

Legal and Regulatory Responses Adopted by Kenya to Combat Terrorism in the Aviation Industry

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ABSTRACT

Terrorist acts against the civil aviation industry have remained sustained since the first recorded aircraft hijack in February 1931. The devastating effects of a successful terror attack in the aviation industry transcend the jurisdictions of many states, threatening their national and human security. This study sought to analyse the responses to combat terrorism within the aviation industry in Kenya. It employed the exploratory research design. This design is appropriate for a research problem in cases where there are few documented studies for reference. Secondary data was collected from government publications, websites, internal records and reports, conference proceedings, research articles, and books, among others. The data collected was analysed thematically. The findings show that due to the many devastating terrorist attacks in Kenya, a number of legal measures have been progressively initiated to strengthen the security of all aspects of Kenya's commercial civil aviation against terror attacks. These include the protection of Aircraft Act, 1970 (revised in 2012). Article 2(6) of the Constitution of Kenya provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Another Act put in place is The Civil Aviation Act, 2002 (revised 2013), which established the KCAA to regulate and oversee aviation safety and security as guided by the provisions of the Convention on the International Civil Aviation. There is also the Kenya Security Laws Amendment Act, 2014 (Section 75) which provided for the establishment of a mechanism for coordinating counter-terrorism measures in all entry and exit ports in the country. There are also numerous regulatory strategies adopted to combat terrorism in Kenya's aviation industry. The country has also put in place elaborate regulations on Preventive Security Measures contained in Part IV of the Civil Aviation (Security) Regulations, 2019. Further, the country has instituted the training program with aims to ensure that personnel of all entities involved with or responsible for the implementation of various aspects of aviation security are properly trained on the appropriate standards for tasks in accordance with the national civil aviation security program. The country also undertakes Aviation Security Audits and Reviews. It can thus be concluded that Kenya has adopted elaborate legal and regulatory responses to combat terrorism in the aviation industry. These have been largely successful in combating aviation terrorism in Kenya. Based on the study findings, there is a need for regular reviews of the various legal and regulatory responses to combatting terrorism in Kenya to enhance their efficacy and responsiveness to the dynamism of international terrorism. Furthermore, the training strategies should be strengthened through increased funding to enhance the domestication of the various legal and regulatory responses in the various aviation security agencies in Kenya. KCAA should also increase the frequency of aviation security audits, inspections, system tests, investigations, and surveys on airports, airlines, cargo agents, and inflight catering operators among others in response to increased sophistication of international terrorism.

Keywords: *Responses to Combat Terrorism, Aviation Industry in Kenya, Legal Responses, Regulatory Responses*

I. INTRODUCTION

In recent decades, there has been a renewed interest from global terror groups in attacking 'soft' targets such as aircrafts and airports.¹ Globally, the aviation industry has become a key target for attacks owing to its vulnerability and the massive losses that even semi-successful attacks can engender.² According to the Global Terrorism Database (GTD), more than 1,363 attacks on aircrafts and airports globally were executed by different terrorist organizations between 1970 and 2016.³ The most fatal of all successful suicide mission attacks in the aviation industry is the 9/11 attack that happened in 2001 in the U.S. It involved a series of four coordinated terrorist attacks which resulted in 2,977 fatalities and over 25,000 injuries and destruction of property and infrastructure worth about 10 billion U.S. dollars. Besides hijacking the planes as a target, the terrorists proceeded to use them as weapons for executing their plan of mass

¹ Roni Tidhar, "Being Naive is Not an Option: The Threat of Terrorism to the Aviation Industry," *International Airport Review*. (2019): 1. Retrieved from: <https://www.internationalairportreview.com/article/69862/threat-of-terrorism-aviation-industry>

² David Baker, "Tourism and Terrorism: Terrorists Threats to Commercial Aviation Safety & Security," *International Journal of Safety and Security in Tourism and Hospitality* 1, no. 12 (2015): 1.

