



AIR PASSENGERS' RIGHTS UNDER INTERNATIONAL
AIR LAW AND NIGERIAN LAW: ISSUES ON
PROTECTION AND DISPUTE RESOLUTION

BY

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ABSTRACT

The key tripartite players in international and domestic air transportation are the regulators, air carriers and air passengers. While the government provides the legal and regulatory framework and air carriers offer air transportation service, the air passengers are the travellers constituting an important organ of air carriage. Although both the international and Nigerian legal regime provides for some air passengers' rights, airlines in Nigeria are insensitive to and violate these rights. For instance, the obligation of informing air passengers of their rights by airlines is merely in the books, delays and cancellation of scheduled flights are common with no enforcement. Currently, there is an unresolved institutional conflict between the Nigerian Civil Aviation Authority (NCAA)/Consumer Protection Directorate (CPD) and the Nigerian Consumer Protection Council (CPC) on the jurisdiction of protecting air passengers' rights. Legally, air passengers can sue airlines before the Federal High Court (FHC) to enforce their rights, but this option is characterised with shortfalls such as technicalities, cost and delays. The research work explored these problems and suggests ways of strengthening the judicial option. Similarly, the lack of efficient Alternative Dispute Resolution (ADR) mechanism limits air passengers' options. It is against this background that the research examined the International and Nigerian legal regime on air passengers' rights and analysed the practices of the United States of America (USA) and the European Union (EU). The reason for selecting these jurisdictions is to draw lessons on the International Best Practices (IBP) for improving air passengers' rights in Nigeria. The research employed both Doctrinal and Non-doctrinal methods and examined the relevant international and Nigerian legal and institutional regime on air passengers' rights. The research also interviewed the staff of the NCAA/CPD, CPC, some air carriers, air passengers and legal practitioners and evaluated their responses. The research finds that both the international and Nigerian legal and institutional regime are weak and lacks effective enforcement mechanism. The terms and conditions in a standard flight ticket are unilaterally issued by the airlines to passengers on a "take it or leave it" basis. The limiting and exclusion clauses in such tickets is an abuse of the principle of freedom of contract. It is found also that Islamic law has comprehensively provided for the rights and compensation of parties to contract and air passengers have adequate protection therein. The research also finds that the CPD is not a creation of any law, ADR mechanism and air passengers' complaint procedure are not clearly defined. The research recommends for harmonization of the Nigerian institutional framework to break the inherent institutional conflict to have synergy in their operations. The Constitution of the Federal Republic of Nigeria, 1999 and the Civil Aviation Act, 2006 be amended to confer jurisdiction to state high courts to determine aviation matters, formally adopt ADR scheme, legally establish the CPD and create an independent Air Passengers' Dispute Resolution Committee (APPDRC) to protect, enforce and resolve air passengers' rights disputes. A mandatory, uniform, simple, fast and practical method of determining complaints be put in place. Finally, improved air passengers' education, enhanced regulatory supervision, adequate sanctions and positive engagements with airlines should be entrenched to strengthen air passengers' rights protection and dispute resolution in Nigeria.

ملخص البحث

الجهات الثلاثة الرئيسية في الطيران المدني هم المنظمون وشركات النقل والركاب. فبينما تقوم الحكومة بتوفير الأنظمة والقوانين وتقوم شركات الطيران بتقديم خدمة النقل الجوي، يمثل الركاب العمود الأساسي في هيكل النقل الجوي. وعلى الرغم من أن الأنظمة الدولية والنيجيرية تنص على بضع من حقوق الركاب، فإن مقدمي خدمات النقل الجوي في نيجيريا يقومون بانتهاك هذه الحقوق ولا يعطون لها اية أهمية. فعلى سبيل المثال، فإن الالتزام بإبلاغ وإعلام الركاب بحقوقهم يكاد لا يكون إلا بالكاتب وكذلك الحقوق المعترف بها المتعلقة بمشاكل شائعة مثل تأخير وإلغاء الرحلات لاتزال غير إلزامية. وفي الوقت الحالي، هناك اختلاف مؤسسي بين هيئة الطيران المدني النيجيرية (NCAA) وبين مديرية حماية المستهلك (CPD) والمجلس النيجيري لحماية المستهلك (CPC) فيما يتعلق بالسلطة القضائية لحماية حقوق الركاب. قانونياً، يمكن للركاب مقاضاة شركات الطيران للمحكمة الاتحادية العليا (FHC) للحصول على حقوقهم؛ إلا أن هذا الخيار مليء بالعيوب كالعيوب الفنية والمادية والزمنية. حيث طالع البحث هذه المشاكل وقدم اقتراحات لتعزيز الخيار القضائي. كما أن عدم وجود البدائل الفعالة لتسوية النزاعات (ADR) يقلل من الخيارات المتاحة للركاب. وفي ضوء هذه الخلفية؛ درس البحث القوانين والأنظمة الدولية والنيجيرية الخاصة بحقوق الركاب وحلل الممارسات المتبعة في الولايات المتحدة الأمريكية (USA) والاتحاد الأوروبي (EU). حيث أن السبب في اختيار هذه السلطات هو للاستفادة من تجربتها كونها الرائدة في المجال والمطبقة لأفضل الممارسات الدولية (IBP) لتحسين حقوق ركاب النقل الجوي في نيجيريا. لهذا الغرض، استخدم البحث أساليب أكاديمية قانونية وأساليب تطبيقية وطالع القوانين الدولية والنيجيرية المتعلقة بحقوق الركاب. كما أجرى البحث مقابلات مع موظفين من هيئة الطيران المدني النيجيرية (NCAA) ومن مديرية حماية المستهلك (CPD) ومن المجلس النيجيري لحماية المستهلك (CPC) ومن بعض شركات الطيران، كما أجرى مقابلات مع أشخاص من المتمرسين في القانون ومع بعض الركاب ومن ثم حلل هذه المقابلات. ويخلص البحث إلى أن الأنظمة والقوانين الدولية

