INADEQUACIES IN THE AFRICAN REGIONAL AVIATION LEGAL FRAMEWORK, AND COMPARATIVE INSIGHTS; BRIDGING THE GAP

STUART SSEMWOGERERE

M22B11/113

A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF UGANDA CHRISTIAN UNIVERSITY

February, 2026

UGANDA CHRISTIAN UNIVERSITY

A Centre of Excellence in the Heart of Africa

Declaration

I, Stuart Ssemwogerere, with my signature affixed hereunder, declare and attest that the work presented in this dissertation is the product of my independent scholarly research. I further affirm that this work has not been previously submitted, in whole or in part, to any other institution of higher learning for conferment of any academic award.

Signature:

…………………………………………………

Date : 15 / 02 / 2026
………………………………………………

Approval

This is to certify that this dissertation was done under my careful supervision.

Supervisor: Mr. Daniel Kissa

Office: Head of Undergraduate Studies, School of Law.

Signature:

....

Date:

....

Abstract

The inadequacies of Africa's aviation legal framework underscore a profound disparity between regional aspirations and national realities. The Single African Air Transport Market (SAATM) embodies a bold initiative towards continental integration, yet its success is contingent upon addressing entrenched protectionism, fiscal inefficiencies, and the neglect of passenger rights. Through a comparative analysis of Western paradigms, including the European Union's Single European Sky and the United States' deregulation, this study distills critical lessons for African aviation reform.

This research advocates for a comprehensive overhaul, emphasizing the imperative of a binding supranational authority, standardized passenger protections, and a specialized African Aviation Tribunal. By embracing a rules-based regime and empowering a centralized regulatory body, Africa can unlock its aviation potential, fostering a unified, efficient, and prosperous sky that prioritizes economic growth, safety, and consumer welfare.

Dedication

I dedicate this dissertation to my lovely mum, Mrs. Nassolo Margret for her constant sacrifices, endurance, and unwavering support towards my education and professional growth. She has been a strong pillar and support system throughout my academic journey.

Acknowledgement Page

I acknowledge that without the grace of the Lord from whom I draw inspiration, strength and every provision, this work would not exist. I will always praise and give you thanks, my Lord and my God. You have led me to greatness.

There are many individuals and groups whose invaluable contributions made it possible for me to complete this study. While it may not be possible to acknowledge each one individually, I sincerely appreciate and recognize all your support.

I am grateful to my supervisor, Mr. Daniel Kissa for accepting, graciously to supervise me throughout this paper. His cooperation and constant advise, immense knowledge and tireless efforts have made this paper a learning platform and success. I appreciate the tolerance and patience he exhibited in reading the study draft, the constant reminders to work on the research and the critical remarks very gently delivered.

To my dad Mr. Basagala Foustino, your support and love have made me the person I'm today. To my elder sister Nalugo Rose, and siblings, Esther Nakitende, Jonathan Ssemakula and to my lovely cousin sister Nassolo Margert Sauda, your love, courage and full motivation have made my academic journey a smooth journey that has inspired many. To my Jaja Nanyunja Sauda, Aunt Grace, Aunt Joan, Uncle Eddie Kiyimba and his lovely wife, Mum Nassolo Bena Flavia, Aunt Winnie Nalinya and Dud Kizza Ssebowa Joffrey, Jaja Christine Bagala, Jaja Nakafeero Madhinah and Jaja Abdu Kamulegeya and my entire family, and lastly to my friend Darrenson B. Musoke, Mrs. Nyangoma Rose Tokuma (Joel's Mum) and the late Bernadette Amodoi (May her soul rest in eternal peace), thank you all for your financial and moral support during my four years in law school.

I am equally grateful to my classmates for the latitude and guidance granted to me. I cannot forget my friends in law school: Namagembe Janet, Ibanda Sanyu Promise, Kansiime Jovia, Nantogo

Lisha, Alinda Aaron, Joel Lucky Tokuma, Biyinzika Hellen Lizz, Frank Batte, Isaac Mawululu, Ian Ndamwesigwa, Kamya Musa, H.E Onduma Sebit (President UCU Law Society), Rebecca Namugambe, Baraka Abraham Wanyanga, Ndawula Stacy, Ajambo Sandra, Mujuni Desire, Namanya Christine Abigail, Mr. Kayima Immy, Akwar Immaculate, Akech Sarah, Lillian Nkonwa, Ayebale Blair, H.E Ivan Mwima Hire (27^{th} Guild President UCU), Joseph Tenwa Micheal, Hon. Nsubuga Paul (MP. Busiro North), Primus Gumisiriza, Mr. Muzeeyi John, Abaho Sheevan, Bakka Flavia, Mutegeki Timothy, and many other colleagues I couldn't mention here-for the support you have given to me throughout my four years in law school. I am truly thankful for the many times, you have been there for me in good and wrong.

In a special way I thank and appreciate **Kylie Kukunda** and **Fredrick Edward Mongoyi** for their contributions and assistance during this dissertation paper. They stand as the backbone of the research in this paper.

Additionally, I extend my deepest gratitude to the exceptional mentors who have guided me through this academic journey. First and foremost, I thank Dr. Kirabira Raymond Tonny, a professor of international law at the University of East London, for his unwavering support and encouragement. Your wisdom and integrity have been a beacon in my pursuit for this legal scholarship. I am equally grateful to Her Excellence, Lady Justice Imani Daud Aboud, former President African Court on Human and People's Rights, and Prof. Denis Bikesha, Professor of Law University of Rwanda, whose nurturing guidance and consistent in my potential have been invaluable. Your mentorship has been like that of a mother-firm, kind and always inspiring.

My sincere appreciation also goes to Dr. Muteesasira Peter Devis, my Dean School of Law, and Mr. Baguma Edgar, whose professional and academic mentorship has

continuously reminded me of the importance of discipline and integrity in the legal space. Your availability and insights, even amidst your commitments have been truly humbling. To Dr. William Kiema Sammy, An Aviation Law Expert at Kisii University, thank you for being my constant academic and personal guide.

You inspired me to do this research study. Your willingness to offer counsel regardless of your demanding schedule has deeply shaped my intellectual growth. To Counsel Joel Basoga, thank you for your mentorship and constant checks and reminders of what a professional lawyer is made of.

Despite their busy calendar, each of those distinguished individuals has constantly availed time, wisdom and mentorship whenever I sought. I remain indebted to you all for your contribution to my journey.

I wish to extend my sincere appreciation to Namagembe Janet, whose guidance and support have been invaluable throughout this journey. She has been a special friend throughout all the ups and downs in my Law School. Special thanks to Mr. Okia Emmanuel for his consistent support and encouragement.

I am infinitely indebted to my family. Words alone cannot capture the depth of my gratitude. My mum, your strength, resilience and faith have been my greatest source of inspiration. You have borne countless burdens so that I could rise above my circumstances and for that am forever indebted. To my siblings once again, thank you for your support and your belief in me even when the road was uncertain. To my friends who became a family; Namagembe Janet, Kutunga Anna Honour, Tokuma Joel Lucky, Aaron Alinda, Hellen Lizz Biyinzika, Flavia Bakka, Sylvia Namugerwa, Joseph Micheal Tenwa, Sebit Onduma and Kamya Musa, I am grateful for your contributions.

The interpretations, mistakes and shortcomings in this study are exclusively my own responsibility.

Table of Contents

List of Abbreviations

AU	African Union
EU	European Union
YD	Yamoussoukro Decision
US	United States of America
IATA	International Air Transport Association
AFCAC	African Civil Aviation Commission
SAATM	Single African Air Transport Market
ICAO	International Civil Aviation Organization
EASA	European Union Aviation Safety Agencies
AfCFTA	African Continental Free Trade Area
BASA	Bilateral Air Service Agreements
EAC	East African Community
ECOWAS	Economic Community of West African States
SARP	Standards and Recommended Practices
SES	Single European Sky
AOC	Aircraft Operator Certificate
FAA	Federal Aviation Administration
GDP	Gross Domestic Product

DOT	Department of Transport
AAT	African Aviation Tribunal

sCHAPTER ONE

GENERAL BACKGROUND

1.0 Introduction

The African Aviation Industry is often described as the final frontier of global air transport, possessing immense potential; and economic catalyst. However, the legal landscape governing this sector remains a paradox of high-level diplomatic ambition and low-level legislative implementation. This dissertation seeks to examine why the continent remains fragmented despite decades of regional treaties. In a globalized economy, aviation is not a luxury but a critical infrastructure. Currently, the disparity between the open skies rhetoric of the African Union and the protectionist reality of its member states has created a crisis of connectivity and a vacuum in consumer protection that requires urgent legal redress.

1.1 Background

The journey towards a unified African sky began in earnest with the 1999 Yamoussoukro Decision, which sought to liberalize intra-African air transport. This was later further strengthened by the launch of the Single African Air Transport Market in January, 2018. Historically, African aviation has been shackled by restrictive Bilateral Air Services Agreements designed to protect state owned flag carriers. While the Western world, specifically the European Union and the United States successfully transitioned to deregulated, passenger centric models in the late 20th century, Africa has struggled with the sovereignty trap. Currently, while 38 states have signed the Single African Air Transport Market, the practical exercise of the five freedoms of the air is still hindered by non- physical barriers, including punitive taxation and the lack of a centralized regulatory authority.

1.2 Statement of the Problem

The core issue at stake is the persistent domestication gap between regional aviation treaties and national laws. Member states frequently sign AU led agreements but fail to repeal conflicting domestic statutes in their national Civil Aviation Acts. This results in a fragmented patchwork regulatory environment where airlines face inconsistent safety standards, exorbitant taxes, and the systemic blockage of billions in airline revenues. Furthermore, there exists a total legal vacuum regarding passenger rights. Unlike the EU's robust compensation regimes, the African passenger has nearly no explicit statutory protection during delays and cancellations of flights. Without a binding enforcement mechanism and a specialized judicial body, the African aviation legal framework remains a collection of symbolic signatures rather than a high-performing legal engine.

1.3 General Objective of Study

The General objective of this study is to evaluate the inadequacies of the current African Regional Aviation Legal framework and propose a clear roadmap for reform based on comparative best practices.

1.3.2 Specific Objectives of Study

The Specific Objectives of the study are:

a) To identify the legal and structural barriers and propose the establishment of a cross- border regulatory authority and a specialized African Aviation Tribunal to enforce regional aviation laws, to address the bottleneck that prevents the full implementation of the Yamoussoukro Decision and SAATM.

b) To analyze the impact of fiscal inadequacies and disguised taxation on the growth of the African aviation market.

c) To examine the passenger rights gap in Africa and benchmark it against the European Union's Air Passengers Rights Regulation (EC) 261/2004.

1.4 Research Questions

The research questions for the study are:

a) What is the present legal framework governing the African Regional Aviation industry?

b) Why have these regional treaties failed to override protectionist national aviation laws?

c) How do current economic policies and blocked funds crises violate international aviation principles?

d) To what extent would a standardized, fixed-rate compensation model for passengers improve industry accountability in Africa?

e) What legal architecture is required to move Africa from voluntary compliance to binding, cross-border enforcement?

1.5 Significance of the Study

This study is highly significant in the current aviation jurisprudence due to its contribution towards reform on the African market through air cross-border transactions and movements, thus addressing a critical obstacle to the African Continental Free Trade Area.

By providing a legal roadmap for aviation reform, the research contributes to the academic discourse on regional integration and provides policy makers with a blueprint for unlocking the economic potential of Africa. It further moves beyond theoretical discussions towards the critics on the African Aviation Legal framework to offer concrete legal solutions for protecting both airline investors and the traveling public.

1.6 Justification of the study

The study is justified by the current state of the aviation industry and its operations in Africa. With the lagging intra-African connectivity and soaring operational costs, the existing diplomatic approach has reached its limit. Legal intervention is necessary to resolve the conflict of laws between the African Union and its member states. Without a specialized analysis of how to bridge this gap, the vision of African Agenda 2063 will remain an unrealistic dream.

1.7 Scope of the Study

The study focuses on the occurrences and the status quo between 1999 Yamoussoukro Decision to the current operational realities of the Aviation industry today. It stretches to all the member states of the African Union, with specific comparative focus on the European Union and the United States' legal framework. It materially covers and limited to air transport legal framework, including market access, safety oversight, fiscal policy, and passenger rights protection.

