

## **A REVIEW OF THE AVIATION LEGAL FRAMEWORK AND THE AVIATION SECTOR IN NIGERIA: DEVELOPMENTAL ISSUES**

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### **Abstract**

Air services are of great importance to the continent of Africa in general and to Nigeria in particular especially in the area of administrative and economic developments. It is also the fastest means of transportation in Nigeria. Hence, an examination of the aviation laws in Nigeria is relevant because the aviation industry is still in the process of achieving its next phase of development and arouses interests in ever larger circles. Howbeit, an analysis of the national law, as a source of air law and management of aviation industry cannot be undertaken in isolation of other sources of aviation law. This is so because, the national laws on the management and operation of aviation industry owe much to other sources of air law. However, emphasis was placed on the analysis and effects of aviation law on the management and operations of aviation industry in Nigeria. This analysis of aviation laws in Nigeria is imperative because, in spite of the multi-national conventions, treaties and national enactments put in place, the air transportation in Nigeria has become a source of worry and concern for all.

### **1.0.Introduction**

In nearly over half of a century of the existence of independent Nigeria, it has built up social and institutional structures to advance its cause and quest for an honourable place in the comity of nations; almost fifty-two years of managing its own affairs has shown that the country has immense potential, is blessed with human and natural resources, yet, exhibiting significant deprivation in the midst of plenty. There is no doubt the economy has expanded and deepened, but it has failed to keep pace with rapid growth in population, increasing expectations and the development performance of peer countries. In many respects the economy has shown traits of complex colouration that defies conventional classification.<sup>1</sup>

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Air services are of great importance to the continent of Africa in general and to Nigeria in particular especially in the area of administrative and economic developments. It is also the fastest means of transportation in Nigeria. Hence, an examination of the aviation laws in Nigeria is relevant because the aviation industry is still in the process of achieving its next phase of development and arouses interests in ever larger circles.<sup>2</sup> Howbeit, an analysis of the national law, as a source of air law and management of aviation industry cannot be undertaken in isolation of other sources of aviation law. This is so because, the national laws on the management and operation of aviation industry owe much to other sources of air law. However, emphasis was placed on the analysis and effects of aviation law on the management and operations of aviation industry in Nigeria. This analysis of aviation laws in Nigeria is imperative because, in spite of the multi-national conventions, treaties and national enactments put in place, the air transportation in Nigeria has become a source of worry and concern for all.

## **2.0. History and Development of Aviation Law in Nigeria**

Nigeria attained independence on 1<sup>st</sup> October 1960, before the attainment of independence Nigeria was under colonial rule with the British Government. Indeed, before the introduction of federalism in Nigeria in 1954, the Governor-General legislated for the whole country (colony of Lagos, the southern and northern protectorates). The introduction of English Law to Nigeria dates back to March 4<sup>th</sup> 1863 with the cessation of jurisdiction and the signing of the Treaty of Cession between Britain and Chief Dosunmu of Lagos.<sup>3</sup> The Treaty of Cession was followed with the promulgation of Order-in-Council in 1872 which empowered the British Council to exercise jurisdiction to bring law and order in Nigeria and particularly to make rules and regulations for peace, order and good governance, a great number of English laws were introduced comprising the Common Law of England, the Doctrines of Equity and the Statutes of General Application in force in England as at 1 January 1900. These laws covered a variety of social and economic activities especially in the administration of criminal and civil justice.<sup>4</sup>

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<sup>1</sup> Federal Government of Nigeria, *Nigeria's Development Report: Nigeria's Growth Experience: Process, Strategies and Implications* (FGN 2010) 41

<sup>2</sup> If Omoleke, 'Legal Policy and Aviation Industry in Nigeria: Constraints to Optimal Safety of Air Transportation' [2019] (13)(3)*African Journal of Political Science*; 001

<sup>3</sup> AOObilade, *The Nigerian Legal System* (Spectrum Books Limited 1990) 18

<sup>4</sup> *Ibid* 19-20

The Civil Aviation Act of 1949 in England, which repealed the Air Navigation Acts 1920-1947, was made applicable to Nigeria by Article 3 of the Colonial Civil Aviation Order of 1952;<sup>5</sup> the Colonial Air Navigation Order 1952 empowered the Governor General by Article 58 thereof to make regulation for Nigeria in respect of air navigation thus the Air Navigation (Regulation) of 1954;<sup>6</sup> in the same vein, the Colonial Air Navigation Order 1955 extended to Nigeria, the Air Transport (Licensing) Regulations, 1958 made under Section 13 of the Civil Aviation Act 1949 and made applicable to Nigeria by Article 3 of the Colonial Civil Aviation (Application Act) 1952. The British Settlement Act 1887 and Foreign Jurisdiction empowered the King of England to make Order-in-Council in 1946 establishing the West African Air Transport Authority (WAATA) whose duty was to secure the development of efficient airport services in and between the West African territories, and that such services are operated at reasonable charges. The Authority was a body corporate with perpetual succession and a common seal, capable of suing and being sued.<sup>7</sup>

The Order provided for WAATA to hold biannual meetings on air transport matters, and to regulate the economic operation of aircraft within the territories specified therein. Section 5(1) (a) prohibited the use of aircraft in the territories, for carriage of passengers and goods except under the authority of a license. Section 5(1) (b) contained procedure for application and 5(1) (c), contained condition for the granting, refusal, revocation and suspension of license. Sub-paragraphs 5(1) (d) - (t), specified the conditions as to fares to be charged by a license holder, fees to be paid in respect of a license and information to be furnished by a license holder.<sup>8</sup> Likewise, the Queen, acting under Carriage by Air Act, 1932 made the Carriage by Air (Non International Carriage) (Colonies Protected and Trust Territories) Order 1953.<sup>9</sup> These Orders extended the application of the Warsaw Convention, 1929 to Nigeria as a territory of the United

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<sup>5</sup> See the Civil Aviation Act 1949 (England) s66(1) which made provisions for His Majesty by Order-in-Council to direct that any provisions of the Civil Aviation Act could be extended to the colonial territories therein specified

<sup>6</sup> BK Peter, *Shaw Cross and Beaumont on Air Law* (Butterworth 1966) 38

<sup>7</sup> See preamble, West African Territories (Air Transport) Order-in-Council 1946(a) Laws of the Federation of Nigeria and Lagos Vol. XI (1958), 657-684

<sup>8</sup> This type of regulatory control shows the position of the British government regarding commercial aviation at this time. At the Chicago Conference on International Civil Aviation in 1944, the views of UK and the US on the pattern of control over commercial aviation were irreconcilable as Britain favoured a protectionist approach against America's liberal concept; see HA Wassenberg, 'World Air Transport Regulatory Reforms'[1994] (XIX)(1) *Annals of Air and Space Law*; 491-492

<sup>9</sup> No. 1474, 1953, 11 LFNL, 618 (1958); this Order has been repealed by section 77 (1)(a) of the Civil Aviation Act 2006

Kingdom; thereby, making Nigeria a high contracting party to those conventions.<sup>10</sup> The Carriage by Air (Non International Carriage) (Colonies Protected and Trust Territories) Order 1953 regulates the carriage of passengers, luggage and goods on domestic flights. However, it does not include carriage of mail or packages carried under any terms or conditions of any international postal convention or local legislation on postal matters. This Order also deals with documentation of carriage; liability of carriers; air consignment note; combined carriage and other general provisions.<sup>11</sup>

The Civil Aviation (Fire and Security Measures) Ordinance No. 31, 1958 is also pertinent to aviation legislation in Nigeria. As amended, this Ordinance continued in force all the way into the 1980s but was later reflected in the Civil Aviation (Fire and Security Measures) Act.<sup>12</sup> Nonetheless, section 24 of the Civil Aviation (Fire and Security Measures) Ordinance No. 31, 1958 was repealed in 1976 by the Nigerian Airports Authority Act No. 45, 1976.<sup>13</sup> The Civil Aviation (Fire and Security Measures) Act established and constituted the Civil Aviation Fire Guard Service. Its functions and duties include fire and crime prevention at airports and airport facilities. Members of the Guard Service also enjoy powers of arrest. Under section 3-5, the Airport Superintendent heads the Service Guard. However, members of the Service are subject to disciplinary control of the Director of Civil Aviation. Part III, section 15-19 set out offences and penal sanctions. Part IV, sections 20-24 constituted miscellaneous and other ancillary provisions on fire safety and security; rule-making powers of the executive arm of government to prescribe additional rules, regulations and executive orders to better administer the Act and powers of the Director of Civil Aviation to prescribe standing orders.<sup>14</sup>

In the same vein, the Civil Aviation Act No. 30, 1964<sup>15</sup> was enacted to provide the primary requisite legislative framework on civil aviation in Nigeria. Section 1 vests power in the responsible Minister or Commissioner to make rules and regulations to effectively implement and enforce the Act. This Act also directs this official to promulgate other subordinate legislation

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<sup>10</sup>SET Taylor, *Aviation Law for Pilots* (Blackwell Scientific Publications 1983); see *Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR (Pt. 498), 124

<sup>11</sup>Charles Mwalimu, *Volume II – Private Law: Introduction to Nigerian Legal System* (Peter Lang Inc., International Academic Publishers 2009) 838

