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Contents

Tottering on the Precipice of Unsafe Skies: Imperatives, Challenges and Prospects of Civil Aviation Reforms in Nigeria

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A B S T R A C T

Safety culture is not yet entrenched in the civil aviation industries of many developing countries. This is in spite of the avalanche of international and domestic legal instruments applicable to the regulation of civil aviation in the world. The paper seeks to appraise the Nigerian civil aviation industry in the context of its unsafe skies and the applicable legal provisions. The paper relies on the relevant provisions of the Chicago Convention of 1944, including its Annexes, as well as recent happenings in the Nigerian civil aviation industry. The paper concludes that despite the challenges facing the Nigerian civil aviation industry, it can still rank among the best in the world if it complies with the regulatory ideals of the International Civil Aviation Organisation as contained in the Chicago Convention and the Annexes made pursuant thereto.

1.0 INTRODUCTION

Transportation by air is very critical to the development of any nation.[1] It is not only basic to military preparedness and alliances, it is also pivotal to peaceful international co-operation, mutual assistance, commerce and trade, including the spread of industrialization.[2] Aviation, by its nature, draws spatially remote locations closer, and by this very fact, it has revolutionized the provision of goods and services in a dimension not previously possible[3]. As such, it is not only a trade in services in itself, but also a catalyst of, and essential infrastructure for, an effective and functioning global trade regime, playing a primary role in fostering international trade.[4] The ultimate success of civil aviation in competition with other transport modes depends on what it has to offer in terms of speed, regularity, safety and working costs[5]. At both the domestic and international levels, transportation by air has fared excellently well in terms of speed, regularity, safety, convenience, comfort and costs.

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[1] *There are many expressions that are interchangeably used to describe transportation by air. Such expressions include, but are not limited to, "air transportation", "air transport", "aeronautical transport", "civil aviation", "international civil aviation", "international air transport", "aerial transport" and "air travel". The basic thing is that all the expressions clearly differentiate this mode of transport from the other modes of transport. The expressions may, therefore, be used synonymously. See Ghosh, Bishwanath, Tourism & Travel Management, 2nd Ed. (Vikas Publishing House PVT. Ltd., New Delhi, 2000) Page 122.*

[2] *Jones, Harold A., "The Equation of Aviation Policy" (1960) Volume 27, No.3, Journal of Air Law and Commerce, Page 222.*

[3] *Bonin,Jason R., "Regionalism in International Civil Aviation: A Reevaluation of the Economic Regulation of International Air Transport in the Context of Economic Integration" (2008) Volume 12, Singapore Year Book of International Law, Page 116.*

[4] *Ibid. at Page 116.*

[5] *Colegrove, Kenneth, "A Survey of International Aviation"(1931) Volume 11, No.1, Journal of Air Law, Page 3.*

Indeed, transportation is the basic infrastructure upon which major commercial activities are based whether domestically or internationally. It, therefore, serves as one of the most important industries in any country‟s economy. Air transportation has also been considered to be a common form of transportation for long-distance passengers and freight travel and the only reasonable alternative when time is of the essence.[6] The tremendous speed of the airplane has led to the growth of air transportation, particularly in the movement of passengers.[7]

Air transport has been described as the second most popular mode of tourist transport, next to automobiles especially for international travel.[8] It is attractive because of its speed and range and also because, for business visitors, it offers status as well as saves valuable work time when travelling on a long-haul journey.[9] Where geographical isolation exists, such as in the case of an Island, air is the dominant and often the fastest means of travel.[10] Dr. Steve Ofiaju Mahonwu, a Nigerian aviation expert, has aptly captured the situation in the following manner:

Civil Aviation has become an important element in the transportation system of nearly all nations. For all nations, large and small, developed or developing, aviation also means progress. Aviation‟s speed and ability to overcome natural obstacles stimulates better communications, economic growth and opportunities. It enables people to travel with greater ease and speed and comfort to cover the globe with unique and beneficial contributions of their cultural systems. Aviation brings greater access to markets and facilitates the movement of people and products domestically and internationally. Aviation sophistication can lead to the development of a nation‟s technological experts which can have beneficial spin-offs to other parts of that nation‟s economy. By and large, the impact of aviation has been felt in all fields of human endeavour.[11]

In particular, air transportation has surpassed other means of transportation.[12] This paper will, therefore, appraise the imperatives, challenges and prospects of civil aviation reforms in Nigeria. The paper is divided into six parts. Part one is the introduction. Part two briefly traces the history of civil aviation in Nigeria. Part three discusses the areas in which civil aviation reforms are urgently required. Part four

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[6] *See Bardi, Edward J., et al, Management of Transportation,1st Ed.(Thomson South-Western, Canada, 2006) Page 158.*
[7] *Ibid.*
[8] *See Ghosh, Biswanath, Tourism and Travel Management, 2nd Ed.(Vikas Publishing House PVT Ltd., New Delhi, 2000) Page 122.*
[9] *Ibid. at page 122.*
[10] *Ibid.*
[11] *See Mahonwu, Steve Ofiaju, Evolution of Civil Aviation in Nigeria-(1925-2010), 1st Ed.(New Era Aviation Development Agency,Nigeria, 2010) Pages 7-8.*
[12] *Decker, „Tunde, A History of Aviation in Nigeria - 1925- 2005, 1st Edition(Dele-Davis Publishers, Lagos, 2008) Pages 27-29.*

analyses the likely challenges that can militate against civil aviation reforms in Nigeria. Part five deals with the prospects of civil aviation reforms in Nigeria. Part six has to do with the conclusion and recommendations.

2.0 A BRIEF HISTORY OF CIVIL AVIATION IN NIGERIA

Very little is known of the early commercial aviation in Nigeria but available records have it that a gentlemen called Bud Carpenter owned a private de-Havillard Moth aircraft which he frequently flew between Kano and Lagos. He used the rail tracks as his guide and this meant additional distance for him. There is also a record of an enterprising pilot who carried a few passengers in a sea-plane between Lagos and Warri in the early 1930s.[13]

The first recorded flight in the annals of aviation in Nigeria landed at the ancient and walled city of Kano in 1925.[14] The flight, which was in a British fighter-aircraft, was flown by the commanding officer of the Royal Air Force (RAF) Squadron based in Khartoum, Sudan. The pilot made a breath-taking but safe landing on the horse race course in Kano, thus going down in history as the first recorded aviation activity in Nigeria. The flight of the Royal Air Force was to become an annual event starting from Cairo, which was another base, down through the Nile to Khartoum and then Maiduguri and Kano.[15]

The history of civil aviation in Nigeria cannot be meaningfully and completely discussed without commenting on the history of civil aviation in Africa as a whole. There was the British Overseas Airways Corporation (BOAC) which later replaced the services of the Royal Air Force (RAF), having been given the statutory rights to fly to Sudan, Kano, Lagos and Calabar.[16] With the end of World War II and based on the experience the Royal Air Force (RAF) and the British Overseas Airways Corporation (BOAC) had acquired within the West African sub-region, it became a task for the authorities of the British colonies in Nigeria, Gold Coast (Ghana), Sierra Leone and the Gambia to annex the countries together through a joint operation of a regional airline, named the West African Airways Corporation (WAAC).[17]

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[13] *Ibid. at page 2.*

[14] *Mahonwu, Steve O., Evolution of Civil Aviation in Nigeria (1925-2010), 1st Edition (New Era Aviation Development Agency, Nigeria, 2010) Page 1.*

[15] *Uwadiae, Deba, "From Polo Field to Airports" in Deba Uwadiae (ed.) A flight Higher: 80 Years of Aviation in Nigeria (1925-2005), Lagos, Business Travel Publishing Company, 2005, page 1. The contributions packaged in the book were written by aviation experts in Nigeria to commemorate eighty years of aviation in Nigeria.*

[16] *See Mahonwu, Steve O., Evolution of Civil Aviation in Nigeria(1925-2010), 1st Edition(New Era Aviation Development Agency, Nigeria, 2010) Pages 1-3.*

[17] *As permitted by Articles 77 and 79 of the Chicago Convention. Article 77 provides that "Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies." Article 79 is to the effect that "A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The Companies may, at the sole discretion of the States concerned, be state-owned or partly state-owned or privately owned."*

The West African Airways Corporation (WAAC) started operations with a wet-leased Dove aircraft under the supervisory control of another body set up simultaneously as the West African Air Transport Authority (WAATA). The initial services of the West African Airways Corporation (WAAC) included the link between the colonies and United Kingdom, passing through Sudan. Later, a number of domestic services particularly in Nigeria and Ghana were introduced. During the period of the WAAC services, properties and equipment, land and buildings were acquired and located in the four countries, with Lagos and Accra sharing major administrative and technical responsibilities of the airline.[18]

At the independence of Ghana in 1957, Ghanaian authorities considered it politically expedient to establish a national airline as was then the vogue, resulting in the virtual disbandment of the WAAC. Sierra Leone and the Gambia also considered themselves nearer each other but far away from Nigeria and thus considered the regional airline no longer practicable and realistic for their continued participation. These developments later led to the eventual incorporation of the WAAC (Nigeria) Ltd., on August 23, 1958, which existed for only nine months before it was re-registered as Nigeria Airways Ltd., to herald Nigeria‟s independence.[19]

The new airline had three basic objectives which were to: (a) have a national flag carrier to promote the image of Nigeria; (b) provide air transportation on both domestic and international routes; and (c) provide a back-up for security during periods of emergency. The airline, the Nigeria Airways Ltd; grew its aircraft fleet over a 14-year period between 1970, the year the Nigerian civil war ended, and 1984 when the industry was partially de-regulated, to a total of 32 aircraft. Of these, 27 were fully owned whilst the rest were on operating leases.[20]

In a similar vein, taking a cue from developments within the West African sub-region with the establishment of the West African Airway Corporations (WAAC), about ten French-speaking states in 1961 signed what has now become known as the Yaounde Treaty culminating in the establishment of what was once Air Afrique. Similarly, this arrangement was rooted in the Chicago Convention.[21] More recently, precisely on 6 and 7 October, 1988, African Civil Aviation Ministers, assembled in Yamoussoukro in the Republic of Cote D‟ Voire and appended their signatures to the Yamoussoukro Declaration on a new African Air Transport Policy. This Declaration was the result of a collective consensus in Africa that nations within the African continent must, inter alia, prepare for the effects of the 1978 de-regulation in the United States on other countries and their potential adverse effect or impact

[18] *Iyayi, Roland, "A Framework for Future Development" in A Flight Higher: 80 Years of Aviation in Nigeria (1925-2005), supra at pages 91-92.*
[19] *Iyayi, Roland, Ibid.*
[20] *Iyayi, Roland, at page 92.*
[21] *See Articles 77 and 79 of the Convention.*

on African airlines of the air transport liberalization policies of Western Europe, particularly the application by the European Economic Community (EEC) of the Treaty of Rome to air transport services and the creation of a single internal European market by 1993.[22]

In Nigeria, subsequent developments opened a lee-way for the emergence of private airlines. The first private airline made its debut a few decades ago. Over this period, the Nigerian aviation industry, particularly its airline aspect, was on the verge of collapse when an entrepreneur of no mean standing, Chief Gabriel Osawaru Igbinedion, decided to invest in the industry. This gave birth to Okada Air Limited. The Okada Airline initially operated as OGI Nigeria Limited with its incorporation on October 13, 1981. It operated non- scheduled passenger and cargo air charter services.[23] Today, it is believed that Chief Gabriel Osawaru Igbinedion‟s effort has set the pace for many private airlines to conduct air travel in the Nigerian airspace.

3.0 IMPERATIVES OF CIVIL AVIATION REFORMS IN NIGERIA

The word "imperative" suggests urgency. It means something that is urgently needed; it is something that is critical to a state of things. A thing that is imperative cannot be down-played. It requires immediate and prompt attention. It cannot be neglected. If it is neglected, the consequence will go beyond the causal factors. In the civil aviation industry, there are certain things that must pre-occupy the minds of the stakeholders, particularly in Nigeria.

3.1 Aviation Safety

The most important is aviation safety. This has received ample support from an expert. According to him:[24]

Aviation safety is the condition precedent to all commercial airline activities; the huge numbers of people travelling on airlines in the global north know that flying is safer than driving, and it may even be safer than staying at home. Some of the world‟s major airlines have been operating for nearly two decades without a single passenger fatality. This simple reality inspires the confidence that allows millions to break the bonds of Earth as they make routine trips for work or pleasure across a country or around the world…Complaints about security screening, baggage fees or airline food are common, but currently in the global north, there are remarkably few public concerns about airline safety.[25]

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[22] *Iyayi, Roland, Op. Cit. at page 93.*
[23] *Mahonwu, Steve, "Emergence of the Private Airlines: A case Study of Okada Airlines" In A flight Higher: 80 Years of Aviation in Nigeria (1925-2005), supra at page 36.*
[24] *Fitzgerald, P. Paul, " Questioning the Regulation of Aviation Safety", (2012) Vol. xxxvii Annals of Air and Space Law, Page 1 at 3*
[25] *The expression " global north" used by the learned author refers to North America, the European Union, most of the former Soviet Union, Japan, Australia and New Zealand.*

Consequently, all stakeholders in the civil aviation industry are concerned with aviation safety.[26] In order to ensure safety, some persons or institutions must act. At the global level, the International Civil Aviation Organisation regulates international civil aviation with a view to entrenching aviation safety. It does this principally through its Law[27] and the Annexes made pursuant to the Convention.[28] There are now precisely nineteen of such Annexes and it is apposite at this juncture to set forth, at least, the aeronautical issues covered by the Annexes, which are Personnel Licensing,[29] Rules of the Air,[30] Meteorological Services for International Air Navigation,[31] Aeronautical Charts,[32] Units of Measurement to be used in Air and Ground operations,[33] Operations of Aircraft,[34] Aircraft Nationality and Registrations marks,[35] Airworthiness of Aircraft,[36] Facilitation,[37] Aeronautical Communications,[38] Air Traffic Services,[39] Search and Rescue,[40] Aircraft Accident and Incident Investigation,[41] Aerodromes,[42] Aeronautical Information Services,[43] Environment Protection,[44] Security(Safeguarding International Civil Aviation Against Acts of Unlawful Interference),[45] safe Transport of Dangerous Goods by Air[46] and the implementation of State Safety Programmes (SSP) and Safety Management System.[47]

All these Annexes are to complement and help ICAO to achieve its laudable objectives as contained in the Chicago Convention which provides that:

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: (a) Insure the safe and orderly growth of international civil aviation throughout the world; (b) Encourage the arts of

