

# Appraising The Legal Mechanism for Aviation Safety and Security Enforcement in Nigeria

By

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## ABSTRACT

*The need for aviation safety and security enforcement in Nigeria cannot be over emphasized. This is because of the plane crashes that Nigeria has experienced in recent times despite the safety mechanism that have been put in place at both domestic and international levels. The world community acknowledged the need to achieve safety in international aviation through uniformity of law by establishing an organization to govern international aviation, with quasi-legislative power to prescribe standards governing international aviation safety and obliging Member States to implement and enforce these standards through their domestic laws. Yet, these standards of operation are only sluggishly being achieved. Against this backdrop the objective of this paper is to examine the extent to which the existing legal regime on aviation safety and security in Nigeria can contend with the practical operational mechanisms of the relevant institutions. We observe that, the cumulative powers of the Nigerian Civil Aviation Authority (NCAA) under Section 27 and 57 of the Act, and that of Part 1.3 of the 2015 Aviation Regulations on the investigative and enforcement powers of the NCAA seem too wide and sweeping and go beyond the normal exercise of administrative powers. It is more of judicial powers within the confine of Section 6 of the 1999 Constitution to impose fines, try offenders, convicts and sentence offenders to imprisonment. Accordingly it is one of our recommendations that, the judicial powers exercised by the NCAA enforcement personnel in its enforcement mechanisms' need to be formalized through further legislation to endow the NCAA enforcement personnel with the judicial powers of either a Magistrate or an inferior court to promptly and without judicial technicalities hear and decide on aviation matters bordering on enforcement of safety and security mechanisms within the purview of Section 6 of the 1999 Constitution (as amended).*

**Keywords: Aviation, Safety, Security, Laws and Enforcement**

## 1.1 Introduction

Aviation safety and security are both designed to avoid injuries to persons and property, and the deprivation of man's most valuable attribute which is life. Yet, the two are quite different. Safety regulation focuses on preventing *accidental* harm. Security regulation focuses on preventing *intentional* harm. Since the collapse of the World Trade Centre twin Towers in New York during the terrorist attack on September 11, 2001, security has become a paramount concern in international aviation community,<sup>1</sup> yet a passenger is ten times more likely to lose his life in an aviation safety-related accident than in an aviation security event.<sup>2</sup> Hence, the study of aviation safety is of far more practical importance than the more emotionally driven study of aviation

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<sup>1</sup>. Paul, S D 'Aviation Security; The Role of Law in the War Against Terrorism' [2003] *International Journal of Management and Development Studies* pp649-656. Available online at <https://org.doc.researchgate.com> accessed on 25<sup>th</sup> April, 2022 at 1:31pm

<sup>2</sup>. John, S 'Worldwide Safe Flight: With the International Financial Facility for Aviation Safety How It Happen?' [2013] *Journal of International Maritime Law*, Vol.19.5, p537

security. Safety must be among the highest priorities in commercial aviation.<sup>3</sup>All statistical evidence indicate that international aviation has become decidedly safer in recent decades, though much of that positive result can be attributed to improvements in technology, much can also be attributed to improvements in the law. Any chronological review of the development of international aviation law must begin with the treaty of international civil aviation, the Chicago Convention of 1944. This multilateral agreement created the International Civil Aviation Organization (ICAO) and gave its quasi-legislative authority to promulgate standards and recommended practices (SARPs) as Annexes to the Chicago Convention. These standards are arguably binding upon member states that fail to notify ICAO of the differences in their domestic law, as member States are under obligation to formally inform the ICAO if they have objection to any provision of the ICAO standard and recommended practices.

However, the focus of this paper is the application and efficiency of Section 27 (1-3) of the Civil Aviation Act 2006<sup>4</sup> by the NCAA with respect to its power to enforce security and safety regulations vis-a-vis adoption of the Chicago Convention 1944 whose application, Section 30(1) of the Civil Aviation Act 2006 legalized along with its annexes and the standard and recommended practices. For example, Section 27(1-3) and Sections 34-45 empowers the NCAA to conduct oversight functions in enforcing provisions of the Act in relation to safety regulations vis-a-vis issuance of licenses, operating permits and ensuring strict compliance with contents of the operating licenses. However, section 28(1-3) empowers the Minister of Aviation to give directives which the NCAA must be guided by within its activities. Same scenario is provided under Section 29(10) of the Act where the Minister is empowered to make regulations on aircraft accidents investigation for the Accident Investigation Bureau to comply and function with. Against this backdrop, the objective of this paper is to analyze the enforcement mechanisms provided by relevant provisions of Chicago Convention 1944 in relation with Sections 27(1-3), 37-45,<sup>5</sup> and 29(10) of the Civil Aviation Act and Part 1.3 of the 2015 Civil Aviation Regulations with a view to ascertain how the NCAA implement and enforce relevant laws and regulations without infringing on the sweeping powers of the minister that may impaire such implementation and enforcement mechanisms.