<sup>12</sup> LFN 2000; III LFN Cap 52 1990

<sup>13</sup> FAOduba, *Nigeria Index to Federal Statutes in Force 1984: Being an Index of the Law of Nigeria which are still in Force as at 31<sup>st</sup> December 1984* (Abington, Oxfordshire 1985) 94

<sup>14</sup>Mwalimu, *Volume II – Private Law: Introduction to Nigerian Legal System* supra 839

<sup>15</sup>*Ibid*; AVLFNRN A319 (1964); LFN 2000; II LFN Cap 51 1990 as amended by Act No. 51 1999 LFN 2000

mandating specific compliance and enforcement of the Chicago Convention 1944.<sup>16</sup> The Convention and Ministerial regulations and orders generally govern registration of aircraft in Nigeria; prohibit flying without a certificate; licensing; inspection; regulation and access to airports and airplanes and other aviation related matters. The Civil Aviation Act 1964 regulates investigation of accidents; dangerous flying; licensing of air transport undertakings and the duty of these undertakings to furnish information in respect of these crafts.<sup>17</sup> Section 6-8<sup>18</sup> regulates acquisition of land by the administering authority of airport facilities and other matters incidental or connected with the smooth operation and running of civil aviation in Nigeria. The land is deemed acquired for public purposes. The Civil Aviation Act 1964 repealed the Air Navigation (Safety of Navigation) Act No. 65, 1941. This law had incorporated and utilized certain provisions of the Air Navigation (Colonial Protectorates and Mandated Territories) Order 1927.

It would be noticed that the legal framework of civil aviation under British rule witnessed a series of changes from one legal instrument to the other.<sup>19</sup> The need to make new laws and review and amend existing ones, has been attributed to the developments and changing nature of civil aviation which required corresponding changes in the laws, in order to keep pace with its development.<sup>20</sup> The trend of one air law instrument succeeding another in very quick succession has proved that air law is dynamic in nature, an attribute which is yet to be matched because ‘no science has been developed so quickly in its practical application to the activities of man as the science of aeronautics... No activity so needs the law to keep pace with it from one stage of development to the next...’<sup>21</sup>

It is recognised that reforms carried out in respect of the British air law system were related to the events in civil aviation both at home and internationally. It is however doubtful whether the changes in the aviation scene in Nigeria justified the mass of regulatory instruments extended by British enactments at that time. It would seem that once changes were made in the British air law

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<sup>16</sup>Federal Ministry of Justice, *Nigeria's Treaties in Force, 1969-1968* (FMOJ 1969)

<sup>17</sup>The Civil Aviation Act 1964 s2-5

<sup>18</sup>Ibid

<sup>19</sup>From 1911 when the first Aerial Air Navigation was passed in the United Kingdom, a variety of aviation instruments came into existence which have been amended, re-amended, consolidated and re-consolidated in order to keep track of the development of civil aviation at the international level; see Shawcross and Beaumont, *Air Law* (Butterworth 1977)

<sup>20</sup> Ibid; For example in the UK, the 1911 and 1913 Aerial Air Navigation Acts were repealed by Air Navigation Act 1920 and in turn the Civil Aviation Acts 1920-1947 were consolidated and repealed by Civil Aviation Act 1949 which has also been repealed by the Civil Aviation Act 1982

<sup>21</sup> Ibid 118-119

system, the same were automatically made in the case of Nigeria, without much regard whether such laws were indeed required. A scenario such as this raises the question whether consideration was given to prevailing local circumstances and the pattern of future growth of civil aviation in Nigeria.

Nonetheless, under the extant legal regime, the Constitution of the Federal Republic of Nigeria, 1999 listed aviation matters in the Exclusive Legislative List, Schedule II, Part I, item 3. Thus, matters relating to ‘aviation including airports, safety of aircraft and carriage of passengers and goods by air’ can exclusively be legislated upon by the National Assembly; hence, a new Civil Aviation Act was enacted by the National Assembly in 2006. In same year (2006), the Civil Aviation Regulations were also issued, in order to establish national requirements that align with the Civil Aviation Act 2006 provisions regarding standardised operational procedures, equipment and infrastructure.<sup>22</sup>

### 3.0.Sources of Nigeria Air Law

As observed earlier, Nigeria Air Law cannot be considered without highlighting the international nature of its sources. Hence, the sources of Nigeria Air Law flows in descending order from international sources to national sources; as highlighted below:

#### 3.1. International Sources

- Conventions and Treaties;<sup>23</sup>
- Decisions of International Tribunals;<sup>24</sup>
- General Principles of International Law;<sup>25</sup>

<sup>22</sup> Amended in 2009, 2012 and 2015; see International Law Office, ‘Civil Aviation Regulations 2015: An Overview’ [August 16 2017] *George Etomi and Partners* <<https://www.internationallawoffice.com/Newsletters/Aviation/Nigeria/Gorge-Etomi-Partners/Civil-Aviation-Regulations-2015-an-overview>> accessed on 15<sup>th</sup> February 2020; see also the Nigerian Civil Aviation Policy (NCAP) 2013

<sup>23</sup> For example the Convention on International Civil Aviation 1944 (Chicago Convention); the Convention for the Unification of Certain Rules Relating to International Carriage by Air of 1929 (Warsaw Convention – WC29); the Convention for the Unification of Certain Rules Relating to International Carriage by Air of 1999 (Montreal Convention), which seeks to consolidate the Warsaw Convention and other related instruments, inter alia – it should be noted that by virtue of section 77 (1)(a) of the Civil Aviation Act 2006, the Warsaw Convention ceased to apply in Nigeria. Conversely, Nigeria ratified the Montreal Convention, 1999 and section 48(1) of the Civil Aviation Act 2006 incorporated the Montreal Convention into Nigerian law in compliance with Nigeria constitutional requirement; see CFRN 1999 s12; hence, the Montreal Convention is effective in Nigeria.

<sup>24</sup> These are Tribunals such as the International Court of Justice (ICJ), the Court of Justice of the European Communities, the Council of ICAO, the ECOWAS Tribunal for member States of the Economic Community of West African States (ECOWAS), and other Special Tribunals provided for by a treaty or agreed to by the parties to a dispute

<sup>25</sup> For example the principle of States sovereignty over its territory, equality of States, reciprocity in international relations, freedom of contract, inter alia

- Opinion of Renowned Publicists in International Air Law;<sup>26</sup>

### 3.2. National Sources

- Local Legislation;<sup>27</sup>
- Decisions of Courts;<sup>28</sup>
- Contracts between States and Airline Companies;<sup>29</sup>
- Contracts between Airline Companies;<sup>30</sup>

## 4.0. Legal Regulation of Aviation in Nigeria

### 4.1. Principal Legislations in Nigeria's Aviation Sector

#### 4.1.1 International Regulation

At the international level, the following instruments regulate the conduct of international civil aviation in Nigeria:

**1. The Convention on International Civil Aviation (The Chicago Convention, 1944) and its Annexes:** These form the primary international air law regulating the conduct of international civil aviation in Nigeria. The Chicago Convention laid down the general rules under which civil aviation could be undertaken globally; and the provision of technical annexes meant to bring about the highest possible degree of international standardization of practice for safe, secure, and economy of air navigation. Also, other instruments such as Conventions and Protocols have been concluded for specific areas including Aviation Security, Passenger and third party liabilities.<sup>31</sup> Some are:

i. Convention for the Unification of Certain Rules Relating to International Carriage by Air of 1999 (Montreal Convention) which seeks to consolidate the Warsaw Convention and other related instruments. Some new features of the Montreal Convention include, increase in compensation in case of death or injury of passengers,<sup>32</sup> advance payment in cases of death or injury in order to offset initial expenses,<sup>33</sup> limit of carriers' liability in respect of delay, lost

<sup>26</sup> See Callistus EUwakwe, *Introduction to Civil Aviation Law in Nigeria* (Aviation Publishing and Consultancy Co. Ltd. 2006) 20

<sup>27</sup> Ibid 20-23; for example the Civil Aviation Act 2006; NIMET Act 2003; FAAN Act LFN 2004, etc.