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[26] *These include aviation regulatory authorities, airlines, flight crew, cabin crew, passengers, etc.*
[27] *i.e. the Chicago Convention of 1944, otherwise known as the Convention on International Civil Aviation.*
[28] *The Annexes embody the Standards and Recommended Practices that represent ICAO"s benchmarks for the regulation of civil aviation.*
[29] *Annex 1 to the Chicago Convention.*
[30] *Annex 2 to the Chicago Convention.*
[31] *Annex 3 to the Chicago Convention.*
[32] *Annex 4 to the Chicago Convention.*
[33] *Annex 5 to the Chicago Convention.*
[34] *Annex 6 to the Chicago Convention.*
[35] *Annex 7 to the Chicago Convention .*
[36] *Annex 8 to the Chicago Convention.*
[37] *Annex 9 to the Chicago Convention.*
[38] *Annex 10 to the Chicago Convention.*
[39] *Annex 11 to the Chicago Convention.*
[40] *Annex 12 to the Chicago Convention.*
[41] *Annex 13 to the Chicago Convention.*
[42] *Annex 14 to the Chicago Convention.*
[43] *Annex 15 to the Chicago Convention.*
[44] *Annex 16 to the Chicago Convention.*
[45] *Annex 17 to the Chicago Convention.*
[46] *Annex 18 to the Chicago Convention. See also "Forms of Standards and Recommended Practice" in www. Icao int. ; Cheng, Bin op. cit pp. 152-153.*
[47] *Annex 19 to the Chicago Convention. See the ICAO"s State of Global Aviation safety Report for the year 2013, available at: http://www.icao.int/Safety/State of Global Aviation Safety/ICAO_SGAS-book-EN=book-EN-SEPT2013_final_web.pdf, accessed on 26/8/2016.*

aircraft design and operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) Prevent economic waste caused by unreasonable competition; (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international civil aeronautics.[48]

Beyond this international legal framework, ICAO still periodically audits its members‟ aviation systems under its Universal Safety Oversight Audit Programme. [49] The Convention on International Civil Aviation, which has now 190 signatories, [50] created the International Civil Aviation Organisation (ICAO), a specialized United Nations agency, which adopts Standards and Recommended Practices(SARPs) " to promote the orderly, safe Safety Oversight Audit Programme(USOAP) to conduct regular, mandatory, systematic, and harmonized safety audits in all Contracting States in order to assess each State‟s capability for safety oversight; effective execution of a safety oversight system; and the level of implementation of safety-related Standards and Recommended Practices(SARPS).[51]

Initially, the results of the USOAP audits were strictly confidential, but the programme has now evolved to become transparent, with all audit reports posted on the ICAO public website; final reports are also distributed to all Contracting States and a secure process exists to inform all States about any significant safety concerns.[52] The foundations of this "safety testing measure" (USOAP) are described as follows: In the history of ICAO, the first acknowledgement that the notification of differences from SARPs was not satisfactory can be traced back to Resolution A7-9 adopted during the 7th Assembly in 1953. The Assembly recognized a "lack of positive evidence as to the degree of implementation on a worldwide basis of International Standards, Recommended Practices and Procedures". However, it was not until 7 June 1994 that the Council established the Safety Oversight Assessment Program (SOAP), sanctioned by the 31st Assembly, a voluntary and confidential programme that ensured the effective implementation of SARPs and associated procedures in areas of personnel licensing, operation of aircraft and airworthiness of aircraft by Contracting States. The results of the 45 audits conducted by ICAO under the SOAP showed an alarming gap between the notifications made by the States and the

[48] *Article 44, Chicago Convention, 1944.*
[49] *See Blumenkron, Jumena, " Implications of Transparency in the International Civil Aviation Organization"s Universal Oversight Safety Audit Programme"(2009)Volume xxxiv Annals of Air and Space Law, page 31.*
[50] *This was as at 2009. There are now about 191 signatories.*
[51] *Blumenkron, at page 33.*
[52] *Ibid. at page 34.*

level of compliance with the SARPs. It was evident that there was a need for a mandatory audit program if improvement was to occur.[53]

The International Civil Aviation Organisation was very discreet and pragmatic in its implementation of the Universal Safety Oversight Audit Programme (USOAP). The agency, according to Blumenkron, put the implementation of the Programme into phases. The ICAO Assembly asked the Contracting States of ICAO to sign a bilateral Memorandum of Understanding with ICAO regarding the implementation of Standards contained in Annex 1,[54] Annex 6[55] and Annex 8[56] , upon ICAO‟s initiative, with results to be used only for safety-related purposes.[57] This first phase of audits is known as the "initial audit cycle".[58] The ICAO Assembly later expanded the programme to include compliance with Annex 11, [59] Annex 13,[60] Annex 14,[61] and every safety-related Standard contained in the Annexes to the Chicago Convention in order to encompass an all-embracing audit system. The audits conducted under this phase are known as "comprehensive systems approach."[62] The last phase which is to be called the "continuous monitoring approach" audit cycle, was based on continuous data collection, States‟ updated data, ICAO regional inputs, on-site audit visits, and safety risk analysis.[63]

In auditing the safety compliance level of each contracting State with ICAO Standards and Recommended Practices, the International Civil Aviation Organisation usually has eight critical elements of safety in focus, which are (i) Primary aviation legislation; (ii) Specific operating regulations; (iii) State civil aviation system and safety oversight functions; (iv) Technical personnel qualification and training; (v) Technical guidance, tools and provision of safety-critical information; (vi) Licensing, certification, Authorization and approval obligations; (vii) Surveillance obligations; and (viii) Resolution of safety concerns.[64] These criteria have been more explicitly stated in an ICAO report. This is the 2011 State of Global Aviation Safety Report. This report contains a more explicit description

[53] *Ibid. at page 34. Clearly, SOAP was a precursor to USOAP. Both were designed by ICAO to ensure compliance with safety standards as epitomized by ICAO"s Standards and Recommended Practices .*
[54] *Annex 1 to the Chicago Convention is on personnel licensing.*
[55] *Annex 6 is on operations of aircraft.*
[56] *This Annex is on airworthiness of aircraft.*
[57] *Blumenkron, at page 35.*
[58] *It has to do with the safety oversight audits conducted between 1999 and 2004.*
[59] *The Annex is on air traffic services.*
[60] *This Annex is on accident and incident investigation.*
[61] *The Annex is on aerodromes.*
[62] *This covers the safety oversight audits conducted between 2005 and 2010.*
[63] *The continuous monitoring approach audit cycle was to begin in 2011.*
[64] *Blumenkron, op. cit. at page 36. The International Civil Aviation Organisation carries out safety audits in order to forestall any occurrence of any significant safety concern. A "significant safety concern" occurs when a holder of an authorization or approval does not meet the minimum requirements established by the State and by the Standards set forth in the ICAO Annexes, resulting in an imminent safety risk to international civil aviation. See, again, Blumenkron at page 137.*

of the eight critical elements that form the basis of the ICAO-run Universal Safety Oversight Audit Programme, which are: primary aviation legislation and civil aviation regulations; civil aviation organization; personnel licensing and training; aircraft operations; airworthiness of aircraft; air navigation services; aerodromes; and aircraft accident and incident investigation.[65] The purpose of any USOAP exercise carried out, including the report written thereon, is as follows:
Its main objective is to inform the audited State of the status of implementation of SARPs, procedures, safety-related guidance material, and good safety practices. It also measures State‟s capability to provide safety oversight based on the level of effective implementation of the critical elements of safety oversight. It further serves as recommendation for the resolution and correction of identified deficiencies. It demonstrates the need to initiate corrective actions by the State. Finally, it provides ICAO with information on differences between the audited State‟s national regulations and the SARPs. It contains the information found in an interim safety oversight audit report, the CAP and its comments and the progress made towards the implementation of the CAP.[66]

The final step in the process of auditing a country‟s civil aviation system is the development and implementation of a CAP[67] which must address all of the findings and recommendations pointed out by the audit team, and the objective of the corrective action plan is to bring the State‟s regulatory framework in compliance with SARPs. It should also include detailed information of the actions to be taken and the respective time-frames within which those actions are to be taken. [68] Eight fundamental principles were developed by ICAO to assure States of the validity of the audit process.[69] In addition to the eight fundamental principles, the International Civil Aviation Organisation relies on the Safety Oversight Audit Manual to determine the following actions expected by ICAO prior to, during and after the audit: (a) Signature and return of the revised MOU; (b) Acceptance of their respective Audit Schedules proposed by ICAO; (c) Submission of the State Aviation Activity Questionnaire and Compliance Checklists 90 days before the on-site audit, and specific documentation submitted six months in advance; (d) Co-operation and assistance with the audit team during the On-site Audit; (e) Attendance and co-operation during the closing meeting of the On-site Audit; (f) Proposal of theappropriate corrective measures, if a significant safety concern is identified; (g) Development of a CAP based on the interim safety oversight audit report; (h) Submission of the Corrective Action Plan within 60 calendar days after receiving the interim safety oversight audit report; (i) Implementation of

[65] *http://www.icao.int/safety/Documents/ICAO_State-of-Global-Safety_web_EN.pdf, accessed on 26/8/16. See page 7 thereof. 66 Blumenkron at page 38.*
[67] *" CAP" means corrective action plan devised by a country whose civil aviation system has been audited and in which some deficiencies are unearthed to correct those deficiencies.*
[68] *Blumenkron, op. cit. at page 38.*
[69] *The fundamental principles are : Sovereignty; Universality; transparency and disclosure; Timeliness; All-inclusiveness; being Systematic, consistent and objective; Fairness; and Quality.*

the CAP as scheduled; (j) Submission of updated information until corrective actions are completed; (k) Submission of comments on the final Safety Oversight Audit Report; (l) Consent to publish the final audit results in the ICAO public website; and (m) Co-operation and assistance with the follow-up action.[70]

After USOAP exercises, the reactions of audited States differ and can be categorised into three. Some States react positively regarding all aspects of the audit process, other States lack the political will to resolve safety deficiencies. [71] Therefore, there are the unreservedly proactive States, [72] reservedly proactive States[73] and the recalcitrant States.[74] The last group demonstrates severe and persistent safety deficiencies, exhibiting all or some of the following traits: (i) Failure to participate in USOAP audit process; (ii) Failure to complete the State Aviation Activity Questionnaire and Compliance Checklists;(iii) Failure to participate in the on-site audit; (iv) Failure to submit an acceptable Corrective Action Plan; (v) Failure to resolve the deficiencies identified in the USOAP audit; (vi) Level of activity inconsistent with safety oversight capability; and (vii) Nature of activity inconsistent with safety oversight capability.[75]

The International Civil Aviation Organisation (ICAO) first carries a duty before identifying the role expected of each member country of ICAO in ensuring safe skies by adhering strictly with ICAO‟s scheduled Universal Safety Oversight Audit Programme. A similar programme called SOAP was the precursor programme before USOAP.[76] Accordingly:
In 1997, the International Civil Aviation Organization (ICAO) established safety oversight and the identification of safety shortcomings as key activities for the enhancement of civil aviation safety. One of the numerous measures taken in this respect was the development of a strategy for enhancing global capacity for safety oversight in civil aviation through a programme designed to conduct regular, mandatory, systematic and harmonized safety audits in all Member States: the Universal Safety Oversight Audit Programme(USOAP). Twelve years has passed since the adoption of the USOAP and ICAO has started to build the foundations of the next cycle of one of its most successful programmes. The predecessor of the USOAP, the Safety Oversight Assessment Programme(SOAP) was established in 1994 for the purpose of conducting voluntary assessments of the effective implementation by Member States of Standards and Recommended Practices(referred together as SARPs) and associated procedures in areas of personnel licensing, operation of aircraft and airworthiness of aircraft. The

[75] *See Blumenkron at page 64.*
[76] *Blumenkron, Jimena, "A Prospective Analysis of the Evolution of ICAO"S Universal Safety Oversight Audit Programme Beyond 2010"(2010)Volume xxxv Annals of Air and Space Law ,page 297.*

alarming gap between the notifications made by forty-five assessed States and their poor level of compliance with SARPs led to the adoption of USOAP in October 1998.[77]

The programme has proven to be effective in identifying the level of implementation of each State‟s safety oversight system and it has also increased awareness of the safety oversight responsibilities of States through the revelation of vital safety information to the aviation community and provided better ways of tackling deficiencies found during the audits.[78] Various options have been proposed by ICAO after the initial first three phases.[79]

Auditing activities are a common practice where there is a desire to improve performance and a thorough oversight includes auditing and monitoring activities. However, a combined Continuous Auditing and Continuous Monitoring system is recommended.[80]

The safety of air navigation is the fundamental concern and aim of international air law and as air navigation is a global activity, so is concern for its safety becoming a global concern.[81] Accordingly: ICAO did not show initial leadership in the enforcement of standards. For decades, ICAO silently tolerated the alarming fact that many States did not implement ICAO safety standards and failed in their legal duty to notify their departure or non-implementation pursuant to their explicit legal obligation under Article 38 of the Chicago Convention. While the ICAO Secretariat experts were for years aware of the shortcomings in implementation of standards and of the deplorable lack of transparency in the attitudes of States, the ICAO leadership was too "diplomatic" and timid to bring the problem out into the open and to address it. Eventually, the experiences of the US FAA and the European JAA prompted the implementation of the ICAO safety oversight audit program.[82]

The sovereignty of States is fully respected by the ICAO‟s Universal Safety Oversight Audit Programme.[83] The audit missions are undertaken on the basis of a Memorandum of Understanding (MOU) between ICAO and the State to be audited, and so far there has been no recorded instance where a

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[77] *Ibid. at pages 297-298.*
[78] *Ibid. at page 304.*
[79] *The author endorses the following options with sufficient justifications: Comprehensive System Approach Follow-Up Action; Comprehensive System Approach Second Cycle; Annexes 1, 6 and 8 Cycle; Annexes 11, 13 and 14 Cycle; Postponement of USOAP Audit Activities Cycle; and Continuous Monitoring Approach Cycle.*
[80] *Ibid. at page 317.*
[81] *Milde, Michael, " Aviation Safety Oversight: Audit and the Law"(2001) Volume xxvi Annals of Air and Space Law, page 165.*
[82] *Milde, Ibid. at page 173.*
[83] *This recognition is in sync with Article 1 of the Chicago Convention which provides that " The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory".*

State has refused or deferred to undergo a safety oversight audit.[84] ICAO justifiably has a basis on which it can embark on a Universal Safety Oversight Audit Programme exercise. According to an author:
It is submitted that the performance of safety audits is actually in full harmony with existing constitutional framework of ICAO and does not break new legal ground. It is a mandatory function of the Council "to request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services" and "to report to Contracting States any infraction of this Convention." A failure of a State to file a difference under Article 38 would be a flagrant infraction. The Council has a mandatory constitutional obligation"to report to the Assembly any infraction of this Convention where a Contracting State has failed to take appropriate action within a reasonable time after notice of infraction. The Council also has a discretionary power "to conduct research into all aspects of […] air navigation which are of international importance. The existing framework of the Chicago Convention thus gives all necessary powers to the Council to act assertively for the implementation of safety standards.[85] The want or lack of an efficient enforcement mechanism capable of forcing each contracting State to compulsorily comply with ICAO Standards and Recommended Practices substantially detracts from the value of the said constitutional mandate.

