment of AFCAC

There shall continue to be the African Civil Aviation Commission (AFCAC) as established by the 1969 AFCAC Constitution. AFCAC is the Specialized Agency of the African Union responsible for Civil Aviation matters in Africa.

## Article 3 – Objectives

AFCAC's objectives shall be *inter alia*:

- a) Coordinate civil aviation matters in Africa and to cooperate with ICAO and all other relevant organizations and other bodies which are involved in the promotion and development of civil aviation in Africa.
- b) Facilitating, coordinating and ensuring the successful implementation of the Yamoussoukro Decision by supervising and managing Africa's liberalized air transport industry.
- c) Formulating and enforcing appropriate rules and regulations that give fair and equal opportunity to all stakeholders and promote fair competition.
- d) Promoting understanding on policy matters between its Member States and States in other parts of the world.
- e) Fostering *inter alia* the implementation of ICAO Standards and Recommended Practices for the safety, security, environmental protection and regularity of the aviation sector.
- f) Ensuring adherence to and implementation of Decisions of the Executive Council and Assembly.

## Article 4 – Functions

AFCAC shall carry out the following functions:

- a) undertake studies on technical regulatory and economic developments in air transport, with particular focus on their implications for Africa;
- b) encourage and support Member States to comply with ICAO Standards and Recommended Practices, as well as the regional air navigation plans;
- c) foster and coordinate programmes for the development of training facilities in Africa and to encourage and support the training and development of personnel in all fields of civil aviation;
- d) encourage and support the creation of autonomous civil aviation entities;
- e) develop collective arrangements to secure the necessary resources for the promotion of international civil aviation, particularly those provided within the framework of bilateral and multilateral programmes for technical cooperation to Member States;
- f) ensure advocacy and defence of common positions of member States at international fora relating to civil aviation;
- g) ensure seamless and close co-operation with the various RECs as well as those of other African Organisations concerned with civil aviation matters;
- h) advise Member States on all civil aviation matters;
- i) examine specific problems which may hinder the development and operation of the African civil aviation industry and, where possible, take corrective and/or preventive actions in coordinating with Member States as required;
- j) act pursuant to provisions of the Article 9 of the Yamoussoukro Decision to discharge its duties of Executing Agency of Air Transport in Africa;
- k) develop and harmonize common rules and regulations for the safety, security, environmental protection, fair competition, dispute settlement and consumer protection, amongst others;
- l) increase and coordinate synergies in the fields of search and rescue, salvage and accident investigation;
- m) coordinate the development and implementation of plans in the field of aviation infrastructure;
- n) coordinate the election of African States into the ICAO Council and of African experts into the Air Navigation Commission after receiving the approval of AU;
- o) support and facilitate the appointment of Africans into ICAO, its organs and other international civil aviation bodies; and
- p) perform such other functions as may be conferred upon it by the Executive Council or the Assembly of the African Union to fulfil its objectives.

## Article 5 – Membership

Membership shall be open to all African States. Each Member State shall enjoy equal rights in terms of participation and representation at AFCAC meetings.

### **Article 6 – Legal capacity**

AFCAC shall enjoy, in the territory of each Member State, legal capacity accorded to legal persons under the national laws of the Member States as may be necessary for the fulfilment of its objectives and the exercise of its functions.

### **Article 7 – Privileges and immunities**

AFCAC, its Representatives and Staff shall enjoy in the territory of each Member State, the privileges and immunities stipulated in the 1964 General Convention on the Privileges and Immunities of the OAU/AU.

### **Article 8 – Headquarters**

1. The Headquarters of AFCAC is established in Dakar, Senegal. The Headquarters may be transferred to another Member State by a decision of the Plenary, which shall be on the recommendation of the Bureau in accordance with the AU Criteria for hosting AU Organs.
2. The Headquarters shall be governed by a Host Agreement negotiated between the Secretariat and the Host Country and approved by the Plenary, which shall be reviewed periodically to ensure strict compliance and facilitate the smooth functioning of AFCAC.