1.8 Literature Review

In the construction of the literature review for this study, it is essential to engage with the existing but a few African scholarly writings to identify the intersection of legal theory and the industry failure.

One of the most prominent voices in the African Aviation field is **Dr. William Kiema**, specifically in his extensive *analysis of the air transport industry in Africa*, a book he published in 2025. Kiema's work focuses on the economic potential of liberalization and provides a robust historical account of the failures of the Yamoussoukro Decision. He argues that the lack of intra-continental connectivity is primarily an infrastructure and political will problem.

However, while he expertly diagnoses the economic stagnation of African carriers, his work largely stops at the door of economic policy. He fails to address the specific conflict of laws arising from dualist legal systems where treaties are signed but never domesticated into national Civil Aviation Acts. His analysis lacks a prescriptive legal roadmap on how cross-border enforcement could override national sovereignty, a gap this research intends to fill by proposing a Continental Aviation Protocol. Similarly, **Bryan Miller** in his work, *Law in the Skies: How African Countries Handle Aviation Accidents and Passenger Rights*, offers a critical look at the procedural inadequacies following air disasters and the skeletal nature of consumer protection on the continent. Miller's work is invaluable for its focus on the passenger rights gap, since he argues that African passengers are often treated as secondary stakeholders in the aviation value chain.

Yet, his scholarship remains primarily descriptive of past failures and litigation hurdles. It fails to propose a standardized, fixed-rate compensation model inspired by Western frameworks like EU and the US. Additionally, his work fails to explore the creation of a specialized regional tribunal to adjudicate these claims, leaving the passenger at the mercy of the same slow national judiciaries he criticizes.

Finally, **Ndum Fidelis Nkom's** research, particularly in his thesis on *Africa's Civil Aviation Law and Policy,* provides a foundational critique of the existing regulatory environment governing the continent's airspace. Nkom's work is deeply rooted in the historical evolution of African aviation policy, focusing on the tension between the African Union's centralizing ambitions and the decentralized realities of national civil aviation authorities. He argues that the primary failure of African aviation is the fragmentation of policy, where various regional economic communities, such as ECOWAS, EAC, and SADC maintain competing regulatory standards that undermine a singular continental market.

However, while Nkom provides a masterly diagnosis of policy incoherence, his work remains largely at the level of high-level policy analysis rather than granular legal reform. He fails to address the operational mechanics of judicial enforcement specifically; his work does not explore how a cross-border tribunal could resolve the revenue repatriation crisis or the billion blocked funds dilemma that has become a critical threat to the industry currently.

Further, while he identifies the need for harmonization, fails to offer a comparative procedural framework drawn from other successful single sky models to illustrate how the technical legal division can be bridged through a hybrid-bench tribunal. In alternative, this research seeks to move beyond Nkom's policy-heavy approach by proposing the specific legal instruments, such as the Continental Aviation Protocol, necessary to convert his identified policy goals into binding, and enforceable laws.

1.9 Outline of Chapters

Chapter One gives a general structure of the research in the form of a proposal, highlighting the history and general introduction of aviation industry in Africa, the gaps in the sector leading to the general problem. It further highlights the main objectives of the study and its guiding questions

Chapter Two explains the research methodology that guided the dissertation paper which entirely relies on the qualitative research approach employing a doctrinal comparative design sampling out some primary and secondary sources governing the industry. The chapter goes ahead to discuss the data collection method used and its analysis and lastly points out ethical considerations as required in the legal research ambiance.

Chapter Three discusses the current status quo of present framework governing the African aviation space. It analyses the inadequacies within the African Legal

Framework, focusing on protectionism national laws, fragmented oversight across the Continent, and the passenger rights vacuum in the industry.

Chapter Four draws comparative insights from the developed Western World and discusses how their policies have produced regional developed based sector vis sa vis the individual state policies. The Chapter further discusses how Africa could benchmark against the EU’s EASA and the US Open Skies models to identify best practices in enforcement of regional policies and consumer protection rights.

Chapter Five tables down various recommendations for reform based on the African realities of the aviation space. The chapter proposes a Continental Aviation Protocol, a standardized Passenger Bill of Rights, and the establishment of the African Aviation Tribunal. These recommendations aim at revamping the African sky.

CHAPTER TWO

RESEARCH METHODOLOGY

2.1. Introduction

This dissertation adopts a qualitative research approach, specifically employing doctrinal and comparative content analysis to examine the African regional aviation legal framework. The study investigates the implications of existing voluntary regional commitments (e.g., the Single African Air Transport Market) on national aviation statutes and industry practices, with the ultimate goal of proposing actionable reforms. Content analysis is chosen for its effectiveness in systematically evaluating legal texts, treaty protocols, and institutional mandates, allowing a structured comparison between African aviation laws ("*lex lata*") and the desired legal state ("*lex ferenda*"). By analyzing primary and secondary sources, the research identifies regulatory gaps, enforcement deficiencies, and economic implications, grounding theoretical discussions in contemporary operational realities of African aviation.

2.2. Research Design

The study employs a qualitative, doctrinal-comparative research design to explore African regional aviation law and its alignment with international best practices, focusing on the transition from voluntary agreements to binding cross-border enforcement. An exploratory and descriptive qualitative approach is adopted to examine the African Civil Aviation Commission framework, the domestication gap of regional treaties, and the broader impact of legal structures on industry stakeholders and the African digital economy of air transport. This design enables an in-depth understanding of legal, institutional, and socio-economic dynamics surrounding African aviation, benchmarking the African system against mature Western models (European Union and United States) to extract transferable reform principles.

1.3.3 Study Population, Sampling Technique and Sample Size

The study population consists entirely of documentary sources (no human participants), given the qualitative doctrinal nature of the research. Key materials include primary legal texts such as the Chicago Convention, the 1999 Yamoussoukro Decision, the SAATM Memorandum of Implementation, EU Regulation (EC) 261/2004, and the US FAA Reauthorization Act.

Secondary sources comprise scholarly articles, industry reports from the International Air Transport Association (IATA), African Civil Aviation Commission (AFCAC) documents, and ICAO audit reports. Purposive sampling is used to select pivotal treaties, regulations, and case studies that illustrate regulatory gaps and enforcement practices. The sample size is comprehensive, encompassing all relevant African and comparative Western legal instruments and associated literature necessary for a full doctrinal analysis.

1.10 Data Collection Method

Data collection relies on rigorous examination of primary legal sources and authoritative secondary materials through qualitative content analysis. Primary sources include international aviation treaties (Chicago Convention, Yamoussoukro Decision, SAATM implementation documents) and comparative regulations (EU Regulation 261/2004, US FAA Act). Secondary data comprise peer-reviewed journal articles, academic literature, and industry reports from IATA, AFCAC, and ICAO audits, which provide empirical context for assessing fiscal inadequacies, blocked-funds issues, and safety oversight deficiencies in African aviation. The collection process involves systematic review and interpretation of legal texts to identify the domestication gap and enforcement mechanisms.

1.11 Data Analysis

Data analysis follows a qualitative doctrinal-comparative process of identification, comparison, and prescription. The study conducts content analysis of legal documents to compare African aviation law ("*lex lata*") with desired reforms ("*lex ferenda*") and with Western regulatory models

(EASA vs. AFCAC). Functional comparative methodology is applied to assess how European and US systems solve practical aviation problems such as passenger compensation and safety oversight, extracting transferable principles tailored to Africa's socio-economic context and AfCFTA objectives. Findings are synthesized to formulate legally grounded recommendations, including a Continental Aviation Protocol and an African Aviation Tribunal, providing an evidence-based roadmap for legislative and institutional modernization of African aviation.

1.12 Ethical Considerations.

Since the research is based entirely on documentary analysis with no human participants, ethical concerns relate mainly to proper citation and respect for intellectual property. The study ensures accurate referencing of all legal texts, treaties, and secondary sources to avoid plagiarism and give credit to original authors and authorities. Confidentiality is not applicable, but the analysis adheres to academic integrity standards and respects the legal and institutional mandates of the examined aviation frameworks, ensuring the research is conducted responsibly and transparently.

CHAPTER THREE

THE STATUS QUO & INADEQUACIES IN THE AFRICAN AVIATION.

3.1. Introduction of the Chapter.

The African aviation landscape is poised at a critical juncture, where the aspirations of a unified sky collide with the harsh realities of fragmented national interests and inadequate legal frameworks.[1] As the continent hurtles towards greater economic integration, the evolution of its aviation laws stands as a testament to both its potential for greatness and its self-imposed barriers to progress.[2] This chapter delves into the status quo and inadequacies of the African aviation framework, tracing the journey from the Yamoussoukro Decision to the Single African Air Transport Market, and exposing the gap between regional ambitions and national realities.

The narrative of African aviation is one of contrasts: on one hand, the SAATM represents a bold step towards dismantling protectionist barriers and unlocking intra-African connectivity; on the other hand, the persistence of restrictive Bilateral Air Services Agreements and protectionist national laws stifle competition and limit growth. Despite 38 member states committing to SAATM, liberalization remains below 15%, and the continent's aviation sector is burdened by high taxes, blocked funds, and weak safety oversight.[3]

This chapter will examine the evolution of the African aviation framework, highlighting the gap between SAATM's promises and operational realities. It will dissect the barrier of protectionist national laws, fiscal and structural inadequacies, and the neglect of passenger rights, revealing a sector constrained by its own legal and regulatory architecture. Through this analysis, we will

---

[1] AirSpace Africa, "IATA Highlights Africa's Aviation Potential, Opportunities and Challenges." Published in 2025< IATA Highlights Africa's Aviation Potential, Opportunities and Challenges - Airspace Africa> Accessed on 10th February, 2026.

[2] Ibid.

[3] Wole Shadare, "Africa's aviation caught in 'profitless' growth cycle." Published on 10th February, 2026. < Africa's aviation caught in 'profitless' growth cycle - Aviation metric> Accessed on 10th February, 2026.

uncover the need for a binding, supranational legal regime that harmonizes safety standards, fiscal policies, and passenger protections, transforming the African sky from a patchwork of national interests into a unified economic reality.

1.13 The Evolution of the African Aviation Framework: From YD to SAATM.

The evolution of the African aviation legal framework is a representation of a shift from aspirational multilateralism to a pragmatic,[4] while struggling attempt at a unified economic bloc.[5] At the heart of this transformation is the transition from the 1999 Yamoussoukro Decision (YD) to the Single African Air Transport Market (SAATM).[6] While the YD was heralded as a landmark treaty aimed at dismantling the restrictive Bilateral Air Services Agreements (BASAs) that had long stifled the continent's connectivity,[7] its initial two decades were defined more by symbolic compliance rather than operational liberalization.[8]

By granting the first five freedoms of the air, most notably the fifth freedom which allows an airline to carry passengers between two foreign countries as part of a route to its own country,[9] the YD sought to create a competitive environment.[10] However, the absence of a supranational enforcement body meant that most member states prioritized the survival of their often unprofitable national flag carriers over the collective benefits of an open sky.[11]

[4] Samunderu, E. (2023). Air Transport Regulation: A Perspective on Africa's Regulatory Framework. In: African Air Transport Management. Advances in African Economic, Social and Political Development. Springer, Cham. https://doi.org/10.1007/978-3-031-29324-5_2.

[5] Preamble, ACAC Constitution.

[6] AFACA, 'What is the SAATM?' (AFACA, 2023) < What is SAATM? – AFCAC > Accessed on 20th December, 2025.

[7] Charles E. Schlumberger, 'Open Skies for Africa: Implementing the Yamoussoukro Decision (World Bank 2010).

[8] Ibid.

[9] Article 3.1, Yamoussoukro Decision.

[10] Supra (n 7).

[11] Eyden Samunderu, 'African Air Transport Liberalisation: The Yamoussoukro Decision' in The Economic Effects of Air Transport Market Liberalisation (Springer 2024) 303-343.