At the international level again, the United States of America also regulates aviation safety. How does it do this? One of the means is through its own audit programme called " the Foreign Aviation Safety Assessment Programme (FASAP), the implementation of which the US Federal Aviation Administration initiated following an air crash in 1990 by a Colombia-registered Avianca Airlines Boeing 707 en route from Bogota to New York. The crash resulted to 73 fatalities.[86]

The FASAP subjects foreign aircrafts flying into or through the US airspace, and particularly landing at the US airports, to scrutinous tests. The FASAP standards are based on ICAO standards but the enforcement mechanisms are stricter than the ICAO ones. The US FASAP is based on five (5) factors, which are: 1. whether the foreign civil aviation authority has developed or implemented laws or regulations in accordance with ICAO standards; 2. whether the said civil aviation authority lacks the technical expertise or resources to license or oversee civil aviation; 3. Whether it lacks the flight operation capability to certify, oversee and enforce air carrier operation requirements; 4. Whether it

[84] *A State may defer if it is not ready, probably because it lacks some of the major eight critical elements of aviation safety. For example, until 2006, Nigeria did not have a solid and standard aviation legislation like the Civil Aviation Act, 2006. The ever-ready and safety conscious US has been audited by ICAO and several corrective actions were accordingly carried out. See Milde, op. cit. at page 175.*
[85] *Milde, at pages 176-177.*
[86] *Mark Lee Morrison, "Navigating the Tumultuous Skies of International Aviation: The Federal Aviation Administration"s Response to Non-Compliance with International Safety Standards" (1995) 2 South Western Journal of Law & Trade, Pp. 621-655, at 621-622.*

lacks the aircraft maintenance requirements and; 5. Whether it lacks appropriately trained inspector personnel required by ICAO standards.[87]

At the industry level, the International Air Transport Association (IATA) places high premium on aviation safety. It also has its safety audit programme called " the Internationa Air Transport Associatioon Operational Safety Audit (IOSA). This audit is to ensure that international airlines that are members of IATA conduct safe flights.

3.2 Aviation Security

Aviation security goes hand-in-hand with aviation safety. "Security" and "safety" are interrelated and are sometimes used interchangeably. In the civil aviation industry, it is believed that aviation safety covers and embraces aviation security. The two concepts are, however, different.[88] Aviation safety relates to the actual operational aspects of civil aviation and it deals with issues like licensing, certification and airworthiness of aircrafts, aerodrome design and engineering, communication and navigational aids, among others.[89] It appears that aviation safety deals generally with all measures taken before the actual commencement of aircraft flights. This does not mean that safety measures are not taken during flight operations. But safety measures appear to be "internal" or precautionary measures taken to guarantee aviation safety.

On the other hand, aviation security deals with all measures taken to guard against external, usually third party, interferences with the safe and secure operations of aircrafts. Aviation security involves curbing criminal activities taking place on board and in the airports. [90]Aviation security measures are taken against all activities that endanger the lives of passengers, crew, other persons and property including air navigation facilities either on board the aircraft in flight or on ground.[91] Such measures include, but are not limited to, deployment of law enforcement agencies at the airports, screening passengers, erection of perimeter fences at the airports and the use of CCTV at the airports. Airports in Nigeria are not comparable with standard airports outside the country. A serious aviation regulatory system must address such gaps.

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[87] Ibid. at Page 637. It is important to note that in Nigeria, airlines usually rely heavily on expartriate pilots and safety inspectors are really in short supply in the Nigerian civil aviation industry.
[88] Callistus E. Uwakwe, Introduction to Civil Aviation Law, 1st Edn. (Aviation Publishing and Consultancy Ltd., Lagos, 2006) Page 171.
89 Ibid.
[90] Shreya Rastogi & Swarnali Chanda, "Need of Reforming the Aviation Security and Airport Security Measures in India- A comparative Analysis" in Ranbir Singh, Sanat Kaul & Srikrishna Deva Rao (eds) Current Developments in Air and Space Law (National Law University Press, Delhi, 2012) Page 89.
[91] Ibid.

The International Civil Aviation Organisation, appreciating the importance of aviation security, developed in 2002 the Universal Security Audit Programme (USAP). The objective is to provide high standards of security, quality control, training and certification of relevant stakeholders. The expected effect is that each member country of ICAO must have a secure civil aviation system.[92]

3.3 Procurement of Maintenance, Repair and Overhaul (MRO) Facilities.

The role of MRO in the civil aviation industry cannot be over-emphasised in civil aviation reform. Maintenance, Repair and Overhaul facilities are critical to aviation safety. For flight operations to be safe, aircraft must be airworthy, and for aircraft to be airworthy, they must be properly serviced and undergo mandatory checks. These facilities are lacking in Nigeria. These facilities, if available in Nigeria, will guarantee a steady flow of revenue for the government. They will also save the Nigerian airlines from avoidable foreign exchange being expended on maintenance of aircraft abroad.

3.4 Resuscitation of a National Carrier in Nigeria

In an ideal state, many factors gender or even contribute to economic development. In the case of Nigeria, oil has regrettably been the mainstay. Other critical areas that have been neglected include agriculture, tourism and non-oil natural resources. In the aspect of transport, Nigeria has, for long, underestimated the huge spin-offs that accrue from a legally and effectively managed national airline. This, no doubt, has been to her economic detriment. This aeronautical neglect has, in particular, robbed her of the prodigious gains afforded by the Yamoussokrou Declaration, an African air transport initiative aimed at the liberalization of the civil aviation market among African nations. The reason for the neglect is ostensibly impregnable- the Nigeria Airways Limited, the nation‟s predecessor-national carrier, suffered an ineluctable liquidation due partly to bad management. Even though there have been serious debates on the desirability or otherwise of a national carrier in the Nigerian civil aviation industry, its establishment, it is believed, will fill a gap in the industry.

3.5 Airport Concessioning or Privatisation

This is an arrangement that necessitates a change in the ownership or management of an airport. The arrangement may accommodate both ownership and management of the airport in question.[93] Privatisation of airports seems to now be the order of the day in the civil aviation industry. This has beenattributable to many factors, which include the facts that: 1. the private sector has much stronger

[92] *Sanat Kaul, "Chicago Convention Revisited: Review of Chicago Convention and Bilateralism in Air Services" in Ranbir Singh, et al (eds), Op. Cit. at Page 9.*
[93] *Ghanshyam Singh, "Aviation Industry: Emerging Legal Challenges" in Ranbir Singh, et al (eds), Op. Cit. at Page 16.*

stronger management capability due to its ability to recruit and compensate qualified managers and technicians; 2. the private sector has freedom to operate outside of political and bureaucratic constraints; and 3. the private sector has potentially greater experience in developing facilities and providing services adapted to competitive world of global trade. [94] Airport privatization yields many benefits. In this regard, it has been submitted thus:

Benefits of airport privatization can more efficiently deliver many goods or service than government due to free market competition. In general, it is argued that overtime this will lead to lower prices, improved quality, more choices, less corruption, less red tape, and quicker delivery. [95] Many are skeptical about whether the Chicago Convention even supports the privatization of airports as the Convention refers to States, rather than individuals, investors or company, as the manager or owner of an airport in some of its Articles. Again, even where privatisation occurs, the private entity may become bankrupt; the private entity may prioritise profits above aviation safety and; the private entity may increase airport charges, which may not be in the best national interest.[96]

4.0 CHALLENGES OF CIVIL AVIATION REFORMS IN NIGERIA

There are many challenges facing civil aviation reforms in Nigeria. These have accumulated from the policies and activities of successive governments as well as past mismanagements and bad attitudes. Some of the challenges pertinent to this paper are briefly discussed below.

4.1 Non-Compliance with the ICAO Regulatory ideals

This is a serious challenge which inhibits any meaningful civil aviation reforms that may be conceived. It is conceded that there is no utopian aviation safety status anywhere in the world. But ICAO member countries must comply with the minimum regulatory standards of ICAO. In fact, countries with superb aviation safety records have exceeded ICAO‟s ideals in matters of regulatory compliance.

How can Nigeria exceed ICAO‟s ideals when it is yet to comply with the ICAO minimum standards? Non-compliance has impacted negatively on the Nigerian civil aviation industry. There have been many avoidable aviation accidents and incidents in the Nigerian civil aviation industry.[97] This is in spite of

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[94] *Ibid. at Page 14.*
[95] *Ibid. at Page 15. 96 Ibid. at Page 16.*
[97] *On September 26, 1992, a Nigerian Air Force C-130 aircraft crashed few minutes after taking off from Lagos airport, resulting in the death of about 200 people; on June 25, 1995, a Harka Airlines Soviet-era Tupolev Tu-134 aircraft crashed at Lagos airport, killing 15 people; on November 13, 1995, a Nigeria Airways Boeing 737 crashed on landing in Kaduna, killing 9 people; on November 1996, a Boeing 727 operated by Nigeria"s ADC crashed on its way from Port Harcourt to Lagos, killing all 42 passengers and crew members; in the month of May, 2002, an EAS Airlines BAC 1-11 had a crash in Kano State as a result of which 148 people comprising 75 on board and at least 73 on the ground died; on December 10, 2005, Nigerian Sosoliso aircraft DC from Abuja crashed on landing at Port Harcourt, killing 106 people, half of them school children on their way home for Christmas; on September 17, 2006, 12 Nigerian military personnel, mostly high-ranking officers, were killed in a plane crash in Benue State; on October 29, 2006, an ADC aircraft carrying 14 passengers crashed and got burnt after take-off from Abuja, leading to many fatalities. See Onanuga, Adebisi, et al, "How to Make the Sky Safer" , The Nation, Tuesday, June 12, 2012, Pages 36-37; Lucas, Muyiwa, "Plane Crash: Why Dana Is Culpable", Tell Magazine, June 18, 2012, Page 32.*

many aviation policies that have at one time or the other been churned out by successive ministers who have been at the helms of the industry. [98] The view that the Nigerian aviation industry is not the only country that has witnessed a concatenation of aviation accidents is a lame point because Nigeria, as a member of the International Civil Aviation Organisation, must ensure compliance with ICAO‟s ideals for aviation safety. [99] The Nigerian Civil Aviation Authority (NCAA) has failed to comply with the regulatory ideals of the International Civil Aviation Organisation (ICAO). This is evident in the NCAA‟s failure to carry out timely safety and economic audits on domestic airlines, airports and the entire aviation industry in Nigeria.[100]

One of the most recent air crashes in the Nigerian aviation industry that attracted a wide public attention was the Dana commercial aircraft crash at Iju-Ishaga, a Lagos State suburb, on June 3, 2012.[101] The Dana Airline Boeing-made MD83 aircraft, with registration Number 5N-RAM, which crashed into the residential area, killed all 153 passengers and crew on board.[102] Ten residents of a two-storey building into which the aircraft plunged also lost their lives.[103]

4.2 ICAO's Regulatory Permissiveness

The International Civil Aviation Organisation, in spite of its robust legal framework, appears to have a permissive enforcement mechanisms.[104] The global regulatory body does not seem to possess coercive enforcement mechanism. In this regard, it has been observed that, though the ICAO was created to ensure the safe and orderly growth of international civil aviation throughout the world and to promote the safety of flight in international air navigation, the ICAO, possibly due to its structure, is limited to recommending the lowest common denominator among safety regulations, resulting in generalized, diluted standards. More importantly, the ICAO does not have an enforcement mechanism capable of imposing even these generalized standards on countries lacking aviation experience and effective oversight.[105]

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[98] *Some of the ministers include Olusegun Agagu, Kema Chikwe, Isa Yuguda, Babalola Borishade, Femi Fani-Kayode, Felix Hyat, Babatunde Omotoba, Fidelia Njeze and Stella Oduah, among others. See Lukas, Muyiwa, Op. Cit. at Page 33.*
[99] *Shadare, Wole, "Can Nigerian Airlines Rekindle Passengers‟ Trust?", The Guardian, Friday, June 14, 2012, Page 46.*
[100] *Okeke, Ifeoma, "Aviation Sector Totters on Weak NCAA Regulation", Business Day, Tuesday 02 May, 2017, Pages 1 & 34.*
[101] *Kolade-Otitoju, Babajide & Balogun, Funsho, "Murder in the Air", The News Magazine, Volume 38, No 24, June 18, 2012, Page 12.*
[102] *Ibid.*
[103] *Ibid.*
[104] *See Article 38 of the Chicago Convention.*
[105] *Mark Lee Morrison, Op. Cit. at Page 623.*

Weak Airline Economic Bases Due to Aviation Costs

The Nigerian airlines are economically weak. Indeed, the airline industry in Nigeria is facing economic upheavals forced upon it by multifarious factors like increased fuel prices, sagging domestic economy and international competition.[106] Summing up this daunting challenge, an expert said:

In some industries, though, costs may have remained flat or even increased, despite in some cases quite significant advances in technology. Aviation is an example. Labour costs, fuel costs, aircraft costs, system complexity (network breadth), among others, have risen dramatically over the decades. [107]

Nigerian airlines incur huge costs on aircraft maintenance, which makes the airlines to spend little or no money on the preservation of aviation safety in order to save more profits. The price of aviation fuel, otherwise known as Jet A1, also constitutes further burden on the Nigerian airlines.