## **II AFCAC structures**

### **Article 9 – Organs of AFCAC**

The Organs of AFCAC shall be:

- a) The Plenary;
- b) The Bureau; and
- c) The Secretariat.

### **Article 10 – The Plenary**

1. The Plenary shall be the supreme organ of AFCAC.
2. The Plenary shall be composed of duly accredited representatives of Member States responsible for Civil Aviation.
3. The Plenary shall meet in:
  - a) Ordinary session: once every three (3) years; and
  - b) Extraordinary session: at the initiative of the Bureau or at the request addressed to the Bureau by a Member State and upon the approval of two-thirds of all Member States.
4. The quorum for the Plenary shall be two-thirds majority of Member States.
5. Without prejudice to the provisions of Article 21, decisions of the Plenary shall be adopted by consensus failing which by two-thirds majority of Member States present and having the right to vote.
6. The Plenary shall take place at the Headquarters unless a Member State invites the Plenary to hold a session in its territory.

## Article 11 – Functions of the Plenary

The functions of the Plenary shall be to:

- a) issue policy guidelines through resolutions and recommendations;
- b) elect the President and Vice-Presidents to serve as members of the Bureau;
- c) approve the Organizational Structure of AFCAC and appoint the Secretary General upon the recommendation of the Bureau;
- d) approve the work programme, business plan, budget, rules and regulations of AFCAC;
- e) establish committees and working groups, as necessary, to undertake special assignments or tasks on civil aviation in Africa, with such functions as may be specified, and appoint their members;
- f) approve such other activities, rules and procedures as deemed appropriate, to meet the objectives of AFCAC;
- g) appoint External Auditors of AFCAC;
- h) consider and take appropriate action on the External Auditors report;
- i) ensure the effective implementation of the Yamoussoukro Decision, principally the liberalization of air transport services;
- j) adopt the financial rules and regulations, accounting and auditing rules and regulations for AFCAC;
- k) submit its tri-annual report on the state of implementation of the Yamoussoukro Decision to the Assembly of Heads of State and Government through the Executive Council;
- l) adopt its rules of procedure, including the establishment of committees as deemed appropriate as well as the Rules of Procedures of the Bureau; and
- m) undertake such other functions as may be requested or conferred upon it by the relevant Organs of the AU, the Monitoring Body and the Sub-Committee of Air Transport.

## Article 12 – The Bureau

1. The Bureau shall be composed of the President and five (5) Vice-Presidents elected by the Plenary in accordance with the AU geographical representation formula.
2. The Coordinator of the African Group at ICAO Council shall attend meetings of the Bureau in an *ex-officio* capacity.
3. The Presidency of AFCAC shall be on rotational basis, each region serving one (1) term of three (3) years.
4. The Vice-Presidents shall each represent one AU region.
5. Each Vice-President shall serve a term of three (3) years at a time and may be re-elected only once.
6. Members of the Bureau shall possess relevant professional experience in the field of civil aviation and participate actively in carrying out AFCAC activities.
7. Members of the Bureau shall, attend all meetings of the Bureau and perform their responsibilities as assigned by the Bureau, in the interests of AFCAC.
8. Decisions of the Bureau shall be taken in accordance with its Rules of Procedure.
9. The quorum required for the Bureau meetings shall be fixed by the Rules of Procedures of the Bureau.
10. Any Member State may participate, without a vote, in the consideration by the Bureau of any question which especially affects its interests. No member of the Bureau shall vote in the consideration by the Bureau of a dispute to which that Member State is a party.
11. The Bureau may determine its own internal organization, arrangements and procedures, including the establishment of committees as may be deemed appropriate.