<sup>28</sup> For example see *Ibidapo v. Lufthansa Airlines* (supra) and *Egypt Air v. Abdullahi* (1997) 11 NWLR (Pt. 528) 179

<sup>29</sup> Uwakwe, *Introduction to Civil Aviation Law in Nigeria* supra 24

<sup>30</sup> Ibid

<sup>31</sup> Omoleke, 'Legal Policy and Aviation Industry' supra

<sup>32</sup> The Montreal Convention article 21

<sup>33</sup> Ibid article 28

baggage and cargo,<sup>34</sup> periodic review of limits,<sup>35</sup> expansion of jurisdiction<sup>36</sup> and provision of adequate insurance,<sup>37</sup> inter alia;

ii. Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 (The Hague Convention) which mandates States, to impose severe penalties on any person who on board an international flight unlawfully, by force or threat or any other form of intimidation, seizes or exercises control of or attempts to perform any such act or is an accomplice of a person who performs or attempt to perform such act;

iii. Convention on International Recognition of Rights in Aircraft of 1948 (The Geneva Convention), which seeks to protect certain rights in aircraft, which have been duly constituted and recorded, according to the laws of the state of registration. These rights includes<sup>38</sup> rights of property in aircraft; rights to acquire aircraft by purchase coupled with possession of the aircraft; rights of possession of aircraft under leases of six months or more and rights in mortgages, or similar rights in aircraft, which are contractually created as security for payment of indebtedness. These rights are registrable and extend to all sums secured; however, the amount of interest shall not exceed that accrued during the 3 years prior to execution process, together with that accrued during the execution proceedings.<sup>39</sup>

iv. Convention on International Interest in Mobile Equipment and the Protocol to the Convention on Matters Specific to Aircraft Equipment of 2001 (The Cape Town Convention and Protocol). These aims to facilitate asset based financing and leasing of aircraft, aircraft engines and objects. It seeks to ensure that interest in such equipment are recognized and protected universally. It also provides for the constitution of international interest in aircraft and aircraft equipment. The Convention presents the prospect of immense reduction in financing costs of aircraft and aircraft equipment, by making the aircraft or equipment the security for its acquisition. The Convention provides an easy and expedited means for a lessor or mortgagor of an aircraft or aircraft equipment to realize his security, in the event of default by the lessee or mortgagee. The domestication of this Convention saw a huge leap in fleet acquisition and renewal in Nigeria.

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<sup>34</sup> Ibid article 22

<sup>35</sup> Ibid article 25

<sup>36</sup> Ibid article 33.2

<sup>37</sup> Ibid article 50

<sup>38</sup> The Geneva Convention article 1(1)

<sup>39</sup> Ibid article 5

**2. The African Civil Aviation Policy, 2011 (AFCAP):** It provides a framework and platform for the formulation, collaboration and integration of national and multinational initiatives in various aspects of civil aviation in Africa. Article 5.2 of the Policy is on Air Service Agreements. Under this Article, the objective of member States is to be active participants in international air transport and allied services. In pursuance of this objective, the following shall be ensured: air service agreements negotiated amongst member States shall be in accordance with the Yamoussoukro Decision and the AFCAP; air service agreement negotiated by member States with Third Countries shall be in accordance with the African Union Guidelines on External Negotiation; in order to ensure fair and equal opportunities for African airlines, all air service agreement signed with Third Countries should include Option 2 of the ICAO guidelines on Slot Allocation which provides that parties shall facilitate the operation of the agreed services by granting designated airlines the necessary landing and take-off slots, subject to applicable national and international rules and regulations and in accordance with the principle of fair and equal opportunity, reciprocity, non-discrimination and transparency; and parties shall attempt to resolve any dispute over slots through consultation and negotiation in accordance with the articles on Consultation Dispute Settlement.

#### **4.1.2 National Regulation**

At the national level, every International Civil Aviation Organization (ICAO) Member State is expected to enact its primary aviation legislation that empowers the conduct and oversight of civil aviation activities within its territory. This comprehensive and effective aviation law should be consistent with the environment and complexity of the State's aviation activity and compliant with the requirements contained in the Chicago Convention. The Nigerian Civil Aviation Policy, the Civil Aviation Act, 2006 together with regulations made by the NCAA constitutes the primary law regulating civil aviation in Nigeria.

**1. The Nigerian Civil Aviation Policy (NCAP):** The Minister of Aviation is responsible for drafting the national aviation policy for Nigeria with the assistance of the Civil Aviation Authority. The first indigenous Nigerian Civil Aviation Policy was formulated in 1989, following the adoption of Air Commodore Kola Falope Committee findings on aviation

reforms.<sup>40</sup> The major highlight of the 1989 policy was the creation of Federal Civil Aviation Authority (FCAA), responsible for safety and economic oversight as well as the provision of air traffic services, aeronautical information services and aero telecommunication services.<sup>41</sup> In 1995, during military rule, a major reform saw the dissolution of FCAA and the creation of Department of Safety Regulation and Monitoring (DSRAM) which was responsible for the safety regulatory functions of FCAA.<sup>42</sup> The Federal Airport Authority of Nigeria (FAAN) was also established, while the economic regulatory functions of FCAA were merged with those of the Aviation Coordination Department, to form Department of Air Transport Management (DATM) in the Ministry of Aviation. The reforms of the 1995 policy were immediately found to be at variance with the recommendations of ICAO; and the rapid development in civil aviation activities across the world, including the adoption of the Yamoussoukro Decision, emergence of Banjul Accord and Nigeria's increasing influence in international civil aviation, made a review very necessary, to bring Nigeria in line with international standards and practice.<sup>43</sup>

In 2001, a well thought out and comprehensive policy was formulated for the aviation industry. The objectives of this policy were: to ensure that all laws and regulations governing civil aviation in Nigeria are consistent with international laws and regulation; and that harmonious relationship exists between the Ministry of Aviation and its agencies. In furtherance to these objectives, FAAN was to operate a privatized, competitive and commercialized airport system; Nigerian Airspace Management Agency (NAMA) was to provide air navigation services and coordinate aeronautical search and rescue with Nigeria Emergency Management Agency (NEMA); NCAA was to have safety and economic regulation and oversight in aircraft operations in accordance with International Civil Aviation Organization (ICAO)'s Standards and Recommended Practices (SARPs).<sup>44</sup> The economic thrust of the policy favoured liberalization, the principle of reciprocity, fair and equal opportunity, privatization and competition.

A new Nigerian Civil Aviation Policy was unveiled in April, 2013. The objectives of the 2013 Policy encompasses institutionalizing world class safety and security standards, development of

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<sup>40</sup> P Okoronkwo, 'Overview of Nigeria Civil Aviation Policy, Legal and Regulatory Framework' *being a paper presented at the Second Annual Seminar for Federal High Court Judges on Civil Aviation Law* on 3<sup>rd</sup> September (2014) 2

<sup>41</sup>Ibid

<sup>42</sup>Ibid

<sup>43</sup>Ibid

<sup>44</sup>Ibid

world class infrastructure, development of aero-metropolis, among others.<sup>45</sup> The major thrust of the policy, is the promotion of harmonized approach to achieve international standards on safety, security and comfort of passengers, thereby ensuring the sustainability of the sector. The 2013 Policy is divided into ten parts. Part 1 deals with the historical background of the aviation sector in Nigeria. Part 2 presents an overview of the strategic goals, objectives, management and institutional framework, while highlighting the economic and social importance of the sector. Part 3 addresses the importance of Aviation Financing, with emphasis on the development of a sustainable aviation financing mechanism through Public Private Partnership. Part 4 deals with aviation training with special focus on improving the Nigerian College of Aviation Technology (NCAT), as a centre of excellence in Africa. Part 5 emphasizes the continuous autonomy of Accident Investigation Bureau (AIB), to ensure timely and thorough investigation of all major incidents and accidents, while addressing the merits of Aviation safety and security as an integral part of the strategic objective of ICAO policy. Part 6 focuses on air transportation, removal of hindrances to the growth of airlines and creation of enabling environment for alliances among airlines. Part 7 reviews the deficiency in controlling and monitoring General Aviation; and advocates for a regulatory framework, adequate human resources and infrastructure to support the policy. Part 8 advocates that Bilateral Air Service Agreement and Multilateral Air Service Agreement negotiations shall not only be on the principle of reciprocity, but also on providing maximum opportunities for Nigerian airlines to grow and compete effectively.<sup>46</sup> Part 9 deals with aviation allied support services, intermodal transport system, and facilitation of passengers among others. Part 10 reaffirms the continual monitoring and review of the ministry and its agencies, to align with new strategic goals, policies and procedures, to an internationally acceptable level. In the writer's opinion, the 2013 policy provides a platform for the way forward and future prospects of the aviation industry in Nigeria.

**2. The Nigerian Civil Aviation Act, 2006:** The Nigerian Civil Aviation Act, 2006 repealed the Civil Aviation Act (CAA), 1964 and the Nigerian Civil Aviation Authority (Establishment) Act, 1999. It consolidated and substantially re-enacted the provisions of both documents. The Act is a radical legislation that seeks to modernize and internationalize aviation law in Nigeria. The major highlights of the Act are as follows:

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<sup>45</sup>See generally the Nigerian Civil Aviation Policy (NCAP) 2013

<sup>46</sup>It is pertinent to note here that the provisions of Article 8.1 of the NCAP, 2013 is same with Article 5.2 of the AFCAP 2011

Section 1 reinforces the constitutional provision that lists aviation in the exclusive list and supports the federal government policy on aviation, relating to controls and supervision of civil aviation in Nigeria. It provides that the Honourable Minister of Aviation shall be responsible for the formulation of policies and strategies for the development of the sector. It further distinguishes the powers of the Honourable Minister of Aviation (HMA) and the regulatory authority, thereby eliminating the conflicts in the previous legislation.

