

Instructions for the

Workshop, Breakout Sessions & Participants



McGill

**Institute of
Air and Space Law**

**Institut de
droit aérien et spatial**

The Workshop

Cornerstones

The Objective is to create

1. diagnosis of the legal risks and opportunities;
 2. design a legal framework and;
 3. design an implementation and compliance mechanism
- for Harmonization/Coordination of administration of aviation TFCs in African.

The workshop will:

1. Conduct a SWOT analysis focused on law
2. Create a Legal Risk Mitigation Matrix
3. Design the framework for harmonized and/or coordinated administration of aviation TFCs in Africa which addresses SWOT and Legal Risk analysis.
4. Design the implementation and compliance mechanism for the Frameworks suggested

BREAKOUT STRUCTURE

Group Structure:

- Participants divided into 3 working groups
- Group balance is based on expertise, depth of engagement with the subject matter, and diverse geographic representation
- Subgroups may be formed
- Moderators will 'facilitate' the discussions
- Each group will have a designated rapporteur who will capture discussions
- Each group will select one representative to present positions. In the absence of a representative, the rapporteur will present working group's position

Group 1: Legal & Policy Framework Design

- Questions of principle: Sovereignty; mandate sharing (national, REC and AU bodies) [\[What will be done\]](#)

Group 2: Institutional & Governance Mechanism

- Questions of Institutional Mechanism for application of the mandate [\[Who will do it\]](#)

Group 3: Administrative & Harmonization/Coordination System

- Questions of process ; operational processes, and practices; institutional actions [\[How will it be done\]](#)

Breakout Session 1: SWOT Analysis **SAMPLE**

STRENGTHS (Legal Advantages):

- Does Africa have existing Continental, REC or National legal mandate to regulate aviation TFCs?
- Does Africa have established Institutional bodies with requisite powers?
- Do African countries, whether through AU, REC or National systems, observe and implement core TFCs principles?
- Are there precedents for legal harmonization and/or coordination in the continent or in other jurisdictions?

WEAKNESSES (Internal Legal Limitations)

- Are there fiscal sovereignty limitations (Constitutional restrictions on harmonization and/or coordination)
- How does fragmentation of TFCs at national, REC & AU level affect proposed Legal Frameworks on TFCs?

OPPORTUNITIES (Legal Reform Opportunities):

- What can be capitalized on for creation of a desired TFCs Legal Framework (AU, REC, or national mechanisms)

THREATS (External Legal Risks):

- Constitutional Challenges & Conflict of Laws
- Non-Binding Nature of Decisions

Breakout Session 1: Legal Risks Analysis- **SAMPLE**

Constitutional & Sovereignty Risks

Legal Risk	Legal Basis of Risk	Potential Impact on TFCs	Mitigation Strategy	Responsible Actor	Priority H/M/L
National constitutional challenge to harmonization instrument	Taxation powers constitutionally reserved to Parliament	Instrument declared unenforceable domestically	Include explicit sovereignty-preserving clause; use model law format; require parliamentary ratification etc	AU Legal Counsel / National Ministries / National Attorney General	High
Perception of erosion of fiscal sovereignty	Political interpretation of harmonization as rate control	Political resistance; non-ratification	Clarify framework governs transparency & coordination, not tax ceilings (initially)	AU / AFCAC Secretariat	High

GROUP 1: LEGAL & POLICY FRAMEWORK DESIGN

Main Objectives:

1. Design a Continental Instrument (Legal and/or Policy) Framework to harmonize/coordinate aviation TFCs across in African
2. Recommend the legal instrument, format & core principles: **aim for conerstones**

Key Guiding Context

- Alignment with ICAO principles on taxation vs charges
- Compatibility with the AU & REC legal instruments
- Support to African Civil Aviation Commission regulatory mandates
- Outcome must be to facilitate conduct and liberalization continental air transport

Tasks for Group 1

1. Identify the Problem

- Map the inconsistencies in aviation taxes & charges across African States
- Identify unlawful or non-compliant charging practices

2. Define Legal Principles to be followed: (bullet form)

- Cost-relatedness of charges
- Non-discrimination
- Transparency
- Consultation obligations
- Prohibition of revenue diversion

3. Define Scope of application: what is included and what is excluded?

- Passenger taxes
- Overflight charges
- Airport charges
- Security charges
- Fuel taxes
- Solidarity levies
- Data sharing requirements

4. Select & Design Legal Instrument Options

- AU Instrument? AU/AFCAC/REC Model Law?
- Binding Protocol?
- AFCAC Regulation?
- REC template regulation/ model law?