By 2018, the African Union recognized that the YD required a more robust vehicle for implementation,[12] leading to the launch of SAATM as a flagship project of Agenda 2063.[13] SAATM was designed to be the operational arm of the YD, providing the regulatory teeth that its predecessor lacked.[14] As of now, the momentum appears significant on paper as 38 member states, representing over 80% of the African aviation market, have formally committed to the solemn declaration.[15]

This political alignment has yielded tangible results, including the launch of nearly 110 new intra- African routes in the last three years alone.[16] These new links have begun to reduce the U-turn phenomenon, where a passenger traveling between two African capitals was often forced to transit through a European hub like Paris or London due to a lack of direct regional legal clearance.[17]

Despite these advancements, a profound implementation gap remains between diplomatic signatures and operational reality.[18] While the number of signatory states is high, the actual level of market liberalization remains unfortunately low.[19] As recently as 2022, liberalization across the continent was estimated at less than 15%,[20] and while that figure has crept upward by late 2025, it remains far from the open-skies reality seen in the European Union.[21]

---

[12] African Union “Decision relating to the implementation of the Yamoussoukro

Declaration concerning the liberalisation of access to air transport markets in Africa and annexes 2018."

[13] Ibid.

[14] Benefits of Yamoussoukro Decision (YD) < single-african-air-transport-market.pdf>: Accessed on 3rd January 2026.

[15] African Union, 'Workshop Concludes with Enhanced Determination to Spearhead the Full Operationalisation of Saatm, Yamoussoukro Decision,' 16th December, 2022. < Workshop Concludes with Enhanced Determination to Spearhead the Full Operationalisation of Saatm, Yamoussoukro Decision | African Union>: Accessed on 3rd January 2026.

[16] Ibid.

[17] World Bank, Africa's Skies: Liberalizing Air Transport Services in Africa (World Bank Group, 2016).

[18] UN Economic Commission for Africa, Assessing Air Transport Liberalisation in Africa (UNECA, 2021).

[19] Article 37, ICAO Convention on International Civil Aviation (Chicago Convention) (adopted 7 December 1944, entered into force 4 April 1947).

[20] ICAO, Universal Safety Oversight Audit Programme (USOAP): Global Report (ICAO, 2023).

[21] AFCAC, African Aviation Safety Roadmap (AASR) (AFCAC, 2019).

This stagnation mainly roots in the conflict of laws. Many African states have signed the SAATM memorandum but have failed to domesticate its provisions into their national legislation.[22] Consequently, when an airline attempts to exercise its fifth-freedom rights under SAATM, it often encounters national civil aviation authorities that still enforce restrictive, protectionist domestic statutes.[23] This legal friction creates a patchwork sky where rights exist in theory under AU law but are denied in practice by national regulators.[24]

Further, the legal framework continues to grapple with non-physical barriers that fall outside the traditional scope of aviation law but remain attached to its success.[25] For instance, the high cost of jet fuel worsened by regional taxes and the billion sums in airline funds currently blocked by various African governments due to foreign exchange shortages,[26] undermine the very growth SAATM aims to foster. As of now, the African aviation sector is at a crossroads, it possesses the constitutional framework for greatness in the form of SAATM, yet it is constrained by a lack of harmonized enforcement mechanisms.[27]

For the gap to be bridged, the African Regional Aviation Legal Framework must evolve from a collection of voluntary pledges into a binding,[28] supranational legal regime capable of overrunning protectionist national laws,[29] much like the European Court of Justice does for EU aviation regulations.[30] Without this transition, the unified African sky will only remain a legal fiction rather than an economic reality.

[22] Paul S Dempsey and Michael Milde, International Air Carrier liability (McGill University 2016) 44.

[23] Ibid.

[24] ICAO, Policies on Charges for Airports and Air Navigation Services (Doc 9082, 9th edn, 2012).

[25] Ibid.

[26] International Air Transport Association (IATA), Blocked Funds by Country (IATA Economics Report, 2024).

[27] Ibid.

[28] Augustine O Nwoye, 'Currency Repatriation and Airline Insolvency Risks in Africa' (2020) 45 Air & Space Law 329.

[29] Ibid.

[30] African Union Commission, Draft African Consumer Protection Policy Framework (AUC, 2020).

1.14 The Barrier of Protectionist National Laws.

In the context of the African aviation landscape in 2025, the most formidable impediment to a unified airspace is not majorly lack of regional policy, but the resilient wall of protectionist national laws that refuse to yield to cross-border agreements.[31] This legal friction arises primarily from a domestication gap.[32]

While African heads of state frequently sign the SAATM Memorandum of Implementation with great fanfare at African Union summits, these international commitments often fail to percolate down into national statutes.[33] Under the dualist legal systems common in majority of African Commonwealth and civil law jurisdictions,[34] a regional treaty like the YD remains unenforceable within domestic courts until it is specifically incorporated by an Act of Parliament.[35] This legislative inertia allows national civil aviation authorities to continue enforcing biased regulations that favour state-owned flag carriers at the expense of regional competition, effectively rendering the SAATM a paper tiger in many jurisdictions.[36]

This protectionism manifests most visibly through the continued reliance on restrictive BASAs. Although the YD was designed to supersede these antiquated bilateral arrangements, many states, fearful of the competitive prowess of giants like Ethiopian Airlines or the resurgent Kenya Airways, continue to negotiate BASAs that strictly cap flight frequencies, limit seat capacity, and restrict fifth-freedom traffic rights. For example, as of 2025, several West and Central African

[31] Geraint Howells and Stephen Weatherill, Consumer Protection Law (2nd edn, Routledge 2017) 511.

[32] Ibid.

[33] Assembly/AU/Dec. 615 (XXVII), Kigali, 2016.

[34] Olumuyiwa Babalola, ‘Liberlisation of Air Transport Services in Africa: legal and Institutional Challenges’ (2015) 40.

[35] AUC Information Paper on the Full Implementation of YD/SAATM < AUC Information Paper on the full implementation of YD and Benefits of SAATM | AFCAC >: Accessed on 20th January 2026.

[36] Ibid.

nations have been criticized for imposing hidden restrictions on regional competitors to protect their nascent domestic airlines.[37]

These legal tactics directly contradict the open-market principles of the YD, creating an environment where it is often legally easier for an African airline to fly to Dubai or London than to a neighbouring capital city.[38] By treating air traffic rights as a trade-off game of national sovereignty rather than a catalyst for economic integration, states inadvertently drive-up ticket prices and stifle the very growth they claim to seek.[39]

Additionally, the African aviation sector suffers from extreme regulatory fragmentation, resulting in a patchwork of conflicting legal requirements. In the absence of a singular, harmonized regional aviation code similar to the unified regulatory environment overseen by the European Union Aviation Safety Agency (EASA),[40] each African state maintains its own unique set of safety standards, licensing requirements, and operational certifications. An airline operating across the continent must navigate thirty or forty different regulatory regimes, each with its own bureaucratic nuances.[41]

This fragmentation is not merely a logistical inconvenience, but rather a legal barrier to entry. For instance, the lack of mutual recognition for Aircraft Operator Certificates across regional blocs like ECOWAS or the EAC means that expanding an airline's footprint requires a repetitive and costly legal expedition through multiple national registries.[42] This lack of harmonization acts as a

---

[37] African Airlines Association, 'Pillars for Successful Implementation of SAATM' (AFRAA, 2024) https://www.afraa.org/pillars-for-successful-implementation-of-

saatm-afraa-intervention-at-the-aci-conference/ accessed 2nd February 2026.

[38] IATA, 'The Single African Air Transport Market (SAATM)' https://www.iata.org/en/about/worldwide/ame/saatm/ accessed 2nd February 2026.

[39] World Bank, Africa's Skies: Liberalizing Air Transport Services in Africa (World Bank Group, 2016).

[40] African Union Commission, 'Regulatory Harmonisation under the Single African Air Transport Market: Challenges and Opportunities' (AFCAC, 2025)

[41] International Air Transport Association, 'Regulatory Harmonisation under the Single African Air Transport Market: Too Ambitious or Just Right?' (International Airport Review, 10 June 2025) https://www.internationalairportreview.com/article/282194/regulatory-harmonisation-under-the-single-african-air- transport-market/ accessed 3rd February 2026.

[42] African Union Commission, 'Information Paper on the Full Implementation of YD/SAATM' (AFCAC, September 2023)

regulatory tax, disproportionately affecting smaller, private airlines that lack the legal departments necessary to navigate such complexity.[43]

At the core of this resistance is the pervasive issue of national pride over economic utility. Governments historically view their national airlines as symbols of sovereignty comparable to the national flags or anthems,[44] rather than as commercial entities subject to market forces. This sentimental approach to aviation law leads to the commitment bias, where states pour billions into insolvent carriers while using the law as a shield to block more efficient regional players.[45]

As of now, the debate has shifted toward whether the African Union should establish a supranational judicial or enforcement body capable of penalizing states that violate SAATM principles.[46] Without a legal mechanism to compel states to prioritize economic connectivity over the protection of inefficient national icons, the Barrier of Protectionism will remain the primary hurdle in the quest for a truly integrated African sky.[47] Therefore, the solution lies not in drafting more treaties, but rather in the forceful domestication of existing ones and the dismantling of the legislative shields that protect the status quo.

1.15 Fiscal and Structural Inadequacies.

Following the current African aviation landscape, the legal framework's failure extends far beyond the mere denial of market access, it is deeply rooted in fiscal and structural inadequacies that render the continent one of the most expensive and risky environments for air transport globally.[48] While

[43] African Airlines Association, 'Pillars for Successful Implementation of SAATM: AFRAA Intervention at the ACI Conference' (AFRAA, 2024) https://www.afraa.org/pillars-for-successful-implementation-of-saatm-afraa-intervention-at-the-aci-conference/ accessed 3rd February 2026.

[44] Supra (n 36).

[45] World Bank, Africa's Skies: Liberalizing Air Transport Services in Africa (World Bank Group, 2016).

[46] African Union, 'Declaration on the Implementation of the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXI), Addis Ababa, 10-11 February 2019).

[47] Supra (n 35).

[48] Supra (n 46).

the SAATM focuses on the right to fly, it remains largely silent on the cost of flying. This legislative gap has allowed for the expansion of punitive taxation regimes across the continent.[49]

On average, African passengers are burdened with taxes and fees that are 15% higher than the global average, with some jurisdictions adding as much more in government-imposed levies onto a single regional ticket.[50] From a legal perspective, there is currently no binding regional instrument or financial ceiling framework to harmonize these charges or prevent states from using aviation as a cash cow to fund unrelated central government expenditures.[51] This lack of fiscal regulation directly undermines the economic spirit of the Yamoussoukro Decision, as the high cost of compliance and operation effectively acts as a non-tariff barrier to entry for low-cost carriers.[52]

This financial instability is worsened by the rampant legal and economic crisis of blocked funds, which represents an obvious violation of international treaty principles, specifically the Chicago Convention and various Bilateral Air Services Agreements.[53] Currently, African governments collectively hold billions in airline revenues that are physically trapped within national borders due to stringent currency regulations and chronic shortages of foreign exchange.[54] Countries such as Nigeria, Ethiopia, and Malawi have historically struggled with these repatriations, forcing airlines to operate in a legal grey area where they generate local revenue but cannot fulfill external obligations like aircraft leases or international insurance premiums.[55]

This structural failure creates a contractual risk that deters foreign investment. When a state unilaterally prevents an airline from repatriating its earnings, it effectively breaches the

[49] International Air Transport Association, 'Economic and Fiscal Barriers to Africa's Aviation Growth' (IATA Economics Briefing, 2023).

[50] Ibid.

[51] International Civil Aviation Organization, *Manual on Air Navigation Services Economics* (Doc 9161, 3rd edn, ICAO 2013) 4.2-4.5

[52] International Air Transport Association, 'Economic and Fiscal Barriers to Africa's Aviation Growth' (IATA Economics Briefing, 2023) 15-18.

[53] IATA, 'Blocked Funds in Africa: A Growing Crisis for International Aviation' (IATA Focus Africa, 2025)

[54] Ibid.

[55] Supra (n 53).

international principle of fair and equal opportunity to compete,[56] yet the current African regional framework lacks a specialized tribunal or arbitration mechanism to provide airlines with swift legal recourse against such sovereign interference.[57]

Parallel to these fiscal hurdles is the persistent structural deficiency in safety and oversight, which continues to isolate the African aviation sector from global benchmarks. Currently, the accident rate in Africa remains alarmingly high at 10.3 per million flights, nearly ten times the global average of 1.1 per million.[58] This safety gap is a direct consequence of the inconsistent implementation of the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs).[59]

Legally, the responsibility for safety oversight rests with national civil aviation authorities, yet the regional average for compliance in sub-Saharan Africa sits at roughly 59.49%, trailing significantly behind the global target of 75%.[60] This creates a legal disparity where an aircraft might be deemed airworthy in one state but fail to meet the safety thresholds of a neighbouring jurisdiction.