Section 2 re-established the NCAA as a corporate and autonomous body, with a governing board and a Director General, who shall be the account officer. The functions of the Authority as captured in several provisions of the Act especially Parts 9, 10 and 11 of the Act show that NCAA shall have the power to regulate and monitor the conduct of air navigation in Nigeria; issue the Air Operator Certificate (AOC) which is safety certificate; issuance of economic licenses, permits or authorization e.g. Air Transport License, Air Operator Permit (AOP). The functions and powers of NCAA in regulating the civil aviation industry are all in accordance with ICAO Annexes and SARPs. Also, some other aviation regulatory agencies establishment acts had some provisions therein that made them self-regulatory prior to the Act. However, realizing that these provisions were not repealed in the Act of 2006, the then President of the Federal Republic of Nigeria Alhaji Umar Yar' Adua issued 'a letter of Comfort', assuring the international community, that Nigeria has one regulatory authority for civil aviation in Nigeria and the authority is the NCAA.<sup>47</sup> In addition, each of these agencies (i.e. NAMA, FAAN, NCAT, and NIMET etc.) entered into and signed a 'Memorandum of Understanding' relinquishing such regulatory powers and functions to NCAA.<sup>48</sup> Section 29 of the Act established Accident Investigation Bureau, as a semi-autonomous body in charge of investigation of serious incidents and accidents in the aviation sector. Major international conventions on aviation which hitherto were ratified by Nigeria were also domesticated in the Act, for example: the Montreal Convention of 1999 is domesticated by Section 48(1) of Nigerian Civil Aviation Act, 2006; the Hague Convention of 1970 and the Geneva Convention of 1948 is domesticated by Section 73(1) of Nigerian Civil Aviation Act, 2006; and the Cape Town Convention of 2001 is captured in Section 73(2) of the Nigerian Civil Aviation Act, 2006.

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<sup>47</sup>Okoronkwo, 'Overview of Nigeria Civil Aviation Policy' supra

<sup>48</sup>Ibid

Furthermore, certain offences were created in Sections 42, 43, 45, 46(5) etc. of the Nigerian Civil Aviation Act. Consequently, It provides that NCAA shall with the consent of the Attorney General of the Federation, in its name have power to initiate and undertake the prosecution, of any person, in respect of any offence created under the provisions of this Act or any regulation, rule or order made pursuant to this Act.<sup>49</sup>

Currently, there is a proposal to consolidate all the different legislation in aviation. Specifically the various Establishment Acts, into one comprehensive Civil Aviation Act; and some new provisions are also being articulated like the Victim Assistance Programme, among others. Also, more International Conventions are recommended to be domesticated in the proposed Consolidated Civil Aviation Act. These include the Convention on Offences and Certain Other Crimes Committed on Board an Aircraft, (Tokyo Convention 1963); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (Montreal 1971); Beijing Convention; and Protocol on Aviation Security 2010 etc.<sup>50</sup>

**3. The Nigerian Civil Aviation Regulations (NCARs):** Sections 30 of Civil Aviation Act (CAA), 2006 empowers NCAA among other things to, ‘make regulations for carrying out the Convention on International Civil Aviation concluded in Chicago on the 7<sup>th</sup> day of December 1944; any annex to the Convention which relates to international Standards and Recommended Practices (SARPs) and is adopted in accordance with the Convention or of any such Annex which is made in accordance with the Convention.’ As observed earlier, the objective of the Chicago Convention is uniformity and standardization in air navigation. To achieve this, ICAO adopts International Standards and Recommended Practices (SARPs) on procedures dealing with several aspects of air navigation and designate such as Annexes. Standards according to ICAO, means ‘any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application is recognized as necessary for the safety or regularity of international air navigation and to which member states will conform in accordance with the Convention.’<sup>51</sup> According to ICAO, Recommended Practices means ‘any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application is recognized as desirable in the interest of safety, regularity or efficiency of international air navigation and to which member states will endeavour to conform in accordance

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<sup>49</sup>Nigerian Civil Aviation Act 2006, s63(2)

<sup>50</sup>Okoronkwo, ‘Overview of Nigeria Civil Aviation Policy’ supra

<sup>51</sup>Ibid

with the Convention.<sup>52</sup> The difference is that while Standards are mandatory and necessary, Recommended Practices are desirable. ICAO requires Contracting States that find compliance with a standard impracticable, to file a notice of differences with the ICAO Council.<sup>53</sup> Hence, the Civil Aviation Regulations were issued, in order to establish national requirements that align with the Civil Aviation Act 2006 provisions regarding standardised operational procedures, equipment and infrastructure.<sup>54</sup>

## 5.0. Principal Regulatory Bodies in Nigeria's Aviation Sector

### 5.1. International Regulatory Bodies

Aviation is highly regulated through Rules, Laws and Recommended Practices in the design and operation of both aircraft and airport.<sup>55</sup> The international key regulatory agencies which regulate civil aviation in Nigeria are:

**1. The International Civil Aviation Authority (ICAO):** It was established in order 'to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport.'<sup>56</sup> Therefore, it is safe to say that at the international level, the ICAO is the body charged with the duty of regulating aviation. The International Civil Aviation Organization (ICAO) is a specialized branch of the United Nations Organization established in 1947 following the Chicago Convention of 1944. It is based in Montreal, with regional offices in Paris, Dakar, Cairo, Nairobi, Mexico City and Lima and has over 186 contracting states. Its main function is aviation safety through the establishment of International Standards, Recommended Practices (SARPs) and procedures, covering licensing of personnel, rules of the air, meteorology, aerodromes, etc.<sup>57</sup>

**2. The African Civil Aviation Commission (AFCAC):** It is the specialized agency of the African Union responsible for civil aviation matters in Africa. The African Civil Aviation Commission (AFCAC) was created by the Constitutional Conference convened by the

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<sup>52</sup>Ibid

<sup>53</sup> Chicago Convention 1944, article 38

<sup>54</sup>Initially in 2006, amended in 2009, 2012, and 2015; see International Law Office, 'Civil Aviation Regulations 2015: An Overview' [August 16 2019] *George Etomi and Partners* <<https://www.internationallawoffice.com/Newsletters/Aviation/Nigeria/Gorge-Etomi-Partners/Civil-Aviation-Regulations-2015-an-overview>> accessed on 15<sup>th</sup> February 2020

<sup>55</sup> AIOzoka, *Aviation System Planning and Operations: Blending Theory with Professional Practice* (Ahmadu Bello Press Limited 2009) 9

<sup>56</sup>International Civil Aviation Organization, 'About ICAO' ICAO <http://www.icao.int/about-icao/pages/foundation-of-icao.aspx> accessed on 16<sup>th</sup> February 2020

<sup>57</sup>Ibid

International Civil Aviation Organization (ICAO) and the OAU at Addis Ababa in 1964. AFCAC membership is open only to member States of African Union (AU). It comprises of 54 African States and is managed through a triennial Plenary (consisting of all member States). It is made up of a President, 5 Vice-Presidents (representing Northern, Western, Eastern, Central and Southern Africa Regions) and the Coordinator of the African Group at the ICAO Council. Its headquarters is in Dakar, Senegal. The Commission's objectives are: to coordinate matters of civil aviation in Africa, to promote the development of the civil aviation industry, to foster compliance with ICAO standards and recommended practices (SARPs) for the safety security and regularity of the air transport and to examine any specific problems which may hinder the development and operation of the African civil industry.<sup>58</sup>

## 5.2. National Regulatory Bodies

Item 60 of the Exclusive legislative list<sup>59</sup> gives powers to the National Assembly for 'the establishment and regulation of authorities for the federation or any part thereof...' Therefore, it will be appropriate to state that the aviation regulatory agencies are the Federal Ministry of Aviation, Nigerian Civil Aviation Authority, Federal Airport Authority of Nigeria, Nigeria Airspace Management Agency, Nigerian Meteorological Agency, Nigerian College of Aviation Technology, and Accidents Investigation Bureau:

**1. The Federal Ministry of Aviation (FMA):** The Federal Ministry of Aviation has been given overall responsibility for the formulation and management of the federal government aviation policies in Nigeria. The Ministry is also directly responsible for overseeing air transportation, air policy development and management, provision of aviation infrastructural services and other needs arising from the wide spectrum of the aviation industry both nationally and globally. The Ministry, through its International Relations Division coordinates and promotes Bilateral and Multilateral Air Service Agreements between Nigeria and other friendly individual countries.<sup>60</sup> The divisions functions are to: monitors the implementation of air service agreements in collaboration with other parastatal; negotiate and review subsisting air service agreements; negotiate Pool and Commercial Agreements to cover extra-bilateral frequencies and unilateral exploitation; and monitoring of Pool and Commercial Agreements between Nigeria's

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<sup>58</sup>See Ozoka, *Aviation System Planning and Operations* supra

<sup>59</sup>Constitution of the Federal Republic of Nigeria (CFRN) 1999

<sup>60</sup>See Federal Ministry of Aviation, *Developments in the Aviation Industry under Nigeria's New Democracy* (FMA 2001)

designated carriers and the designated carriers of other countries especially on regular payment of Royalties.<sup>61</sup>