والنيجيرية تفتقر إلى آلية فعالة لحماية حقوق الركاب وإلى أن الشروط والأحكام في تذاكر الطيران القياسية تصدر من جانب واحد فقط ألا وهو شركات الطيران فإضافة قاعدة "خذها أو اتركها". وهذه التذاكر مليئة بشروط من الحد والإقصاء وهذا يعد انتهاكاً لمبدأ الحرية في التعاقد. بالإضافة إلى ذلك، فإن الشريعة الإسلامية قد شملت الحفاظ على الحقوق ومنها حق التعاقد وحق التعويض للمسافرين حيث أن هذه الحقوق تأمن لهم الحماية الكافية. يجد البحث أن النظام المؤسسي النيجيري ضعيف في فرض وتطبيق حقوق الركاب حيث أن مديرية حماية المستهلك (CPD) لم يتم انشاءها بناء على أي قانون كما أن آلية تطبيق البدائل في تسوية النزاعات (ADR) وإجراءات شكاوي الركاب غير منظمة. بناء على ذلك، يوصي البحث لتنسيق النظام المؤسسي النيجيري وحل الخلاف لإنشاء جو من العمل التعاوني. كما يوصي بتعديل القوانين ذات صلة مثل دستور الجمهورية الاتحادية النيجيرية لعام ١٩٩٩ وقانون الطيران المدني لعام ٢٠٠٦ لمنح السلطة القضائية للمحاكم العليا في المحافظات وحل المسائل المتعلقة بالطيران واعتماد نظام لتسوية النزاعات وإقامة مديرية رسمية لحماية المستهلك وإنشاء لجنة مستقلة لتسوية النزاعات (APPDRC) لتقوم بحماية وتطبيق وحل النزاعات المتعلقة بحقوق الركاب. ويجب وضع منهج لاتخاذ قرارات تتعلق بالشكاوي تكون إلزامية وموحدة وتتميز بالبساطة والسرعة والعملية. أخيراً، ينبغي تحسين وعي الركاب لحقوقهم وتحسين الأنظمة المشرفة على العمل؛ كما ينبغي وضع العقوبات الكافية وترسيخ العلاقات الإيجابية مع شركات الطيران لتعزيز حماية حقوق الركاب وتسوية النزاعات.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or any other institution.

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To my beloved family members particularly my parents and siblings, who fervently supported me with prayers and to my dear wife who significantly provided me with assurances during my constant traveling. Her unalloyed support enabled me to focus on both the essence and quality of my PhD thesis.

