

An Appraisal of Air Passenger Protection Laws for Delay of Flight in Nigeria

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Abstract—The aviation industry requires adequate regulation especially on safety, the rights of air passengers and the liability of air carriers. It is worrisome that air passengers face distressing challenges as delay of a scheduled flight; cancellation; lost, damaged or delayed baggage e.t.c despite the existence of laws. This paper appraise the Nigerian legal regime protecting consumers (air passengers) in the airline transportation and the nature of abuses perpetrated by air carries. It also appraise the rights of air passengers and the liability of carriers particularly in case of *delay of flight* and the extent of protection provided under the Nigerian laws. The paper explored the USA and EU air passenger protection regime and proffer recommendations for the amendment of the relevant aviation laws in Nigeria in line with the US and EU Laws.

Index Terms—Air passenger, consumer protection, legal regime, aviation industry.

I. INTRODUCTION

The aviation industry is a major industry that is involved in the transportation of persons and goods globally. The key players in the aviation industry are the government, the air carriers and the air passengers (consumers). This paper will appraise the relevant laws that regulates the relationship between passengers and air carriers with a focus on the consumer rights and protection within the context of the aviation legal regime. The paper will appraise the legal provisions that regulates consumer protection concerns, particularly delays of flights. The paper will look at consumer protection and regulation in Nigeria, air passenger rights and challenges, an overview of air passengers' rules as provided by the applicable legal regime with particular emphasis on delay of flight. The paper will also make reference to the US and EU rules on consumer protection in the airline industry and proffer recommendations.

II. CONSUMER PROTECTION AND REGULATION IN NIGERIA

The term "consumer" for the purpose of this paper is taken to mean a person to whom services are supplied for a consideration [1]. The term consumer is used in this paper to mean *air passenger*. Consumer protection on the other hand mean "the efforts of the government and private organizations to ensure that the consumers are not exploited by the producers" [2]. In substance, it deals with the legal machinery to allocate consumer issues between the purchasers and users of goods and services [3].

In Nigeria, the Consumer Protection Council generally is the apex consumer protection agency which is established to

promote and protect consumers' interests in all areas of products and services, provide speedy redress to their complaints, inform, educate and empower them (consumers) to act as discerning and discriminating consumers in the market place [4]. This Council was set up under Decree No.66 of 1992 as a parastatal of the Federal Government of Nigeria. However it became operational only in 1999, when its institutional framework was put in place and assigned extensive functions and powers. Although the Council was established by the Military government of Nigeria, it now enjoy legislative blessing and is now part of the Laws of the Federation of Nigeria, chapter C.25 of 2004.

Section II of the Decree empowers the council to discharge among others the following functions:

- To provide speedy redress to consumer complaints through negotiations, mediation and conciliation;
- To seek ways and means of removing or alienating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;
- To undertake and organize campaigns and other forms of activities as will lead to increased public consumer awareness;

Considering consumer protection in the air transportation sector and in particular the protection of air passengers, the international Civil Aviation Organization (ICAO) among other measures held a High-Level Security Conference on Aviation Security in 2012. During the event, it was resolved that *passenger satisfaction* must be the basis of any public policy in civil aviation matters [5]. In Nigeria however, air passenger protection is regulated by the international conventions and the Nigerian Civil Aviation Regulations, 2012. The relevant conventions and the Nigerian Civil Aviation Regulations (which provides for passengers' Rights and Airlines Obligations) will be discussed below.

III. AIR PASSENGERS (CONSUMER) RIGHTS AND CHALLENGES IN NIGERIA

Traveling by air confers certain rights to passengers which among others include: right to the full value of passengers money; right to book and confirm tickets with an airline of passengers choice; right to the provision of a conducive airport environment before, during, and after flights; right to seek redress for all irregularities during flight; right to timely feedback in respect of matters/complaints lodged with service providers; right to be fully informed about flight status; right to be treated with respect and dignity irrespective of race or physical condition. It is arguable weather consumers enjoy these rights. Air passengers often face difficulties such as denied boarding against the will of passengers; delays and cancellation of a scheduled flight, unfair treatment of consumer's e.t.c.

Even where an air passenger's right is breached, it is mostly not addressed satisfactorily by both the existing laws

and the regulatory agencies. For example a passengers who misses a flight as a result of cancellation or long delay often suffer many forms of damages (which may include social and economic loss in the form of missing important appointments, interviews and loss of profit for business transactions). In the same vain, air carriers enjoy some discretion and protection to the detriment of consumers. A good example is where a carrier may deny a passenger boarding involuntarily in accordance with its boarding priority. This is because there is no corresponding law that mandate an air carrier to compensate a booked passenger who is late to the airport or who do not show up at the exact date or time of departure. Equally there is no provision giving the passenger the right of revocation of contract of carriage and to be entitled to immediate refund of his full fares with substantial damage in case of delay by air carriers. Again, the absence of any or satisfactory explanation in some cases from the air carries is indeed an issue of great concern. Some passengers who are faced with any of these challenges usually recourse to grumbling than taking any legal or procedural steps because the law is not wholly protective and satisfactory.