## Article 13 – Functions of the Bureau

The functions of the Bureau shall be to:

- a) convene the ordinary and extraordinary plenary sessions, subject to the relevant provisions of Article 10, and determine the provisional agenda;
- b) ensure the implementation of the AFCAC work programmes and other resolutions of the AFCAC Plenary;
- c) supervise and coordinate the activities of the Secretariat and any committee or working group;
- d) prepare its own rules of procedures and submit them to the Plenary for approval;
- e) implement the resolutions, directives and decisions of the Plenary and discharge the duties and obligations which are conferred upon it in the Constitution;
- f) select and recommend from a short-list to the Plenary, candidates for the position of Secretary General;
- g) supervise the administrative and financial management of the Secretariat;
- h) submit periodic reports on its activities to the Plenary; and
- i) carry out any other functions that may be assigned to it by the Plenary.

## Article 14 – The Secretariat

1. The Secretariat shall be headed by a Secretary-General assisted by the necessary and competent Staff for the smooth functioning of AFCAC.
2. The Secretary General shall be appointed by the Plenary upon the recommendation of the Bureau.
3. In the appointment of the Secretary General and other Staff, consideration shall be made to ensure competence, qualification, experience, high integrity and geographical distribution of posts.
4. The Secretary General shall serve in office for a term of three (3) years renewable once only for a further term of three (3) years.
5. The Secretary-General shall;
  - a) follow up and ensure the implementation of the resolutions, directives and decisions of the Plenary, Bureau and Monitoring Body, in accordance with the rules and regulations of AFCAC;
  - b) represent AFCAC and defend its interests under the guidance and approval of the Plenary and the Bureau;
  - c) promote the development of the programmes, projects and initiatives of AFCAC;
  - d) prepare and submit proposals concerning the work programmes, business plans, strategic objectives, projects, activities and budgets of AFCAC and ensure their implementation;
  - e) oversee the administrative and financial management of AFCAC by appropriately managing the budgetary and financial resources including collecting the approved revenue from various sources;
  - f) prepare financial reports including reports for the past triennial and a budget for the forthcoming triennial to be submitted by the Bureau to the Plenary for approval in accordance with AFCAC rules and regulations;
  - g) submit reports on the activities of AFCAC to the Plenary, Bureau and Monitoring Body;
  - h) appoint staff and terminate contracts of appointment in accordance with AFCAC Staff Rules and Regulations;
  - i) prepare and service meetings of the Plenary, Bureau and Committees of AFCAC;
  - j) organize meetings and undertake studies as necessary and maintain relevant records in relation thereto;
  - k) submit to the Bureau and the Monitoring Body annual reports on the operations of AFCAC;
  - l) keep in custody the seal, documents, files and other data relating or relevant to the work of AFCAC; and
  - m) make recommendations to improve AFCAC's operational efficiency.

## Article 15 – Reports to the Sub-Committee on Air Transport

The Sub-Committee on Air Transport is the Conference of Ministers responsible for air transport matters in Africa, whose mandate shall be to, *inter alia*, consider and adopt recommendations

submitted by AFCAC on all activities concerning the functions of the Executing Agency entrusted to it and other matters requiring political Decisions in accordance with the African Union procedures.

### III International relations

#### Article 16 – Cooperation with other organizations

AFCAC shall work in close cooperation with the different AU Organs, RECs, ICAO, United Nations Economic Commission for Africa (UN-ECA) as well as with other governmental and non-governmental international organizations, civil aviation service providers on civil aviation matters of mutual interest.

### IV Financial matters

#### Article 17 – Financial resources

- a) The regular budget of AFCAC shall be funded by contributions made by Member States in accordance with the scale of assessment determined by the Plenary;
- b) Supplemental budgets of AFCAC shall be made available, where necessary to meet the extra and/ or special budgetary expenditure of AFCAC. The Plenary shall determine the contributions of Member States to the Special budgets of AFCAC; and
- c) In addition AFCAC may receive Grants, Donations and proceeds for its activities as approved by the Bureau.