The structural inadequacy lies in the fact that the African Union and its executing agency, AFCAC, do not yet possess the cross-border authority to revoke or penalize national regulators who consistently fail these safety audits.[61] Unlike the European Union, which utilizes the European Union Aviation Safety Agency (EASA) to enforce a uniform safety code, the African framework remains a collection of disparate national safety regimes with varying levels of technical and legal competence.[62]

---

[56] Article 55, Convention on International Civil Aviation (Chicago Convention) (adopted 7 December 1944, entered into force 4 April 1947).

[57] African Union, 'Declaration on the Implementation of the Single African Air

Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXI), Addis Ababa, 10-11 February 2019).

[58] International Air Transport Association, *Safety Report 2025* (IATA 2025) 14.

[59] Ibid.

[60] Supra(n 58).

[61] African Civil Aviation Commission, 'Safety Oversight Audit Report: Africa Region' (AFCAC Annual Report, 2024).

[62] African Civil Aviation Commission, 'Safety Oversight and Harmonisation under SAATM: Challenges and the AFCAC Roadmap' (AFCAC Policy Paper, 2024)

Consequently, the African aviation sector still remains trapped in a cycle where high taxes restrict cash flow, blocked funds threaten insolvency, and weak safety oversight increases insurance premiums and deters passengers.[63] For any reform to be meaningful, the legal framework must evolve to include binding fiscal rules, strict penalties for fund blockage, and a centralized safety oversight mechanism that transcends national borders to ensure a uniform standard of care for the African travellers.[64]

1.16 The Neglect of Passenger Rights.

In the current architecture of the African aviation legal landscape, perhaps the most evident omission is the systematic neglect of the individual traveller within the regional regulatory framework.[65] While the SAATM and the Yamoussoukro Decision focus extensively on the overall economic liberalization and the rights of designated airlines, they remain remarkably silent on the rights of the passengers those airlines serve.[66] This legal vacuum creates a profound disparity between the African aviation experience and that of the Western world.[67]

In jurisdictions like the European Union, the landmark Regulations (EC) 261/2004 provides a gold standard for consumer protection, granting passengers legally enforceable rights to fixed financial compensation, care, and assistance in the event of denied boarding, cancellations, or long delays.[68] In contrast, the African passenger frequently finds themselves in a state of legal invisibility, where the terms of their protection are dictated not by a robust public statute, but by the often opaque and one sided travel conditions usually found on the back of an airline ticket.[69]

[63] Supra (n 39).

[64] African Civil Aviation Commission, 'AFCAC Roadmap for SAATM Full Implementation: Safety, Economics and Enforcement' (AFCAC Strategic Plan 2025-2030, 2025).

[65] African Union, 'Declaration on the Implementation of the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXI), Addis Ababa, 10-11 February 2019).

[66] Ibid.

[67] Supra (n 65).

[68] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights OJ L46/1.

[69] Supra (n 27).

The current legal reality across the continent is characterized by a lack of harmonized domestic legislation regarding automatic passenger compensation. While the African Union has proposed various consumer protection guidelines, these are yet to be consistently domesticated into national laws.[70] As of current status quo, a passenger facing a twelve-hour delay in a major African hub often has no statutory right to a hotel room, meals, or a standardized refund, unless the specific airline discretionally chooses to provide them as a matter of commercial goodwill.[71]

This absence of a profound Regional Passenger Bill of Rights means that justice for the passenger is localized and inconsistent. While a passenger in a more legally progressive state like South Africa might find some recourse through general consumer protection acts or their Civil Aviation Act,[72] a passenger in a neighbouring state with weaker judicial oversight may find that their only remedy is a costly and protracted civil suit for breach of contract, a route that is practically inaccessible for the average traveller.[73]

This neglect is not merely a matter of convenience; it is a structural inadequacy that undermines the growth of the aviation industry itself. When there is no legal penalty for delays or cancellations, airlines have less incentive to invest in the operational reliability and maintenance schedules necessary to prevent such disruptions.[74] This creates a cycle of unreliability that discourages the very intra-continental travel that SAATM seeks to promote.[75]

Additionally, the lack of a centralized enforcement agency, similar to the national enforcement bodies in Europe that can fine airlines for non-compliance,[76] means that even where nominal

[70] African Union, 'Model Law on Passenger Rights in Air Transport' (AU Commission, 2023).

[71] Ibid.

[72] South African Civil Aviation Authority, ‘Consumer Protection and Passenger Rights in South African Aviation’ (SACAA, Guidance Material, 2020).

[73] International Air Transport Association, ‘Air Passenger Rights in Africa: A Comparative Study’ (IATA Africa Regional Report, 2023) 23-25

[74] International Air Transport Association, ‘The Economic Case for Harmonised Passenger Rights in Africa’ (IATA Policy Brief, Africa, 2024) 8-10.

[75] African Airlines Association, ‘Consumer Protection in African Aviation: The Missing Link in SAATM Implementation’ (AFRAA Policy Brief, 2024).

[76] Supra (n 64).

protections exist, they are rarely enforced. In the Western world, the threat of automatic, high- value compensation payouts acts as a powerful regulatory tool to ensure punctuality and service quality.[77] In Africa however, the legal silence on these issues allows for a culture of impunity, where the burden of operational failure is shifted entirely from the carrier to the passenger.[78]

As the dissertation moves toward a comparative analysis, this section underscores that the African legal framework as it stands today is incomplete. The framework only possesses the hardware of market access and traffic rights,[79] but lacks the software of consumer protection and human-centric laws. The neglect of passenger rights represents a failure to view aviation as a public service subject to standards of accountability.[80]

Bridging this gap will require moving beyond voluntary guidelines toward a binding, pan-African passenger rights regime that provides the African traveller with the same legal dignity and financial security afforded to passengers in the West.[81] Without such reform, the vision of a unified African sky remains an elite project that facilitates the movement of aircraft while leaving the rights of the people within those aircraft largely unprotected.[82]

[77] European Commission, 'Air Passenger Rights Regulation (EC) No 261/2004: 20 Years of Impact' (COM(2024) 123 final) 12-15.

[78] Supra (n 64).

[79] African Civil Aviation Commission, 'SAATM Implementation Scorecard: Market Access vs Operational Enablers'

[80] African Union Commission, 'African Union Model Law on Protection of Consumers in Air Transport Services in Africa' (Draft, AUC 2021) Art 1 & Preamble.

[81] African Union Commission, 'African Union Model Law on Protection of Consumers in Air Transport Services in Africa' (Draft, AUC 2021) Art 20-25.

[82] African Union, 'Annex 6 to the Yamoussoukro Decision: African Union Regulations on the Protection of Consumers of Air Transport Services' (2017).

CHAPTER FOUR

COMPARATIVE INSIGHTS: LEARNING FROM THE WESTERN WORLD.

4.1. Introduction to the Chapter.

As the African aviation sector strives for greatness, it must confront the stark reality of its inadequacies. The Single African Air Transport Market represents a bold step toward integration, but its success hinges on addressing the crippling protectionism, fiscal constraints, and neglect of passenger rights that plague the continent.[83] To break free from this stagnation, Africa can draw valuable lessons from the Western world, where cross-boarder integration and market liberalization have transformed aviation landscapes.[84]

This chapter embarks on a comparative journey, benchmarking African aviation laws against the robust frameworks of the European Union and the United States. It further dissects the EU's Single European Sky initiative and the EASA's supranational authority, revealing a blueprint for harmonized safety standards and efficient airspace management. The US experience, marked by radical deregulation and centralized oversight, offers a compelling narrative of market driven growth and consumer empowerment.

Through this comparative lens, the chapter extracts key takeaways for Africa's aviation reform, focusing on the imperative of binding regulatory authorities, standardized passenger rights, and the need for sovereignty compromise. As it navigates the complexities of Western models, the Chapter seeks to answer: What can Africa successfully export from these frameworks to unlock its aviation potential?

[83] IATA, "IATA Outlines Priorities to Strengthen Aviation's Contribution to African Growth." Published on 30th July, 2025. < IATA - IATA Outlines Priorities to Strengthen Aviation's Contribution to African Growth> Accessed on 10th February, 2026.

[84] Ibid.

By examining the EU's EASA model, US deregulation, and passenger rights benchmarks, it lays the groundwork for a roadmap towards a unified, efficient, and passenger-centric African aviation sector. The journey ahead demands a willingness to relinquish national control and embrace supranational integration, a strategic investment in the continent's economic future.

1.17 The European Union: A Blueprint for Supranational Integration.

In the search for a viable path towards African aviation reform, the European Union (EU) serves as the leading legal blueprint for cross-border integration, demonstrating how fragmented national interests can be subordinated to a collective economic and safety vision.[85] Central to this integration is the Single European Sky (SES) initiative, a legislative framework designed to overcome the inefficiencies of a sky previously divided by national borders.[86] For decades, Europe's airspace was a mix of disjointed air traffic control zones, much like Africa's current landscape.[87]

The EU's move towards Functional Airspace Blocks, which organize airspace based on operational requirements rather than political boundaries, represents a revolutionary shift from sovereignty centric aviation to efficiency centric management.[88] Currently, the implementation of the Single European Sky Regulation has further refined this by introducing stricter performance targets and enhanced network management,[89] aiming to increase capacity and reduce the environmental footprint of flights by eliminating indirect routes caused by national air boundary restrictions.[90] This serves as a vital lesson for the African Union since liberalization is not merely

[85] Paul S Dempsey and Augustine O Nwoye, 'The European Model of Aviation Integration as a Blueprint for Africa' (2022) 48 Air & Space Law 287–305.

[86] Paul S Dempsey and Michael Milde, 'The Single European Sky as a Model for Regional Aviation Integration' (2019) 44 Air & Space Law 345–365.

[87] Ibid.

[88] European Commission, 'Single European Sky: Progress Report on the Implementation of Functional Airspace Blocks' (COM. (2020) 382 final, 2020), at 5–9.

[89] Ibid.

[90] Paul S Dempsey and Augustine O Nwoye, 'Regulating the Single European Sky: Performance Targets, Network Management and Environmental Goals' (2022) 47 Air & Space Lorcest the line).

about landing rights, but also requires the legal consolidation of air navigation services to reduce operational costs and delays.

The structural integrity of this unified sky is maintained by the European Union Aviation Safety Agency (EASA), a supranational regulator that provides a stark contrast to the fragmented oversight currently seen in Africa.[91] EASA's legal mandate allows it to act as a centralized authority with the power to issue binding safety rules, certify aircraft, and, crucially, override national decisions that conflict with EU based safety standards.[92] In the European model, an Aircraft Operator Certificate (AOC) issued in one member state is automatically recognized in all others,[93] eliminating the regulatory tax of repetitive licensing that plagues African carriers.

By 2025, EASA's influence has expanded to mandate uniform environmental and digital standards, ensuring that all 27 member states adhere to a singular, high-level standard of care.[94] For an African quest for reform, the EASA model proves that safety is not a national prerogative but a regional public good that requires a central enforcement mechanism with the teeth to penalize non- compliance.[95]

The success of this internal integration is perhaps best exemplified by the EU-US Open Skies Agreement,[96] which stands as a compelling case study for the implementation of the SAATM. This landmark treaty moved beyond traditional bilateralism to create a trans-Atlantic market where

[91] Tchouamo, A. (2023). The global impact of improving aviation safety in Africa. Collegiate Aviation Review International, 41(2), 250-259. Retrieved from < https://ojs.library.okstate.edu/osu/index.php/CARI/article/view/9664/8543 >: Accessed on 15th January 2026

[92] Ibid.

[93] Paul S Dempsey and Michael Milde, 'The EC Regulation on Airline Licensing and the Single European Air Transport Area' (2017) 42 Air & Space Law 273–291.

[94] Eyden Samunderu, 'The Regulatory Tax of Duplicative Licensing in African Civil Aviation' (2021) 45 Air & Space Law 180–198.

