

# Enforcement of aircraft security in African countries

Presented by Amin Hajji  
Hajji & Associés  
Casablanca – Morocco

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## I. The legal framework of enforcement of securities in African countries:

- 54 countries
  - ✓ Common Law system
  - ✓ Civil Law system

→ Incidence on mode of securities' enforcement
- Reference study countries: Morocco – Algeria – Egypt - RSA- Nigeria – Kenya - Ghana – Senegal (OHADA 17 west African countries Cameroon, Gabon, Togo, Ivory Coast, CAR, Congo, Mali, BF, Guinea )
- How to ensure valid security in aircraft in African countries :
  - Registration with local CAA of legal interest in aircraft
  - Compliance with Cape Town and protocole convention, Geneva Convention and Roma Convention

## II. The enforcement of security

- Friendly or under Cape Town and Protocole convention - Flag carrier / Continuity of Public services
- Under juridical procedure - Private operators

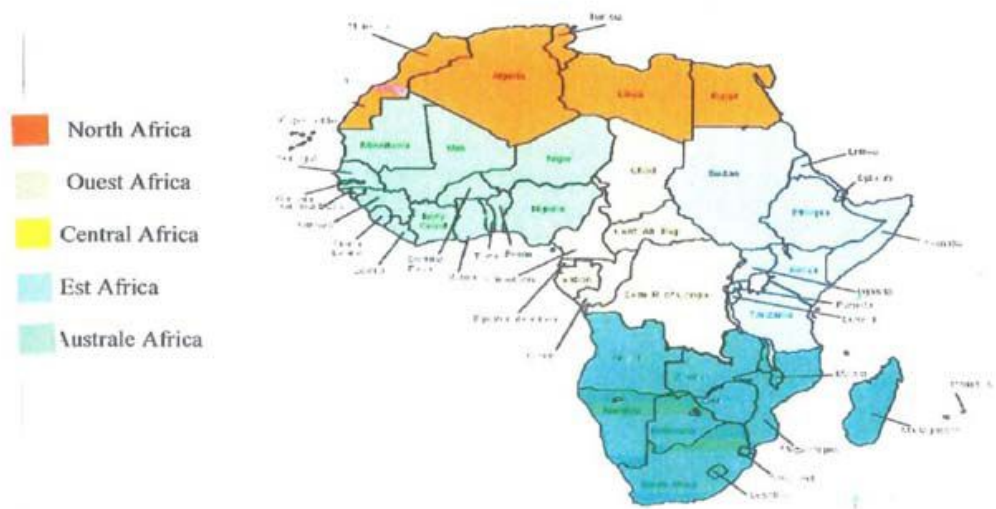
## Conclusion

### *Practical recommandations :*

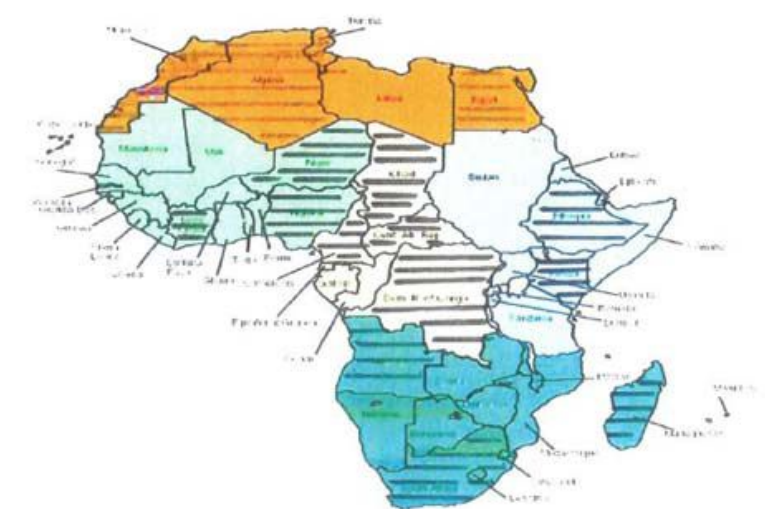
- ✓ Application of the law by the courts
- ✓ Adaptation of contract documentation

# African legal environment

African divided in sub-regions and countries



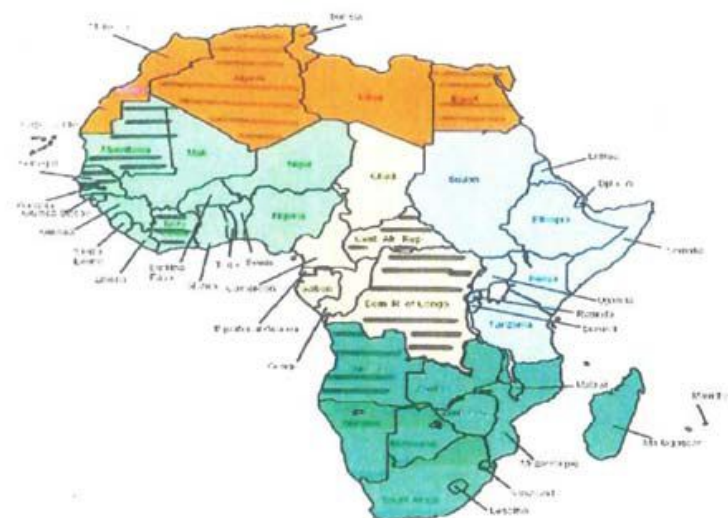
African countries party to Geneva 1948



African countries party to Cap Town and Protocole convention 2001



African countries party to Roma convention 1933





**2001 Cape Town Convention**  
on international interests in Mobile equipment and  
Protocol specific to Aircraft Finance