Similarly, where consumer's rights are breached, they are left vulnerable, because they either accept what is provided as compensation by the air carriers, no matter how inadequate, or back out from the bargain as there is little or no room for them to argue for their losses. This is a gap in the legal regime.

It is also worrisome to note that even where passengers choose to institute a legal action against air carriers, they are faced even by a greater challenge of delays and technicalities of legal proceedings. For instance, in the unreported case of *Aderamola and Others V. ADC Airlines* (FHC/L/CS/1057/1995), the plaintiff in a consolidated case claim \$600 as general and special damages arising from recklessness and wilfull misconduct of the defendant, its servants and agents resulting to the crash of the defendants DC9 Aircraft on 26th july, 1995 at James Spring Payne Airport, in Moronvia, Liberia. This case has been lingering since 1995 to date and has been handled by eight different judges.

IV. AN OVERVIEW OF AIR PASSENGER'S CONSUMER PROTECTION REGIME IN NIGERIA

Since an aircraft passes through the airspace of several countries, it naturally falls within the realm of International Law. The International nature of aviation law, apart from the national laws deals with Treaties and Conventions. International Conventions like the Warsaw Convention, 1929 and the Montreal Convention, 1999 are applicable. These conventions are referred to Convention for the unification of certain rules relating to international carriage by air. The principal national law on aviation in Nigeria is the Civil Aviation Act, 2006. The Act has 15 Parts with 79 Sections. Under section 77 (1) (a-d) it repealed the Carriage by Air (Colonies, Territories and Protectorates) Colonial Order 1953, Civil Aviation Act, Cap 51 of the laws of the federation of Nigeria (LFN) 1990, Civil Aviation (Amendment) Act, 1999 and the Nigerian Civil Aviation Authority (Establishment) Act, No. 49 1999.

The relevant provisions of the act will be referred in due course.

As a background and from the international perspective, consumer protection in the aviation sector can be elicited from the provision of the Chicago convention, 1944. This Convention is broadly described as the Convention on International Civil Aviation, signed at Chicago on 7th December, 1944. The Chicago was actually a package of five sub-agreements, each severable from the whole. In the aggregate, the Convention known principally for its *five freedoms* which the signatories granted to each other. They were contained in a sub-agreement called *International Air Transport Agreement*.

Article 14 provides for the Prevention of spread of disease in air carriage. The relevant article provides: "Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate.

On a similar note, The Civil Aviation Act, 2006 under section 62 (1) and (2) empowers the minister of aviation to make rules protecting public health where it provides that "The Authority in consultation with other relevant government agencies may, make regulations for the prevention of danger arising to public health by the introduction or spread of any infectious or contagious disease from aircraft arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome.

(2) The Authority may, by regulation provide that a breach of any regulation made pursuant to subsection (1) of this section shall be punishable with imprisonment for a period not less than 1 month or a fine of not less N100,000.00 or both." These provisions underscores the protection of air transport consumer especially as it relates to health and prevention of diseases.

A. Passenger Protection under the Warsaw and Montr á l Conventions, 1929 and 1999 Respectively

The Warsaw Convention signed at Warsaw on 12 October 1929 was the first convention that imposed liability on the carrier towards the passengers for death and bodily injury, delay of passengers as well as for damage to and/or loss of baggage. The limits of liability as set by the Warsaw system were increasingly considered to be widely insufficient when compared with today's economic and social standards. As a result, further attempts were made to increase the liability limits. This resulted in the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999. The Montreal Convention has radically changed the Warsaw system as it concerns the liability limits in case of death and injury.

The Montréal Convention expressly recognizes the protection of the interests of air transport consumers and the need for equitable compensation but did not expressly cover certain areas of the passenger-carrier relationship which have recently given rise to increased regulatory activity. Those areas include price transparency, assistance to passengers in cases of travel disruption, e.t.c. Precisely article 19 of the Convention deals with *delay of flight*. The article provides that the carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

It is important to note that the Warsaw system still exists alongside the Montreal Convention, as by now approximately half of the states that ratified the Warsaw system in one or more of its variants have ratified the Montreal Convention.

