

## Confédération Africaine de Football *and Governance*



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### → Confederation of African Football (CAF) – Governance

On 16 March 2017, Ahmad AHMAD of Madagascar delivered a speech after being elected as the new President of the Confederation of African Football (CAF) during the 39<sup>th</sup> CAF General Assembly in Addis Ababa (Ethiopia).

### A brief review of the birth of the Confederation

At the 29<sup>th</sup> Congress of the Fédération Internationale of Football Association (FIFA) held in Berne in 1954, on the sidelines of the 5<sup>th</sup> World Cup, FIFA “admits in its statutes that national associations that belong to the same continent can be grouped into confederations which will be recognized by international bodies.”<sup>1</sup>

The African countries members of FIFA, that are Egypt, Sudan, Ethiopia and South Africa, decided to create the first pan-African institution in history: Confédération Africaine de Football (CAF). This birth would take place in Khartoum (Sudan) in February 1957.

On 10 February 1957, after the CAF constitutive assembly, the first African Cup of Nations (CAN) was held in the Sudanese capital.<sup>2</sup>

The governance of institutions (including sports) is a subject that provokes numerous articles.

1 Éléments Géopolitiques du Sport Africain, J.-P. Augustin, Les Cahiers de l’Outre-Mer, Avril-Juin 2010  
2 [www.cafonline.com](http://www.cafonline.com)

Concerning Football, it is during the crisis experienced by FIFA in recent years - as a result of corruption problems - that governance and good governance practices have been remembered.

We could define such practices as the use or creation of tools and organs that will allow the optimal functioning of the institution but also the good behaviors that its leaders must adopt.

The challenges of these good governance practices include optimizing the effectiveness of the institution’s operations both internally and externally, creating value for the benefit of the institution, which is the responsibility of both the institution and its leaders.

### The functioning of CAF with regard to governance

The CAF is one of the six Confederations affiliated to FIFA. It organizes its own competitions at the level of national clubs and selections in Africa and, through its action, helps to improve the

practice of this sport on the continent.

The CAF is built around its main bodies that are:

- The President who is “the legal representative of CAF”,<sup>3</sup>
- The Executive Committee which is “responsible for implementing the policies and decisions of the General Assembly and the management and the administration of CAF”,<sup>4</sup>
- The General Assembly which is “the supreme authority of CAF and shall define the general policy and implementation of the relevant decisions”,<sup>5</sup>
- The CAF Secretariat “perform all administrative duties under the direction of the Secretary General”,<sup>6</sup>
- Legal bodies;<sup>7</sup>
- Standing Committees.<sup>8</sup>

3 Art. 24 of the Statutes of CAF - President  
4 Art. 23 of the Statutes of CAF - Prerogatives of the Executive Committee  
5 Art. 17 of the Statutes of CAF - General Assembly  
6 Art. 25 of the Statutes of CAF - CAF Secretariat  
7 Art. 48 of the Statutes of CAF - Legal bodies  
8 Art. 28 and following of the Statutes of CAF

The democratic functioning of an institution is one of the main good practices of governance and CAF has a fairly comprehensive arsenal in this area.

### A democratic election

The election of the President and the members of the Executive Committee of the CAF complies with the principles of “representative democracy”,<sup>9</sup> i.e. the elective process allows the independence of the institution.

Indeed, according to this process, elections are held by secret ballot;<sup>10</sup> each member is entitled to vote;<sup>11</sup> a quorum equal to 2/3 of the members is required for the validity of the deliberations;<sup>12</sup> and the election is won by an absolute majority of the expressed votes.<sup>13</sup>

This democratic process is working and has played its part in the change of presidency on 16 March 2017 in Addis Ababa, Ethiopia, where Mr Ahmad AHMAD took over from Mr Issa HAYATOU, a candidate for his own re-election, a position he held for almost 30 years.

This change was made smoothly and only through the ballot box.

However, “any candidate to the elections for the presidency of the Confédération Africaine de Football, in addition to possessing the required skills, must be or have been a member of the CAF Executive Committee.”<sup>14</sup> This statutory addition, which took place in September 2012, six months before the elections of March 2013, led to the ineligibility of the candidature of the only candidate who opposed the outgoing President, thus restricting access to the Presidency.