RSA, Nig., Keny, Ang., Eth. Rwd, Tanz. Seng., Togo, Cam., Cap.V

**1948 Geneva Convention**  
on the recognition of rights in aircrafts

RSA, Ang., Nig., Ken., Eth., Madg., Mau., Rwd., Cam., Cong., Iv. C., CRA, Gha., Guin., Tog.  
Tch., Nig., Egy, Mor, Alg., Tunis.

**1933 Roma Convention**  
relating to the precautionary arrest of  
aircrafts

Ang., Cong., Iv.c., CRA, RWD., Egy. Alg. Sen. Maur., Mali, Niger.

**1944 Chicago Convention on International civil aviation**

**1958 New York Convention**  
on the recognition of foreign arbitral awards

**Domestic Laws in African countries on enforcement of  
security in aircraft.**

Civil Law and Common Law countries

Conflict of  
Law.  
Traeties  
superceed  
to National  
laws?

International financing transaction  
(finance lease or true lease or synthetic lease)

**Creditor  
Owner  
Lessor**

**Debtor  
Operator  
Lessee  
Grantor**

International financing transaction

Loan agreement

Bank Mortgagee

Guarantee agreement

ECA Guarantor

- ✓ Subject to foreign law and jurisdiction
- ✓ Security interests duly registered : Mortgage - Lease
- ✓ DPoA, Assignment of revenues, of insurances

Default

Default

Event of default

- Cape Town parties
- Local laws allowing selfhelp remedies
- Debtor cooperation

- Non cape Town parties
- Lessee obstructs Creditor's claim

Non judicial

Judicial

Claim for debt payment of for aircraft possession

Risk: Nigerian experience

Deregistration

Foreign Court Judgment / Award

Risk

repossession

Local courts

Insolvency

Attachment

Auction sale

Reorganization

Liquidation

Priority Claims:  
Under Geneva Convention:  
Navigation charges - costs for salvage of aircraft or damages for injured persons in surface + superpriviledges

Export of aircraft

Possession

Deregistration

If creditor is winning bidder in Juridicial auction sale

Remittance of Proceeds

**Creditor  
Owner  
Lessor**

**Debtor  
Operator  
Lessee  
Grantor**

**International financing transaction**  
(finance lease - Operating lease - Synthetic lease)

- ✓ Subject to foreign law and jurisdiction
- ✓ Security interests duly registered
- ✓ DPoA, Assignment of revenues, insurances

Loan

Bank  
Mortgagee

Guarantee

ECA  
Guarantor

**Default**

**default**

- Cape Town parties
- Local laws allowing selfhelp
- Debtor cooperation

- Non cape Town parties

**Event  
of  
default**

**Remedies**

**Remedies**

**Non judicial**

**Judicial**



Creditor  
Owner  
Lessor

# Judicial Proceeding

Obtaining possession of aircraft

Foreign Court Judgment/  
Award (When transaction contracts including Mortgage deed subject to foreign law and jurisdiction)

1958 NY Convention

Enforcement subject to local laws public policy (Very restrictive in respect Mortgages. *Lex Situs*)

Local courts

Civil Aircraft Authority

Judicial Interim injunction –  
Mareva injunction: Nigeria/Kenya  
Judicial notice: Mor. Alg. Egypt.

Arrest of Aircraft

Sale of Aircraft  
Judicial (Mor. Alg. Egypt)/ non judicial (Nig. Ken – Ghana)

Risk

Insolvency

Lengh of Trial in main African countries: Without arguable defense:

6 months ... 2 Years

Reorganization

Liquidation

Risk

Continue the lease

Risk

Export of aircraft

If creditor is winning bidder in Juridicial auction sale

Remittance of Proceeds

Possession

Deregistration

**Creditor  
Owner  
Lessor**

**Non Judicial**

Nigeria, Kenya and  
Ghana: Enforcement  
of legal mortgage and  
direct possession Vs  
Equitable mortgage.

DPOA

**Deregistration**

Self Help possession

IDERA: Irrevocable  
Deregistration and Export  
Request Autorisation (Art. IX  
Cape Town Conv.)

**Repossession**





# CONCLUSION

## *Practical recommendations :*

- ✓ Application of the law – national & international - by the courts
- ✓ Adaptation of contract documentation – More simple and accessible
- ✓ Harmonization/uniformization of regional laws with multinational regional airlines