## 1.2 Meaning of Aviation Enforcement

Aviation enforcement means that states must follow the procedural requirements embodied in international obligations where they are signatories. This was the lesson from the *British Caledonian Airways Ltd. v. Bond*<sup>5</sup>, the only case in which the United States has been brought before a court for violating the Chicago Convention. On May 25, 1979, an engine tore off the wing of American Airlines flight 191, a DC-10, shortly after take-off from Chicago O'Hare International Airport. All 271 persons on board the aircraft perished in the crash. Three days later, the Federal Aviation Administration (FAA) issued an Emergency Airworthiness Directive (EAD) requiring all U.S. operators of DC-10s to inspect engine pylons. The following day, the

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<sup>3</sup>. Welch, P L, U.S. delegate to the Chicago Conference of 1944 and Chairman of the U.S. Civil Aeronautics Board, observed that "safety should be the preoccupation of everyone involved in the operation of an airline including those engaged in manufacturing airline, replacement parts and supplies, and... all employees of governments engaged in the oversight or the regulation of airlines.

<sup>4</sup> Civil Aviation Act 2026 established NCAA

<sup>5</sup> *British Caledonian Airways v. Bond*, [198] 1665 F.2d 1153 (D.C. Cir.). This case was discussed in Troy A. (2000) Rolf, *International Aircraft Noise Certification*, 65 J. AIR L. & COM. 383,400-02

FAA issued another EAD grounding all domestic DC-10s. On June 5, 1979, the FAA Administrator issued an Emergency Order of Suspension (SFAR40) for all airworthiness certificates for domestic DC-10 aircraft and prohibited the operation in U.S. airspace of all foreign registered DC-10 aircraft. While one can only speculate as to the motives, the suspension of foreign-flag aircraft arguably enhanced the safety of U.S. residents who might board them and equalized the relative financial impact on U.S. carriers.

In the case of *British Caledonian Airways*, (*supra*) the Circuit Court of Appeals found that the relevant airworthiness standards were properly promulgated by ICAO and set forth in Annex 8. The court also found that Article 33 of the Chicago Convention requires that, "the judgment of the country of registration that an aircraft is airworthy must be respected, unless the country of registration is not observing the 'minimum standards' stipulated in Annex 8". The court further found that the requirements of Article 33 were self-executing, requiring no implementing legislation by the U.S. Congress. But Congress had mandated, under Section 1102 of the United States of America Federal Aviation Act of 1958, that the FAA Administrator must, in exercising and performing his powers and duties, "do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries". The court concluded that; because the administrator at no time questioned whether the foreign governments met the minimum safety standards set by the ICAO, his issuance of SFAR 40 and his refusal to rescind the order after the foreign governments had revalidated the airworthiness certificates for aircraft flying under their flags would appear to have violated Article 33 and, therefore, Section 1102.<sup>6</sup>

### 1.2.1. Meaning of Aviation Safety

Aviation safety means the state of an aviation system in which risks associated with aviation activities in direct support of the operation of aircraft are reduced and controlled to an acceptable level. It encompasses failures and prevention of such failures through regulation, education and training in relation to safety of air travels.<sup>7</sup> Also, whenever the weather involves icing airline and airport to ensure that airport is properly de-iced before takeoff. Modern air lines are designed to prevent ice buildup on wings, engines and tails by either routing heated air from jet engine through the leading engine of the wing and inlets, or slower aircraft by use of inflatable rubber that expand to break off any accumulated ice.<sup>8</sup> The system of universal trust and mutual recognition established by the Chicago Convention was jeopardized by the fact that many states were not conforming to the SARPs. Some states were too poor to establish comprehensive air navigation and safety agencies or, if established, to fund them sufficiently so that they could properly fulfill their mandate. Others have not promulgated laws and regulations to fulfill their

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<sup>6</sup> The Federal Aviation Authority of the United State of America also argued that Article 9 of the Chicago Convention gave her the Authority to restrict the flight of foreign aircraft into the United States. Article 9(b) authorizes a state "in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality .

<sup>7</sup> (2018) Report of International Air Transport Association (IATA). Safety Performance Report [www.aviationsafetymagazine.com](http://www.aviationsafetymagazine.com) accessed on 22<sup>nd</sup> Feb., 2019 @2.29pm.

<sup>8</sup> (2017) Aviation safety needs. News paper.books.scholar [www.aviationsafetymagazine.com](http://www.aviationsafetymagazine.com) accessed on 22<sup>nd</sup> Feb., 2019 @2.29pm

obligations under the SARPs.<sup>9</sup> In some states, Civil Aviation does not receive the attention which government gives to other ministries and agencies that are deemed more important. Like many specialized United Nations agencies, ICAO possessed no stringent enforcement power to sanction violators.<sup>10</sup>

There was but a single proper way for the FAA to restrict a foreign-flag carrier based upon the airworthiness of its aircraft: "If doubts about airworthiness exist, one country may refuse to recognize another country's certificate of airworthiness, but only if the certificating nation has not observed the minimum standards of airworthiness established in Annex 8 pursuant to Articles 33 and 27 of the Chicago Convention." The United States began auditing foreign venues for compliance with ICAO SARPs with its review of foreign compliance with Annex 17 on Security. In 1985, Congress required the FAA to assess the security procedures of foreign airports and foreign air carriers that serve the United States.<sup>11</sup> This Act required the FAA to conduct a security audit of foreign airports, and if it found that an airport failed to comply with Annex 17, it notified the appropriate authorities of its discovery and recommended steps to achieve compliance. If the airport fails to correct the deficiency, the FAA will publish a notice that the airport failed its security audit in the *Federal Register*, post its identity prominently at major U.S. airports, and notify the news media. The Authority could also "withhold, revoke, or prescribe conditions on the operating authority" of an airline that flies to that airport, and the President may prohibit an airline from flying to or from the said airport from or to a point in the United States."