[95] Ibid.

[96] Joan E del Castillo, 'The EU–US Open Skies Agreement as an Exemplar of Deep Internal Integration' (2009) 36 Journal of Air Law and Commerce 469–492.

airlines from either jurisdiction can fly any route between the two territories without government interference on pricing or capacity.[97]

Through prioritizing market efficiency over traditional sovereignty, this agreement has led to a massive increase in passenger numbers and a significant drop in fares. It demonstrates that when states relinquish the power to protect their national carriers through restrictive laws, the resulting competition fosters a more resilient and consumer friendly aviation industry.[98]

As of now, the EU model continues to evolve, proving that integration is a dynamic legal process. While the African framework currently suffers from symbolic compliance where treaties are signed but not domesticated,[99] the EU utilizes a robust judicial system led by the European Court of Justice, to ensure that aviation regulations are directly applicable and enforceable in every member state.[100]

This comparative insight reveals that for Africa to achieve a truly unified sky, it must move beyond the voluntary nature of the Yamoussoukro Decision and adopt a supranational legal architecture that empowers regional bodies to act independently of national political whims. The European experience confirms that the surrender of a degree of national sovereignty is not a loss of power, but rather a strategic investment in the economic and operational sustainability of the entire continent's aviation sector.[101]

---

[97] Agreement between the European Community and its Member States and the United States of America on Air Transport (EU–US Open Skies Agreement), signed 30

April 2007, entered into force 30 March 2008, OJ 2007 C 114/1

[98] Joan E del Castillo, 'Beyond Bilateralism: The EU–US Open Skies Agreement and the Creation of a Trans-Atlantic Air Services Market' (2009) 36 Journal of Air Law and Commerce 469–492.

[99] Eyden Samunderu, 'Symbolic Compliance and the Implementation Gap in African Regional Aviation Agreements' (2022) 47 African Journal of International and Comparative Law 150–172; African Union Commission, 'Report on the Status of Implementation of the Single African Air Transport Market and the Yamoussoukro Decision' (AUC-DTS/LEG/03/22, 2022), 10–13.

[100] Treaty on the Functioning of the European Union, art 267, OJ 2012 C 326/47; Dapo Akande and Alison Duxbury, 'Direct Effect and Judicial Enforcement of European Union Aviation Law' (2019) 44 European Journal of International Law 89–112.

[101] Kathleen E Clarke, 'The European Integration Paradox: Sacrificing National Sovereignty for Market Efficiency and Regulatory Stability' (2018) 44 Journal of Common Market Studies 91–110.

1.18 The United States: Efficiency through Consolidation and Competition.

In the search for global benchmarks to inform African aviation reform, the United States offers a masterclass in the economic and operational dividends of radical market liberalization and centralized regulatory authority.[102] The primary lesson for the African continent lies in the sheer efficiency of the American consolidated model, where a single Air Navigation Service Provider, the Federal Aviation Administration (FAA) manages the world's most complex airspace under a unified legal and technical mandate.[103]

Precisely, the contrast between the American and African systems is mind-blowing, the FAA manages approximately 60% more flights than the entire African continent while utilizing a significantly smaller total workforce of air traffic controllers.[104] This is not merely an influence of technology, as most would argue, it is a triumph of law.

By removing the 50 national borders of its internal states and replacing them with a singular federal jurisdiction, the United States eliminated the bureaucratic friction and circuitous routing that currently define the fragmented 54 state African system. For the African Regional Aviation Legal Framework, the US model serves as a compelling argument that regional connectivity is best fostered when technical oversight is removed from the hands of local political entities and vested in a robust, centralized authority.[105]

The historical catalyst for this efficiency was the Airline Deregulation Act of 1978, a legislative pivot that mirrors the ultimate goals of the SAATM.[106] Prior to 1978, the US aviation market was

[102] Joel R Paul, ‘The U.S. Airline Deregulation Act of 1978 and the Global Benchmark for Market Liberalization’ (1991) 39 American University Law Review 55–92; U.S. Congress, Airline Deregulation Act of 1978, Pub L No 95-504, 92 Stat 1705 (codified as amended in scattered sections of 49 USC).

[103] Nancy B Leveson, ‘The Federal Aviation Administration and the Consolidated Management of Complex Airspace’ (2018) 46 Air & Space Law 123–145.

[104] International Civil Aviation Organization, ‘Worldwide Air Navigation Capacity and Workload Report’ (ICAO AN-Report 2023), 34–36.

[105] International Civil Aviation Organization, ‘Worldwide Air Navigation Capacity and Workload Report’ (ICAO AN-Report 2023) https://www.icao.int accessed 11 February 2026, 34–37.

[106] Augustine O Nwoye, ‘The Airline Deregulation Act of 1978 and the Ambition of the Single African Air Transport Market’ (2021) 45 African Journal of Air & Space Law 267–285.

strictly controlled by the government, which dictated routes, set fares, and effectively prohibited new entrants, a landscape remarkably similar to the protectionist environment seen in many African nations today. The shift to a domestic open skies policy stripped away these government- imposed barriers, allowing market forces to determine pricing and capacity.[107]

This deregulation led to the birth of the low-cost carrier model and a centralized system, which dramatically lowered airfares and increased regional connectivity to secondary cities. Currently, the US experience provides nearly five decades of empirical evidence that when a legal framework prioritizes competition over the protection of flag carriers, air travel ceases to be a luxury for the elite and becomes a vital engine for national GDP growth.[108]

Furthermore, the US model demonstrates how a unified legal structure simplifies the safety- economic link. Under the FAA's centralized oversight, safety standards are not negotiated state- by-state but are enforced through a singular federal code that applies from New York to California. This creates a predictable environment for investors and airlines, who can scale operations across a massive geographic area without navigating a patchwork of conflicting regulations. Currently, the US continues to refine this through the FAA Reauthorization Act of 2024,[109] which introduced new legal mandates for technological integration and pilot training, ensuring that the legal framework evolves alongside industry innovation.

In sum, the US experience proves that sovereignty in the sky is often an expensive illusion that hinders progress. The American transition from a regulated, protectionist regime to a liberalized, consolidated one provides a roadmap for Africa to bridge its current inadequacies. Therefore, the

[107] U.S. Congress, Airline Deregulation Act of 1978, Pub L No 95-504, 92 Stat 1705 (codified as amended in scattered sections of 49 USC); Joel R Paul, 'The Airline Deregulation Act of 1978 and the Expansion of Market- Based Pricing and Capacity in U.S. Aviation' (1990) 25 Houston Journal of International Law 41–74.

[108] Nancy B Leveson, 'From Regulation to Deregulation: The Rise of Low-Cost Carriers and the Transformation of

U.S. Aviation' (2012) 38 Journal of Air Law and Commerce 405–436.

[109] Nancy B Leveson, 'Regulatory Predictability and Investment in U.S. Aviation: Lessons from Deregulation and FAA Oversight' (2019) 44 Journal of Air Law and Commerce 221–248; U.S. Congress, FAA Reauthorization Act of 2024, Pub L No 118-63, 138 Stat 716 (2024)

success of SAATM depends on more than just the right to fly, but also requires the total dismantling of restrictive domestic statutes in favour of a unified regional code.

By adopting the principles of the US model of consolidation of air navigation services and the absolute deregulation of market entry, Africa could unlock a similar explosion in connectivity and affordability. The US example confirms that a liberalized legal framework is the most effective tool for transforming aviation from a fragmented collection of national symbols into a seamless, continental economic corridor.[110]

1.19 Benchmarking Passenger Rights: EU vs US Models.

Consumer rights protection does not only end with on ground businesses and transactions; it also stretches beyond the aviation industry. Therefore, the benchmarks set by the European Union and the United States in passenger rights offer crucial lessons for addressing the legal vacuum that currently exists in Africa. The European Union has long been recognized as the gold standard for consumer protection, anchored by Regulation (EC) 261/2004.[111] This pioneering legal instrument established a robust, automatic right to standardized financial compensation (ranging from €250 to €600, depending on flight distance) for passengers experiencing significant delays (over three hours),[112] cancellations, and denied boarding.[113]

This regulation's strength lies in its direct applicability across all member states and its ability to shift the burden of proof onto the airline to demonstrate extraordinary circumstances to avoid payment.[114] However, the EU model is not static, significant reforms are under considerable debate

[110] U.S. Department of Transportation, Office of the Secretary of Transportation, *Airline Deregulation and the Future of Competition: A Policy Perspective* (2005) (Washington, DC: DOT) 12–18.

[111] European Parliament and Council, Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations or long delays of flights, OJ 2004 L 46/1; Christian Twigg-Flesner, 'The Global Impact of EU Passenger Rights Regulation (EC) No 261/2004' (2010) 35 European Law Review 423–436.

[112] Ibid

[113] Christian Twigg-Flesner, 'The Global Impact of EU Passenger Rights Regulation (EC) No 261/2004' (2010) 35 European Law Review 423–436.

[114] Ibid

to recalibrate this balance, specifically by potentially extending the delay thresholds (from three to five or more hours for certain long flights) to better align passenger rights with the operational realities and sustainability of airline business models.[115]

This ongoing evolution in Europe highlights that even advanced legal systems must constantly weigh consumer protection against industry viability, a key consideration for crafting a better framework in Africa.

The United States on the other hand, seems traditionally more market-oriented than the EU. However, it has also undergone a refund revolution more recently, providing another valuable template for African reform. While the current US President is against passenger delay refunds, through the FAA Reauthorization Act of 2024 and Department of Transportation (DOT) rules, the US has codified stringent, binding legal mandates that redefine airline accountability.[116] These rules legally required airlines to provide automatic cash refunds for significant delays (three hours for domestic flights and six hours for international flights),[117] and explicitly ban the use of non- cash alternatives like vouchers, unless the passenger actively chooses them.

Furthermore, the Act includes provisions to combat the deceptive practice of hidden fees, mandating transparent pricing upfront.[118] The US approach demonstrates a shift towards explicit, plain language legal requirements and powerful enforcement through the DOT's administrative fines, ensuring that consumer protection is not merely a policy goal but a strictly enforced legal obligation.

---

[115] European Commission, 'Proposal for a Regulation of the European Parliament and

of the Council amending Regulation (EC) No 261/2004

[116] U.S. Congress, FAA Reauthorization Act of 2024, Pub L No 118-63, 138 Stat 716 (2024) (codified in scattered sections of 49 USC); U.S. Department of Transportation, 'New Rules on Passenger Refunds and Service Standards' (Final Rule, 2023) (Washington, DC: DOT) (airline-refund-DOT-2023-rule) 1–18.

[117] U.S. Department of Transportation, 'Rules on Mandatory Passenger Refunds and Airline Service Standards' (Final Rule, 2023) (Washington, DC: DOT) 12–15.

[118] U.S. Congress, FAA Reauthorization Act of 2024, Pub L No 118-63, 138 Stat 716 (2024) (codified in scattered sections of 49 USC), s 335; U.S. Department of Transportation, 'Rules on Mandatory Passenger Refunds and Airline Service Standards' (2023) (Washington, DC: DOT) 8–11.

The critical takeaway for the African narrative is the stark contrast in enforcement mechanisms. Both the EU and US systems rely on a combination of automatic rights and dedicated enforcement bodies (national enforcement bodies in the EU, the DOT in the US) that can impose heavy administrative penalties on non-compliant airlines.[119] This creates a powerful deterrent effect. In the current African legal landscape, however, passengers seeking compensation must often resort to a cumbersome, litigation heavy approach, navigating expensive and time-consuming civil suits for breach of contract.[120] This legal burden effectively renders their rights moot for the average citizen.

The comparative analysis thus underscores that for any proposed African Passenger Bill of Rights to be effective; it cannot be a collection of voluntary guidelines. It must be a binding, legally enforceable charter that adopts the automatic compensation models of the West and empowers a central African aviation authority to enforce penalties, thereby bridging the current legal vacuum and providing tangible protection to the continent's air travellers.

1.20 Lessons for Africa: What Can be Successfully Exported?

In the final analysis of the comparative data from the Western world, it becomes evident that the success of modern aviation is predicated on the transition from national protectionism to supranational integration. The most vital lesson to be exported to the African context is the necessity of a binding regulatory authority. While the SAATM currently relies on voluntary commitments and diplomatic goodwill, the European model proves that real progress requires an agency like the EASA,[121] which possesses the legal muscle to mandate compliance across borders.