**2. The Nigerian Civil Aviation Authority (NCAA):** The NCAA was first established in 1989 as Federal Civil Aviation Authority (FCAA) but was scrapped in 1995 and re-established by Decree 49 of May, 1999 as Nigerian Civil Aviation Authority<sup>62</sup> in compliance with the conditions of the ICAO, which requires all member States to establish an appropriate State organization to be known as ‘Civil Aviation Authority.’ The NCAA is charged with the primary responsibility of ensuring compliance with air navigation regulations and ICAO’s Standards and Recommended Practices (SARPs). This encompasses ensuring the safety, efficiency and regularity of air navigation and safety of aircraft and of persons and property carried in the aircraft; regulating the safety of aircraft operations, air navigation and aerodrome operations; making regulations to ensure the maintenance of an acceptable level of safety in areas like: licensing of aircraft personnel (maintenance engineers, air crew, air traffic controllers and airport/airdromes personnel), design, manufacture, maintenance, and overhaul of aircraft to be registered and/or operated in Nigeria, the maintenance and overhaul of engines and other equipment to be used on aircraft registered and/or operated in Nigeria; to monitor aircraft operating environment for safety and security purposes; the NCAA is further charged with the responsibility of ensuring proper air transport economic (regulation) policy by endeavouring to allow all users of the Nigerian airspace to fly safely consistent with efficient and profitable airline operation, encourage growth of air traffic, and protect the interest of consumers of air transport service. Furthermore, the NCAA regulate the method of entry and conduct of air transport business in Nigeria; and acts as an adviser to the government on issues of air transport licenses and matters relating to international aviation organizations and airlines. It also set aviation training standards and approves training institution; and it facilitates take-off and operation of e-ticketing and Billing Settlement Plan (BSP).<sup>63</sup>

The NCAA is made up of the following directorates through which it undertakes the above functions:<sup>64</sup>

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<sup>61</sup>Ibid

<sup>62</sup>Ozoka, *Aviation System Planning and Operations* supra

<sup>63</sup>See generally Nigerian Civil Aviation Act 2006, s2 and s29

<sup>64</sup>Vivian KelechiUmemba, ‘Comparative Legal Analysis of Bilateral Air Service Agreements Between Nigeria and Some Selected Countries’ (LLM Thesis, School of Postgraduate Studies, Ahmadu Bello University, Zaria, October, 2015) 46

a. Flight Standards Group (FSG): It is a group of Directorates that perform the joint safety oversight responsibilities. Directorates under FSG are Directorate of Operations and Training (DOT), Directorate of Airworthiness Standards (DAWS), Directorate of Licensing (DOL)<sup>65</sup> and the Department of Aeromedical Services (DAMS). The main focus of the FSG is to ensure coordination and communication through the harmonization of processes and safety standards that will ensure effective and efficient certification, licensing and surveillance of aviation organizations and personnel.

b. Directorate of Airworthiness Standards (DAWS): It is the responsibility of the Airworthiness Directorate to ensure that all aircraft in Nigeria are airworthy, i.e. fit to fly. DAWS also inspects and certifies aircraft according to established procedures; proposes, reviews and approves designs, repairs and modifications; ensures that safety requirements are complied with and, where deficiencies are identified, corrective measures are taken (through letters, fines, suspension of certificates, etc.); supervises the whole aviation industry in order to align it with global aviation trends and propose corrective measures to ensure air safety.

c. Directorate of Licensing (DOL): It is responsible for licensing of all personnel in line with the Nigerian Civil Aviation Regulations that in turn, are aligned with ICAO Annex 1 Standards and Recommended Practices (SARPs).

d. Directorate of Operations and Training (DOT): It is responsible for the effective oversight activities and setting of standards in all areas of flight operations and training in the Nigeria air transport industry.<sup>66</sup>

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<sup>65</sup>In order to accelerate enhanced conformity of airports with the ICAO standards, the NCAA embarked on recertification of airports in the Country starting with the International Airports in Lagos, Abuja, Kano and Port Harcourt. The Authority has used the exercise to address critical safety problems relating to rescue and fire fighting, perimeter fence, bird strike/hazard control measures, and dismantling of Airport obstruction; see B Omotoba, 'The Aviation Sector' *Ministerial Press Briefing* (held at the National Press Centre, Radio House, Abuja, on 26<sup>th</sup> January 2010)

<sup>66</sup>*Ibid*; the ICAO made it mandatory for every Civil Aviation Authority to have qualified personnel in sufficient numbers to meet its safety oversight responsibilities. The NCAA has started strategies to achieve this as the Authority has sponsored and is sponsoring some pilots and aircraft maintenance engineers in Nigerian College of Aviation Technology (NCAT). The Authority has also organized and sponsored various training seminars and workshops in Nigeria. For example, the Authority hosted the Safety Management System (SMS) workshop conducted by ICAO; organization of training workshop programmes on Search and Rescue, Emergency Management and Accident Investigation and AVSEC Security training by US experts in the first quarter of 2009; sponsoring of training workshop on Machine Readable Traveling Documents (MRTDS), Biometrics and Security Standards (which was in collaboration with the US Embassy in Nigeria and Nigeria Immigration Service). The Authority has also encouraged Airlines to embark on similar sponsorship programme

e. Directorate of Aerodrome and Airspace Standards (DAAS): The primary responsibility of the DAAS is to ensure safety and security at all Nigerian aerodromes in conformance with the relevant standards and recommended practices of ICAO Annexes.

f. Directorate of Finance and Administration: It is responsible for all financial,<sup>67</sup> administrative, human resources, corporate affairs /planning functions while projecting the image of the organization and articulating policies for effective and efficient service delivery in the Authority based on SERVICOM; and the Consumer Protection Department (CPD)<sup>68</sup> was launched in March 2001, to ensure that all aviation consumers obtain the best services in air transportation.

g. Directorate of Air Transport Regulation (DATR): The Nigerian Civil Aviation Authority (NCAA) is statutorily responsible for the safety and economic regulation of the civil aviation industry. In accordance with the provisions of Part IX Section 30(7) (a) of the Civil Aviation Act 2006, NCAA has six Directorates among which is the Directorate of Air Transport Regulation (DATR).The Directorate is responsible for the economic regulation of the aviation industry.

**3. The Federal Airports Authority of Nigeria (FAAN):** The Federal Airports Authority of Nigeria Act, 2004 established the Federal Airport Authority of Nigeria, (FAAN) as a service provider, statutorily charged to manage all Commercial Airports in Nigeria and provide services to both passenger and airlines.<sup>69</sup> It was initially established by Decree No. 45 of 1976 as the Nigeria Airports Authority to maintain and manage airports on behalf of the Federal Government.<sup>70</sup> This was a fall out of the massive airport development Programme of 1975-1980

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<sup>67</sup>Ibid; NCAA operates Aviation Insurance and Non-Aviation Insurance Policies. The Aviation Insurance policy is a cover on NCAA Aircraft, Calibration Equipment and Cabin Crew insurance; the Non-Aviation Insurance Policy covers Motor Vehicle, Fire and Peril Risk, Burglary, Plant all Risk, Cash in transit, Group Personnel, Accident and Workmen Compensation. NCAA prepared an update on the payment of compensation to families of victims of Bellview, Sosoliso and ADC Airlines for presentation to the Senate Committee on Aviation in a stakeholder meeting and the premium demand for the period has been settled by the Authority

<sup>68</sup>Umemba, 'Comparative Legal Analysis of Bilateral Air Service Agreements' supra 48; the CPD has improved on the following passenger's protection area: Prompt lost baggage recovery/compensation, flight delay/cancellation, and crime/crowd control to prevent passengers discomfort and pilferage. Also, foreign airlines have improved their service performance, for example, flight schedules have been adjusted by British Airways so that they no longer arrived at odd hours of the night. Delta Airlines have also committed newer Boeing 777 Aircraft to their Lagos service replacing older Boeing 767s. Note that these actions were in response to passengers' complaints.

<sup>69</sup> See FAAN Act LFN 2004, s1

<sup>70</sup>Ozoka, *Aviation System Planning and Operations* supra 25

in which Government decided to construct an airport in each state capital to complement other modes.<sup>71</sup> There were only 12 states at the time, but today, there are so many airports.

FAAN is entrusted with the following functions:<sup>72</sup> to develop and maintain at airports all necessary services and facilities for the safe operation of aircraft excluding navigation aids, telecommunication facilities and air traffic control services; to provide accommodation and other facilities for the effective handling of passengers and freight; to develop and provide facilities for surface transport within airports; to carry out and exchange economic activities at airports that is relevant to air transportation; to provide adequate security at airports; and the amended decree of 1993 empowers the FAAN to carry and use guns.<sup>73</sup> The development of new airports is the joint responsibility of the Ministry, the NCAA and the FAAN.<sup>74</sup> While the Ministry gives approval, the NCAA coordinates the development for compliance with international requirements and the FAAN on its part supervises the actual construction and ensures proper planning and management of the airports.<sup>75</sup>

**4. The Nigerian Airspace Management Agency (NAMA):** The Nigeria Airspace Management Agency was established by Decree No. 48 of 1999 and commenced operation in January, 2000.<sup>76</sup> Its main functions are to provide effective communication, navigation, surveillance and air traffic management for safe and orderly conduct of flight operations in the Nigerian airspace, and it coordinates aeronautical search and rescue. Although NAMA is a provider of air Navigational Services, it is also a parastatal of the Ministry of Aviation.<sup>77</sup>

**5. The Nigerian Meteorological Agency (NIMET):** The Nigerian Meteorological Agency was established in 2002 and is vested with the responsibility of providing adequate, accurate and timely terminal and en-route weather forecast to civil aviation operators as well as weather information for agriculture, marine, military, energy and water sectors, etc.<sup>78</sup> The agency has been performing its functions well; an example is the 2012 flood prediction in the country that actually came to pass.