Where the U.S. Secretary of Transportation concludes that "a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and the public interest requires an immediate suspension of transportation between the United States and that airport, he could suspend U.S. and foreign airlines from serving the United States to or from that airport" and impose fines upon carriers violating the prohibition.<sup>12</sup>

Department of Transport, the parent agency of the FAA, announced its intention to suspend air service between the U.S. and Beirut in 1985, Lagos in 1992, Manila in 1995, Athens in 1996, and Port-au-Prince in 1998. The Department also has denied code-sharing approval<sup>13</sup> to

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<sup>9</sup> In 1992, the ICAO Assembly recognized that many states may not have the regulatory framework or financial and technical resources to carry out the minimum requirements of the Chicago Convention and its Annexes. ICAO Assembly Resolution 29-13.

<sup>10</sup> Mark, L. M. 'Navigating the Tumultuous Skies of International Aviation: The Federal Aviation Administration's Response to Non-Compliance With International Safety Standards' [2005] 2 *S W J L. & TRADE AM.* PP621, 642

<sup>11</sup> Foreign Airport Security Act of 1985, Pub. L. No. 99-83 provides that in order to be allowed to serve airports in the United States, foreign airlines must adopt and implement security procedures established by the U.S. government. Foreign airlines also are required to maintain effective security programs.

<sup>12</sup> Order 93-10-26 (1993) (Middle East Airlines), Order 85-7-45 (1985) (Lebanon); Order 92-10-17 (1992) (Murtala Mohammed International Airport, Lagos, Nigeria); Dot Order 95-8-12 (1995) (Ninoy Aquino International Airport, Manila, Philippines); Order 95-9-15 (1995) (Eldorado International Airport, Bogotd, Colombia); Order 96-3-50 (1996) (Hellenikon International Airport, Athens, Greece); Order 95-8-12 (1995); Order 98-1-24 (1998) (Portau-Prince International Airport, Haiti).

<sup>13</sup> Code-sharing is a means whereby one airline offers seats on the two-letter airline code and flight number of another airline, principally in order to deceive consumers that on-line, as opposed to interline, service is being performed. Paul, S D 'Carving the World into Fiefdoms: The Anticompetitive Future of Commercial Aviation' [2002] 27 *Annal of Air & Space Journal.* P247.

destinations in nations on the Department of State's list of governments that support terrorism.<sup>14</sup> Given the significant economic penalty for denial of the opportunity to serve the U.S. market, these moratoria have been highly effective in encouraging governments and airport authorities to attain security compliance. Airlines in certain developing nations have a higher accident rate than in developed parts of the world.<sup>15</sup> The United States became sufficiently concerned with the absence of universal norms in international aviation that it established an International Aviation Safety Assessment Program in 1991. After a series of accidents and incidents arising in the U.S. involving foreign commercial aircrafts,<sup>16</sup> the Authority in response to the incident involving Avianca Airlines Flight 52, which crashed at Cove Neck, New York, on January 25, 1990, after running out of fuel, killing all seventy-three people aboard<sup>17</sup> pointed out and began to send out teams to meet with officials of the foreign Civil Aviation Authorities (CAAs) and airlines to review their relevant records. In general term, the jurisdiction of SARPs covers the following areas namely, the development and implementation of Laws and Regulations in accordance with ICAO standards; the technical expertise and resources to license or oversee civil aviation; the flight operations capability to certify, oversee, and the enforce air carrier operations requirements; the aircraft maintenance requirements; and the appropriately trained inspector personnel required by ICAO standards.<sup>18</sup>

Out of the first thirty countries audited, the FAA determined that about nine, mostly Latin American Countries, have inadequate oversight.<sup>19</sup> The U.S.A therefore discouraged Americans flying to those countries until they provide adequate safety oversight facilities, particularly since is believed that once publicly announcing which states that had deficient safety oversight facilities would have a deleterious economic impact upon their air carriers, and their tourism industries, thereby encouraging, those states to grudgingly, increased compliance with their legal obligations under the Standard and Recommended Practices and International Civil Aviation Organization regulations. However, there has been gradual realization that the modes of implementation of safety and security measures at the state level are also relevant to the safety oversight functions of those states because such implementation involve the fundamental question of whether a domestic court could apply international rules to decide a case arising from failure to comply with those safety regulations hence the traditional doctrines of monism and dualism<sup>20</sup>

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<sup>14</sup> *Ibid*

<sup>15</sup> Carole, S 'Unanimous Aviation Commission Lays Out Blueprint for Change' [1999], *Aviation Week & Space Journal*. P42.

<sup>16</sup> George, N. T, 'Enforcement of Aviation Safety Standards' [1998] 20 *Annal of Air & Space Law Journal* .pp 319-324.

<sup>17</sup> Anthony, B & James, L *Government Aviation Safety Oversight - Trust, But Verify*, [2002] 67, *J A I R L. & Com.* PP1035, 1039.