#### Article 18 – Sanctions

1. Any Member State that fails to honour its financial obligations to the Commission for a period of two (2) years or more shall, as long as it is in such arrears, forfeit the right to vote in the Plenary or to present candidates for any elective or other post within AFCAC.
2. Any Member State that remains in sanctions for a period of three (3) years or more shall, in addition to the sanctions referred to in the preceding paragraph, have its nationals deprived of the rights, privileges, benefits and advantages usually accorded to Member States.
3. Any violation of any provision of this constitution by a Member State shall result in sanctions as maybe determined by the Plenary.

## V Transitional and final provisions

### Article 19 – Signature, ratification, accession and entry into force

1. This Constitution shall be open to signature, ratification, acceptance and accession by African States in accordance with their respective Constitutional procedure.
2. The instrument of ratification shall be deposited with the Chairperson of the African Union Commission.
3. Any African State acceding to this Constitution after its entry into force shall deposit the instrument of accession with the Chairperson of the Commission.
4. This Constitution shall provisionally enter into force upon signature by fifteen African States and shall definitively enter into force upon ratification by fifteen (15) African States.
5. The Depository shall give notice to AFCAC and any Member State, of the date on which this Constitution enters into force provisionally and definitively.

### Article 20 – Transitional arrangements

Without prejudice to Article 26, a Member State under the 1969 AFCAC Constitution shall continue to maintain its membership of AFCAC until such a time that this Constitution comes into force definitively.

### Article 21 – Denunciation

Any denunciation of this Constitution shall be made through appropriate notification to the Chairperson of the AU Commission who, within thirty (30) days, shall advise AFCAC and its Member States accordingly. The denunciation of any State from membership of AFCAC shall become effective one (1) year following the receipt by the Chairperson of the AU Commission of such notification.

### Article 22 – Amendment and revision

1. Any Member State may submit proposals for the amendment or revision of this Constitution.
2. Proposals for amendments or revision shall be submitted to the Chairperson of the AU Commission who shall transmit the same to AFCAC and the Member States within thirty (30) days of receipt thereof.
3. The Plenary shall meet to consider the proposals for amendments or revisions and submit their recommendations to the Executive Council.
4. The Assembly, upon the advice of the Executive Council, shall examine the recommendations within a period of one year following notification of Member States in accordance with the provisions of paragraph 2 of this Article.
5. Amendments or revisions shall be adopted by the Assembly and submitted for ratification by all Member States in accordance with their respective constitutional procedure. The amendments shall enter into force in accordance with the provisions of Article (19).

### **Article 23 – Settlement of disputes**

1. Any dispute arising between two (2) or more Member States on the application or interpretation of this Constitution shall in the first instance be settled through negotiations.
2. In case the dispute(s) remains unresolved within twenty one (21) days, either Party may refer the dispute to the Bureau for resolution. The Bureau shall make a decision within sixty (60) days of receipt of the referral.
3. In the event that the Bureau cannot resolve the dispute or should their decision fail to provide a satisfactory solution to either Party within sixty (60) days, the dispute may be settled by arbitration. The arbitration team shall consist of a panel of African arbitrators appointed by each party. An additional arbitrator shall be appointed by the other arbitrators.
4. The arbitration panel shall adopt its own Rules of Procedure and make an award within six (6) Months. The decision of the Panel shall be final and binding on the Parties.
5. Without prejudice to the above provisions, the African Court of Justice and Human Rights may be seized with any dispute regarding the application or interpretation of this Constitution.

### **Article 24 – Working languages**

The working languages of AFCAC shall be those of the AU.

### **Article 25 – Registration**

This Constitution shall be registered with ICAO in compliance with Article 83 of the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944.

### **Article 26 – Abrogation**

This Constitution shall abrogate and supersede, as of the date of its entry into force, the AFCAC Constitution adopted at Addis Ababa, Ethiopia, on 17 January 1969.

**IN WITNESS, WHEREOF WE**, the Plenipotentiaries, having been duly authorized, have adopted this Constitution.

**DONE at Dakar, Senegal on the 16<sup>th</sup> day of December 2009, in Arabic, English, French and Portuguese, all the texts being equally authentic.**

**President of AFCAC/Chairperson of the Meeting of Plenipotentiaries**