4.4 Poor Aviation Infrastructures

One major problem facing the Nigerian civil aviation industry is lack of the required infrastructure for safe flights. The Nigerian airports lack airfield lighting, perimeter fences, etc. It has been submitted that poor aviation infrastructures, weak economies and differing political processes, coupled with inconsistent aviation policies are anathema to international airline safety.[108]

4.5 Multiple Aviation Charges Payable by the Ailing Airlines

The Nigerian airlines like Bellview, Aero Contractor, Arik, Air Peace, etc, pay multiple aviation charges. They pay 5% ticket sales charge to the Nigerian Civil Aviation Authority. They also pay some navigation charges to the Nigerian Airspace Management Agency.[109] The charges payable to the Federal Airports Authority of Nigeria have many sub-heads. Airlines are considered as tenants of airport authorities. To this extent, they are under financial obligations to the airport authorities. [110] Accordingly, it has been observed as follows:

Around the world, airlines must pay airports for the use of their facilities and services. These so-called "airport charges" mean higher costs for the airlines, and in order to recover these costs, airlines pass them on to the passengers in the form of higher fares; it is therefore in the interest of both airlines and passengers that airport charges are as low as possible.[111]

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[106] *N.J. Strantz, "From Technology to Teamwork: Aviation Security Reform since PAN AM Flight 103" (1993) 3 Alb. L.J. Sci. & Technology, Pages 235-265, at 241.*

[107] *Matt Anderson, "Getting at the Core of Airline Economics" (2009-2010) 9 Issues in Aviation Law and Policy, Pages 263-306, at 270.*

[108] *Mark Lee Morrison, Op. Cit. Page 622.*

[109] *Chinedu Eze, "Nigerian Airlines Spend Over #10bn Annually on Taxes" THISDAY, Friday, February 17, 2017, Pages 19-20.*

[110] *Article 15 of the Chicago Convention, 1944.*

[111] *Wouler Oude Alink, "The Establishment of Airport Charges: Recent Development in the EU" (2012) 11 Issues in Aviation Law and Policy, Pages 457-478, at 457.*

Characteristically, aviation charges and fees are payable by airlines for services and facilities provided by the airports and air navigation service providers. Such charges are for the use of runway, [112] airport infrastructure,[113] terminal buildings, [114] airport security, [115] protection of the environment, [116] air traffic control[117] and other air navigation services.[118]

This state of affairs, coupled with other aviation costs discussed above, has made the Nigerian airlines to be heavily indebted to the Nigerian chief civil aviation regulatory agency [119] and some other auxiliary civil aviation institutions.[120]

4.6 Porous Airport Security

This deserves a separate treatment. Airports in Nigeria are not up to the international standards. Recent security breaches resulting in aviation incidents attest to this fact. The most recent, but seemingly innocuous, of these threats is aerial stow-away, a phenomenon that general consensus associates with maritime affairs. It has now gained notoriety in civil aviation, particularly in the continent of Africa.

4.7 Flight Delays and Flight Cancellations

These are common occurrences in the Nigerian civil aviation industry. These constitute cases of breach of contract between the airline and the passenger concerned. According to an aviation writer:

If the departure time of the flight is inordinately delayed, it is hard to maintain that the flight is still the flight which was previously planned. It is precisely in scenarios like this that statutory exceptions should apply. The current piecemeal measures applied by the NCAA, in summoning the management of the defaulting airlines "to explain" the circumstances for long delays; or seeking to prevail on the airline‟s officials to provide refreshments at times of delay, are rather supine and can only encourage the current practice of outright disregard for contractual obligations.[121] The effect of this trend, as captured by the author, is as follows:

The frequent inordinate delays in the domestic airline industry in Nigeria are incongruent with the reform agenda that has been implemented by the government since 2006 to wide international acclaim. The delays also have dire economic implications, as is evident from the meager contribution of the aviation sector to the newly rebased GDP.[122]

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[112] *Otherwise called landing charges.*
[113] *i.e. parking and boarding bridge charges.*
[114] *i.e. passenger charges.*
[115] *i.e. security charges.*
[116] *i.e. noise charges.*
[117] *i.e. en route navigation and terminal charges.*
[118] *i.e. meteorological and aeronautical information services. See Article 15 of the Chicago Convention, 1944. See also Wouler Oude Slink, Op. Cit. at Page 460.*
[119] *i.e. the Nigerian Civil Aviation Authority.*
[120] *They include the Federal Airports Authority of Nigeria and the Nigerian Airspace Management Agency.*
[121] *Enyinnaya Uchenna-Emezue, "Addressing the Contractual Quagmire in the Nigerian Aviation Industry"(2014-2015) 14 Issues in Aviation Law & Policy, Pages 9-18, at 11.*
[122] *Ibid. at Page 17.*

4.8 Problem of Aircraft Acquisition by Nigerian Airlines

Aircraft are expensive equipment. And they are not being produced in Nigeria. Leasing one is also costly. One of the factors that launched China into the aviation limelight is the domestication of aircraft production. The US and the UK are also good examples in this regard.[123]

5.0 PROSPECTS OF CIVIL AVIATION REFORMS IN NIGERIA

In spite of the above challenges, the future of the Nigerian civil aviation is bright. If certain developmental projects are put in place or the ones already embarked upon are continued, the Nigerian civil aviation industry will rank comparably with its counterparts abroad. What are the existing indices that indicate the prospects?

5.1 Regulatory Specialisation

This is between the Ministry of Aviation and the Nigerian Civil Aviation Authority. The Civil Aviation Act of 2006 has forged a clear dichotomy, at least in principle, between policy making powers [124] and regulatory powers.[125] This was not the situation before 2006. However, this legislative division of powers must be strictly adhered to. This will lead to the desired aviation reform. In the UK terminology, a strict adherence to the legislative division of the powers will lead to "Regulatory Specialisation[126]".

5.2 Completion of Airport Remodelling

The Minister responsible for civil aviation under the administration of President Goodluck Jonathan initiated and embarked on the remodeling of the nation‟s airports. If these laudable projects can be completed, there will be reform in the area of aerodromes in the Nigerian civil aviation industry.

5.3 Proposal to Have Maintenance, Repair and Overhaul Facilities

This will translate to developments in the civil aviation industry. If the federal government can build one or complete the one recently begun by the Akwa Ibom state government, then there will be reform. It will even translate to aviation safety because aircraft maintenance will cost less, and more revenue will be generated for the government.

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[123] *Barry Kellman, "China"s Reform of Aviation: A Signal of the Significance of Competition under Law" (1987) 8 Northwestern Journal of International Law and Business, Pages 1-28, at 16.*
[124] *Which are vested in the Minister responsible for civil aviation in Nigeria.*
[125] *Which are vested in the Nigerian Civil Aviation Authority.*
[126] *Which means a consolidation and transfer of both the economic and safety regulatory powers affecting the civil aviation industry to the NCAA, due to the latter"s technical expertise in aviation matters. See Brian F. Havel & Jeremias Prassl, "Reforming Civil Aviation Regulation in the United Kingdom: The Civil Aviation Bill 2012 (2011-2012) 11 Issues in Aviation Law & Policy, Pages 321-326, at 321.*

5.4 Establishment of a National Carrier after the Ethiopian Model

This will lead to reform in the Nigerian civil aviation industry. Nigerians must learn from the past failures; Nigerians must not surrender to the ensuing fear of past failures. Airline management must be separated from governance.

5.5 Airport Concessioning

This is a noble ideal that can lead to civil aviation reform if properly harnessed. Lessons can be learnt from India. Privatisation or private participation must not assume private monopoly in favour of the private company concessionaire.[127]

5.6 Airline Alliances

There are recent developments and practices in the air transport industry that are capable of opening up the global marketplace for the Nigerian airlines, particularly in international airline operations, such as code-sharing agreement, mergers between airlines , including regional initiatives among like- minded states.[128]

5.7 AMCON on the Rescue

Nigerian airlines are heavily indebted to aircraft companies, insurance companies, aircraft maintenance companies and aviation agencies. In fact, the Nigerian airline believed to be the largest and strongest, Arik Airline Ltd., is dying. But the Asset Management Corporation of Nigeria is taking it over.[129] Heavy indebtedness has been the common terminating agent of an average Nigerian airline, shortening the lifespan of an average commercial airline to ten years.[130]

5.8 Industry Watchdogs

The Nigerian Civil aviation industry is blessed with many independent watchdog associations and individuals. Some of them are trade unions but they sometimes alert members of the public to the danger of flying in particular parts of the world or country. They include the Air Operators of Nigeria, National Association of Aircraft Pilots and Engineers, Association of Nigerian Aviation Professionals, Aeronautical Information Services Association of Nigeria, etc.

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[127] *Moses George, "Public Monopoly to Private Monopoly- A Case Study of Greenfield Airport Privatization in India Part 1" (2009-2010) 9 Issues in Aviation Law and Policy, Pages 174-202, at 187-192.*
[128] *Francesco Fiorilli, "Ensuring Global Competitiveness in the Airline Industry" (2011-2012) 11 Issues in Aviation Law & Policy, Pages 101-148, at 102.*
[129] *Clara Nwachukwu, Femi Adekoya & Wole Oyebade, "Why our managers took control of Arik, by AMCON" The Guardian, Friday, February 10, 2017, Pages 1 & 6.*
[130] *Chinedu Eze, "Why Nigerian Airlines Fail" THISDAY, Friday, February 17, 2017, Page 24.*

6.0 CONCLUSION AND RECOMMENDATIONS

The civil aviation industry rides and thrives on aviation safety and security. These two elements are critical to safe skies. Many other factors like compliance with the applicable aviation legal regime, a robust airline system, good airports and a safety- conscious regulatory agency are equally important. In Nigeria, many of these aviation factors are not yet entrenched, whereas they are key to a new dawn in the Nigerian civil aviation industry. There exists a robust legal regime for the regulation of civil aviation in Nigeria. Aviation players and stakeholders only need to comply with the law. For Nigeria to record a commendable degree of compliance in its aviation industry, it must first put its house in order by exceeding the ICAO regulatory ideals and harnessing its activities towards aviation safety. According to an expert:

Several of the restrictions in the bilateral regimes were imposed to protect national safety and security, and the DOT, in particular, was concerned that a more liberalized structure could threaten these measures. Under the current regulatory system, the ICAO develops and disseminates detailed international standards, and signatory states, through national civil aviation authorities (CAAs), apply and enforce the ICAO standards. The United States and the European Union have superb safety records because they not only comply but often exceed the standards imposed by the ICAO.[131]

Besides, the federal government must provide "public subsidies" [132] to the fledgling airlines in the industry. This should be closely monitored. Such public subsidies tend to provide confidence as airlines recognize that they will have the support of their government if they fail.[133] Also, the government must inject professionals to all critical areas of aviation operations. These must be trained and re-trained. Nigeria must also draw lessons from other countries whose aviation systems are safe and secure.

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[131] *Jessica Finan, "A New Flight in the International Aviation Industry: The Implications of the United States-European Union Open Skies Agreement" (2008) 17 Tulane Journal of International & Comparative Law, Pages 225-242, at 235.*

[132] *These are the equivalent of bail-out funds in the Nigerian phraseology.*

[133] *Jessica Finan, Op. Cit. at Page 234. In Nigeria, such public subsidies were not properly made use of in the past.*

Deployment of Armed Forces on Internal Security: Constitutional Provisions

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A B S T R A C T

Article 355 of the Constitution places an obligation upon the Union of India to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this Constitution. Under the Constitution, law and order as well as public order are both within the exclusive province of the states. Even where the armed forces of the Union are deployed in aid of the civil power of the state to maintain public order, whether on the basis of a request for such armed forces from the state or whether such deployment is made by the Union government acting under a law made under Entry 2 A of the Union List, the law and order and public order yet remain within the domain of the states.

Keywords: Constitution, law and order, internal disturbance, armed forces.

Article 355[1] of the Constitution places an obligation upon the Union of India to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this Constitution. Prior to the Constitution (44th Amendment) Act, Article 355 was relevant both for the purpose of Article 352 as well as Article 356. Under Article 352 (as it obtained prior to the said Amendment Act), The President could proclaim emergency and assume the powers mentioned in the said Article. The expressions external aggression and internal disturbance were common to both Article 355 and Article 352. Similarly, if the government of a state was not carried on in accordance with the provisions of the Constitution, the President could take action under Article 356 and assume to himself the powers of the government of that state and exercise other powers mentioned in that Article. However, by Constitution (44th Amendment) Act, the expression internal disturbance in Article 352 (1) was substituted by the expression armed rebellion. With this the connection between Articles 355 and 352 got snapped partially. In other words, in case the security of India or a part thereof is threatened by internal disturbance in a State, the power under Article 352 may not be available. Even then, the obligation of the Union government to protect every State from internal disturbance remains. it is now an independent obligation to be performed in such a manner as the Union government thinks appropriate. By the Constitution (42nd Amendment)

[1]*Constitution of India, Article 55. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.*

Act, the Parliament brought in the following provisions/amendments. Article 257A was introduced[2] providing for assistance to the states by deployment of armed forces or other forces of the Union. The said Article which was deleted by the Constitution(44 Amendment) Act. introduced Entry 2A in[3] Constitution. This entry Along with Article 257A, Parliament had also the Union List in the Seventh Schedule to the has not been deleted by the Constitution (44thAmendment) Act. It states about deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power, and powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. Entry 1 in List II (State List) read as follows before the Constitution (42nd Amendment) Act that Public order (but not including the use of naval, military or air force or any other armed force of the Union in aid of the civil power). By the said Amendment however, the said Entry was amended and states that public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of civil power). It may be noticed that Entry 2A in the Union List does not refer to or use the expression public order. Article 257 contemplated Government of India deploying the armed forces of the Union for dealing with any grave situation of law and order in any state.