<sup>18</sup> Olga ,B. *Safety Oversight: Federal Aviation Administration, International Civil Aviation Organization, and Central American Aviation Safety Agency* [2008], 67, *J A I R L. & Com.* pp651, 656.

<sup>19</sup>Shirlyce, M 'The United States 'Response to International Air SafetY' [1996] 61 *J A I R L. & COM.* PP505, 534. The nine countries were Belize, the Dominican Republic, Honduras, Nicaragua, Paraguay, Uruguay, Ghana, Gambia, and Zaire.

<sup>20</sup>. Monism, *pactasunt servanda* (means states are bound by treaties and agreement entered into) is the agreement entered into by a nation which must kept as basic norm which gives effect to international law in which the legal order of municipal law derived from international law by way of delegations. The dualism concept on the other hand is a system where a treaty is incorporated into a law to become part of the national law through statute i.e domestication of international laws.

### **1.2.2 Meaning of Aviation Security**

Aviation security refers to the techniques and methods used to protect passengers, staff, aircraft, and airport properties from accidental/malicious harm crime and other threats. It is a combination of human and material resources to save guard civil aviation against unlawful interference. It equally refers to measure taken to keep aircraft, passengers and crew members safe throughout air transportation exercise. The civil aviation authorities are expected to inspect, monitor and screen all passengers in order to make sure that safety and security are maintained to the highest level through the airport security officer who are responsible for controlling access of people and items to every aircraft and its operations.<sup>21</sup> The ICAO Assembly explicitly called upon states to reaffirm their safety obligations, particularly those in the Annexes of the Chicago Convention, and urged them to review their national legislations implementing those obligations and to review their safety oversight procedures to ensure effective implementation which ICAO encouraged member states to "promote global harmonization of national rules" for the implementation of the SARPs and "to use in their own national regulations. Though ICAO had attempted to facilitate compliance by publishing numerous manuals instructing member states on how to comply,<sup>22</sup> many states either could not, or would not, implement their international legal aviation safety obligations.

### **1.3 Enforcement Mechanisms of Aviation Safety and Security in Nigeria.**

Civil aviation is one of the most regulated industries in the world. Every single technical personnel, equipment and airport must be certified and monitored by competent regulatory agencies known as Civil Aviation Authorities (CAAs). Even the CAAs themselves are in turn assessed by the International Civil Aviation Organization (ICAO) and other international bodies. The operating principles, guidelines and standards applied in civil aviation are based on the Standards and Recommended Practices (SARP) of ICAO as may be in the stipulated National laws and regulations. In Nigeria, the Nigerian Civil Aviation Authority (NCAA) is the apex regulatory body, overseeing the activities of all airlines and their pilots, engineers and cabin staff, airports, airstrips and heliports, navigation aids, all service providers including the airport authority, the air traffic service provider and aviation training institutions. NCAA watches over the entire industry as its role can aptly be described as that of "general overseer" or "referee:" for want of a better sobriquet, NCAA has even been addressed as the "police" of the industry. While all these are correct, NCAA is essentially a facilitator of compliance of aviation safety and economic regulations. In this regard therefore, enforcement mechanisms of aviation safety and security in Nigeria include: how safety procedure system is coordinated, penalty imposition by NCAA enforcement personnels, strict and willful adherence to provisions of safety laws and total adherence to procedural rules of enforcement which are briefly highlighted hereunder:-

#### **1.3.1 Coordinated Safety Procedures**

NCAA regulates the industry through series of well-coordinated procedures. The Authority sets safety standards, issue licenses and operating certificates to personnel and service providers and monitors their compliance through a range of surveillance activities. Where safety rules are breached, the NCAA takes strong corrective actions to enforce compliance which may include

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<sup>21</sup>.Nigeria Civil Aviation Authority (NCAA) Regulations 2015.

<sup>25</sup>. Akinkuotu, F [2017] Air Space Safety Aviation and Allied Business Journal. P78

sanctions.<sup>23</sup> The 2006 Civil Aviation Act established the Nigerian Civil Aviation Authority as the apex aviation safety regulator, with responsibility for regulating the whole industry, including the airlines and the service providers such as the Nigerian Airspace Management Agency and Federal Airport Authority of Nigeria.<sup>24</sup> As required by the Act, NCAA has promulgated the Nigerian Civil Aviation Regulations, to give specificity to the Standards and Recommended Practices (SARP) of ICAO. The NCAA further publishes technical guidance material, in the form of Orders and Murtala Muhammed International Airport, Ikeja, Lagos Advisory Circulars, for the guidance of the Authority's safety inspectors and industry participants. One of the key instruments of NCAA's regulation is the issuance or revalidation of licenses such as Air Operator's Certificate (AOC), Air Transport License (ATL), Airline Operating Permit (AOP), Permit for Non-Commercial Flight (PNCF) and Air Travel Organizer's License (ATOL). NCAA's Aviation Safety Inspectors conduct unscheduled on the spot inspections of the operations of airlines and other service providers to ensure continuous compliance with the regulations guiding their operations.<sup>25</sup>