9 Art. 18 of the Statutes of CAF - Elections, requisite majority, voting  
10 Art. 18.1 of the Statutes of CAF - Elections, requisite majority, voting  
11 Art. 6.1 of the Statutes of CAF - Members’ Rights  
12 Art. 17.15 of the Statutes of CAF - General Assembly  
13 Art. 18.11 of the Statutes of CAF - Elections, requisite majority, voting  
14 Art. 18.3 of the Statutes of CAF - Elections, requisite majority, voting

### Regular renewal of management teams

The CAF recently added a limitation on the number of terms of office of the President and members of the Executive Committee who can “not be elected for more than three terms (whether consecutive or not)”<sup>15</sup> allowing for a regular renewal of the directors.

Indeed, before this proposal, CAF found itself headed by the same President for seven consecutive terms. Such a measure will make it possible to avoid such longevity for the benefit of the institution and its credibility.

However, it is stated that “the previous terms served as Vice-President or as a member of the Executive Committee shall not be considered in determining the term limits of a President.”<sup>16</sup> This addition results in a substantial breach of equality between the ongoing mandates - some of them dating back more than three terms - and new mandates.

### Governance issues for Mr AHMAD

The CAF, in line with FIFA’s guidelines<sup>17</sup>, has fully understood and integrated the governance issue and is committed “to comply at any times with the principles of good governance, integrity and sportsmanship (...)”<sup>18</sup>

The new President of the CAF, Mr Ahmad AHMAD, takes the reins of an institution in demand of change and whose governance will have to be further improved and accompany his development to bring African Football even higher.

15 Art. 22.9 b of the Statutes of CAF - Composition of the Executive Committee  
16 Art. 22.9 c of the Statutes of CAF - Composition of the Executive Committee  
17 Art. 23 of the Statutes of FIFA - Confederation’s Statutes: “The confederations’ Statutes must comply with the principles of good governance, and shall in particular contain, at a minimum, provisions relating to the following matters (...)”  
18 Art. 2.2 of the Statutes of CAF - Objectives and Principles

Efforts still need to be made, particularly in the field of transparency, such as:

- “Reporting” the use of funds collected to avoid any form of opacity in its functioning;
- Declaring the income of the directors.

From the first day of his presidential campaign, Mr AHMAD revealed his vision that will be based mainly on the positive change in favor of African football; he clearly announced that he will focus on some main points including: governance, transparency and the system of the African competitions.

Regarding the system of the African football championships, Mr AHMAD has promised to open a discussion about increasing the number of teams participating in the CAN as well as the timing of the CAN, as the current timing conflicts with the European leagues that have a significant number of African players.

At every competition - especially the African Cup of Nations - we hear about players that refuse to join their national teams, or European clubs that complain about their sporting loss when their African players participate in the CAN. In the 2017 CAN, seven Cameroonian players declined call ups for the Cameroon national team, including Joel MATIP who was playing for Liverpool.

Mr AHMAD is also willing to change the mechanism of choosing the organizing countries for the CAN. He has a great objection on the current mechanism, as it was already decided by the CAF Executive Committee that the upcoming three African Cup of Nations will be organized by the following countries: 2019 will be in Cameroon, 2021 in Ivory Coast and 2023 in Guinea. This reflects a sort of injustice as the three countries are geographically close, meaning that just one African region will benefit from hosting upcoming editions.

If we look at the previous CAN editions, they were as following: the 2017 CAN was in Gabon, 2015 was scheduled to be in Morocco, but they refused to host it because of Ebola concerns then it was moved to Equatorial Guinea, 2013 was hosted by South Africa who replaced the tournaments with Libya because of the civil war in Libya, 2012 was co-hosted by Gabon and Equatorial Guinea before CAF decided to switch the CAN to be held in odd years.

It is obvious that most of the 7 CANs between 2012 and 2023 are hosted or going to be hosted by countries located in only one region, despite Africa being a vast continent with almost 56 countries which are divided into six zonal unions<sup>19</sup> that requires a fair and justice mechanism in distribution of the tournaments on all the zones.

Therefore, Mr AHMAD's vision regarding this important matter is based mainly on the latest reforms by FIFA in deciding the hosting country to the World Cup. He is in favor of the decision of choosing hosting country for the CAN must be made by a majority of votes in the CAF Congress, not solely by the CAF Executive Committee.

The current mechanism of choosing the CAN hosting countries is stipulated in the Statutes of CAF, and gives the right of deciding the place and dates of the final tournaments of the CAF competitions exclusively to the Executive Committee.<sup>20</sup>

Mr AHMAD always confirms his desire to improve CAF's governance, his ambition to create an infrastructure that suits African football and his will to avoid creating White Elephant stadiums.