Under the Constitution, law and order as well as public order are both within the exclusive province of the states. Even where the armed forces of the Union are deployed in aid of the civil power of the state to maintain public order, whether on the basis of a request for such armed forces from the state or whether such deployment is made by the Union government acting under a law made under Entry 2 A of the Union List, the law and order and public order yet remain within the domain of the states. Of course, these words were there in Entry 1[4] of the State List even prior to the Constitution (42nd Amendment Act) and they remain even now. In this connection, the difference between the concepts law and order, public order, internal disturbance and armed rebellion, all the expressions employed by our Constitution, there is a distinction between public order (State List, item 1) and internal disturbance referred to in Article 355. For this purpose, the meaning and content of both the expressions must be examined. As pointed out by the Supreme Court in the case of Ram Manohar Lohia (1966 S.C), law and order are a larger circle within which public order constitutes a smaller circle. The concept of

[2] *Constitution of India Article 257A. [Assistance to States by deployment of armed forces or other forces of the Union.] Rep. by the Constitution (Fortyfourth Amendment) Act, 1978, s. 33 (w.e.f. 20-6-1979).*
[3] *Constitution of India Union List Entry 2A.- Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.*
[4] *Constitution of India State List 1-Public order (but not including 3[the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).*

security of the state was said to be a yet another smaller circle within public order as concentric circles. For example, a simple murder is a law and order problem but where a murder is committed on communal grounds, which is meant to or designed to create a fear and a feeling of insecurity in one or more communities, it becomes a public order issue. A communal clash is a public order problem but where the communal clashes take place on a large scale, affecting an entire state or a part of the state, paralyzing the administration, it would be a case of internal disturbance. Once a militant group decides to engage in indiscriminate violence against civilians for political ends, it crosses a certain moral threshold that sets it apart from other groups.[5] The distinguishing features include such elements as the targeting of unarmed civilians, the use of extra-normal violence, the desire by the terrorists to instil fear in the target population, or the intent to influence a broader audience beyond the immediate victims of the terrorist attack. [6]

Now, coming to the meaning and content of the expression internal disturbance, it is necessary to turn to Constituent Assembly debates in the absence of a judicial pronouncement. The reference to the speech of Dr B. R. Ambedkar[7] in the Constituent Assembly, explaining the principle behind Article 355. He said that if the centre is to interfere in the administration of provincial affairs, it must be by and under some obligation which the Constitution imposes upon the Centre. The article says that it shall be the duty of the Union to protectevery unit. Similar clauses appear in the American Constitution. They alsooccur in the Australian Constitution where the Constitution provides that it shall be the duty of the Central Government to protect the units or the states from external aggression or internal commotion that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions namely that it shall be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. The provisions of the American and Australian Constitutions, which Dr. Ambedkar referred to, may also be set out for a clear understanding of the meaning of the expression internal disturbance. Article VI (4) of the US Constitution states that the UnitedStates shall guarantee to every state in the Union a republic n form of government and shall protect each of them against invasion and on application of the Legislature or of the Executive when the Legislature cannot be convened against domestic violence. Similarly, Section 119 of the Australian Constitution Act states that the Commonwealth shall protect every state against domestic violence. It would be seen that both the

[5] *Boaz Ganor, interview with the authors, Herzliya, Israel, 12 February 2014.*
[6] *Schmid, A.P. (Ed.), The Routledge Handbook of Terrorism Research; Hoffman, Bruce. Inside Terrorism Columbia University Press, 2013; on approaches to definition of terrorist groups see Phillips, Brian J. "What is a Terrorist Group? Conceptual Issues and Empirical Implications." Terrorism and Political Violence (2014): 1-18; De la Calle, Luis and Ignacio Sa´nchez-Cuenca. "In Search of the Core of Terrorism." Chap. 3, In Killing Civilians Or Holding Territory? how to Think about Terrorism, edited by Victor Asal, Luis De la Calle, Michael Findley and Joseph Young. Vol. 14, 475-497: Wiley Online Library, 2012.*
[7] *C.A.D.Vol.IX. P. 133*

and Australian Constitutions use the expression domestic violence though under the US Constitution, the federal government steps in the case of domestic violence only at the request ofthe state or Legislature of the state concerned. As against these provisions,Article 355 empowers the Union to act on its own i.e. without a request from the state government, to protect the state from internal disturbance. The reference in this connection can be given by the speech of Sri Alladi Krishnaswami Ayyar[8] in the Constituent Assembly as well. Speaking upon this Article, Sri Alladi said that it is the duty of the Union Government to protect the states against external aggression, internal disturbance and domestic chaos andto see that the Constitution is worked in a proper manner both in the states and in the Union. It would therefore be legitimateto infer that the expressioninternal disturbance means internal commotion (the expression used by Dr Ambedkar in the above speech), domestic violence (expression used in both theAmerican and Australian Constitutions), and domestic chaos (the expressionused by Sri Alladi Krishnaswami Ayyar in the Constituent Assembly during the debate on the said Article) and internal security in current scenario. The members of the constituent assembly believed that India was peculiarly faced with uniquely extraordinary issues which had not confronted other federations in history. [9] It therefore follows that every public order problem does not necessarily amount to internal disturbance while the converse may be true i.e., in case of' internal disturbance, public order is bound to be affected. The duty and power of the Central Government under Article 355 comes into play only in case of internal disturbance i.e., domestic chaos or internal commotion or internal insecurity. The said power is not available in each and every problem of public order. Internal disturbance means failure of public order on a large scale and in a sustained manner for whatever reason it may be affecting the entire state or part of the state. The expression internal disturbance itself is expressive of the level of disturbance, chaos, commotion and insecurity it contemplates. It must be remembered that prior to the 44th Amendment, internal disturbance was one of the grounds on which the President could proclaim emergency under Art.352. This consideration also induces to hold that internal disturbance connotes disturbances on a large, on a sustained and serious level and is distinct and different from issues of public order which arise from time to time in one or the other place, village, town or city of a state. In the latter type of cases, it is for the state government to tackle it. It is for the state government to decide whether it requires the help of armed-forces/para-military forces of the Union to help and tackle it. Indeed, if it is of a purely local level, the Executive Magistrate (of the highest rank) can deal with it under Section 130 of the Code of Criminal Procedure. The above distinction between the public order in entry 1 of List II of the Seventh Schedule to the Constitution and internal disturbance referred to in Article 355 has to be kept in mind and observed that in the interest of preserving the federal character of our Constitution and to ensure that the field reserved to the states and to the Union under our Constitution. In

[8] *C.A.D. Vol.IX.P.150.*
[9] *Constituent Assembly Debates V, 1, 38, N.G. Ayyangar.*

recent years a growing number of actors traditionally labelled terrorist groups are increasingly relying on a combination of tactics that fall squarely within the predominant understanding of both terrorism and guerrilla tactics.[10] it is relevant to point out that entry 2A in the Union List speaks of deployment of the armed forces of theUnion in any State in aid of civil power but it does not speak of or refer topublic order. It only empowers the Union to make a law providing for such deployment and their powers and procedures. It does not and cannot make the law to maintain public order. It is important to notice how entry 1 in the State List reads about public order but not including the use of the army, naval, military or air force in aid of civil power. It means that the state cannot make a law with respect to the deployment of the armed forces, while it can legislate with respect to public order. The State can no doubt request the Central Government to send its armed forces for maintaining public order but it cannot itself direct such deployment. Twenty-first-century India faces multitude ofsecurity challenges. At thecore of India's security concerns is its internalsecurity a major national security challenge. [11] India does not face an external threat in the conventional sense but only internal security threats from external sources. [12] Pakistan's conflict with India cannot be reduced simply to resolvingthe Kashmir dispute. Its problems with India are much more capacious than the territorial conflict over Kashmir.[13] For the Pakistani Army too, the Kashmir conflict offers an excuse for perpetuating a war-like scenario to enjoy a special status with superior privileges in Pakistani society.[14]

It is worthwhile to note that while no provision in the Unlawful Activities Prevention Act specifically refers to the deployment of any armed force or para military force for achieving any of the objectives of the Act, clause (b) of Section 49 expressly gives protection to any serving or retired member of the armed forces or para purported to be taken by military forces in respect of any action taken or him in good faith in the course of any operation directed towards combating terrorism. Now, it is a well established presumption which is affirmed by innumerable decisions of the courts that the Parliament does not make any provision without a purpose. None of the provisions in an Act can be understood or construed as superfluous. If so, a question arises why did the Parliament introduce clause (b) of Section 49 of UAPA? The reason to think it necessary to provide a protection to any serving or retired member of the armed forces or para military forces in respect of any action taken in good faith in the course of any operation directed towards combating terrorism. the considered opinion is that this provision does contemplate by necessary implication, use of armed forces/para military forces for combating

[10] *Berger, "War on Error*
[11] *In Kautilya's 'mandala' conception, a ruler conceives of security in a series of concentric circles around his/her domestic realm. At the core is 'internal security'; in the next circle, there are neighbours; and in the outermost circle, distant great powers. Any security strategy has to deal with these three circles.*
[12] *Interaction with Mr K. Subrahmanyam, New Delhi, 16 March 2010*
[13] *Christine Fair, Fighting to the End: the Pakistan Army's Way of War, Oxford University Press, 2014, Chapter 1.*
[14] *Mohan C.Bhandari, Solving Kashmir, Lancer Publishers, 2006, Chapter 8,p. 295*

terrorismand also contemplates the armed forces / para military forces conducting operations towards combating terrorism. Terrorism is usually mentioned as one of the tactics of insurgency, together with propaganda, demonstrations, political mobilization of constituencies, subversion, insurrection, guerrilla warfare, and conventional warfare. [15] Conventional wisdom holds that the secret nature and small size of terrorist organizations generally prevents them from holding territory, while their focus on extreme violence prevents them from enjoying much popular support.[16] This intent must be read in the context of the Schedule appended to the Act wherein there are specifically included quite a few organisations engaged in insurgency /militancy in the States of Assam, Manipur and Tripura. As a matter of fact, the Act makes it clear that the terrorist activity is not restricted to the activities of the organisations mentioned in the Schedule. This section indicates that the Parliament did take note of the fact that in many cases it may be necessary to employ the armed forces or para military forces to combat terrorism and terrorist activities. Indeed, the Parliament must have taken note of the fact that armed forces and para-military forces were already engagedin such operations against the organisations listed in the Schedule and othersengaging in similar activities. At the same time, it must be noted that the protection extended by Section 49 is not unconditional. Both the clauses in (a) and (b) qualify and restrict the protection only to acts done in good faith. The specific language in which terrorist act is defined and the terrorist activity is sought to be fought and curbed by use of armed forces and para-military forces also, wherever necessary, coupled with the fact that several organisations in the States of Assam, Manipur and Tripura are expressly listed as terrorist organizations, induces us to call the ULP Act a cognate enactment.

Involvement of the state bureaucracy, army and the grass root civil society organisation in the developmental activities of the state. Theseissues of accountability also apply to the civilian bureaucracy of close ties to elite economic actors, linked by murky bank loans, J&K. It has land usage deals, and shared interest in government patronage.[17] Insurgency describe it as a struggle between a non-ruling group and a ruling government or authority,where the former uses a combination of political and military means to challenge governmental power and legitimacy, while striving to obtain or maintain

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[15] O'Neill, Insurgency & Terrorism: Inside Modern Revolutionary Warfare, 23-27; Kilcullen, "Countering global insurgency," 603; Metz, Steven. "Rethinking Insurgency." In The Routledge Handbook of Insurgency and Counterinsurgency. Edited by Paul B. Rich and Isabelle Duyvesteyn. London: Routledge, 2012, 38.

[16] Khalil, "Know Your Enemy: On the Futility of Distinguishing between Terrorists and Insurgents." For a traditional description of terrorist groups, see Crenshaw, Martha. "An Organizational Approach to the Analysis of Political Terrorism." Orbis-a Journal of World Affairs 29, no. 3 (1985): 465-489; See also Hoffman, Inside Terrorism, Chapter 1.

[17] Recent examples can be found in Nazir Masoodi, "Jammu & Kashmir: Patronising Corrupt Officials?" NDTV, March 12, 2010, <http://www.ndtv.com/article/ India/jammu-kashmir-patronising-corrupt-officials- 17610> and Altaf Baba, "Baramulla Land Scam: PMO Directs JK Govt to Conduct Probe," Greater Kashmir, July 30, 2013, http://www.greaterkashmir.com/news/2013/Jul/30/baramulla-land-scam-pmo-directs-jk-govt- toconduct-probe-63.asp 1

control over a particular area.[18] The state's prime function is to provide that political good of security to prevent cross-border invasions and infiltrations and any loss of territory or to eliminate domestic threats to or attacks upon the national order and social structure or to prevent crime and any related dangers to domestic human security and to enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other formsof physical coercion. [19] Unlike previous generations of warfare, it does notattempt to win by defeating the enemy's military forces. Instead, via the networks, it directly attacks the minds of enemy decision makers to destroy the enemy's political will. Fourth-generation wars are lengthy measured in decades rather than months or years.[20]

The various provisions of the AFSPA emanate firmly from within the spirit of the constitution and vision of our founding fathers. A split has occurred between a traditional twentieth-century state-centred paradigm and a new set of sub-state and trans-state strata, resulting in the rise of a new spectrum of warfare that reflects the merging of complex and overlapping modes of armed conflict.[21] The outbreak of the global war on terrorism from 11 September 2001 would provide the ultimate example of a fourth-generation enemy and battlefield.[22]

the Indian Army's counter-insurgency strategy has acknowledged the impossibility of achieving any final military victory in an asymmetric war. The strategy instead emphasizes the political resolution of insurgencies, and places severe limitations on the use of military force incounter-insurgency operations.[23] There is no permanent military solution to counter insurgency problems which ultimately have to be resolved politically.[24] This will make the army pro-development than a mere law and order agency. These efforts have been linked to the counterinsurgency offensives by rhetorically emphasizing the healing touch of development and population-centric counterinsurgency, which are intended to

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[18] *O'Neill, Bard E., Insurgency & Terrorism: Inside Modern Revolutionary Warfare. Washington DC: Brassey's, 1990, 13; Kilcullen, David. "Countering Global Insurgency." The Journal of Strategic Studies 28, no. 4 (2005): 597-617; Morris, Michael F. "Al-Qaeda as Insurgency.", U.S. Army War College Carlislearracks (2005); Byman, Daniel. "Understanding Proto-Insurgencies." The Journal of Strategic Studies 31, no. 2 (2008): 165-200.*

[19] *Robert I. Rotberg, "Failed States, Collapsed States, Weak States: Causes and Indicators," in State Failures and State Weakness in a Time of Terror, ed. Robert I. Rotberg (Washington, D.C.: The World Peace Foundation & Brookings Institution Press, 2003*

[20] *Thomas X. Hammes, The Sling and the Stone: On War in the 21st Century (New Delhi: Zenith Press &Manas Publishers, 2006), 2.*

[21] *Michael Evans, "Elegant Irrelevance Revisited: A Critique of Fourth-Generation Warfare," Contemporary Security Policy 26:2 (2005): 245.*

[22] *Simon Murden, "Staying the Course in Fourth-Generation Warfare," in Dimensions of Counter-Insurgency: Applying Experience to Practice, eds. Tim Benbow and Rod Thornton (New York: Routledge, 2008), 192.*

[23] *Rajesh Rajagopalan, "'Restoring Normalcy': The Evolution of the Indian Army's Counterinsurgency Doctrine," Small Wars & Insurgencies 11:1 (2000): 44.*

[24] *Rajesh Rajagopalan, "Fighting Fourth Generation Wars: the Indian Experience," in Global Insurgency and the Future of Armed Conflict: Debating Fourth-Generation Warfare, eds. Terry Terriff, Aaron Karp, and Regina Karp (London: Routledge, 2007), 263–66.*

appeal to civilians by mixing security reassurance and economic progress. [25] Confidence-building measures (CBMs), such as efforts at greater cross-LoC trade, with Pakistan have been sporadically explored as an external form of stabiliz tion.[26] TheIndian state, as ShamuelTharu argues, has over time incorporated into the legalsystem a whole array of legislation and ordinances that prolong exercise exceptional powers indefinitely.[27]

[25] *Aditi Malhotra, "Operation Sadhbhavana: Winning Hearts andMinds," Centrefor Land Warfare Studies (January 26, 2012),<http://www.claws.in/index.php? action¼details&m_id¼1060& u_id¼119>*
[26] *ICG, StepsTowards Peace: Putting Kashmiris First,Asia Briefing, no. 106 (Brussels: ICG,June 2010).*
[27] *ShamuelTharu, "Insurgency and the State in India: The Naxalite and Khalistan Movements," South Asian Survey 14:1 (2007): 98.*

Problems of Women Entrepreneurs in Shivamogga District

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ABSTRACT

What man can do women can do better. A women entrepreneur depicts the balance between home and office done very effortlessly. Technically, a "women entrepreneur" is any women who organizes and manages any enterprise, usually with considerable initiative and risk. However, quite often the term "women-owned business" is used relative to government contracting. Social and economic development of women is necessary for development of any country. The women who start up their businesses have to face some teething problems. This research paper attempts to ascertain the problems faced by women entrepreneurs in Shivamogga District. From the study, it is ascertained that women entrepreneurs face more difficult in marketing their products followed by financial problem etc,.