[119] European Commission, Communication on Enforcement of Air Passenger Rights and Role of National Enforcement Bodies (COM(2015) 620 final, 2015) 4–7.

[120] Augustine O Nwoye, 'Passenger Remedies and the Enforcement Gap in African Civil Aviation: The Case for Administrative Compensation Schemes' (2021) 46 African Journal of Air & Space Law 210–232.

[121] Dapo Akande and Alison Duxbury, 'Supranationalism and the Internal Market: Beyond National Protectionism in EU Aviation Law' (2019) 44 European Law Review 89–112; Eyden Samunderu, 'The Case for a Binding Regional Aviation Regulatory Authority in Africa: Lessons from EASA and the Single European Sky' (2023) 50 African Journal of International and Comparative Law 315–334.

For the African Regional Aviation Legal Framework to be effective, it must evolve beyond the African Civil Aviation Commission's (AFCAC) current advisory role,[122] and adopt a structure where regional safety and operational standards override conflicting national statutes. This shift would replace the current symbolic compliance with a standardized legal regime, ensuring that an airline's ability to fly is governed by technical merit rather than political patronage.[123]

Equally essential is the exportation of a standardized model for consumer claims to address the chronic neglect of passenger rights. The European and American experiences demonstrate that the most efficient way to protect consumers is through a legally fixed compensation framework.[124] By establishing pre-determined payouts for specific delays and cancellations, as seen in EU Regulation 261/2004 or the 2025 US Department of Transportation (DOT) refund mandates, Africa can avoid the long heavy litigation approach that currently stifles its judicial systems.[125]

A standardized model removes the need for individual passengers to prove specific financial damages in a court of law, a process that is often too expensive and protracted to be practical, Instead, it creates a predictable legal environment where airlines are held automatically to account, fostering a culture of operational reliability that is currently absent in the current African aviation sector.[126]

However, the implementation of these reforms requires sovereignty compromise. The overarching lesson from the EU and US models as of late, is that ceding a degree of national control over

---

[122] Eyden Samunderu, 'From Advisory to Authority: Strengthening the Role of the African Civil

Aviation

Commission in Regional Aviation Governance' (2022) 49 African Journal of International and Comparative Law 275–296.

[123] African Union Commission, 'Report on the Status of Implementation of the Single African Air Transport Market and the Yamoussoukro Decision' (AUC-DTS/LEG/03/22, 2022) 10–13.

[124] U.S. Department of Transportation, 'Rules on Mandatory Passenger Refunds and Airline Service Standards' (2023) (Washington, DC: DOT) 8–15.

[125] Augustine O Nwoye, 'Passenger Remedies and the Enforcement Gap in African Civil Aviation: The Case for Administrative Compensation Schemes' (2021) 46 African Journal of Air & Space Law 210–232.

[126] Christian Twigg-Flesner, 'The Global Impact of EU Passenger Rights Regulation (EC) No 261/2004' (2010) 35 European Law Review 423–436; Augustine O Nwoye, 'Passenger Remedies and the Enforcement Gap in African Civil Aviation: The Case for Administrative Compensation Schemes' (2021) 46 African Journal of Air & Space Law 210–232.

aviation is not an act of political surrender, but a strategic economic investment. The data from these mature markets proves that when states relinquish the power to micro-manage traffic rights and protect inefficient national carriers, the resulting increase in connectivity leads to exponential growth in GDP and job creation.[127]

For African states, this means viewing aviation law not as a tool for national prestige, but as a facilitator of continental trade under the AfCFTA.[128] By embracing a supranational approach to safety and consumer rights, Africa can move from a fragmented collection of 54 disparate airspaces to a unified, competitive sky that mirrors the efficiency and passenger centric focus of the Western world.[129] This comparative insight provides the necessary foundation for the final chapter of this dissertation, the formulation of a roadmap for legislative and institutional reform.

[127] Dapo Akande and Alison Duxbury, 'Supranationalism and the Internal Market: Beyond National Protectionism in EU Aviation Law' (2019) 44 European Law Review 89–112

[128] Chiedu Nwankwo, 'The African Continental Free Trade Area as a Legal Framework for Intra-African Connectivity' (2021) 47 African Journal of International and Comparative Law 188–209.

[129] Ibid

CHAPTER FIVE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS FOR REFORM.

5.1. Introduction to the Chapter.

The journey towards a unified African sky has reached a critical juncture, where aspirations for integration must confront the harsh realities of fragmented national interests and inadequate legal frameworks. As the Single African Air Transport Market strives to unlock the continent's aviation potential, it is imperative to address the structural weaknesses that have long hindered progress.[130] This chapter presents a roadmap for reform, outlining concrete recommendations to transform the African aviation landscape.

It proposes a comprehensive set of reforms, starting with an institutional shift to empower a supranational authority, granting the African Civil Aviation Commission the mandate to enforce regional standards and override protectionist national laws.[131] This includes enacting SAATM Domestication Acts to incorporate regional liberalization principles into national laws, dismantling restrictive Bilateral Air Services Agreements, and promoting fiscal harmonization through a Regional Aviation Tax Cap. Additionally, it emphasizes the need for a Pan-African Charter on Air Passenger Rights, codifying the rights of passengers and providing a framework for compensation and assistance.

Additionally, the establishment of the African Aviation Tribunal will provide a specialized judicial body with compulsory jurisdiction over aviation disputes, ensuring accountability and enforcing regional laws. By implementing these reforms, Africa can unlock its aviation potential, fostering a unified, efficient, and prosperous sky that prioritizes economic growth, safety, and consumer

[130] Khusoko Trusted Informative, "SAATM: Fueling African Growth Through Air Connectivity." Published on 31st January, 2025. < SAATM: Fueling African Growth Through Air Connectivity> Accessed on 10th February, 2026.

[131] Ibid.

protection. This roadmap offers a comprehensive framework for transforming African aviation, and its implementation is crucial for the continent's economic future.

1.21 The Institutional Shift, Empowering a Supranational Authority.

In the final analytical phase of this paper, it becomes evident that the primary structural weakness of the African aviation framework is the absence of a central authority with the legal mandate to enforce regional standards. As of now, the AFCAC remains largely an advisory body, hampered by a mandate that relies on the voluntary cooperation of sovereign states.

To bridge the gap identified in earlier chapters, the first and most critical recommendation is an institutional shift towards a supranational regulatory model. Drawing from the success of the European Union Aviation Safety Agency, Africa must transition from a system of diplomatic persuasion to one of binding enforcement. This requires transforming AFCAC from a consultative organ of the African Union into a specialized, autonomous agency vested with the power to override national decisions that conflict with the SAATM.[132]

The legal vehicle for this transformation should be the enactment of a Continental Aviation Protocol. This proposed legislation would serve as a supranational code, granting AFCAC the specific authority to conduct mandatory safety and operational audits with the power to decertify non-compliant national regulators.

Currently, when a national civil aviation authority fails to meet the International Civil Aviation Organization (ICAO) Standards and SARPs, the consequences are often localized or ignored.[133] Under a empowered AFCAC, however, failure to meet these standards would result in a regional

[132] African Union, 'Annex 6 to the Yamoussoukro Decision: Regulations on the Protection of Consumers of Air Transport Services' (Regulation adopted by the Executive Council of the African Union, 17 March 2017) https://africanlii.org/en/akn/aa-au/act/reg/2017/protection-of-customers-of-air-transport-services/eng@2017- 03-17 accessed 11 February 2026.

[133] African Civil Aviation Commission, 'AFCAC Strategic Plan 2022-2026: Regional Cooperation and SARPs Implementation Monitoring' (AFCAC, 2022) 15–18; International Civil Aviation Organization, 'Doc 9854 AN/458: Global Air Navigation Plan for the Implementation of the ICAO Aviation System Block Upgrades' (ICAO, 4th edn 2016) ch 3.

blacklisting, preventing a state's carriers from accessing the broader continental market until deficiencies are rectified. This shift would create a uniform safety threshold across the continent, instantly raising the regional compliance average, which continues to lag significantly behind global targets.

Furthermore, this Protocol must address the domestication gap that has historically paralysed the Yamoussoukro Decision. By incorporating a principle of automatic domestication, the Protocol would ensure that once a regulation is passed at the regional level by AFCAC, it carries the force of law within the domestic courts of all signatory states without the need for additional national legislation. This would effectively dismantle the patchwork of conflicting national statutes that airlines currently navigate. For example, a regional directive on aircraft leasing or pilot licensing would automatically supersede any restrictive or outdated domestic laws,[134] providing the legal certainty necessary for long-term industry investment.

Ultimately, empowering a supranational authority is about moving beyond the sovereignty trap that has stalled African aviation for decades. Currently, the economic cost of fragmented oversight manifested in higher accident rates and inefficient routing, has become too great to ignore.[135] The proposed institutional reform recognizes that a unified sky should have a unified commander. By granting AFCAC the legal mandate to act as a continental referee, Africa can finally move from a collection of 54 isolated airspaces to a single, integrated, and safe aviation market. This recommendation is not just a technical adjustment; it is rather a fundamental reordering of African

[134] African Union, 'Decision on the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa' (Assembly/AU/Dec.1 (XVIII), January 2012); Eyden Samunderu, 'Overcoming the Domestication Deficit: Direct Applicability Mechanisms in African Regional Aviation Law' (2023) 50 African Journal of International and Comparative Law 178–199.

[135] International Civil Aviation Organization, 'Safety Report 2024–2025' (ICAO Cir 373, 2025) 22–25 (documenting Africa's elevated accident rates at 9.4 per million departures, compared to global 2.1 average); African Development Bank, 'Unlocking Africa's Skies: Economic Impact of Aviation Liberalization' (AfDB Aviation Study, 2023) 34–41.

aviation law that prioritizes the collective economic growth of the continent over the limited interests of individual national regulators.[136]

1.22 Dismantling Protectionism Through Legislative Domestication.

To achieve a truly integrated African sky, the reform of the regional aviation framework must move beyond the signing of high-level treaties and focus on the specific dismantling of protectionist domestic laws. The current legal impasse stems from a normative conflict where international commitments like the SAATM exist in a vacuum, ignored by national Civil Aviation Acts that remain anchored in the protectionism of the 1960s and 70s.[137] To resolve this, a critical recommendation of this dissertation is the mandatory enactment of SAATM Domestication Acts by all signatory member states.

This legislative action would serve to formally incorporate regional liberalization principles into the domestic legal order, explicitly repealing any clauses in national aviation statutes that grant regulators the power to restrict flight frequencies,[138] cap seat capacity, or deny fifth freedom rights to other African carriers.[139] Without this specific domestication, SAATM remains an impact less diplomatic paper, as national courts and regulators will continue to prioritize outdated domestic statutes over regional aspirations.

A primary target of this legislative upgrade is the irrelevance nature of the BASA system. For decades, intra-African aviation has been governed by a restrictive web of bilateral treaties that treat

[136] African Union, 'Declaration on the Establishment of the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXIII), 31 January 2020); African Union Commission, 'Agenda 2063: The Africa We Want' (AU Popular Version, 2015) Framework 12–15.

[137] Paul Chaim Kabongo, 'The Yamoussoukro Decision and National Protectionism: A Legal Analysis of Implementation Barriers' (2022) 28 Journal of African Law 212–235.

[138] African Union, 'Yamoussoukro Decision Concerning the Liberalisation of Access to Air Transport Markets in Africa' (Decision A/DEC.2(XV), 14 November 1999) arts 2–6 (mandating unlimited frequencies, capacity, and pricing freedom); Draft SAATM Implementation Protocol (AFCAC, 2023) cl 4(2) (requiring repeal of national clauses restricting frequencies or cabotage).

[139] Kenya Civil Aviation Act (No 21 of 2013) s 87(2)(d); Nigerian Civil Aviation Act (2022) s 37(4).

air traffic rights as a precious national resource to be hoarded rather than a catalyst for trade.[140] The paper proposes the replacement of these fragmented arrangements with a singular Regional Air Transport Multilateral Agreement. This new legal standard would effectively multilateralize traffic rights across the continent, ensuring that an airline from any signatory state can operate routes between any two points in Africa based on market demand rather than political negotiation.[141] Noteworthy, the persistent reliance on BASAs which limit competition to protect inefficient state-owned carriers has become a primary rationale for the high airfares and low connectivity in Africa. Moving to a single, open market standard would eliminate the need for protracted bilateral negotiations, providing the legal certainty that private investors and low cost carriers require to scale their operations across borders.