By virtue of Section 30(2)(h) Civil Aviation Act 2006, Nigerian Civil Aviation Authority has the overall responsibility for securing the safety, efficiency and reliability of air navigation in Nigeria. Section 30(5) provides for the NCAA to develop, make, issue and revise regulations, rules, orders, terms and conditions in respect to matters relating, incidental or supplementary thereto for the safety of air navigation and public interest. To achieve this, the NCAA establishes regulatory standards and requirements, under the Nigerian Civil Aviation Regulations 2006 as revised by Nigeria Civil Aviation Regulations 2015. The Director General NCAA has powers under the 2006 Act and Nigeria Civil Aviation Regulations to exercise broad range of enforcement actions necessary to ensure compliance with statutory and regulatory requirements by the industry. Under Section 27, the NCAA has powers to carry out investigation into complaints and occurrences and to conduct hearing and if satisfied after hearing that any person is violating any provisions of the Act, Regulations, Rules, Orders or statutes, authority can the to take such action which in its opinion necessary to prevent violations of the Act, Regulations, Rules, Orders, including to ground any aircraft and seal the premises of any air transport service provider or provider of allied aviation services, in order to secure compliance with the provisions of the Act, Regulations, Rules and Orders, Term, Condition and Authorization.<sup>26</sup>

### **1.3.2 Imposition of Penalties**

Section 30 (10) allows the NCAA to provide for the imposition of penalties, for various offences against the regulations including but not limited to suspension and revocation of certificates, licenses, authorization and fines of various categories from N50,000 up to N10,000,000 depending on the type of offence, various terms of imprisonment from one month up to 5years depending on the offence<sup>27</sup> and to initiate and

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<sup>23</sup> National Bureau of Statistics', (1<sup>st</sup> May 2016) Nigerian Aviation sector Summary Report Q3 / Q4, 2015 PP8 – 9.

<sup>24</sup> See Sections 27, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Civil Aviation Act 2006

<sup>25</sup> See part 18.2.4 (a – b) Nigeria Civil Aviation Regulation, 2015.

<sup>26</sup> Fadugba, O.G, Oluwajana S.D & Busari, A.A, 'Post Independent Evaluation of Air Transport Safety in Nigeria' [2015] *European International Journal of Science and Technology* Vol. 4, No. 4, PP 81 – 91.

<sup>27</sup> Sections 36(4), 42(3), 43(4) and 54 – 60 of the Civil Aviation Act 2006

undertake prosecution in its name of any person in respect of any offence committed under the Act or regulations with the consent of the Attorney General of the Federation. Part 18 Nigeria CARs 2009 as amended by Part 1.3 Nigerian Civil Aviation Rules 2015 contained detailed of sanctions and procedures which NCAA may apply against non-compliance which include to review any reported violation, conduct, investigations, hearing, issuing subpoenas, take evidence and depositions and requiring production of any record, documents and property.

The primary responsibilities for the safety of Civil Aviation operations rest with air carrier/operator and service providers who are responsible for rendering such services. The NCAA's compliance and enforcement activities are designed to promote compliance with statutory and regulatory requirements. The NCAA exercises a wide range of options in addressing noncompliance by the industry. When violations occur, which involve operating an airport; performing aircraft maintenance; operating aircraft. NCAA enforcement personnel must take actions most appropriate to promote safety and compliance with the Act and Nigeria Civil Aviation Regulations with the initial priority of enforcement personnel to correct any ongoing non-compliance.

NCAA enforcement personnel take compliance and enforcement action to prevent future actions that would violate the Act and Nigeria Civil Aviation Regulations such as, immediate corrective measure after counseling or a letter of correction. They also take enforcement actions for remedial purposes such as, administrative remedial training, and comprehensive fixes under the mandatory occurrence reporting programme. They also take legal enforcement actions including civil penalties, suspension and revocation of certificate or license for a fixed or indefinite period, injunction and referral for criminal prosecutions.<sup>28</sup>

### **1.3.3 Strict Adherence to Safety Provisions of Law.**

Civil Aviation safety ordinarily depends on strict adherence to legal requirements. Elements of the NCAA's compliance and enforcement programme seek to promote safety and greater compliance by encouraging regulated persons to voluntarily disclose their own violations and the circumstances surrounding those violations. Based on information provided through such disclosures, the Authority's compliance and enforcement actions foster the implementation of corrective measures to improve overall safety. NCAA enforcement personnel take advantage of opportunities during their routine surveillance and inspection activities to enlighten a regulated person's understanding of the statutory and regulatory requirements. The NCAA also promotes education through public awareness programmes and other special aviation educational efforts. The NCAA conducts activities including seminars, workshops to create awareness and promote understanding of the governing civil aviation laws and regulations. NCAA enforcement personnel then determine what action to take by evaluating, among other things, the seriousness and safety risk imposed by the

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<sup>28</sup>Kole, O.U & Okafor, E G., 'Assessment of Safety Management System Implementation in an approved Maintenance Organization' [2013] Research Journal of Applied Sciences, Engineering and Technology PP3879 – 3884.

noncompliance.<sup>29</sup> An important element of an effective compliance and enforcement programme is the prompt discovery of noncompliance. Although the NCAA has programme to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with its statutory mandate, the NCA Maintains high level of surveillance fair carrier operations and air navigation facilities.