Keywords: Women Entrepreneurship, Finance, Marketing, Middlemen.

INTRODUCTION

Human, physical, and financial resources determine Economic Growth and Development of the country. Even though, there is an abundance of natural and physical resources, machinery and capital may go underutilized or misused, if human resources factors are not adequately cultivated or properly managed.

Industrial development of any region is the outcome of the purposeful human activity and entrepreneurial trust. In India a large number of people are seeking entrepreneurship as a career option. Entrepreneurship is considered as vital factors for the development of the country. After the libralisation of economy and resultant increase in competition, the emphasis is shifted from efficient utilization of resources to being innovative and opportunities seeking. Hence, it is felt that the Industrial activity can be generated by promoting good entrepreneurs and a positive attitude towards entrepreneurship.

What man can do women can do better. A women entrepreneur depicts the balance between home and office done very effortlessly. She has to up fronted with socio economical problems.

Meaning

Women Entrepreneur according to Government of India is an Entrepreneur who runs an enterprise owned and controlled by her and having minimum financial interest up to 51% of the capital and giving at least 5% of the employment to women[1].

Problems faced by Indian Women Entrepreneurs Besides the above basic problems the other problems faced by women entrepreneurs are as follows:

1. Family ties
2. Lack of education
3. Shortage of raw materials
4. Tough competitions
5. Low risk-bearing capa District
6. Lack of entrepreneurial aptitude
7. Legal formalities
8. Lack of self confidence
9. Male dominated societies
10. Social barriers
11. Problem of finance
12. High cost of production
13. Limited mobility
14. Limited managerial ability
15. Exploitation by middle men[2]

LITERATURE REVIEW

1. Priyanka Sharma (2013)[1] in her article **"Women Entrepreneurship Development in India"** found that Entrepreneurship among women, improves the wealth of the nation in general and of the family in particular. Today's women are more willing to take up activities that were once considered the preserve of men, and have proved that they are second to no one with respect to contribution to the growth of the economy. Women entrepreneurship must be mounded properly with entrepreneurial traits and skills to meet the changes in trends, challenges global markets and also be competent enough to sustain and strive for excellence in the entrepreneurial arena.

2. S.John Kaviarasu, et al., (2018)[2] in their article **"Women Entrepreneurship In Indian Context: A Critical Study of Its Challenges And Solution"** concluded that women entrepreneurial qualities and skills not only to meet the changing trends and challenging global markets, but also to become competent persons to sustain in the local economic arena as women entrepreneurs.

OBJECTIVES OF THE STUDY

The following are the objectives of the study

1. To study demographic features of women entrepreneurs in Shivamogga District.
2. To identify problems faced by Women Entrepreneurs in Shivamogga District.

RESEARCH METHODOLOGY

The data required for the study is primary in nature. Primary data is collected by making use of Interview Schedule. By adopting convenience sampling method, 50 women entrepreneurs residing in Shivamogga District are contacted for the study. Percentage, and Garett's Ranking tool is used.

Limitations of the Study

Though proper care will be taken, the present study will be subjected to certain limitations which are inherent in this type of study. The limitations are as follows:

1. The study is restricted only to Shivamogga District.
2. The study is limited only to 50 women entrepreneurs.

Table No. 1: Demographic Profile

Age	No. of Respondents	Percentage
Less than 30	5	10
31 - 40	11	22
41 - 50	32	64
Above 50	2	4
Total	50	100
Marital Status	**No. of Respondents**	
Single	2	4
Married	46	92
Widow	2	4
Total	50	100
Education	**No. of Respondents**	
SSLC & Below	24	48
PUC/ Diploma	15	30
Graduate	11	22
Total	50	100
Locality	**No. of Respondents**	
Rural	38	76
Semi Urban	12	24
Total	50	100

Sources: Primary Data

The above table explains the demographic characteristics of the respondents. Most of the respondents (64%) are of between 41-50 age group. With regard to marital status 92% is belongs to married group. Out of all the respondents 24 respondents are less educated.

Table No.2 Garett's ranking of Problems faced by women entrepreneurs on the basis of their age

Sl. No.	Particulars	Ranks				Overall
		Below 30	31 - 40	41 -50	Above 50	
1	Shortage of Raw Materials	1	1	2	1	2
2	Problems of Finance	1	2	1	2	1
3	Tough Competition	5	5	3	5	5
4	Exploitation by Middlemen	3	3	5	4	3
5	Social Barriers	4	4	4	2	4

Sources: Primary Data

The Garret's ranking table revels that all age group of the women entrepreneurs are facing the financing problem and standing at the top of all ranks and followed by shortage of raw materials and ranked two. However, tough competition and social barriers are not the major problems for all age group of women entrepreneurs as they are ranked five and four.

Table No. 3: Garett's ranking of Women entrepreneurs' perception regarding problems in setting up a unit

Sl. No.	Particulars	Total Score	Mean Score	Rank
1	Shortage of Raw Materials	2735	547	2
2	Problems of Finance	2940	588	1
3	Tough Competition	2305	461	5
4	Exploitation by Middlemen	2445	489	3
5	Social Barriers	2425	485	4

Sources: Primary Data

The Garret's ranking table revealed that among various problems problem of finance is a major problem faced by women entrepreneur with highest mean score of 588 and standing at the top of all ranks. However, shortage of raw material obtained second rank and exploitation at third rank with mean value of 489.

SUGGESTIONS

1. Now way days majority of the Public Banks are providing loan facilities to women entrepreneurs, but they should provide loans without any securities. And lengthy procedure and formalities in lending loans should be reduced.
2. Government should provided raw materials at concessional rate.
3. One of the main problems faced by women entrepreneurs are lack of finance support. As married women are full depends upon their husband's property its quite to get finance from banks. Therefore the corporation should lend money to such entrepreneurs without any securities.
4. Central and state Government should assist financially to women entrepreneurs to participate in International trade affairs, exhibitions and conferences.

CONCLUSION

This paper was under taken with an objective of studying the women entrepreneurs in Shivamogga District. It has been achieved with the study of various factors of women entrepreneurs. The success of women entrepreneur is very less, as they have to face number of problems like difficulties in getting raw

materials, finance, and social barriers etc., In order to overcome these problems Government has to offer numerous facilities to Women Entrepreneurs, there by nation and community will get proper.

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Resoluteness of Digital Signature: Issues and Challenges.

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A B S T R A C T

This paper tries to focus on the area of cyber law applicability in different area of intervention in life through network. The authenticity of digital document with help of different digital or electronic signature whether is admissible in the court of law to render justice to the common individual .It intends to look into the selected legal issues on digital signature and technical aspects of digital signature. What are the issues relating to this signature authenticity is at question have been tried to solve with the help of this article in order to control cyber crime committed by tampering the document as well as signature. Suggestions and recommendations are also made to improve the effectiveness of the present recognised digital signature system in protecting and solving the above issues.

INTRODUCTION:

The emergence of cyber law in India and the convergence of computer network, telecommunication facilitated by digital technologies have given birth to a common space called cyber space. This space allows a platform of human activities which converge on internet. The most happening space in the world is the cyber space .Now is the era of internet, life without internet seems to be impossible. With advancement of internet we can communicate-commerce is possible, education, banking transaction is also possible. Everthing has its own advantage and disadvantage. Lots of traditional crime is being committed through internet from hacking to indecent representation of women in internet medium and in order to control this IT Act has been framed but how far the law is being enforced is at question to control the crime rate. The ratio of crime is increasing at a much faster rate it‟s the need of the hour to control crime. Therefore internet has something to perform to everybody and in the process it never increased as such.

For every transaction or business that is being conducted, the level of security is always the main concern in determining the successfulness for these activities. According to Davis and Benamati (2003) security is the quality or state of being secure which includes "freedom and danger" and "freedom from fear and anxiety". With the evolving of Information Communications Technologies(ICT), a new way of business has evolved which we refer it as E-businesses-business include the exchange of information not directly related to actual selling and buying of goods through any electronic networks such as Internet and Intranet.

For any dot com company, information is the most important of all the business. Securing information is the most complex and difficult aspects of e-business.

In old days, Security has always been about keeping people out. When considering the security of a business today, it is very much about dissolving the boundaries between customer and business, staff and the business, business and trading partner. With the high acceptance and usage of computing technologies throughout the business, security has become an increasing concern.

The challenges a company might face can be subdivided into a few areas. Privacy infringement happens where other read or copy or data or information for which they are not entitled While keeping information private, it‟s important to note down that sometimes it is enough for a competitor to only watch how a business manage and organise important data and reformation.

The most concerned threat is during the sending or transferring confidential data or information through an electronic network. A message or information sent by the sender might be tapped or copied by an unintended person before it reaches the intended receiver. Hence the unintended person will be able to read, alter or even delete the message .Hence privacy or secrecy has been compromise.

According to Davis and Benamati (2001) no matter how well a network is protected, some intrusion attempts will succeed.

Traditional Signature:-

Traditionally a person may sign on the document and the signature may serve various purposes. A Sign is defined u/s 3 of Interpretation Act of 1948 and 1967(Consolidated and Revised 1989) (Act 388) to include a making of a mark or affixing of a thumb print. Signing of a document serves the following purposes. Firstly it serves a proof of evidence that the document has been duly signed by a particular person and secondly the act of signing a document calls the signer attention the legal significance of signers Act and thereby helps prevent poorly considered engagements. Thirdly a signature expresses the signer‟s approval or authorisation of writing content or the signer‟s intent that it has legal effect and force.

Digital Signature:-

Digital signature is such a concept that it is used many times interchangeable with that of electronic signature. But the difference between the two terms has been clearly demarcated by the definition provided in the IT Act 2000 along with the IT rules. According to section2 (p) of the IT act digital

signature means authentication of any electronic record by subscriber by means of electronic method or procedure in accordance with the provision of section 3 whereas electronic signature u/s 2(tb) means authentication of electronic record by subscriber by means of electronic technique specified in the second scheduled and includes digital signature. For this two type of signature the certificate is being issued by the certifying authority to make it authentic and approved. The authentication of electronic record is possible only when the subscriber affixes his digital signature and this can be possible by use of asymmetric cryptosystem accompanied with hash function which makes it differentiable to that of electronic signature. Looking into the technicality through the hash function a hash result is being developed by the use of alogorithm. Section 3 of the IT act states that any person by the use of a public key of the subscriber can verify the electronic record. As the private and public key are unique to the subscriber and constitute a functioning key.

Apart from the provisions provided under IT act still then the security of the signature and question of authenticity is at question. No doubt chapter v of IT Act along with the section 14 and 15 has been stated for securing of electronic record but its implication is yet to be verified. The certifying authority has the power to issue certificates both digital and electronic but they can do so by selecting different class of digital certificates at different level after verification starting from class0 to class 3 of certificates dealing with the purpose of demonstration and testing till high assurance certificates used for e-commerce application.

As we have covered what digital signature can do to facilitate in e-commerce application. The important thing is how it will handle the weighty issues of law. How does law view the digital signatures, electronic signatures and electronic business transaction in? There are two types of school of thoughts regarding the legality of digital signature.

One school gives emphasis to do nothing; Digital signature will come into their own through use by people. If two parties agree to conduct business and one party or even the third party contest the agreement then the issue need to be resolved by court of law. The court need to look into all the documentation associated with the agreement to find out what sort of contract is there. Did both the parties to the contract had consensus ad idem and abide by the policy and terms of contract. The usual way to indicate the intention is to pen down their signature to the bottom of contract. If both the parities have done their digital signature in electronic document then in this case the court will decide if the digital signature is legally binding. If it is determined that the parties intended digital signature to be their attestation of good faith ,then the contract will be declared to be binding and digital signature will have definition as stated under IT Act,2000.

The second school of thought said to avoid litigation process, save the overburdened court system from being bothered with the stuff and save the companies thousands of dollars in legal fees by regulating the use of digital signature.

Several states has legislated the use of digital signature they range all the way from Utah‟s law which is quiet hefty to some other law e.g. Massachusetts law which is barely two pages long. Utah defined not only when digital signature can be used but also stated who may issue key pairs and under what circumstances. The Utah law impose severe penalties on certificate authorities and strictly controls how key are issued. The Utah law has undergone several revisions since it was first passed. There are still many who view the law as too restrictive and some view the Massachusetts law as too scanty.

Benefits of Digital Signature:-

1. Authentication of sender‟s identity to the receiver by an entrusted third party.
2. Verification of genuineness of the message.
3. Security of information sent (No one can tamper the message without jeopardising the verification process and the sender is unable to repudiate the effect of his signature.

The issues being of two types in relation to the digital signature:-

1. Technical issues which involve the verification of the cryptography. The signer can be any individual but if it‟s a valid signer then it will first apply the hash function in the signers software this function can compute the hash result of standard length which is convert into Digital signature using signer „s private key. Breaking open of this technicality is not that easy but if at all any one tries to break open this technical aspects there should be at other end the subscriber well equipped to check out who the signer is and prevent it from being tampered. Although many people know the public key of a signer and can use it to verify the signer‟s signature its quiet impossible to know the private key and use it to forge digital signature.