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<sup>71</sup>Ibid

<sup>72</sup> See FAAN Act LFN 2004 s3

<sup>73</sup> See Ibid s10(3)

<sup>74</sup>Ozoka, *Aviation System Planning and Operations* supra 25

<sup>75</sup>See generally Olatunmbi Omisore, Kayode Eri and Salisu O Paul, 'Federal Airports Authority of Nigeria (FAAN): A Chronological Description of its Functionality in the Aviation Industry'[2014] (2)(2) *Journal of Good Governance and Sustainable Development in Africa (JGGSDA)*; 193-202

<sup>76</sup>Ozoka, *Aviation System Planning and Operations* supra 27

<sup>77</sup>Ibid

<sup>78</sup>Ibid

**6. The Nigerian College of Aviation Technology (NCAT):** The Nigerian College of Aviation Technology Act, 2004 established NCAT. NCAT is a higher education institute in Zaria. It was formerly known as the Nigerian Civil Aviation Training Centre and was established in 1964. It is charged primarily with the responsibility of training Pilots, Air Traffic Controllers, Aircraft Maintenance Engineers, Aero-telecommunications Engineers, and several other aviation specialists for the Nigerian and African aviation industry.<sup>79</sup> Indeed in the 1970s and early 1980s, it was the African Aviation Centre for Excellence and many Nigerians and African Aviation professionals were trained there. It is a foremost aviation training institution in the West African sub-region. However, today it lacks the modern infrastructure, training equipment, curriculum and up to date instructors who possess knowledge about modern aviation practices.<sup>80</sup>

**7. Accidents Investigation Bureau (AIB):** The Nigerian Civil Aviation Act 2006 is the primary law that established the AIB.<sup>81</sup> The agency is charged with the responsibility of investigating aircraft accidents and serious incidents with a view to determining the causes and proffer safety recommendations that can prevent similar occurrences in future. The agency plays a vital role in furthering the latitude of air safety which explains why the International Civil Aviation Organization (ICAO) recommends contracting states to establish autonomous accident investigation bodies that are separate from other government organs. It is also responsible for assisting families of victims of air accidents and incidents.<sup>82</sup>

### **6.0.Courts' Jurisdiction in the Aviation Sector in Nigeria**

It has been opined that Nigerian courts have not considered the question of jurisdiction for airline liability under article 33 of the Montreal Convention and article 28 of Warsaw Convention. It was further added that, however, in general litigation practice before the courts, the doctrine of *forum non conveniens*<sup>83</sup> is recognised by the Nigerian courts and the courts will

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<sup>79</sup>Training activities in the College are carried out in five Training Schools: Flying School, Aircraft Maintenance Engineering (AME) School, Aeronautical Telecommunications Engineering (ATE) School, Air Traffic/Communications (ATS/Com.) School, and Aviation Management School; see Umemba, 'Comparative Legal Analysis of Bilateral Air Service Agreements' supra 51

<sup>80</sup>Ibid

<sup>81</sup> Civil Aviation Act 2006 s29

<sup>82</sup>Ibid

<sup>83</sup>*Forum non conveniens* is a doctrine applied mostly in common law judicial systems. It allows courts that have jurisdiction over a case to stay or dismiss the case upon a determination that the case may be heard more appropriately in another court. The trial court is given substantial discretion in determining whether a more appropriate forum exists and if so, whether to stay or dismiss in favour of that other court; see Ronald A Brand, 'Forum Non Conveniens'[January 2019] *Oxford Public International*

consider the circumstances of each particular case in recognising or refusing to recognise a particular jurisdiction.<sup>84</sup>

Nonetheless, aviation is on the exclusive legislative list of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 which brings the power and jurisdiction to legislate on Civil Aviation within the sole and exclusive ambit of the National Assembly, and the power to control and manage same within the purview of the Federal Government to the exclusion of any other tier of Government.<sup>85</sup> Jurisdictional conflict between the State and Federal High Courts having been resolved by Decree 107 of 1993 which transformed into Section 251 of the 1999 Constitution, the Federal High Court has Jurisdiction to the exclusion of any other Court in Civil causes and matters relating to Aviation and safety of Aircraft.<sup>86</sup> The cumulative effect of Section 251 (i) (k) and item No. 3 of the exclusive legislative list of Second Schedule to the CFRN, 1999 raised no dispute as to the fact that it is only the Federal High Court that has Jurisdiction to hear and determine any suit or claim arisen from Aviation and safety of Aircraft.

### **7.0. An Assessment of Nigeria's Compliance with ICAO's SARPs**

The formulation and adoption of the SARPs for international civil aviation is the most important legislative function performed by the International Civil Aviation Organisation (ICAO). The SARPs are incorporated into the 19 technical annexes to the Convention on International Civil Aviation (the Chicago Convention).<sup>87</sup> The SARPs for international aviation security were first adopted by the ICAO Council in March 1974 and designated as Annex 17 to the Chicago Convention, which provides for standard procedures and guidelines to regulate security and safety in the civil aviation industry. Annex 17 contains specific provisions on safety standards to safeguard civil aviation against acts of unlawful interference. The most salient provisions of Annex 17 include: Standard 3.2.2, which provides that each contracting state must ensure that there is an authority responsible for the coordination and implementation of security

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Law <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e28> accessed on 17 February 2020

<sup>84</sup> Admin, 'Aviation Liability' [December 2019] *Getting the Deal Through* <https://gettingthedealthrough.com/area/105/jurisdiction/18/aviation-liability-nigeria/> accessed on 17 February 2020

<sup>85</sup> See item No. 3 exclusive legislative list, second schedule of the CFRN 1999 where Aviation including Airports, safety of Aircraft and carriage of passengers of goods by Air were listed

<sup>86</sup> See CFRN 1999 s251 (I) (k)

<sup>87</sup> The SARPs are technical specifications adopted by the ICAO Council in accordance with Article 37 of the Convention on International Civil Aviation in order to achieve: 'The highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.'

controls at each airport; Standard 4.2.2, which provides that each contracting state must ensure that security restricted areas are implemented at airports based on security risk assessments; and Standard 4.2.3, which provides that a contracting state must ensure identification systems are in place to safeguard security restricted areas at airports.<sup>88</sup>

The Nigerian Civil Aviation Authority (NCAA) is responsible for maintaining aviation security and ensuring that the industry is protected from unlawful interference at Nigerian airports. The NCAA promulgated the Civil Aviation Regulations in 2006 to provide national requirements in line with the provisions of the Civil Aviation Act 2006 and to ensure safety management and training systems conform to the Standard and Recommended Practices (SARPs). Part 17 of the Civil Aviation Regulations 2015 on aviation security provides for aviation security programmes, measures, processes, procedures and practices aimed at safeguarding civil aviation against acts of unlawful interference. Part 17 of the regulations incorporates Annex 17 of the SARPs. Despite the current standards, recently there have been issues ranging from malfunctioning aircraft parts to theft and other similar aviation security breaches. The existing safety standards must be adhered to in order to prevent further issues and security threats.<sup>89</sup> Further, it is also expected that airline operators ensure their aircraft are airworthy and have well-functioning parts and compartments to avoid accidents. In a 2018 incident at the Abuja airport, a private jet skidded off the runway during landing due to malfunctioning landing gear.<sup>90</sup> There was also a recent incident where the emergency exit door of an aircraft carrying passengers fell off at Abuja airport.<sup>91</sup> These incidents point to not only a lack of adequate aircraft maintenance, but also the failure to perform periodic inspections by airlines and their operators. If diligent periodic checks are made by appropriate agencies, the risk for accidents will be significantly reduced. By contrast, in the United States, airlines and other

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<sup>88</sup>See generally the Chicago Convention 1944 Annex 17

<sup>89</sup> See George and Etomi Partner, 'Aviation Security and Safety Standards' [May 30 2018] *Newsletters - International Law Office* <<https://www.internationallawoffice.com/Newsletters/Aviation/Nigeria/George-Etomi-Partners/Aviation-security-and-safety-standards#>> accessed on 17 February 2020

<sup>90</sup>NAN, 'Private Jet Skids Off Abuja Runway' [January 25 2018] *The Guardian* <<https://guardian.ng/news/private-jet-skids-off-abuja-runway/>> accessed on 17 February 2020; Olusegun Koiki, 'Nestoil Jet Crashes at Abuja Airport Over Landing Gear' [January 26 2018] *Independent Newspaper* <<https://www.independent.ng/nestoil-jet-crashes-abuja-airport-landing-gear/>> accessed on 17 February 2020

<sup>91</sup>Munachim Amah and Bukola Adebayo, 'Passengers Panic as Aircraft's Emergency Door Falls Off' [February 9 2018] *CNN* <<https://edition.cnn.com/2018/02/09/africa/dana-airlines-exit-door-falls-off/index.html>> accessed on 17 February 2020; Chinedu Eze, 'Panic as Dana Air Aircraft Emergency Door Falls Off' [February 8 2018] *This Day* <<https://www.thisdaylive.com/index.php/2018/02/08/panic-as-dana-air-aircraft-emergency-door-falls-off/>> accessed on 17 February 2020

commercial operators undergo a continuous inspection programme approved by the Federal Aviation Administration.