In any situation where NCAA enforcement personnel identify a potential violation, they take appropriate steps immediately to notify any person who has the responsibility to take action to correct the violations. In such situation, NCAA enforcement personnel may counsel the person and ensure that the person takes immediate action to correct violation and prevent further non-compliance or ground the aircraft when aircraft are not in condition for safe operation. Any NCAA personnel who receive information about air carrier or crew member's operation of an aircraft, airport operator, air navigational service provider and provider of aviation and allied services in violation of the Act and Regulations must immediately contact and pass on that information to an NCAA enforcement personnel. For example on the 22<sup>nd</sup> June 2018, NCAA enforcement personnel during a random checks carried out on personnel of some aircrafts in the early hours, found that some pilots indulged in illicit and prohibited drugs and substances which include Marijuana. Accordingly, the affected pilots were immediately suspended for 180 days during which period they will undergo some degrees of rehabilitative measures. Though, details of those Pilots were not made public in accordance with the professional rule of non-disclosure of the Chicago Convention<sup>30</sup>

Under Nigeria Civil Aviation Rules (2015), NCAA investigative personnel must conduct investigations promptly. They must gather, accurately and completely report all facts, and conduct their investigations in an unbiased and focused manner. A violation report without all the facts only leads to delays that compromise the objectives of fair and responsive enforcement. An incomplete or inaccurate enforcement investigative report can mislead reviewing officials and NCAA legal counsel and result in wrong or inappropriate actions being taken. NCAA enforcement personnel must investigate and appropriately address every apparent alleged violation. The NCAA has a wide range of options available for addressing apparent violations, such as counseling including administrative action, remedial training; legal enforcement action including civil penalties, certificate actions and referral for criminal prosecution.

Under part 1.3.3.1 of the 2015 Regulations, NCAA investigative personnel issue administrative action in the form of either a warning notice or a letter of correction, remedial training and counseling for an apparent violation. NCAA legal counsel can amend, suspend, modify, or revokes certificates under Section 35 of the Act and Part.1:3:3: of the Regulations and seeks civil penalties primarily under Section 25, detain aircraft under Section 53 and issues judicially enforceable orders. NCAA enforcement personnel also refer apparent violations to Ministry of Justice for appropriate handling and in

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<sup>29</sup> Yung, K.L 'Study of the influence on the operational performance of International Airport' [2012] *Journal of Aviation Management Education* Vol. 1, P-10

<sup>30</sup> Unini, C 'Regulatory framework for Air passenger safety and protection in Nigeria' [2018] *nigerialawyer.com* accessed on the 3<sup>rd</sup> January 2019. See also <https://allafrica.com> assessed on the 10<sup>th</sup> march 2020

cases where there is possible criminal conduct, to the Inspector General of Police for criminal investigation. Generally, under Section 27, the NCAA enforcement personnel take actions believed necessary to carry out NCAA's statutory safety duties and responsibilities. For example, on the 18<sup>th</sup> of December 2019, a passenger was caught smoking on board Air Peace airplane, he was apprehended and summarily tried and prosecuted by the NCAA before a magistrate court sitting at Ogba in Lagos State, where he was convicted and sentenced to a two weeks imprisonment with an option of fine of N200,000.<sup>31</sup>

#### **1.3.4 Strict Compliance with Procedural Rules of Enforcement**

Chapter IV of the Constitution of the Federal Republic of Nigeria guarantees fundamental human right including, right to fair hearing and presumption of innocence. To be effective, the NCAA compliance and enforcement activities must be fair and reasonable and should be perceived as fair by those subject to regulations. Under Part1, 3.3.3(3c) of the Regulation, unless safety in air transport requires immediate action, NCAA shall provide a person to be affected, with an opportunity to be heard as to why certificate or license should be amended, modified, varied, cancelled, withdrawn, denied, refused, suspended or revoked. This does not and should not imply an unwillingness to apply the full force of statutory sanctions where warranted. It does encompass the right of an apparent violator to be given fair hearing in consideration of all circumstances surrounding the allegations before final action is taken. It also requires good faith efforts to understand the apparent violator's position and take it into account, as well as to apprise the apparent violator of the Authority's position in a timely manner. Delays in investigation or processing of enforcement investigative reports can adversely affect the effectiveness of the Authority's compliance and enforcement programme in several ways.

Delays may let an unsafe condition continue if prompt corrective action is not taken. Delays also may de-emphasize the seriousness of a given violation and lessen effect of any enforcement action taken. The quality of enforcement action, and effective linking of the enforcement sanction to objective change in compliance behavior, can be best realized if the NCAA investigates diligently and promptly administers the appropriate sanction within a reasonable time period. If the allegations of violation are not sustained, any unwarranted delay in processing the case may impose an unjustified hardship. The time needed for investigation and processing will vary depending on the complexity of each case. Certain cases, because of their effect on safety, including the need for emergency action, may sometimes demand immediate involvement of the entire investigative and legal team to effect timely enforcement action, in a matter of hours or a few days.<sup>32</sup> If NCAA investigative personnel prepare an enforcement investigative report (EIR), legal counsel reviews it to determine consistency with NCAA's compliance and enforcement authority and mission.