TheUNCITRAL model law adopts a technological neutral approach but it does not approve or specify any particular form for signature for authentication purpose. The Model also explains the rule of conduct to indicate the obligation of signer, the recipient and the role of certifying authorities.

Legal issues is that it‟s at question any one can go for signing of electronic record on behalf of anyone .The signature is at question whether it is done by the same individual or by anyone in his/her behalf .In order to have a control to this issues section 5 is concerned with the legal recognition of the electronic signature‟s/s 10 of IT Act states clearly the power of central government to frame rules for electronic signature and section 15 about the security of the electronic signature from being forged. Lastly section 21 which deal with the power of the controller to give license to issue Electronic signature certificates.

The other related problem of Digital Signature is as:-

1. It follows a good old fashioned authentication. If a small piece of paper is presented in court, it must be demonstrated to be authentic to make it admissible in court. The question is, is the party actually signed it or someone else. When we sign something before the notary its self authentication because the notary is a public official who is duty bound to ensure that is at question.
2. When we sign something before the witness, the witness would theoretically testify about the piece of paper by giving evidentiary support to its authenticity.
3. Its legal perspective is based on the core area.
4. Scope of its application is very limited.
5. Limitation and Restriction in recognising a sole digital signature regime.
6. Qualification and duties of the licensed identication authority and subscriber.
7. When a party sign something physically not before the witness, the paper can be shown to party familiar with handwriting as evidence in support of authentication.

All of these directly give authentication that the signature is real not forgery. But in case of Digital signature it does not incorporate any physical signature at all and thus there is always a possibility that the person on other end of the computer typing words into a box is not in fact the person on whose behalf they are signing. There are some schemes that the website operator have devised to substitute of this such as asking information not likely to be known by all other than the true signer setting up a PIN system logging IP addresses and so forth there is no categorical rule that a digital signed paper isn‟t valid but our traditional rule of evidence caught up to this. The procedures being as follows:-

Plain Text- Cryptography -Cipher Text-Decrypotography-Plain text.

There are cases relating to digital signature:

The Hon‟ble Bombay High Court, whilst granting ad-interim reliefs in a couple of Suits before it, discovered the possible manner in which a Digital Signature could be misused and scorned at the plausible impact that such misuse of Digital Signature could cause.

The Suits in reference were filed by two companies situated in Mumbai, namely DDPL Global Infrastructure Private Limited and Unicorn Infra Projects & Estates Private Limited. A group of 4 individuals are Directors on the Board of both of these companies (the "Existing Directors").

One fine morning, the Directors realized that the MCA portal shows the names of two unknown persons as the Directors of the Companies instead of themselves. On probing a little further, the Existing Directors fathomed the entire gamut of fraud played to oust them as the Directors of the Companies from the MCA portal.

The whole fraudulent act of removing the names of the Existing Directors from the MCA portal was initiated by fraudulently obtaining a digital signature of one of the Directors on basis of forged photo identity and address proof of the concerned Director. Using the said Digital Signature of one unknown person‟s name was uploaded on the MCA Portal as the Director of the Company, who then not only uploaded forms to oust the Directors and himself from the MCA portal, but also to upload requisite forms to upload the other two unknown persons as the Director of the Companies.

The Court has referred to the entire aforesaid act by the unknown persons as being "nothing short of a wholesale Corporate Hijack". The extent of threat it poses to the reputation of any corporate is unfathomable as there is room for misuse of the private key. The primary purpose behind adopting Digital Signature is to encrypt the information.

Quite contrary to serving its purpose, the present case exhibits how the digital signatures if used unwarranted, can sabotage the working of its users.

The whole case has brought to light the possible mischief that can be committed on a company by merely procuring a fraudulent Digital Signature of one of the Directors of the Company.

The other glaring issue which the Court noted was that of the access to MCA portal being permitted simply against entry of DIN numbers without any use of a now industry-standard the two-step security protocol to verify the legitimacy of the user logging in. The potential threat to any corporate, is highlighted by the present case is shuddering and requires urgent attention of the concerned authorities.

Probably nothing could conclude the whole case better than the observations of Hon‟ble Mr. Justice G.S. Patel of the said case made in his Order quoted as:
“This is, to put it mildly, a most alarming state of affairs. The reasons are many. It throws into doubt the viability of using digital signature at any level that demands security, from companies to courts. It also demands a closer scrutiny of the manner in which digital signatures are issued in the first place. It appears that these are being issued willy-nilly without sufficient checks and balances and without proper verification or adherence to standard KYC norms.”

SUGGESTIONS AND RECOMMENDATIONS

The model law where many countries are signatory should be bound to follow the law and lacuna in IT act being as we are quite aware of the fraud going on in cyberspace need to be controlled at all level by improving the duties of the subscriber in verifying about the signer more closely ,by disclosure and consent by putting valid question which can prove the signer‟s authenticity .By having a track of the record on regular basis ,should be a computer savvy person so that the problems can be easily solved. The law should also mention sections dealing with Digital signature so the signer can be clearly identified. There should be stringent punishment for the netrespassers ,hackers etc in order to resolve this issues of digital signature and making it admissible in the court of law as a better evidentiary value.

The legislative body need to look into those issues highlighted above to safeguard the interest of parties transacted in internet (e-business).The Act shall extend its application to transaction by any person.

Instead of various governing statute there should be one comprehensive statue and should be enacted. So that it governs all aspects of electronic contracts such as formation of contracts generally and particularly the evidential proof of identity of contracting parties.

There should be an insertion of clear provision on the renewal of Digital signature certificate so that a new can be issued to the existing subscriber by providing a new key from time to time, and this may prevent the tampering activities .

The Digital Signature is tried to be made more authentic and legalise by adhering certain criteria:-

a) The Signer must be authenticated.
b) There must be Disclosure and consent.
c) The signer must be aware of the fact that it‟s legally binding.
d) The Documents must be secure from tampering.
e) All signers must have an access to the document.
f) All actions should be documented.

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A Method General Conference Patterns are Religious in the North Sumatera Religion Perspective

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A B S T R A C T

The focus of the study in this study is the perspective of North Sumatra religious elites about the pattern of religious harmony, and how it is applied in the context of North Sumatra. To reveal this, this study uses a phenomenologic-interpretive approach, using data collection techniques, priorities in the FGD (Focus Group Discussion). From this study it was found that: First, the harmony ideals built by the North Sumatra FKUB rested on a pattern of religious non-pluralism harmony. This pattern means that the truth claim in each religion cannot be equated because it has a theological foundation that is different from one another. Because, plurality or diversity is a necessity. But in a social context, the theological truths should not be forced on others, but every religious individual must be able to work together and work together in the interests of society, nation and state. Second, in its implementation, the North Sumatra FKUB does four things, namely: theological dialogue, social interaction, advocacy and regulation and interactive dialogue. Dialogue is a form of preventive, decisive at the theological and flexible level at the sociological level by empowering the local wisdom of each region. Whereas advocacy and regulation are forms of handling conflict through mediation and applicable legal rules.

Keywords: Pattern of Harmony, Religious People, Elite of Relig

I. INTRODUCTION

Research on the pattern of harmony between religious groups in the perspective of religious elites, in this case the Forum for Religious Harmony (hereinafter abbreviated as FKUB) of North Sumatra is an important discussion (A.S.Hornby, 1983). Because, from a pattern, we will know the harmony idealism that was built, or the worldview of the North Sumatra FKUB elite in seeing the diversity, source of conflict and its handling. In addition, the context of North Sumatra which has a very high level of religious plurality, is also a consideration - seeing recently religious conflicts such as in Tanjung Balai (29-30 July 2016) have made North Sumatra quite a spotlight on the level National. Various opinions also emerged regarding the source of the conflict, which, if modeled, converged on: religious pluralism and religious non-pluralism (Abdul Munir, 2005). First, we see that the source of the conflict that has occurred in Indonesia is because of the truth claims of each religion, therefore theological recognition is needed that in essence all religions are the same (Adian Husaini, 2009). While the second recognizes that diversity or plurality is a necessity that cannot be resisted, but does not recognize that all religions are the same. For this reason, this study wants to see which pattern is built by the North Sumatra FKUB religious elite, and how the pattern is applied in the context of the plurality of North Sumatra society (Alodous Huxley, 1947).

II. LITERATUR REVIEW.

Harmony comes from the word "harmonious" means: (1) good and peaceful, not contradictory; (2) unite in heart, agree. Reconcile means: (1) reconcile; (2) making unity in heart. Harmony: (1) about living in harmony; (2) harmony; agreement: harmony lives together. So the harmony of the religious community is a condition of peace, unity in heart, agreeing among religious followers (Anis Manik Thoha,2007) (AR Harahap, 2012).

According to PBM No. 9 and 8 of 2006, Chapter 1, Article 1, the harmony of the Ummah is:"... the condition of relations between religious people based on tolerance, mutual understanding, mutual respect, respect for equality in the practice of their religious teachings and cooperation in community, national and state life in the Unitary State of the Republic of Indonesia based on Pancasila and Republic of Indonesia Constitution Indonesia in 1945. Even the Government developed a harmony trilogy policy, namely: internal religious harmony, religious harmony and religious harmony with the government. "(Arifinsyah, 2013)

Official religions in Indonesia, as subjects and objects of harmony, certainly have their own views on the harmony that is implied by their respective teachings. In Islam, it is ordered not to force others to convert to religion, it is also ordered to invite people into the truth in a civilized manner. More than all, a Muslim is also told to do justice to all human beings even though non-Muslims even on condition that he does not fight Islam (QS: al-Mumtahanah: 8-9).

In Christianity, his people are taught to live in harmony between religious people, as Paul says: "Do not repay evil for evil, do what is good for others" (Romans: 12:17). The same thing was said by Jesus: "Everything that you want people to do to you, do this to them too" (Matthew: 7: 12). It also says: Have mercy on your neighbor as yourself (Matthew:

In Hinduism there are teachings of Tri Hita Karana. Tri means three, Hita means prosperous, safe, harmonious, peaceful, harmonious. While Karana means, the cause of Hita, namely: Pawongan: a harmonious relationship between humans and humans; Palemahan: a harmonious relationship between humans and nature Parhyangan: a harmonious relationship between humans and God.

Furthermore, in Buddhism there are six Dharma which direct someone to remember each other, love each other, respect each other, and help each other. In Confucianism, among the verses that make sense of harmony is: "a susilawan wants to stand up, so he also helps others upright and if he wants to progress, then he also helps others to progress". "You get along with each other in your family to reassure your

parents". "Something effort was successful because it got a lot of support, on the contrary it failed due to lack of support, and three determinants of success were Tian Se (Opportunity and the right time)". These verses teach that unselfishness is a factor that builds harmony, because harmony is a human resource.

The views above show that religions in their ideals highly uphold tolerance both internally in religious communities and among religious people. This shows that in essence there are no religions that teach violence, because it is natural for humans to want to live in peace and harmony.

III. METHOD OF RESEARCH.

This type of research is qualitative with a phenomenologic-interpretive approach. The phenomenology referred to is the phenomenology of Edmund Husserl (1859-1938), where it was stated that the object of science is not limited to the empirical (sensual), but includes phenomena that are nothing but perceptions, thoughts, volition, and beliefs of the subjects in this study religious elite in North Sumatra FKUB about something outside the subject, namely the pattern of harmony between religious groups. Whereas interpretive meant here is a paradigm that emphasizes more on the meaning or interpretation of someone or a number of people, namely the religious elite of the North Sumatra FKUB on developing discourses related to religious harmony between harmony based on religious pluralism or non-religious pluralism. The task of researchers in this paradigm is to interpret (to interpret or to understand) their opinions or understanding of it.

This study took the object of the religious elite in the Sumatra provincial FKUB. This was chosen because North Sumatra has a multicultural society, and because of the provincial level, the North Sumatra FKUB can be used as a representation of the views of the religious elites in the Regency / City FKUB.

Broadly speaking, this research was carried out in 3 (three) core stages, namely the stage of orientation, the exploration phase, and the stage of interpretation. While the techniques used in data collection in qualitative research are prioritized in the FGD (Focus Group Discussion). This technique is used in order to find and gain an understanding of the phenomenon under study from the point of view of the subject being thoroughly studied, which in this case is the North Sumatra FKUB religious elite, until finally the collective understanding can be interpreted comprehensively, even though the FGD was also included in private interviews.

Given that this research is phenomenologic-interpretive qualitative research, where the meaning of the phenomenon to be revealed is inter-subjective meaning, the FGD here is also used as an analytical tool to

express the essence of the phenomenon in question, namely the pattern of harmony among the people in the framework religious pluralism or non-religious pluralism.

IV. A RESULTS OF APPLICATION OF THE HARMONY PATTERN OF NORTH SUMATRA FKUB

In the national scope, North Sumatra as explained by the North Sumatra FKUB is still a reference in the inter-religious harmony. This is as revealed by Mr. Arifinsyah:

"The results of our national meeting are still a barometer even though there are cheats in Tanjung Balai but that is not a red value, but North Sumatra is also a National barometer in the framework of maintaining harmony"

But rather than that, since its formation until now the North Sumatra FKUB has taken steps as a derivative form of the harmony idealism as described earlier, namely:

1) Do theological dialogue

The theological dialogue in question is conducting inter-religious theological studies. This is as said by Mr. Sarwo Edi:

"... that in our FKUB that was not carried out by other FKUBs ... in the office a discussion was held about theology ... for example God according to Islam, God according to Catholicism, God according to Hinduism and others .... that was a pattern one ... to be based on theology. "

However, as explained by Mr. Arifinsyah that the dialogue is not to equate religion but as a means to get to know each other, and enrich the treasures of knowledge in harmony so that they can respect each other, and not mock each other between one religion and another.

2) Carry out social interactions.

The point is to look for formulas that can cement community fraternity. However, the formula is not theological but sociological, such as cultural elements and so on. This is as revealed by Mr. Arifinsyah:

"The social interaction that we do in society ... it does not involve sacred matters but profane issues ... this is where many cultural elements come in ... North Sumatra's luck compared to others, the adhesive is actually adhesive culture ... we have felt ... there is one house of different religions but one culture ... get along well. So if he comes a Muslim ... the Christian prepares a prayer mat ... that's amazing ... we found it in Dairi ... in Karo ... especially in Angkola ... Angkola is not there FKUB is already there they have gotten used to living side by side ... the Church and the Mosque are side by side ... later on they will clean up mutual cooperation ... this Sunday clean the Church ... Friday will clean the Mosque with

heterogeneous variants that exist ... so extraordinary .. That is not because the FKUB ... arose from a sense of togetherness ".