Another issue affecting aviation security in Nigeria relates to stowaways. A 'stowaway' is a person who discreetly boards an aircraft in order to travel to another destination without paying the fare and avoids being noticed.<sup>92</sup> Stowaways are likely to have been aided by personnel working at the airport who have regular access to restricted areas.<sup>93</sup> As a result, even airport security cameras and security personnel have been unable to identify and act on this security breach. This implies that security at Nigerian airports does not comply with the prescribed safety standards as prescribed in Annex 17 Standard 3.4.3 of the SARPs, which states that personnel carrying out screening should be certified in accordance with the requirements of the national civil aviation security programme (NCASTP). The requirements of the NCASTP include the following: security personnel must undergo an aviation security course from a certified training provider; a proper background check must be made on security personnel; and training certificates must be issued. Insufficient security checks can also be attributed to the lack of adequate security facilities and skilled personnel with adequate knowledge of safety standards. Some countries have successfully tackled the issue of stowaways at airports by ensuring adequate security facilities and engaging skilled personnel, including paramilitary forces as security.<sup>94</sup>

Another safety and security issue affecting the aviation industry in Nigeria is the issue of theft. Recently, a private jet allegedly had its cargo compartment robbed while it was taxiing on the runway at Lagos airport to the arrival hangar.<sup>95</sup> This suggests that airport security personnel failed to ensure that access to restricted areas was sufficiently controlled through the use of an airport restricted area permit system to identify and grant access to only authorised persons and vehicles. In Canada, in order to restrain unauthorised persons from restricted areas at the airport,

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<sup>92</sup>See the Oxford Advanced Learner's Dictionary <<https://www.oxfordlearnersdictionaries.com/definition/english/stowaway>> accessed on 17 February 2020

<sup>93</sup>See ChineduEze, 'Nigeria: Stowaways and Their Desperation to Leave Nigeria'[July 14 2017] *This Day* <<https://allafrica.com/stories/201707140056.html>> accessed on 17 February 2020

<sup>94</sup>AmahaFelekeSenu, 'The Global Assemblage of Multi-Centred Stowaway Governance' (PhD thesis, Cardiff School of Social Sciences, Cardiff University, January 2018)

<sup>95</sup>See OladeindeOlawoyin, 'FAAN Speaks on Alleged Robbery of Taxiing Aircraft'[December 28 2017] *Premium Times* <<https://www.premiumtimesng.com/news/top-news/253782-faan-speaks-alleged-robbery-taxiing-aircraft.html>>accessed on 17 February 2020; see also ChineduEze, 'AtedoPeterside Confirms His Jet Robbed on Lagos Tarmac'[April 6 2019] *This Day* <<https://www.thisdaylive.com/index.php/2019/04/06/atedo-peterside-confirms-his-jet-robbed-on-lagos-tarmac/>>accessed on 17 February 2020

the Canadian Air Transport Security Authority introduced a restricted area identity card which is issued after regular security checks are conducted and contains biometric information, including fingerprints and iris scans of the cardholder.<sup>96</sup> Nigerian aviation security authorities should adopt similar methods of restriction, which would foster a better standardised airport technology system to aid with such security issues.

Another vital ICAO's SARPs is Standards 8.17, 8.18 and 8.19 of Annex 9 to the Convention on International Civil Aviation (Chicago Convention) which obliges Nigeria, like other Contracting States, to implement a National Air Transport Facilitation Programme (NATFP) to facilitate and expedite navigation by aircraft between Nigeria and the territories of other ICAO Contracting States to prevent unnecessary delays to aircraft, crews, passengers and cargoes, especially in the administration of the law relating to immigration, quarantine, customs and other clearances at airports. Nigeria, having domesticated the ICAO's Standards and Recommended Practices (SARPs) relating to Annex 9 (Facilitation) to the Chicago Convention, has inculcated its provisions into its legal framework.<sup>97</sup> The National Air Transport Facilitation Programme was promulgated in Nigeria on 24<sup>th</sup> June, 2007 but after the Eighth FAL Panel meeting held in 2014, Montreal and particularly the report of the Facilitation Panel Working Group on Guidance Material regarding guidance on how States may comply with Standards 8.17, 8.18 and 8.19 of Annex 9 to the Convention on International Civil Aviation, Facilitation; Nigeria updated its NATFP in the year 2015 in line with the accepted model. The National Air Transport Facilitation Committee (NATFC) was thereafter, established to implement and manage the provisions of the NATFP. The Airport Facilitation Committee also coordinates facilitation activities of the Programme at the airport level. The Act stipulates that the responsibility for implementing the NATFP in accordance with SARPs on Annex 9 (Facilitation) in Nigeria is within the purview of NCAA. The Airport Facilitation Committee also meets quarterly.<sup>98</sup>

Despite these laudable efforts, the implementation of the NATFP in Nigeria is fraught with numerous challenges that make Nigeria fall short in Complying with Standards 8.17, 8.18 and

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<sup>96</sup>George and Etomi Partner, 'Aviation Security and Safety Standards' supra

<sup>97</sup>See Part IX Section 30(1a) of the Nigerian Civil Aviation Act 2006 and Part 18.8 of the Nigeria Civil Aviation Regulations 2015 (NCAR)

<sup>98</sup>ICAO, 'Challenges Faced in Implementation of the Nigerian National Air Transport Facilitation Programme'[2018] *Information Paper* <<https://www.icao.int/WACAF/Documents/Meetings/2018/FAL-IMPLEMENTATION/Nigeria%20Presentation%20v.2.pdf>> accessed on 17 February 2020

8.19 of Annex 9 to the Convention on International Civil Aviation, 1944 (Chicago Convention). These challenges include:

- Difficulty in obtaining the commitment of Heads/CEOs of parastatal Agencies/Departments who are members of the Committee to send representatives who can take decisions for their organizations at the meetings;
- Lack of synergy amongst the concerned Ministries, Departments and Agencies (MDAs) relevant to the implementation of the programme;
- Limited consideration accorded to persons with reduced mobility (PRM) in accessing services and facilities;
- Lack of a complete database system that will invariably enhance the harmonization of the various security checks at the airports; and
- Insufficient number of thermal scanners to reduce the risk of communicable diseases being imported into the country, through the International airports in Nigeria; inter alia.<sup>99</sup>

Another vital area of compliance that requires assessment is Nigeria's compliance to SARPs on aviation environment. These International Civil Aviation Organizations' Standard and Recommended Practices (ICAOs' SARPs) are contained in Annex 16 Vol. II of Chicago Convention. These Standards and Recommended Practices were created and adopted by the International Civil Aviation Organization (ICAO), for the purpose of regulating aircraft emission in the aviation sector. The creation of ICAO Standards And Recommended Practices on aviation environment came up in 1981, as a result of the declaration in Article 2(2) of Kyoto protocol to the United Nations Framework Conventions on Climate Change (UNFCCC),<sup>100</sup> that developed countries of (Annex I parties), shall pursue limitation or reduction of emission of greenhouse gases from aviation by working through the International Civil Aviation Organization (ICAO). In Nigeria, the relevant Act and regulations for compliance and implementation of international law for protection of aviation environment include the Civil Aviation Act 2006, the Civil Aviation Regulations, 2012 and 2015.

The Nigerian Civil Aviation Regulations 2015 was introduced as a follow up to the Nigerian Civil Aviation Regulations 2012 which was complained to lack provisions for reduction of

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<sup>99</sup>Ibid 2

<sup>100</sup> Article 2 (2) of Kyoto Protocol delegates responsibility for reduction of greenhouse gases in the aviation sector to ICAO

aviation emission. Among the aims of the 2015 Regulations is ensuring alignment of the Nigerian Civil Aviation Regulations with the recent amendment of International Civil Aviation Organization (ICAO), in response to observation received from stake holders from aviation industry through completion of regulations in the ICAO annexes. Also the aim is to standardized operational procedure, implementation and enforcement in the industry.<sup>101</sup> The new Regulations are made up of twenty parts. It is updated to include part 20 on safety management in line with ICAO regulations. Part 1 deals with the General Policy, part 2 deals with Personnel Licensing, part 3 is on Aviation Training Organization, part 4 is on Registration and Marking, part 5 is about Air Worthiness while part 6 is on Approved Maintenance organization. Part 7 is for instrument and equipment, part 8 deals with Operations, part 9 part is about Operator Certification and administration, part 10 is on Commercial Air transport by foreign air carrier within Nigeria, Part 11 is on Commercial Aircraft Operation used for specialised services, part 12 deals on Aerodrome Regulations, part 14 is on Air Navigation Services, part 15 is about Carriage of dangerous goods by air, part 16 is on Environmental Protection Regulations, part 17 is on Aviation Security, part 18 is on Economic Regulation, part 19 deals with Consumer Protection Regulations while part 20 is on Safety Management.<sup>102</sup>