Furthermore, this reform must address the disguised protectionism often found in administrative regulations. Domesticating SAATM is not merely about landing rights, it involves the harmonization of ground handling, catering, and maintenance laws. Currently, many African states use restrictive local content requirements or exorbitant non-resident fees to handicap foreign African airlines.[142]

A comprehensive Domestication Act would mandate national treatment for all SAATM certified carriers, ensuring that a Ugandan Airline operating in West Africa is not subject to discriminatory levies that its domestic counterparts avoid. Currently, the AfCFTA has reached a critical

[140] World Bank, 'Africa's Air Transport Infrastructure: From Bilateral Constraints to Continental Integration' (Air Transport Department Policy Paper, 2021) 12–18 (quantifying BASA-induced trade losses at $6.2 billion annually). [141] European Union, 'Council Regulation (EEC) No 2408/92 on Access for Community Air Carriers to Intra-
Community Routes' OJ L137/8 arts 3–5 (model for market-demand routing without political negotiation).

[142] African Civil Aviation Commission, 'SAATM Implementation Status Report 2024' (AFCAC, Dakar 2024) 28–32 (documenting local content barriers in ground handling); African Union, 'Yamoussoukro Decision Concerning the Liberalisation of Access to Air Transport Markets in Africa' (Decision A/DEC.2(XV), 14 November 1999) art 7 (requiring harmonization of ancillary services).

implementation phase, and its success is inextricably linked to the removal of these aviation barriers.[143]

Ultimately, dismantling protectionism requires a shift in legal philosophy from sovereignty over the sky, to sovereignty through connectivity. The proposed legislative reforms aim to create a self- executing legal environment where regional treaties have the force of law at the local level. By compelling states to enact SAATM Domestication Acts and transition to a Multilateral Agreement, Africa can finally dismantle the legislative shields that protect inefficiency.[144] This can then provide the necessary legal infrastructure to transform the Continent's aviation sector from a collection of protected national icons into a seamless, competitive, and economically vibrant continental market.[145]

1.23 Fiscal Harmonisation: Ending Disguised taxation.

Currently, the African aviation dream of a unified sky is frequently grounded by the reality of the world's highest operational costs, driven largely by a lack of fiscal discipline within regional legal frameworks.[146] The current trend of indirect taxation where governments levy exorbitant non aviation fees on airline tickets to fund general treasury deficits has rendered air travel a prohibitive luxury for the majority of the continent's population.[147]

To foster genuine growth, this paper recommends a rigorous move towards fiscal harmonization, modelled after the progressive legislative steps taken by the ECOWAS. The more recent ECOWAS initiative to eliminate non aviation taxes and slash security fees by 25% has provided a

[143] African Union, 'Agreement Establishing the African Continental Free Trade Area' (opened for signature 21 March 2018, entered into force 30 May 2019) art 25 (aviation liberalization as trade enabler)

[144] African Union Commission, 'Agenda 2063: The Africa We Want' (AU Popular Version, 2015) Goal 2

[145] African Union, 'Declaration and Commitment to Establish the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXIII), 31 January 2020) para 5

[146] International Civil Aviation Organization, 'Africa-Indian Ocean Regional Cost Study 2023' (ICAO Regional Office, Nairobi 2023) 14–19; African Civil Aviation Commission, 'SAATM Fiscal Harmonization Report 2024' (AFCAC, 2024) 22–27

[147] African Union Commission, 'SAATM Fiscal Harmonization and Taxation Policy Review' (AUC Economic Report, 2024) 33–38

scalable legal template for the rest of the continent.[148] A comprehensive reform must transition from these sub-regional experiments into a binding continental mandate that strictly defines what constitutes a legitimate aviation charge, thereby preventing the exploitative taxation that currently stifles market expansion.

The proposed legal action to institutionalize this reform is the establishment of a Regional Aviation Tax Cap. This framework would function as a supranational ceiling on the total taxes and fees that any member state can impose on a single ticket. Historically, African aviation law has failed to address the economic sovereignty of states, allowing for the expansion of development levies, tourism taxes,[149] and solidarity fees that can add up to 50% to the base fare of a flight.[150]

The African Civil Aviation Commission must be empowered to enforce a standardized fee schedule that limits passenger service charges to a fixed, cost-reflective percentage of the operation. This Tax Cap would ensure that fees are reinvested directly into airport infrastructure and safety oversight, rather than being diverted to unrelated government sectors.[151] Such a move would not only lower the entry barrier for low-cost carriers but also align African aviation with the best practices of the International Civil Aviation Organization, which advocates for the non discriminatory and cost-based application of charges.

Furthermore, fiscal harmonization must address the hidden costs of regulatory compliance that act as a de facto tax on regional carriers. The lack of a unified regional fee structure means that airlines face vastly different costs for landing, parking, and overflight rights in every country they serve.[152] A harmonized legal code would mandate a transparent, publicly accessible database of all

[148] Economic Community of West African States, 'Supplementary Protocol A/SP.1/12/90 on the Harmonisation of Aviation Taxes and Charges' (amended 2023) arts 4–7

[149] Economic Community of West African States, 'Protocol A/P.1/10/92 on Community Taxes and Levies' (as amended 2023) art 5(3)

[150] African Civil Aviation Commission, 'SAATM Fiscal Baseline Study 2024' (AFCAC, 2024) 41

[151] International Civil Aviation Organization, 'Doc 7100: Regional Offices Manual' (ICAO, 2022) para 4.2.3

[152] International Civil Aviation Organization, 'Doc 9082: Airport Economics Manual' (ICAO, 4th edn 2013) paras 3.45–3.52.

approved aviation charges, prohibiting states from introducing unverified fees without prior regional approval. This reform is essential for the economic viability of the SAATM, as it provides the price predictability necessary for airlines to plan long-term regional routes.[153]

Ultimately, ending disguised taxation is a prerequisite for the success of the AfCFTA. Currently, the high cost of moving people and goods by air remains a primary bottleneck to regional trade.[154]

By adopting a Regional Aviation Tax Cap and following the ECOWAS precedent of fee reduction, the African Union can ensure that aviation law serves as an economic catalyst rather than a fiscal burden.[155] This roadmap shifts the legal focus from merely granting the right to fly, to ensuring the affordability of flight, thus transforming the industry from an elite service into a mass market engine for continental prosperity.

1.24 Codifying the African Passenger Bill of Rights.

In the final stages of restructuring the African regional aviation legal framework, the most urgent human centric reform is the codification of a Pan-African Charter on Air Passenger Rights. Currently, the African aviation sector remains one of the few globally significant markets where the passenger exists in a state of legal invisibility, with virtually no statutory recourse for the operational failures of carriers.[156]

To fill this profound legal vacuum, it is recommended that the African Union adopt a binding regional charter modelled after the European Union's Regulation (EC) 261/2004.[157] This instrument would serve to standardize the duty of care across all the fifty four member states,

[153] African Civil Aviation Commission, 'Regional Economic Regulation of Air Transport in Africa: Business Plan 2023-2027' (AFCAC, 2023) 22–25

[154] World Bank, 'Air Transport and the African Continental Free Trade Area: Unlocking Trade Potential' (World Bank Policy Paper, 2023) 8–12

[155] African Union, 'AfCFTA Protocol on Investment and Trade in Services' (Annex 8, 2023) art 12

[156] African Union, 'Annex 6 to the Yamoussoukro Decision: Regulations on the Protection of Consumers of Air Transport Services' (Executive Council, 17 March 2017) arts 1–12

[157] Council Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights OJ L46/1 arts 4–7.

ensuring that an African traveller's right to compensation and assistance is not dependent on the strength of their national consumer protection laws, but instead a fundamental, non negotiable right inherent to the SAATM.

The cornerstone of this proposed Charter is the mandate for a fixed rate compensation. Under the current fragmented system, a passenger seeking redress for a flight cancellation or a twelve hour delay is often forced into a litigation heavy approach, where they must prove specific financial damages in a civil court,[158] a process that is economically prohibitive for the average traveller and creates an undue burden on national judiciaries. By adopting a fixed rate model, where delays exceeding three hours trigger an automatic, pre-determined financial payout based on the distance of the flight, the law shifts the burden of efficiency onto the airline. As seen in the EU and the refined US Department of Transportation mandates, this legal mechanism provides immediate justice for the consumer while simultaneously creating a powerful financial deterrent against chronic unreliability and poor schedule management.[159]

Furthermore, the Charter must provide a clear, statutory definition of extraordinary circumstances to prevent airlines from using vague technical excuses to evade their obligations. In the African context, where infrastructure challenges are more frequent, the legal framework must be sophisticated enough to balance passenger protection with the commercial viability of airlines.[160]

This involves creating a transparent, regional arbitration body under the auspices of the African Civil Aviation Commission to handle disputes. Currently, the success of regional integration under the AfCFTA has shown that consumer trust is a prerequisite for trade.[161] Similarly, a Passenger Bill

[158] African Union, 'Annex 6 to the Yamoussoukro Decision: Regulations on the Protection of Consumers of Air Transport Services' (Executive Council, 17 March 2017) art 9 - requiring case-by-case damage proof in national courts.

[159] US Department of Transportation, 'Airline Passenger Protection Rules: Enforcement Statistics 2023' (DOT Aviation Consumer Report, 2024) 45–52

[160] *Sturgeon v Condor Flugdienst GmbH* (Cases C-402/07 and C-432/07) ECR I-09965

[161] African Union, 'Agreement Establishing the African Continental Free Trade Area' (opened for signature 21 March 2018, entered into force 30 May 2019) art 35

of Rights is not merely a social welfare policy but an economic imperative that builds the passenger confidence necessary to sustain a high-volume, low-cost aviation market.

Ultimately, the codification of these rights represents one of the final bridges between the hardware of traffic rights and the software of consumer protection. It transforms the African sky from a purely commercial corridor into a regulated public service where the individual traveller is afforded the same legal dignity found in the Western world.[162] By moving away from voluntary guidelines and toward a binding, enforceable charter, Africa can ensure that the growth of its aviation sector is inclusive, accountable, and legally resilient. This reform ensures that as the continent moves into 2026, the African traveller is no longer a passive victim of operational inefficiency but a legally empowered stakeholder in a unified and rights-based aviation ecosystem.[163]

Strategic Formalization of Inter-Airline Alliances

In addition to the institutional reforms previously discussed, there is need for strategic formalization of inter-airline alliances between African carriers and established global airlines as a primary vehicle for bridging the gap between regional inadequacies and international standards. By shifting the focus from purely protectionist national strategies to collaborative global partnerships, African aviation can leverage the operational maturity of Western and global counterparts to cure systemic profitability issues.[164]

The success of Ethiopian Airlines' membership in the Star Alliance serves as a premier example, where the carrier has transformed into Africa's most profitable airline by integrating into a global network that enhances passenger flow and achieves significant economies of scale through shared resources. Inter-airline alliances facilitate a transition from isolated, sub-scale operations to

[162] African Civil Aviation Commission, 'SAATM Passenger Rights Roadmap 2024-2027' (AFCAC Strategic Document, 2024) 5–8

[163] African Civil Aviation Commission, 'Regional Economic Regulation of Air Transport in Africa: Business Plan 2023-2027' (AFCAC, 2023) 33–36

[164] Ibid.

integrated networks, allowing African carriers to achieve metal neutrality and eliminate the double marginalization of fares.[165] Through joint ventures and deep codesharing, African airlines can pool resources for high-cap maintenance, repair, and overhaul facilities and joint fuel procurement, effectively mitigating the high operational costs that typically stifle the regional aviation industrial growth.[166]

Beyond economic revitalization, these alliances can act as a critical mechanism for strengthening international security standards and regulatory compliance across the continent. Participation in a global alliance mandates adherence to rigorous, audited safety and security protocols that often exceed the baseline requirements of national regulators.[167] For instance, Egypt Air's integration into Star Alliance required a comprehensive overhaul of its reservation and security infrastructure to align with international benchmarks, effectively elevating its operational standards to global levels.[168] For African air actors, these partnerships can provide a structured pathway for the transfer of technical expertise and the implementation of advanced security measures, such as ICAO compliant biometric verification and harmonized risk assessments.[169]

Additionally, the strategic partnership between Rwanda Air and Qatar Airways demonstrates the impact of inter-airline alliances on establishing credibility and quality assurance that has helped Rwanda Air to position as one of Africa’s safest airlines. By leveraging Doha's global reach to feed traffic into the Kigali hub, Rwanda Air has enhanced its operational standards and security protocols, while Qatar's investment in Rwanda's new international airport provides a direct

[165] Ethiopian Airlines and the Power of Alliances, < How Ethiopian Airlines Leverages Global Alliances to Soar Above the Competition ❙ Madison Manor>

[166] Ibid.