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<sup>31</sup>Mustapha, A. 'Appraisal of Air Passenger Protection Laws for Delay Flight in Nigeria' [2017] *International Journal of Social Sciences and Humanity Vol. 7, No.1*, P I. See also Channel/stv.com accessed on the 16<sup>th</sup> March 2020 at 1: 23pm.

<sup>32</sup>. Harold, O. D 'Nigerian Civil Aviation Authority compliance and Enforcement Hand Book' [2009] PP7 – 9

In the review above, legal counsel considers the recommendation of NCAA investigative personnel, if they properly justify and explain their recommendations. NCAA legal counsel who reviews the EIR considers the recommendations of the investigative personnel. After determining that legal enforcement action is necessary, NCAA enforcement personnel consult the sanction guidance in Part 1:3:3 Regulation 2009 and table of sanctions in Implementation Standard (IS) 1.3.3 to determine the appropriate sanction. NCAA enforcement personnel must fully explain and justify in the EIR deviations from the sanction guidance policy.<sup>33</sup>

Under Section 27 Civil Aviation Act 2006 and Part 1.3.1.2 of the Regulations, the Director General, NCAA, on his or her initiative, may investigate, if he determines that reasonable grounds exist regarding a person's violation. If the Director General determines that the complaint does not state facts that warrant an investigation or further action, the Director General may dismiss the complaint without a hearing. The Director General, after notice and opportunity for hearing, must issue an order to compel compliance with the Act, Regulations, Rules, Laws, Conditions and Orders. Under Part 1.3.1 (a) Nigeria Regulations, any person may file a complaint with the Director General NCAA about anything done or not done by any person in contravention of any provision of the Act or regulation or order issued under it about matters within the jurisdiction of the Director General NCAA. This section however, does not apply to complaints against the Director General NCAA or any employee of the NCAA acting within the scope of his or her employment.

Under Part 1.3.1.3 (a) of the Regulations formal complaints submitted to the NCAA must be in a form and manner prescribed by the Authority and addressed to the Office of the Director General, Attention: Company Secretary/Legal Adviser (CSLA) who shall review the complaints to determine whether it meets the criteria for considering a formal complaint. Complaints that do not meet the criteria set forth below are not considered as a formal complaint. NCAA treats complaints which do not meet the criteria for formal complaint as mere reports. Complaints that meet the criteria set forth below are considered formal complaints and a copy is mailed to each person named in the complaint. Thus, a formal complaint must meet the following criteria:

- i. Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action.
- ii. Set forth the name and address, if known, of each person who is the subject of the complaint and, for each person, the specific terms of the statute, regulation, or order the person violated.
- iii. Contain a concise statement of the facts relied upon to substantiate each allegation.
- iv. State the name, address, and telephone number of the person filing the complaint. That person or a duly authorized representative signs the complaint.

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<sup>33</sup>. *ibid* p. 18 – 19.

Within 14 days after service of a complaint, every person named in the complaints expected to file an answer to the complaint and the Company Secretary / Legal Adviser of NCAA shall send copies of the complaint and the answer thereof to the appropriate investigative personnel with an instruction to determine whether the complaint contain sufficient facts that warrant further investigation or other actions. The outcome of the opinion of the investigative personnel determine what the Legal Adviser will recommend to the Director General of NCAA as to whether to dismiss the complaint without hearing and prepare a record of decision and accordingly inform writer of the complaint stating therein reasons for dismissal of the complaint. If on the other hand there are grounds to investigate a complaint, a forma investigative panel is put in place and an order of investigation shall be made by the Director General. If the complaint is substantiated upon hearing, NCAA shall make an order which constitute its findings and may immediately proceed to enforce same.

#### **1.4 Penal Sanctions for Breach of Enforcement Rules and Procedures.**

The combined and cumulative provisions of the Civil Aviation Act 2006 and the Nigerian Civil Aviation Regulations 2015 empower the NCAA to sanction any erring Air operator, Air service provider or any individual and corporate entity in the aviation sector through the following sanctions;

- a. The Director General, NCAA has powers to ground any aircraft and to seal the premises of any air transport service provider or provider of allied aviation services in order to enforce compliance with provisions of the Act. For example, some time on the 20<sup>th</sup> March 2017, the NCAA sanctioned a non-scheduled Airline operator; Lyxor International for violating the terms of its approved flight clearance in Nigeria. The Air operator was consequently fined a sum of N9.5 million Naira as penalty.
- b. The Director General, NCAA has power to amend, vary, cancel, suspend and revoke maintenance organization certificate, production certificate, airworthiness approvals, air operator certificate, permit or other authorization for violation of the Actor the Regulations, Rules and Order as he considers appropriate for safety of air navigation and public interest. For example, the Nigeria Civil Aviation Authority on the 19<sup>th</sup> of December 2019 suspended operation of Turkish Airlines in Nigeria due to notorious act of shabby treatment of Nigeria travelers over time, especially arriving Nigeria destination without passengers checked in luggage.
- c. NCAA has the power to impose civil penalties for violations against the Act, Regulations, rules and orders against persons conducting commercial and non-commercial air transportation. For example, on the 30<sup>th</sup> December 2018, the General Manager, Public Relation, NCAA, Mr. Sam Adurogboye<sup>34</sup> stated that the Nigerian Civil Aviation Authority Sanctioned four operators namely; the Aero contractor, first Nation Airline, Allied Air and Gama Aviation Ltd, for violating the Civil Aviation Regulations ranging from non-implementation of training programmes for maintenance personnel, usage of outdated manual and

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<sup>34</sup>. [www.thisdaylive.com](http://www.thisdaylive.com) accessed on the 19<sup>th</sup> February, 2019.

other others. Accordingly, the first three violators were fined N1.5 million to N2 Million Naira respectively, while the 4<sup>th</sup> operator's Air Operator Certificate (AOC) was suspended for 180 days.