B. Consumer Protection under the Nigeria Civil Aviation Regulations, 2012

Specifically, the Nigerian Civil Aviation Regulations, 2012 deals with consumer protection. Part 19 precisely provides for passengers' Rights and Airlines Obligations to passengers. It addresses consumer protection issues and sets out compensation for overbooking and denied boarding as well as delays and cancellations of flights. The Regulations proscribes minimum rights and obligations for passengers and air carrier. The scope of application of the Regulation is to passengers departing from an airport located within the Nigerian territory to another airport within Nigeria, passengers departing from an airport located in another country to an airport situated within Nigeria, unless they received benefits or compensation and were given assistance in that other country.

Below is the provision of the regulation and discussion on delay of flight and the procedure for complaint and compensation.

C. Protection of Air Passengers for Delay

For delay of air passengers, the regulations provide as follows:

19.4.1.1. For domestic flights, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide the passengers the assistance specified below:

(i) Immediately after one hour, the assistance specified in section 19.8.1 (i) (Refreshments) and section 19.8.2. (Telephone calls, SMS and E-mails);

(ii) at a time between 10p.m. and 4a.m., or at a time when the airport is closed at the point of departure or final destination, the assistance specified in sections 19.8.1 (iii) and 19.8.1 (iv) (hotel accommodation and transport); and

(iii) two hours and beyond, the assistance specified in section 19.7.1 (i) (Reimbursement).

19.4.2.1. For international flights, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide to the passengers the assistance specified below:

(i) Between two and four hours, the assistance specified in sections 19.8.1 (i) and 19.8.2;

(ii) For four hours or more the assistance specified in sections 19.8.1 (ii) and 19.8.2; and

(iii) When the reasonably expected time of departure is at least six hours after the time of departure previously announced, the assistance specified in sections 19.8.1. (iii) and 19.8.1.

(iv) 19.4.2.2. In any event, the assistance shall be provided within the time limits set out in these regulations.

V. PROCEDURE FOR HANDLING CONSUMER (AIR PASSENGER) COMPLAINTS

Generally, under sections 6 to 8 of the Consumer Protection Council Act, a consumer who has suffered a loss, injury or damage as a result of the use or impact of any goods, products or service, may make a complaint in writing

or seek redress through the State Committee of the Council. The Committee is empowered to inquire into the complaint and if substantiated and subject to the approval of the Council impose a redress but without prejudice to any other civil remedy the consumer may have.

Although the protection afforded is apparently well packaged, the authorities are rather very slow in constituting the Council. Besides, the procedure for obtaining redress is so cumbersome by its indirect approach, especially for the illiterate or uninformed consumer that most Nigerian consumers are. Again, many of the provisions or injunctions are not positive enough to elicit prompt compliance or action against an erring manufacturer, company, trade association or individual.

It is interesting to note that besides the option of laying a complaint by a an air passenger consumer to the consumer protection council, the Civil Aviation Regulations also mandates that every airline shall establish a consumer protection desk at every airport it operates into and shall appoint an officer to manage the desk for the purpose of receiving, resolving and channeling difficult complaints to their Head offices, as well as liaising with the Authority where necessary. However, this is not the case in many airports in Nigeria.

VI. THE UNITED STATES (USA) AND EUROPEAN UNION (EU) PASSENGER PROTECTION REGULATIONS

On 25 April 2011, a rule enhancing Airline Passengers Protection was issued by the U.S. Department of Transportation (DOT). Compensation of up to USD 1,300 is due in cases where the passenger is denied boarding due to oversold flights, depending on whether the carrier offers alternate transportation and based on the delay of arrival at final destination [6].

In 2012, the US Congress passed a law adding additional requirements beyond those promulgated by USDOT (United States Department of Transport). The statute requires that the delay contingency plans describe how the carrier will provide food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment, share facilities and gates in an emergency, provide for deplanement following excessive tarmac delays, provide for the sharing of facilities and gates during an emergency, and provide a sterile area for passengers that have not cleared customs and border protection. This follows the 1978 deregulation of the airline industry in the United States which eliminated federal control over many airline business practices, including pricing and domestic route selection [7].

Similarly, scheduled U.S. and foreign airlines are required to adopt and implement a Customer Service Plan applicable to their scheduled flights from, to or within the United States. The Plan must address the following:

Disclosure that the lowest fare offered by the carrier may be available elsewhere, notification of known delays, cancellations and diversions, delivery of baggage on time, and efforts to return delayed baggage within 24 hours, compensating passengers for reasonable expenses incurred because of delay, and reimbursing passengers for any baggage fees charged where the bag is lost, permitting reservations to be held at the quoted price without payment, or (at the discretion of the carrier) canceled without penalty, for 24 hours from the time the reservation is made, provided the flight is more than one week prior to departure,

provision of prompt ticket refunds for credit card purchases, and refunds of cash and check purchases within 20 days, and refund fees charged for optional services not provided, accommodation of passengers with disabilities, satisfaction of passengers' essential needs during lengthy tarmac delays, disclosure of cancellation policies, frequent flyer rules, aircraft seating configuration, and lavatory availability on the carrier's website, timely notification of changes in passenger travel itineraries, Identification of services provided to mitigate inconvenience resulting from flight cancellations and misconnections, etc.