GROUP 2: INSTITUTIONAL & GOVERNANCE MECHANISM

Objectives:

1. Design the institutional structure responsible for oversight, coordination and harmonization.
2. Design a Compliance and enforcement proposal

Key Guiding Context:

- AU & REC mandates
- Exceptions: principles of flexibility (e.g., variable geometry etc)
- Draw on past failures and successes

Tasks for Group 2

1. Institutional Mapping: identify stakeholders

- Nature and level of involvement of National actors: (Ministries, CAAs, Airport Authorities, Revenue Authorities)
- Nature and level of involvement of Regional actors: RECs & Continental bodies (AU, AFCAC)
- Others: Workers unions, industry forums, academia

2. Define the Institutional Roles & Mandates: Governance flow chart

- Who sets TFCs policy?
- Who approves charges? For Taxes it is clear this is the role of states.
- Who audits compliance?
- Who resolves disputes?

3. Design Governance Architecture: spell out who is best place to serve on

- Continental Aviation Fiscal Coordination Committee
- Technical Advisory Panels
- Independent Review Board
- Annual Ministerial Forum

4. Coordination Mechanisms: identify who will coordinate

- Data sharing platform
- Mandatory notification before introducing new charges
- Stakeholder consultation procedures

GROUP 3: ADMINISTRATIVE & HARMONIZATION/COORDINATION SYSTEM

Main Objective

- Design a practical, operational system for administration i.e., how calculation, collection, reporting and monitoring of aviation taxes and charges. **Focus only legal rules not economic calculations**

Key Guiding Context

- Benchmark other similar AU/REC/Bilateral mechanisms
- Consider practicalities and “grass root” implications: E.g., Capacity- How which and many experts are needed, what technology or tools are needed for daily routines like communication, reporting, what skills are required
- Consider how to overcome legal system challenges: standardization (common law, civil law, Roman, Islamic principles etc.)

Tasks for Group 3

1. Recommend an Administration & Collection System

- Centralized vs decentralized collection
- Digital reporting platform
- Standard reporting format

2. Monitoring, Enforcement & Evaluation System and/or Mechanisms

- Reporting requirements & Compliance audits
- Sanctions or corrective measures
- Compliance indicators
- Peer review mechanism
- Annual harmonization scorecard
- Impact measurement e.g., on ticket pricing & connectivity

3. Dispute Resolution Structure

- State-to-State disputes
- Service provider (Airline, ANS, Airport)-State disputes
- Service provider-to-consumer disputes (remember a service provider can be a consumer e.g., airline being served by ANS)
- Appeal process
- Arbitration option

4. Transparency & Publication Requirements

- Public database of charges
- Notice period before changes
- Annual disclosure obligations

TARGETS FOR ALL BREAKOUT GROUPS

Each group must produce deliverables which:

1. Clear, actionable recommendations (not theoretical discussion)
2. Where possible draft language
3. Suggest an implementation timeline (short, medium, long term)
4. Conduct a risk analysis
5. Consider political feasibility of recommendations
6. Consider and identify capacity building needs

Outcome:

1. Draft skeleto-framework for an African Aviation Harmonization & Coordination
2. Institutional governance blueprint
3. Roadmap for perfecting draft, adoption and implementation
4. Technical Working Group set up

Group 1: Legal & Policy Framework Design		Group 2: Institutional & Governance Mechanism		Group 3: Administrative & Harmonization System			
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