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LIST OF ABBREVIATIONS

AC	Advisory Committee.
ACA	Arbitration and Conciliation Act.
ACAC	African Civil Aviation Commission.
ACO	Aviation Consumer Ombudsman.
ADA	Airline Deregulation Act.
ADR	Alternative Dispute Resolution.
AFCA	African Civil Aviation Policy.
AFCAP	African Civil Aviation Policy.
AGF	Attorney General of the Federation.
AIPB	Accident Investigation and Prevention Bureau.
All FWLR	All Federation Weekly Law Report.
APBR	Air Passenger Bill of Rights.
APO	Air Passenger Ombudsman.
APPDRC	Air Passengers' Protection and Dispute Resolution Committee.
APR	Air Passenger Rights.
AU	African Union.
AUC	Air Transport Users Council.
CA	Court of Appeal.
CAA	Civil Aviation Act.
CAA	Civil Aviation Authority.
CADR	Centre for Alternative Dispute Resolution.
CDR	Consumer Dispute Resolution.
Cir.	Circuit.
CJ	Chief Judge.
CJEU	Court of Justice of European Union.
CPC	Consumer Protection Council.
CPD	Consumer Protection Directorate.
DBR	Denied Boarding Regulation.
DG	Director General.
DOT	Department of Transportation.
EASA	European Aviation Safety Agency.
EC	European Commission.
ECC-Net	European Consumers Centres Networks.
ECOSOC	Economic and Social Council.
ECOWAS	Economic Community of West African States.
EU	European Union.
FAA	Federal Aviation Agency.
FAA	Federal Aviation Authority.
FAAN	Federal Airport Authority of Nigeria.
FCT	Federal Capital Territory.
FHC	Federal high Court.
FRN	Federal Republic of Nigeria.
GCC	General Conditions of Carriage.
HC	High Court.
HIV	Human Immunodeficiency Virus.

IATA	International Air Transport Association.
IBA	International Bar Association.
IBP	International Best Practices.
ICAN	International Commission for Air Navigation.
ICAO	International Civil Aviation Authority.
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant Economic, Social and Cultural Rights.
ICJ	International Court of Justice.
ICT	Information and Communication Technology
KLIA	Kuala Lumpur International Airport.
LFN	Laws of the Federation of Nigeria.
MAKIA	Mallam Aminu Kano International Airport.
NAIA	Nnamdi Azikwe International Airport.
NAMA	Nigerian Airspace Management Agency.
NAMA	Nigerian Metrological Agency.
NBA	Nigerian Bar Association.
NCAA	Nigerian Civil Aviation Authority.
NCAP	National Civil Aviation Policy.
NCARs	Nigerian Civil Aviation Regulations.
NCPC	Nigerian Consumer Protection Council.
NEC	National Enforcement Centre.
NGOs	Non-Governmental Organizations.
Nig. CARs	Nigerian Civil Aviation Regulations.
NWLR	Nigerian Weekly Law Report.
OAEP	Office of Aviation Enforcement and Proceedings.
ODR	Online Dispute Resolution.
PACT	Passenger Advice and Complaints Team.
PNR	Passenger Name Record.
PRM	Passenger with reduced mobility (disabled).
Pt.	Part.
<i>s.a.w</i>	<i>Sallallahu Alaihi Wasallam</i> (Peace be Upon Him)
SARP's	Standard and Recommended Practices.
SC	Supreme Court.
SDR	Special Drawing Rights.
SICJ	Statute of the International Court of Justice.
UAVs	Unmanned Aerial Vehicles.
UDHR	Universal Declaration of Human Rights.
UK	United Kingdom.
UN	United Nations.
USA	United States of America.
USC	United States Code.
USD	United States Dollars.
USDOT	United States Department of Transportation.
WTO	World Trade Organization.
WWI	World War I.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

The insatiable needs of man necessitated his movement from one place to another and one means by which he has been doing this is by flying in the airplane. Indeed, Air transportation also referred to air carriage is the fastest means of transportation and this is an advantage over other means of transportation.¹ Air transportation is governed by civil aviation law which is synonymous with air law, aeronautical law, air transportation law, etc.² The relevance of aviation in the economic development and integration of nations cannot be over emphasized. Air carriage easily unites nations and facilitate economic growth and development.³ The major players in the aviation industry are the regulators, air carriers and air passengers. While the government come up with the legal and regulatory framework, air carriers provide air transportation service and the passengers are the travellers constituting an important organ in commercial air transportation.

The international nature of aviation law makes it imperative to look at not only the municipal laws, but relevant treaties and conventions. International conventions like the Warsaw Convention, 1929⁴ and the Montreal Convention, 1999⁵ are

¹ Shawcross and Beaumont, *Air Law* (4th edition) vol.1 Butterworth London (2000), 1.

² Ewakwe C. E, *Introduction to Civil Aviation Law in Nigeria*, 1st edition. Aviation publishing and Consultancy Co. Ltd (2006), 2-3.

³ Mark Smyth Brian Pearce, "Aviation Economic Benefits" IATA Economics Briefing, Available at https://www.iata.org/whatwedo/Documents/economics/aviation_economic_benefits.pdf 2007 (accessed 30 January, 2016).

⁴ The Warsaw Convention is referred as Convention for the Unification of Certain Rules relating to International Carriage by Air, Signed at Warsaw on 12 October, 1929. The Government of Nigeria declared that it is bound by the Convention (before Nigeria became independent, acceptance of the Convention was effected by the United Kingdom on 3/12/1934). This Convention applies to all International carriage of persons, luggage or goods performed by aircraft for reward as well as to