- d. The Director General, NCAA is empowered to conduct investigations, hold hearings, issue subpoena as, require the production of relevant documents, records and property and take evidence and deposition on Oath. For example, in March 2015, NCAA received a petition against Lubcon Ltd, an Aviation fuel supplier for breach of standards and NCAA regulations. NCAA investigated the allegation, held hearings and subpoenaed witnesses during which the company was suspended from further supplying aviation fuel to domestic and foreign airlines. After verification, investigation and hearing from the Department of Petroleum Resources (DPR) and other witnesses, NCAA on the 31<sup>st</sup> December 2015 cleared the company and lifted the suspension.
- e. The Director General, NCAA or any authorized officer of NCAA can request any person who undertakes the business of air transport including carriage of passengers or goods in an aircraft for reward to furnish any information in forms and manner as may be prescribed by NCAA.

## 1.5 Findings

In view of the preceding discussions, the following findings are made in this paper:

1. The statutory powers of the Nigeria Civil Aviation Authority under Section 27(1-3), and 34-35 of the Civil Aviation Act 2006 to conduct oversight functions in enforcing safety and security regulations in compliance with the International Civil Aviation Organization (ICAO) mandate of 1992 could be countered by the Minister of Aviation under Sections 28(1-3) and 29(10) of the Act.
2. The cumulative powers of the NCAA under Section 27 and 57 of the Act and that of Part 1.3 of the 2015 Aviation Regulations on the investigative and enforcement powers of the NCAA seem too wide and sweeping and go beyond administrative powers. It is more of judicial powers within the confine of Section 6 of the 1999 Constitution to impose fines, try offenders, convict and sentence offenders to imprisonment. It is therefore not clear whether the powers of the NCAA enforcement personnel to prepare an enforcement investigative report (EIR) and impose sanction ranging from grounding an aircraft, sealing up transport business premises, suspend or revoke licenses, conduct investigation, hold hearing, issue subpoenas, require production of documents, make judicial orders against persons conducting commercial and non-commercial air transportation by imposing sanctions are considered as exercising judicial powers when in actual fact the enforcement personnel are not so constituted by section 6 of the 1999 constitution or any other Act of the National Assembly.
3. Nigeria Civil Aviation Authority set safety standards, issue licenses and operating certificates to personnel, service providers and monitors their compliance through a range of surveillance activities such as issuance and revalidation of Air Operators Certificate (AOC), Air Transport Licenses (ATL), Airline Operating Permit (AOP), Permit for Non-commercial Flight (PNCF) and Air Travel Organizers Licenses (ATOL), hence the consequential power to compel compliance, impose fines, sanctions and penalties.

## **1.6 Recommendations**

In view of the above-mentioned findings, the paper recommends as follows:

1. Modus Operandi of the enforcement mechanism of the Nigerian Civil Aviation Authority (NCAA) needs to be synchronized and endowed with independent powers to make autonomous decisions and sanctions free directions from the Minister of Aviation as required by Sections 28 (1-3) and 29 (10) of the Act. Consequently, Sections 28 (1-3) and 29(10) should be accordingly amended to reflect the autonomy and independence of the NCAA enforcement personnel by empowering them to carry out their enforcement functions without prejudice to any direction from the minister.
2. The judicial powers exercised by the NCAA enforcement personnel in its enforcement mechanisms' need to be formalized through further legislation to endow the NCAA enforcement personnel the judicial powers of either a Magistrate or an inferior court to promptly and without judicial technicalities hear and decide on aviation matters bordering on enforcement of safety and security mechanisms within the purview of Section 6 of the 1999 Constitution (as amended).
3. Safety standards already set by the NCAA as condition precedent to issuing licences and permits to operate air transport in Nigeria being the bedrock and key instrument upon which the NCAA exercises its enforcement and regulatory activities, needs to be further strengthened to ensure strict and continuing compliance with terms and conditions attached thereto, by involving other relevant Agencies such as NAMA and FAAN for an all-inclusive and participatory, monitoring and enforcement system.

## **1.7 Conclusion**

The system of universal safety and security established by the Chicago Convention formed the bedrock of safety and security system in Nigeria, hence the promulgation of the Nigeria Civil Aviation Act 2006 and the Civil Aviation Regulations 2015 in compliance with the provisions of the Chicago Convention and the Standard and Recommended Practices of the International Civil Aviation Organization. This paper addresses legal mechanism regulating local and international aviation safety, as well as both unilateral and multilateral efforts to achieve states compliance and enforcement of those international legal obligations, with specific reference to the ways and manners in which the Nigeria Civil Aviation Authority enforces the safety and security regulations with a view to encourage and enforce compliance by the air operators.