The European Union consumer protection applicable in both areas of fare advertisements and ticket over sales and denied boarding in EU are promulgated by the European Commission [8]. Indeed EU has over the years played a pioneering role in protecting consumers' rights to access to justice in cross-border contracts due to the existence of inequality of bargaining and litigating power. ECJ held that the European Community common rule of compensation in the event of a long delay is not incompatible with Articles 19, 22 and 29 of the Montreal Convention, 1999 which limit the air carrier's liability when the passengers bring actions to redress damage in individual cases after a delay. Regulation 261/2004 covers damage that is constituted by the inconvenience which is not expressly addressed in the Montreal Convention [9]. The regulation provides:

A right to care, or assistance: in case of flight delays and cancellations, the airline must minimize the discomfort to passenger (catering, hotels, communication means, etc.).

Right to compensation, in cases of flight cancellations and depending on flight distance, of up to EUR 600, unless the cancellation is caused by "extraordinary circumstances". It should be noted that the exemption allowed for under "extraordinary circumstances" only applies to compensation obligations, and not to assistance.

The EU Regulations on delay of air passengers is provided by Article 6 as follows:

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1500 kilometres or less; or for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or for four hours or more in the case of all flights not falling under (a) or (b), passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9 (1) (a) and 9 (2) and when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9 (1) (b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8 (1) (a).

It is interesting to note that the EU in 2015 has created an Alternative dispute resolution mechanism for addressing passenger concerns. This was done by creating an Ombudsman who will oversee the effective operation of the mechanism.

When the proposal was made, the EU Civil Aviation Authority Director of regulatory policy said:

"We are moving forward with these proposals to make sure consumers get the very best level of support when in dispute with an airline. It can't be right that many air

passengers have to go to court to get a concrete resolution to their complaint."

The proposals follow the European Directive on ADR, which requires schemes to be available to help settle any dispute that cannot be resolved through a business's own complaint handling procedure. The CAA will be responsible for approving all ADR schemes in the sector and for ensuring that any organization delivering them are independent and impartial, and that passengers have access to a simple, efficient and effective process at low or no upfront cost.

The CAA has already received strong industry interest in this approach and will now be working towards achieving full participation in ADR, with airlines making contractual commitments to join schemes.

The CAA is now welcoming applications from organizations interested in setting up ADR schemes ahead of implementation of the ADR Directive in July 2015.

The main operational rules that have to be followed by all ADR entities in all sectors include:

The individuals in charge of the ADR process must have a general understanding of the law, possess the necessary knowledge and skills in dispute resolution, and be independent and impartial, the ADR procedure must be free of charge or available at a nominal fee to consumers, ADR entities have three weeks from receiving a complaint file in which to inform the parties concerned if the ADR entity is refusing to deal with a case, dispute resolution must be concluded within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes, ADR entities must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports. Also consumers must have the option to submit a complaint (and supporting documentation) and to exchange information with the airline through the ADR entity either online or offline.

In line with the above objective, the Nigerian consumer protection council Act states the core mandate of the council is to provide speedy redress to consumers complaints through negotiations, mediation and conciliations and to organize and undertake campaigns and other forms of activities as will lead to increased public. It goes without saying that the establishment of the ADR scheme in the EU region is in line with our municipal law and Nigeria should follow suit.

VII. CONCLUSION AND RECOMMENDATION

The paper has demonstrated how the existing Consumer protection regime both internationally and locally impact on the air passengers in the aviation industry. It is obvious that from the Nigerian perspective, there is a limit to which legal and enforcement/regulatory mechanisms can go in protecting the ultimate air passenger against abuse by air carriers. This is partly because the laws are lagging behind in the 21st century. Consumer education need to be aggressively pursued to raise effective awareness about consumer rights and responsibilities. Passengers should be correctly informed of their legal and contractual rights to avoid raising expectations. The laws and regulations needs to be amended to explicitly come up with provisions catering for the overall welfare and protection of air passengers (consumers). Nigeria can step up by coming up

with more encompassing regulations or amending the existing ones by imitating USA and EU where consumer are adequately catered by the laws as consumer challenges emerges and for the full implementation of the consumer protection laws.

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