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2) Carry out social interactions. The point is to look for formulas that can cement community fraternity. However, the formula is not theological but sociological, such as cultural elements and so on. This is as revealed by Mr. Arifinsyah:

1) Handling conflict through advocacy and regulation. The purpose of the FKUB here is that the conflicts that have emerged in the community are not because of the belief in the truth of their religion, but because of the slow advocacy and violations of established regulations or unclear regulations themselves. Violations of this regulation as stated by Mr Arifinsyah cover the area of doctrination, namely forced religious doctrine; simplification is too narrow a view of religion, as well as missions carried out by religion, especially Islam and Christians who tend to violate regulations.

However, it should be noted, that compared to other regions, the mediation process carried out by the North Sumatra FKUB can be classified as fast, and never reaches central government regulations. This is as explained by Mr. Sarwo Edi:

"We have or no funds from the local government, immediately go to the area if there is a problem ... because we are aware that this is a humanitarian problem and cannot be allowed to drag on ... indeed the funds include obstacles to mediation ... but it doesn't matter ... even from my own pocket “

2) Interactive Dialogue. According to the North Sumatra FKUB, having an informal dialogue with the community regarding harmony is one of the important things to do. Furthermore, according to them the

dialogue of central government harmony now is more by design, in the sense that it is top down which leads to pseudo-harmony.

IV. CONCLUSIONS.

From the results of the study it was found that: 1) Ideality of harmony built by the North Sumatra religious elite, in this case the North Sumatra FKUB rests on a pattern of religious non-pluralism harmony. This pattern means that the truth claim in each individual religion cannot be equated because it has a theological foundation that is different from one another. Because, plurality or diversity is a necessity. But in a social context, the theological truths should not be forced on others, but every religious individual must be able to work together and work together in the interests of society, nation and state. 2) In its implementation, the North Sumatra religious elite does four things, namely: theological dialogue, social interaction, advocacy and regulation and interactive dialogue. Dialogue is a form of preventive, decisive at the theological and flexible level at the sociological level by empowering the local wisdom of each region. Whereas advocacy and regulation are forms of handling conflict through mediation and applicable legal rules. In the application of the harmony ideals of the North Sumatra religious elite as mentioned, empowerment of local wisdom is an important factor in creating harmony, but government programs are only top-down so they often do not directly touch those aspects. Therefore, researchers suggest: 1) For the North Sumatra religious elite to further enhance the potential of the local wisdom of the community without reducing the theological basis believed by them. 2) For regional governments to carry out activities that are more touching to the grassroots or bottom-up

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A Two-stream Theory of Teacher Capacitation and ICT Resource Management ONA Teaching of Kiswahili Language Skills

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ABSTRACT

The Ministry of Education introduced the infusion of computer assisted- instruction in teaching of school curriculum in order to improve quality of teaching and learning among secondary school students in Kenya. Poor learning achievements in Kiswahili language skills has been witnessed for some time, among majority students in sub-county secondary schools in Nakuru County, Kenya. The infusion of CAI in the instruction of Languages, helps to transform ordinary classroom instruction strategies in order to enhance students' learning achievements. The purpose of this study was to determine the difference in performance in Kiswahili language skills between students, taught Kiswahili subject using CAI and those students taught the same content using TTMs. The main objective was to develop a theory explaining the use of CAI on performance in Kiswahili language skills. This study was guided by Constructivist Learning Theory and employed a causal-comparative design. This study was conducted in public sub-county secondary schools in Nakuru County,

INTRODUCTION

In this study, the study sought to establish the effect of computer-aided instruction on performance in Kiswahili language skills. The findings have provided a good background for the development of a theory that can be used as a guiding framework for promoting instruction in Kiswahili language skills and other related African indigenous languages. For instance, computer-aided instruction offers a variety of new alternatives for activities such as learning strategies, learner-centered approach, and advancement of critical thinking. Additionally, constructivist theories can be employed to infuse CAI more effectively in classrooms for the purposes of teaching and learning of secondary school curriculum. CAI can provide the students with abilities to control over their own learning process. Also, allowing students to decide what, when, how and in what sequence to learn to improve their learning achievements. Finally, there is a significant link between computer-aided instruction and students' learning achievements in Kiswahili language skills such as grammar aspects, reading comprehension and writing.

First, it is important to explain why there is a need for this theory; Constructivist Learning Theory by Duffy and Jonassen (1992), which was used as a guiding framework in this study, is not only quite old for

the current application, but also lacks sensitivity to the uniqueness of Kiswahili Language. Kiswahili, being an East African to the uniqueness of Kiswahili Language. Kiswahili, being an East African language, need a locally developed theory that is based on African culture and local evidence. In addition, integrating computer-aided instruction for the purposes of teaching and learning in classrooms is not adequate. Second, teachers also are required to develop their own theory explaining their teaching and learning in the classrooms using computer-aided instruction. More so, teachers are very resourceful for students to learn successfully in classrooms. Furthermore, they involve learners in learning concepts that challenge their earlier experiences of the existing limited knowledge; additionally, allow learners to participate fully to make the lesson student driven and more collaborative. Nevertheless, the use of computer-aided instruction in the teaching and learning of school subjects in classrooms is not adequate without establishing a theory that models teachers' competence in integrating computer-aided instruction for the purposes of classroom instruction. Findings by Al-Shamayleh (2014) in English language just like in this study, Moghaden and Falafian (2015) and Naba'h (2012) point that CAI improves performance in the English language. Having said that, the question of how this happens remains a headache? Moreover, different subjects have different instructional methods and tend to pose unique challenges.

Fifth, all other major subjects in the Kenyan curriculum for secondary schools are instructed using the English language. As such, is possible that theories developed based on findings of international global studies can still be applicable in local perspectives. However, Kiswahili language tends to be quite different since the composition of its syntax, semantic, dialect and language structures are all different to a great extent (Milima, 2014)). It is also important to note that CAI contents have been developed in East Africa contrary to other subjects whose much of the contents have been borrowed from the curriculum of western countries.

Lastly, most constructivist learning theories put more stress on individual student learning and external factors that promote students' learning performance in diverse skills leaving out the role of ICT management in the use of computer components in the instruction of classroom subjects at both local and national level. Additionally, it degrades the role of a teacher in the instruction process into a mere facilitator in the classroom; and this view may affect the quality of teaching negatively. Moreover, it ignores, the importance of IT management completely, notwithstanding that IT management brings in, the effectiveness and efficiency of curriculum delivery in classrooms, since it ensures the provision of ICTs infrastructures, instruction strategies, teaching content, supervision of the curriculum implementation, evaluation of the curriculum and teachers capacitation in all learning institutions. It is also important to note that, "Computer-aided instruction strategies cannot replace teachers in

classrooms, but its only teachers with CAI competencies who can the replace the ones who don't have CAI integration skills". And for effective implementation of any CAI curriculum, depends entirely on both teachers and IT curriculum management".

Teachers, students, and principals hold a strong opinion that computer-aided instruction improves students' learning achievements in Kiswahili grammar aspects, reading composition and writing. Teachers believe that when students are exposed to computerized contents, their work is made easier and results are significantly higher. Since computer components are shaping the way we teach and learn, this study finds it important that Kiswahili language instruction in secondary schools is made computerized. This study also argues that examinations should also be made computerized; to encourage learners and teachers to pay more attention to computer-aided instruction.

This study observed that one of the major impediments to adoption of CAI in Kenyan secondary schools is inadequate computer infrastructure resources. Some of the secondary schools had inadequate computer components such as captions, simulations, graphs, and animations. Network availability was also a major problem. It is, therefore, the study's submission that funding ICT infrastructure programs in Kenyan secondary schools would go a long way in improving the integration CAI in these secondary schools. In addition, the IT managers should ensure adequate Investment in the provision of IT infrastructure resources and the network is crucial in ensuring effective integration of CAI in the instruction of Kiswahili language skills is adequate in all secondary schools.

Assuming that there are adequate computers and proper network is provided. The study also assumes that there is an effective and updated Kiswahili CAI curriculum; can there still be good performance? In some of the secondary schools the study visited, there were adequate computer components and internet was not a challenge, however, Kiswahili teachers in these schools were not still using CAI in tutoring of Kiswahili language skills, an indication that there were other missing links. After various conversations with these Kiswahili teachers, the study established that they did not have confidence in using computer components in the instruction of Kiswahili language because they did not have necessary computer knowledge and skills themselves on how to use CAI for classroom instruction purposes. Though most of the teachers admitted having attended seminars and workshops, the computer knowledge and skill gained could not be adequate to use CAI in classrooms. It is, therefore, the study's contention that Kiswahili teachers should be trained on advanced computer literacy while in their training at universities and colleges. In so doing, they will be confident enough to use CAI in their teaching activities.

It is also the study's contention that without proper management of ICT resources from the national level to individual local sub-county secondary schools, it is still a challenge to ensure efficient and sustainable implementation of CAI in some secondary schools. As the study was talking to some teachers, students, and principals, the study realized that school management has been determining to a great extent on how the CAI curriculum should be implemented in the instruction of Kiswahili language skills. While some secondary schools had all the resources required, they could not still implement CAI because the management was not committed to the programme. Evidence from teachers further proved that the supervision at the Ministry of Education was also not committed to ensuring head teachers implemented CAI in the teaching and learning of specific subjects such as Kiswahili language.

Based on the study findings, the study proposes two theoretical frameworks that explain that two streams of factors influence the adoption of CAI namely: teacher training and ICT resource management. Regarding these proposed current theoretical frameworks on teacher training emphasis on teachers who are adequately trained in computer-aided instruction integration skills from universities and teachers training colleges to enhance the learning outcomes in Kiswahili language skills. Additionally, the frameworks appeal to the ministry of education officers at the national level, counties and sub-counties, curriculum specialists, policymakers and teachers' service commission to ensure that teachers instructing Kiswahili language in secondary schools are computer literate and are regularly equipped with necessary CAI integration competencies so as to integrate fully CAI in the instruction of Kiswahili language skills. In addition, the frameworks contend additional capacitation of Kiswahili language teachers through seminars and workshops to heighten the level of CAI integration in classrooms for the purposes of teaching and learning of Kiswahili language skills. Moreover, this current theoretical framework concludes that the adoption of CAI in the teaching and learning of Kiswahili language would enhance learning achievements in grammar aspects, reading comprehension and writing.

On ICT resource management, the present theoretical frameworks emphasis that both the ministry of education, county government and individual secondary school's administration to avail secondary schools with adequate CAI facilities, network coverage so as to make teachers increase the level of CAI integration and ensure adequate capacitation of teachers so as to enable them effective employ CAI in the instruction of Kiswahili language skills in classrooms. In addition, the frameworks argue that the availability of ICT resource management would enhance the effectiveness of CAI integration in the instruction Kiswahili language to improve the performance of students in Kiswahili: grammar, reading comprehension and writing. Furthermore, the frameworks conclude that efficient management of ICT resources from the ministry of education at the national level to individual local sub-county secondary

schools level would motivate teachers to integrate CAI in the instruction of Kiswahili language skills so as enhance learning achievements in grammar aspects, reading comprehension and writing.

The present two stream theoretical frameworks depicted here below show the linkage between the two streams whereby the state of the two streams favor proper implementation of CAI in the instruction of Kiswahili language skills, the study expects better outcomes in terms of performance in grammar aspects`, reading comprehension and writing skills.

The Theoretical Frameworks is shown in Figure 4.8

i. Teacher training

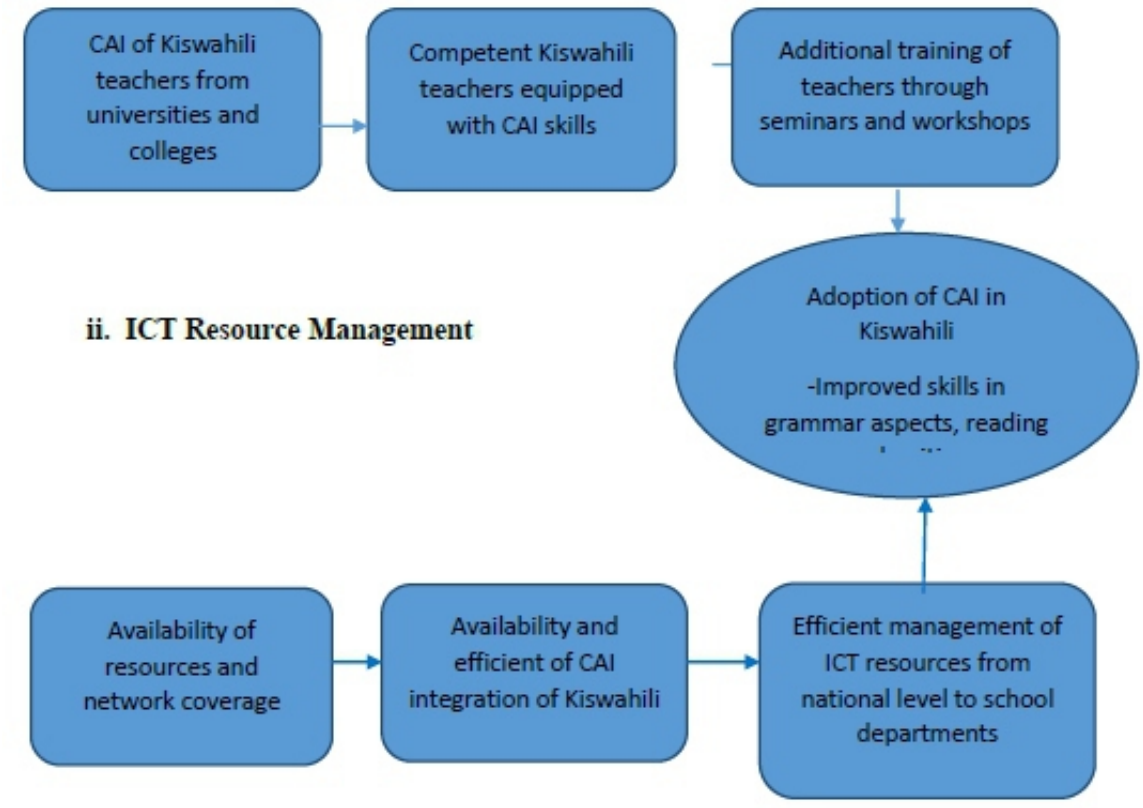

Figure 4.8: Depicts Present Study's Two-Stream Theory of CAI in teaching and Learning of Kiswahili Language Skills.

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