Therefore, Mr AHMAD seeks a significant transparency, as he promised to review all contracts signed by CAF including the broadcasting rights. He also promised to add the transparency in all transactions of CAF.

<sup>19</sup> Art. 13 of the Statutes of CAF - Zonal Unions

<sup>20</sup> Art. 23.17 of the Statutes of CAF - Prerogatives of the Executive Committee

## CAF Under the Spotlight of Competition Authorities<sup>1</sup>



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→ **Confederation of African Football (CAF) –  
Broadcasting rights – Competition law**

*Egyptian Competition Authority, 3 January 2017*

16 March 2017 marks the start of a new era for the Confederation of African Football (CAF). After almost three decades of the reign of the former CAF President, Issa HAYATOU (picture), CAF General Assembly elected a new President, AHMAD, and a quasi-new formation of CAF's

Executive Committee. The election of the New President is widely welcomed and received with high hopes and is seen as part of the wind of change that has redrawn the international football picture. CAF's new Administration under the leadership of the New President, AHMAD, starts its mandate with a heavy legal heritage. CAF is facing antitrust charges in Egypt, its host country, as well as an antitrust investigation on the COMESA level.<sup>3</sup> CAF is additionally subject to investigation by the Egyptian Public Funds Prosecutor - for the same incident - but for suspicions of waste of public funds.<sup>4</sup>

### Egyptian Antitrust Proceedings

On 20 December 2016, an Egyptian company, Presentation Sports, submitted a complaint to the Egyptian Competition Authority (ECA) against CAF for allegations of abuse of dominance. Based on such, on 3 January 2017, the ECA has referred CAF's former president, Issa HAYATOU, and the former Secretary General of CAF, Hicham AL AMRANI, to the Public Prosecutor - Department of Commercial and Financial Affairs (PPCFA), to investigate the alleged violation of CAF of the Egyptian Competition Law no.3/2005 as amended.

The PPCFA has started the investigations and the interrogations on 28 February 2017, has pressed charges and referred the matter to the Cairo Economic Court on 7 March 2017. It is remarkable how swiftly the investigations were concluded in an unprecedented manner: the ECA referred the matter to the PPCFA in less than 10 working days and the PPCFA - in its turn - referred the matter to the Cairo Economic Courts in less than 5 working days, i.e. an overall investigation period of less than 15 working days. It was equally remarkable how the ECA and the PPCFA have concluded their investigations without allowing CAF's legal representatives, i.e. the President or the Secretary General, the opportunity to be heard or to comment on the complaint submitted by Presentation Sports against CAF. The investigation bodies always allow themselves the chance to hear all the involved parties in order to make a more complete and clearer picture of the incident subject of the investigations. This is in sight of a more accurate conclusion and in respect of the basic rights of defense of the juridical person under investigation.

The ECA and the PPCFA have concluded that CAF is a monopoly with 100% market share of the market of "production and distribution of the media content related to CAF's championships" (the "Relevant Market").<sup>5</sup> The ECA and PPCFA have further concluded that CAF has abused its dominant position when it, allegedly, "sold" all the commercial rights related to its championships worldwide on an exclusive basis for 12 years to a French company, Lagardère Sports, in consideration of USD 1 billion (approx. EUR 920 million) and rejecting an offer from Presentation Sports amounting to USD 1.2 billion (approx. EUR 1.1 billion).

According to the ECA, "selling" to Lagardère Sports without launching a tender process includes four aspects of abuse of dominance: discrimination, refusal to deal, market foreclosure and tying. Such, in the view of the ECA, has resulted in the end customers, i.e. the tele-spectators, paying more than they should normally pay to watch the African football matches.

<sup>1</sup> This article contains no confidential information and is based only on publicly available data. It presents only the views and opinions of the author. CAF and Rizkana & Partners do not necessarily share the same views and opinions.

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<sup>3</sup> The Common Market for Eastern and Southern Africa

<sup>4</sup> The Public Prosecutor considered that the funds of CAF are Egyptian public funds that should be protected as same based on the fact the Egyptian Football Association pay a membership fee of approximately USD 500 (approx. EUR 460) per annum.

<sup>5</sup> This is the market definition according to the ECA's decision dated 3 January 2017.