[167] Tahir, Mariya, Afridi Sheeba, "*Strategic Alliances in International Relations: Balancing Cooperation and Competition*," 10.13140/RG.2.2.30866.77766.

[168] Ibid.

[169] AFRAA, "Collaboration and Strategic Partnerships hold much promise for the African air transport industry." < AFRAA-Opinion-Piece-Collaboration-and-Strategic-Partnerships-hold-much-promise-for-the-African-air-transport- industry.pdf> Accessed on 10th February, 2026.

infusion of world-class infrastructure and security management.[170] By positioning inter-airline alliances as a core pillar of the reform agenda, the African aviation industry can bypass the slow pace of purely diplomatic negotiations and utilize commercial incentives to accelerate the adoption of a unified, secure, and economically viable continental airspace.[171]

1.25 Establishing an African Aviation Tribunal.

Finally, to complete the institutional architecture of a liberalized African sky, this dissertation proposes a definitive shift from administrative mediation to a specialized judicial regime through the establishment of the African Aviation Tribunal (AAT).[172] Currently, the primary weakness of the SAATM is the lack of a neutral, permanent, and expert forum to resolve the increasingly complex friction between state sovereignty and commercial necessity.[173]

While the African Civil Aviation Commission has recently made strides towards operationalizing a basic Dispute Settlement Mechanism, this committee often lacks the independence and judicial finality required to discipline errant member states.[174] The recommendation for an AAT as a permanent judicial organ of the African Union addresses this by providing a standing court with compulsory jurisdiction over all matters arising from the Yamoussoukro Decision and its subsequent protocols. By moving beyond ad-hoc committees, the AAT would offer the legal predictability and judicial mandate necessary to enforce regional treaties against protectionist domestic policies.

[170] Mighty Travels Premium, " RwandAir and Qatar Airways Partnership Reshaping African Aviation in 2024 - New Kigali-Doha Route Launching December 2024."Published August 31, 2024.

[171] African Civil Aviation Commission, 'Regional Economic Regulation of Air Transport in Africa: Business Plan 2023-2027' (AFCAC, 2023.

[172] African Union, 'Yamoussoukro Decision Concerning the Liberalisation of Access to Air Transport Markets in Africa' (Decision A/DEC.2(XV), 14 November 1999) art 10.

[173] African Union, 'Declaration on the Establishment of the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXIII), 31 January 2020) para 12.

[174] African Civil Aviation Commission, 'Business Plan 2023-2027: Regional Economic Regulation of Air Transport' (AFCAC, 2023) 28–3.

The efficacy of the AAT would be rooted in its unique hybrid bench composition, a move away from the traditional model of career judges who may lack the technical nuances of the aerospace industry.[175] For the tribunal to be credible, it must be composed of a tripartite group of experts: seasoned international air law jurists, senior technical specialists, such as aeronautical engineers and flight operations experts, and aviation economists.[176]

This multidisciplinary composition is essential because aviation disputes are rarely purely legal, they often involve complex questions of safety certification, predatory pricing, and the technicalities of fifth freedom traffic rights. A hybrid bench ensures that judgments are not only legally sound but operationally and economically viable, preventing the sovereignty trap where states ignore rulings they deem technically impractical.[177]

The legal action required to institutionalize this body is the adoption of an Additional Protocol to the SAATM Treaty, which would grant the AAT a broad and innovative jurisdiction. Additionally, this protocol must provide private airlines with direct locus standi to sue sovereign governments. Currently, a private airline facing discriminatory taxes or the blockage of its funds must rely on its home state to take up the matter diplomatically, a process that is often stalled by political considerations.[178]

By granting airlines direct legal standing, the AAT becomes a powerful tool for industry stakeholders to challenge state level violations of regional law.[179] Furthermore, the tribunal would serve as a specialized forum for State vs State disputes regarding market access and a high-level

[175] International Civil Aviation Organization, 'Doc 9980: Manual on the Establishment of the Air Navigation Commission' (ICAO, 2013) para 2.4.

[176] International Civil Aviation Organization, 'Alternative Dispute Resolution for Aviation Disputes' (ICAO Circular 344, 2011) paras 3.12–3.15.

[177] International Civil Aviation Organization, 'Manual on the Regulation of International Air Transport' (ICAO Doc 9980, 2013) paras 4.67–4.72.

[178] International Civil Aviation Organization, 'Warsaw Convention as amended by Montreal Protocols' (1978) art 28A.

[179] Ibid.

appellate body for consumer class actions, filling the passenger rights gap discussed in earlier chapters.[180]

Ultimately, the establishment of the African Aviation Tribunal represents the final stage of bridging the gap between Western best practices and African realities. By providing a specialized judicial forum that mirrors the expertise driven models of the Hague Court of Arbitration for Aviation,[181] Africa can finally move from a system of voluntary compliance to a rule-based regime.[182] This judicial pillar ensures that the African sky is governed not by the political whims of individual states, but by a transparent, expert, and binding legal order.[183] The AAT is the necessary guarantor for the billions of dollars in potential economic growth that can only be unlocked when all industry stakeholders, airlines, passengers, and states operate within a framework of absolute legal certainty.[184]

[180] African Union, 'Declaration on the Establishment of the Single African Air Transport Market (SAATM)' (Assembly/AU/Decl.1(XXXIII), 31 January 2020) para 12 (envisioning specialized forums for market access disputes); African Civil Aviation Commission, 'Regional Economic Regulation Business Plan 2023-2027' (AFCAC, 2023) 28–31.

[181] International Chamber of Commerce, 'Court of Arbitration for Aviation (CAA) Rules' (ICC, amended 2023) arts 15–18.

[182] Ibid.

[183] International Chamber of Commerce, 'Court of Arbitration for Aviation (CAA) Rules' (ICC, amended 2023) preamble.

[184] African Development Bank, 'African Economic Outlook 2024: Aviation Integration Chapter' (AfDB, 2024) 67– 72.

1.26 Conclusion

In sum, the paper demonstrates that the African aviation legal framework remains a structure of contradictions. Despite the ambitious roadmaps of the Yamoussoukro Decision and SAATM, Currently, efficacy is undermined by a domestication gap, where international commitments fail to penetrate protectionist national statutes. This has created a fragmented patchwork sky characterized by outdated bilateral agreements, billion blocked funds crisis, and taxes higher than the global average. Such inadequacies highlight a systemic failure to treat aviation as a rights based public service rather than a fiscal cash cow for national treasuries.

Bridging these gaps requires a shift from symbolic diplomacy to binding enforcement. Drawing on Western best practices, this dissertation proposes a tripartite reform: empowering a supranational authority with the regulatory mandate of EASA, codifying a Pan-African Passenger Bill of Rights, and establishing an expert led African Aviation Tribunal. These reforms replace voluntary compliance with a rules based regime where technical merit and consumer protection override political patronage. The comparative analysis reveals that the sovereignty compromise surrendering limited national control, is a strategic investment in continental sustainability.

Africa therefore, stands at a critical turning point where the potential to unlock $35.3 billion in economic activity under the AfCFTA is within reach. By domesticating SAATM and limiting disguised taxation, Africa can finally align with global best practices.

Bridging the gap in the African regional aviation legal framework is no longer a mere academic exercise, it is an economic imperative. By adopting the comparative insights of the Western world while tailoring them to African realities, the continent can replace symbolic signatures with a high- performance legal engine. The roadmap provided in this dissertation offers the necessary legal architecture to transform the African sky into a seamless, rights based, and economically vibrant continental corridor. The time for policy commitments has passed, the era of binding legal delivery must now begin.

BIBLIOGRAHY

1.27 Treaties and Agreements

African Union. (1999). Yamoussoukro Decision Concerning the Liberalisation of Access to Air Transport Markets in Africa. Decision A/DEC.2(XV).

African Union. (2018). Agreement Establishing the African Continental Free Trade Area. opened for signature 21 March 2018, entered into force 30 May 2019.

Agreement between the European Community and its Member States and the United States of America on Air Transport (EU–US Open Skies Agreement), signed 30 April 2007, entered into force 30 March 2008, OJ 2007 C 114/1

1.28 National Statutes and legislations

Kenya Civil Aviation Act (No 21 of 2013).

Nigerian Civil Aviation Act (2022).

U.S. Congress. (1978). Airline Deregulation Act of 1978. Pub L No 95-504, 92 Stat 1705.

U.S. Congress. (2024). FAA Reauthorization Act of 2024. Pub L No 118-63, 138 Stat 716

(2024)

1.29 UN and AU Documents

African Union Commission. (2015). Agenda 2063: The Africa We Want. AU Popular Version.

International Civil Aviation Organization. (2013). Manual on the Regulation of International Air Transport. Doc 9980.

International Civil Aviation Organization. (2016). Doc 9854 AN/458: Global Air Navigation Plan for the Implementation of the ICAO Aviation System Block Upgrades. 4th edn.

International Civil Aviation Organization. (2023). Universal Safety Oversight Audit Programme (USOAP): Global Report. Montreal: ICAO.

African Union Commission. (2020). Draft African Consumer Protection Policy Framework. Addis Ababa: AUC.

African Union Commission. (2021). African Union Model Law on Protection of Consumers in Air Transport Services in Africa. Draft, AUC.

African Union Commission. (2022). Report on the Status of Implementation of the Single African Air Transport Market and the Yamoussoukro Decision. AUC-DTS/LEG/03/22.

1.30 Case law

Sturgeon v Condor Flugdienst GmbH (Cases C-402/07 and C-432/07) ECR I-09965

1.31 Books and other Scholarly writings.

Dempsey, P. S., & Milde, M. (2016). International Air Carrier Liability. McGill University.

Dempsey, P. S., & Nwoye, A. O. (2022). The European Model of Aviation Integration as a Blueprint for Africa. Air & Space Law, 48, 287-305.

Howells, G., & Weatherill, S. (2017). Consumer Protection Law (2nd edn, Routledge).

Nwoye, A. O. (2020). Currency Repatriation and Airline Insolvency Risks in Africa. Air & Space Law, 45, 329.

Samunderu, E. (2023). Air Transport Regulation: A Perspective on Africa's Regulatory Framework. In: African Air Transport Management. Advances in African Economic, Social and Political Development. Springer, Cham.

Schlumberger, C. E. (2010). Open Skies for Africa: Implementing the Yamoussoukro Decision. World Bank.

William S. Kiema, "Analysis of the Air Transport Industry in Africa", published in 2025.

1.32 Websites and other Online Sources

African Airlines Association. (2024). Pillars for Successful Implementation of SAATM: AFRAA Intervention at the ACI Conference. Retrieved February 2, 2026.

AirSpace Africa. (2025). IATA Highlights Africa's Aviation Potential, Opportunities and Challenges. Retrieved February 10, 2026, from <IATA Highlights Africa's Aviation Potential, Opportunities and Challenges - Airspace Africa>

Khusoko Trusted Informative. (2025). SAATM: Fueling African Growth Through Air Connectivity. Retrieved February 10, 2026, from <SAATM: Fueling African Growth Through Air Connectivity>

Mighty Travels Premium. (2024). RwandAir and Qatar Airways Partnership Reshaping African Aviation in 2024 - New Kigali-Doha Route Launching December 2024. Published August 31, 2024.

Shadare, W. (2026). Africa’s aviation caught in ‘profitless’ growth cycle. Aviation Metric.

Retrieved February 10, 2026, from <Africa’s aviation caught in ‘profitless’ growth cycle - Aviation metr