



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.3: Consumer protection

AFRICAN AIR TRANSPORT AND THE PROTECTION OF THE CONSUMER

(Presented by 54 Member States¹, Members of
the African Civil Aviation Commission (AFCAC))

EXECUTIVE SUMMARY

This working paper, which is presented by the 54 African States, addresses the need for a consumer protection regime at national, regional and continental levels and advances the draft regulations on air transport consumer protection currently prepared by the African Union as the way forward.

Action: The Conference is invited to agree to the recommendations presented in paragraph 7.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 A lot of consumers of African air transport services do not have the opportunity of being protected by any institution against poor service delivery and are mostly unaware of any rights they may have against the various service providers who are dealing directly with them.

1.2 In some cases where, being aware of their rights, they make any attempt at enforcing those rights, they are often confronted with institutional incapacity or inabilities, sometimes due to lack of information.

1.3 Some African countries regulate the protection of rights of air transport consumers utilising general consumer protection rules. Some countries have a specially developed aviation consumer

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protection regulation and/or a department of the Civil Aviation Authority handling consumer protection issues.

1.4 By and large, a number of African countries do not have any general consumer protection regulations or a specialised set of rules dealing with air transport consumer rights.

1.5 The Warsaw/Montreal regime remains for a large number of African air transport consumers, the only means of obtaining some form of protection and redress against airlines.

1.6 Article 9.6 of the African Yamoussoukro Decision (YD) requires that consumer rights are protected. For the African air transport consumer this provision is perhaps the single most important provision recognising:

- a) the challenges faced by a large number of consumers, and
- b) the need to provide for some form of consumer protection regulation.

2. CONSUMER RIGHTS/SERVICE PROVIDERS

2.1 Consumer rights regulations are designed to ensure that services rendered to consumers are fit for purpose. They ensure that suppliers are regulated to ensure continuity of service, quality of service delivery, complaints handling and most importantly, refunds and compensation schemes for consumers.

2.2 A number of countries have developed a corpus of legal instruments and institutional arrangements applying general consumer protection rules to their citizens and expanding the corpus of law to specialised areas of economic delivery.

2.3 Some civil aviation authorities have also developed a considerable corpus of regulations to guide the operations of service providers and guarantee that consumer rights are protected. While some States may have a single document, others have applied the basic principles in different regulations.

3. KEY PRINCIPLES OF AVIATION CONSUMER PROTECTION

3.1 The key principles of aviation consumer protection include resolving the following issues which are dealt with in draft regulations on African air transport consumer protection by the African Union (AU).

3.2 **Insolvency**

3.2.1 How can one reduce the harsh **effect of insolvency** on the passengers who are either stranded and or lose out on tickets paid for to insolvent travel agents, tour operators and airlines?

3.2.2 Thus, provisions have been introduced in the draft Consumer Protection Regulations to enable the regional YD authorities and national authorities to raise questions at the time of licensing of the carrier and certifying the eligible airline and other airlines to ensure financial stability; regulating how to secure passenger monies; establishing a fund to ensure that passenger monies are not taken by

irresponsible service providers and where taken, can either be refunded or that passengers can be repatriated to their intended destination.

3.3 Unfair and deceptive practices

3.3.1 The type of measures to impose on service providers to ensure fair pricing, fair communication and decent marketing practices has remained a major concern.

3.3.2 Measures introduced in various jurisdictions to curtail such practices include the elimination of misleading advertisement and the disclosure of all the facts about the travel a passenger is paying for. Additionally, given the rampant nature of its implementation in Africa, the practice of free seating has been questioned in the draft regulations and raised as a practice that is not only unfair but may also lead to deception and needs to be punished. Other measures include persistent boarding denials; unfair application of Warsaw/Montreal regime; failure to maintain adequate insurance; and endless delayed flights.

3.3.3 The draft regulations provide general obligations on insurance, non-discrimination, maintaining a contact point for passengers and tourists; information to the consumer; complaints procedure, filing of advanced flight and passenger information; compliance with Warsaw Liability regimes; denied boarding; delay; cancellation of flight; downgrading particularly as a consequence of free seating policy; and specific obligations on air travel agents, tour operators and airports.

4. RIGHTS OF THE CONSUMER

4.1 The duties outlined in the previous paragraph also have complementary rights of the passengers, including reimbursement, cancellation, re-routing, and compensation. It must be observed that the African air transport consumer has the right to cancel his booking, can seek reimbursement or be re-routed and at all material moments has a right to be compensated for delays, overbookings and cancelled flights.

4.2 The consumer also has a right to have his complaints dealt with. Civil aviation authorities should consider it an obligation to introduce measures at the airports to obtain complaints and handle those complaints as appropriate.

5. DUTY CARE OF THIRD PARTIES

5.1 Exceptional provisions have been included in the draft to ensure that service providers upon whose service others rely who are in direct relationship with the consumer and through whose reckless or negligent action the airline fails to provide services contracted for, may be subject to national legislation, subjected to legal suit in tort for general breach of duty to the consumers. Attendant right of recourse of service providers against others have been introduced as well.

6. ADMINISTRATIVE PROCEDURES

6.1 Administrative procedures, including the right to investigate, conduct hearings and impose penalties have also been proposed to ensure compliance with the proposed draft regulation.

7. **RECOMMENDATIONS**

7.1 The Conference is invited to:

- a) request ICAO to develop extensive guidance materials to guide States in order to engender universality and commonality on these issues; and
- b) note that the African Civil Aviation Commission (AFCAC) is ready and willing to work with ICAO and other Regional blocks in this regard in order to obviate unilateralism.

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