However, part 16 which provides for Aviation Environmental Protection is the relevant part on reduction of aviation emission. A careful study of part 16 of NCAR 2015 shows that it is made up of three sub parts namely, Noise Certification, Prevention of Intentional Fuel Venting and Emission Certification. Part 16.1-16.7 deals with various regulatory requirements for noise certification. Part 16.18-16.18.2 deals with Vented Fuel Administration on aircraft, its applicability and prevention of international fuel venting by aircraft. According to the above, it is stated that aircraft shall be designed and constructed as to prevent international discharge of liquid fuel into the atmosphere from the nozzle manifold, during the process of engine shut down after normal flight or aircraft operations on the ground. The provision of this subpart applies to all engine powered aircraft embarking on international flight after 18<sup>th</sup> February 1982. Certification on Vented Fuel prevention shall be granted by the Nigerian Civil Aviation Authority after providing satisfactory evidence of compliance with aircraft engines requirement. In comparison with the provisions in the Nigerian Civil Aviation Regulations 2012 it is observed

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<sup>101</sup> See Murtala GAMurgan and GhafurAhmid, 'Assessment of Implementation of International Law on Reduction of Aviation Emission Under the Nigerian Civil Aviation Regulations 2015' *NAUJILJ* 10 (1),(2019); 56

<sup>102</sup>See NCARs 2015

that part 16.18-16.18.2 of the new Nigerian Civil Aviation Regulations 2015 contains standard and recommended practices on reduction of aviation emission which are not contained in the 2012 regulations. Therefore, the NCAR 2015 is an improvement on 2012 Civil Aviation Regulations in the sense that it provides for reduction of aviation emission. The NCAR 2015 is a change from the general belief that lack of provision of regulations for reduction of aviation emission in the Nigerian Civil Aviation Regulations 2012 is responsible for non-implementation of international Regulations on reduction aviation emission in Nigeria. Based on the above, there is provision for reduction of aviation emission in the Nigerian Civil Aviation Regulations 2015. On relevance of NCAR 2015 to reduction of aviation emission, based on the fact that the provisions on part 16.18- 16.18.2 of the NCAR 2015 are meant for reduction of aviation emission, part 16.18-16.18.2 is very much relevant to reduction of aviation emission. On Compliance with implementation of ICAO International standard Regulations on reduction of aviation emission, it is observed that inclusion of provisions 16.18-16.8.2 which call for prevention of Vented fuel during aircraft operation in the air or on the ground in Nigeria, clearly shows that the ICAO international Regulations and standard requirement on reduction of aviation, have been greatly adopted into the Nigerian Civil Aviation Regulations 2015. However, as regards the issue of actual implementation of international regulations on reduction of aviation emission which involves utilization, administration and monitoring application of International Standards on fuel venting on aircraft in Nigeria, it is observed that the Department of Air Transport Regulations (DATR) of the Nigerian Civil Aviation Authority officially agreed to carry out the implementation activities on prevention of fuel venting with effect from July 1, 2016. Apart from the above, it is observed that no report has been available on implementation of International Standard on Fuel Venting by the NCAA. Likewise, although the adoption of International Regulations on reduction of aviation emission has commenced in the Nigerian Civil Aviation regulations 2015, its implementation is still inadequate because it will need time to mature and take shape. A careful study of the revised 2015 Regulations shows that Part 16, 19-, 16.39 deals with Engine Emission Certification for aircraft that are involved in international air navigation. This process includes emission certification, administration of emission certification and its applicability on turbo jet and turbo fan engines intended for propulsion only at subsonic speeds. Emissions shall be controlled for certification of aircraft engine on smoke, gaseous

emission, unburnt hydro carbons, carbon monoxide, and oxides of Nitrogen.<sup>103</sup> On comparison with the Nigerian Civil Aviation Regulations 2012, it is observed that the newly revised Nigerian Civil Aviation Regulations 2015, improved upon the inadequacies of Nigerian Civil Aviation regulations 2012 as its part 16. 19, 16.19-39 now provides standard and recommended practices on reduction on aircraft engine emission certification thereby contributing to reduction of aviation emission. On relevance to reduction of aviation emission, it is observed that sub part 16.19- 16.19.39 is concerned about reduction and certification of aircraft engine emission; therefore it is highly relevant to reduction of aviation emission. On implementation of international regulations, it has been stated that the main objective of introducing the newly revised Nigerian Civil Aviation Regulations 2015, is to align and ensure compliance with the international standard and practices of the International Civil Aviation Organization on reduction of aviation emission as provided in Annex 16 Volume II of Chicago Convention 1944. Accordingly, part 16.19- 16.19.39, clearly adopted the provisions of ICAO Annex 16 Vol. II of Chicago Convention when it states that the Nigerian Civil Aviation Authority shall grant emission certificate based on satisfactory evidence that aircraft engine complies with stringent requirement which are equal with this sub part. It also states that compliance with emission level of subpart 16.18.2 and 16.18.3 shall be demonstrated by using the procedure described in appendix 6 of ICAO Annex 16 Vol. II.<sup>104</sup> Further, the information applicable to the engine type and required for issuance of engine certificate shall include: the name of authority, manufacturers type and model justifications, statement of additional modification, modest thrust, reference pressure ratio and others. The above requirement shall however be applicable to turbo jet and turbo fan engine intended for propulsion only at subsonic speeds.<sup>105</sup> The above shows that the Nigerian Civil Aviation Authority has adopted the provisions of ICAO International Standard Regulations on reduction of aviation emission into the Nigerian Civil aviation Regulations 2015. The above is a similar practice with other counterpart countries likes the US and the UK.

However, with regard to proper act of implementation of international standard and regulations on reduction of aviation emission which involves utilization, administration and monitoring application of international standard and regulations on aircraft, it is also observed

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<sup>103</sup> See Part 16.18-16.8.2 of The Nigerian Civil Aviation Regulations 2015 as contained Federal Republic of Nigeria Official Gazette, Lagos, 10th February 2016

<sup>104</sup> See Subpart 16.18.2 and 16.18.3, Nigerian Civil Aviation Regulations 2015 <[www.ncaa.gov.ng/new-civilaviation-regulations](http://www.ncaa.gov.ng/new-civilaviation-regulations)> accessed on 17 February 2020

<sup>105</sup> Ibid

that the officially approved take off time of July 2016 did not allow implementation of International Standard and Regulation on reduction of aviation emission take place on time in the Nigerian Civil Aviation Authority. While no report is available from the NCAA on implementation of regulations on aircraft emission, the remaining period from July to December 2016 is considered not adequate for recording a meaningful assessment of implementation of International Standard regulation on Aircraft Emission Certification in Nigerian Civil Aviation Regulation. Therefore, while it can be said that International Regulations on reduction of aviation emission has been adopted in the Nigerian Civil Aviation Regulations 2015, its implementation is inadequate because it is yet to mature and become fully applied by 2017. This inadequacy in implementation will soon need to be improved upon. To further buttress the claim that the implementation of International Standards and Regulations is yet to take place in Nigeria, it is clearly observed in the official statement released by the Nigerian Civil Authority in August 2017, that Nigeria will join the International Civil Aviation Organization on the implementation of the pilot phase of Carbon Offsetting Reduction Scheme for International Aviation (CORSIA) in 2021.<sup>106</sup> These indices confirm the poor position of Nigeria on reduction of aviation emission and mitigating the menace of flood and climate change in Nigeria.<sup>107</sup>

### **8.1. Conclusion**

There are basically three segments in the aviation sector, namely: the airspace, airlines and the airports and different legislations and regulatory bodies oversees all these three segments. Examining the legislations and regulatory bodies shows that the regulatory structures of the Nigerian Civil Aviation sector conforms to that stipulated by ICAO. This is a big step forward compared to the pre-1990s and 1990s when the regulatory structure was a far cry from what was stipulated by ICAO. This is not to say that the Nigerian aviation sector has reached the pinnacle of excellence, more work still has to be done to raise the standard in the sector to fully, or at best substantially, comply with ICAOs' SARPs. For instance, the speed at which the NCAA treats infractions by air operators is commendable but more has to be done in the area of compliance to the rules and regulations of the body. The body still has to do more to forestall infractions so as to improve the aviation industry. The area of airport terminal also has a fair performance as improvements are continuously carried out at various terminals across the country. The area of

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<sup>106</sup> See press statement of Captain MuhtarUsman, Director General, Nigeria Civil Aviation Authority as reported in MaurenIhuhaMaluhenyi, *Punch News Paper*, Nigeria, 24, August 2017

<sup>107</sup> See generally Murgan and Ahmid, 'Assessment of Implementation of International Law' supra

airport security is still lacking, because there has been a raise in the number of stowaways.<sup>108</sup> This can be attributed to the structure of most of the airports. For example, the runways in some Nigerian airports can be accessed by residents of communities close to airport and this is a serious security breach which needs immediate attention. More effort has to be put in place to ensure adequate security in the airports. The provision of safety nets or fence around the airport will also help the security at the airports. Another recommendation will be the prevention of residential communities close to the airport. A particular radius round the airport should be devoid of residential buildings. This will further enhance the security of the airports. Currently, most of the airports in Nigeria are not certified. Efforts should be made to certify these airports.

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<sup>108</sup>R Fasan, 'Security Agencies, Stowaways and Air Safety in Nigeria'[2013] *Vanguard* <<http://www.daargroup.com/daar-group/latest-news/vanguardngrsecurity-agencies-stowaways-and-air-safety-in-nigeria>>accessed on 18 February2020