³ Katie E. Krull, *The Threat Among Us: Insiders Intensify Aviation Terrorism* (Pacific Northwest National Lab., 2016): 6-7.



destruction. This particular attack had the greatest impact on the security structure of the aviation industry in many states. It is in its aftermath that the international civil aviation community realized that its approach to responding to terrorism in the industry was not effective. The approach was responding to the last attack rather than preventing the next attack. The realization led to changes in the aviation security structure moving from reactive to proactive approaches.⁴

Historically, Africa has also had its share of terrorism incidents against its aviation industry. Most of these incidents were politically instigated. Among the earliest recorded incidents of aviation targeted terrorism in Africa is the July 1976 hijacking of an Air France airliner destined for Paris from Tel Aviv by two Palestinian insurgents. They demanded the release of Palestinian detainees in Israel and other countries in exchange for the hostages. The insurgents forced the plane to land at Entebbe Airport in Uganda during the reign of Idi Amin as the president. In October the following year, a Lufthansa airlines flight 181 was also hijacked en route to Frankfurt by terrorists who landed it on a runway in Mogadishu, Somalia.⁵ Over the decades, there have been various other cases of aviation-targeted terrorist attacks in the continent. The 1980s recorded an upsurge in the use of explosives due to advancements in technology by the time. For instance, the baggage compartment of Air Malta B-737 exploded on the ground in Cairo, Egypt while offloading luggage in October 1981.⁶ In another incidence in November 1985, terrorists heavily armed with guns and grenades seized an Egypt Air aircraft flight 648 flying from Athens to Cairo and diverted it to Malta, where they began executing American and Israeli passengers. In August 1986, a Sudan Airways flight from Malakal to Khartoum was shot down by the SPLA militants using missiles. This trend continued into the following decade, an example being the August 1992 incident in which a powerful bomb planted by Muslim extremists exploded in Algiers International Airport, indiscriminately killing nine persons and injuring over one hundred others.⁷ November 1996 also recorded one of the most lethal aircraft hijackings in the African region involving an Ethiopian airline B-767 en route Nairobi from Addis Ababa by three Ethiopians seeking asylum in Australia.⁸ In this particular incidence, 125 of the 175 passengers and crew on board, including the three hijackers, died.

In the East African region, one of the earliest recorded incidents in this category is the 20th March 1974 hijacking in which the East African Airways Douglas C-4 flight was seized after departing Nairobi en route to Mombasa.⁹ In 1982, Air Tanzania flight B737 was hijacked en route to Kilimanjaro from Mwanza Tanzania. Three years later, the region experienced another politically instigated hijacking which happened in November 1985 involving a Ugandan Airways flight from Kampala to Arua, Uganda. The plane was forced to land in Kasese in the southwest of the country. In February 1988, Tanzania experienced another domestic flight hijacking involving Air Tanzania B-737 which was en route Kilimanjaro from Dar es Salaam with 76 people on board. The perpetrators demanded the release of a political figure who was in the government's custody.

Other than the hijackings, the region has also experienced a ground attack on the 6th of June 1994 in which the plane carrying the sitting presidents of both Rwanda and Burundi was shot down while approaching the runway of Kigali International Airport. This attack is said to have signaled the start of the 1994 Rwandan genocide, whose basis was also on political and ethnic divides. In December 2000, the region experienced the shooting of the Sabena flight airbus A300-200 en route from Brussels to Nairobi. The plane that was on the verge of landing in Bujumbura International Airport was shot at an altitude of approximately 100 meters by Hutu rebels fighting the Tutsi-led government.¹⁰

The events highlighted above indicate that the East African airspace equally witnessed events of aircraft hijackings which evolved to include ground attacks, taking the same pattern as those that have happened in both the African and global regions. Whether regional or global, the events reveal a sustained spirit of resilience by terrorists to attack the aviation industry. The motives behind the attacks largely remain the push for both a political and religious agenda.

The sustained effort by terror groups is because the tactic of attacking aviation industries has been proven to be effective in projecting their political and religious agenda globally. Besides this, a successful terror attack in the industry has the potential to cause massive deaths and loss of property. This in turn instills psychological fear among the masses

⁴ Mary Schiavo, *A Chronology of Attacks against Civil Aviation* (Aviation Security Management, 2008): 140.

⁵ Kent C Krause, "Putting the Transportation Security Administration in Historical Context," *Journal of Air Law & Commerce*. 68 (2003): 237

⁶ Andrew Selth, "International Terrorism: A New Kind of Warfare," *The Russian Journal* 132, no. 1 (1987):65.

⁷ Salima Mellah, "The Massacres in Algeria, 1992–2004," *Extracts from a Report Presented by the Justice Commission for Algeria*. Berlin: *Algeria Watch* (2004): 8

⁸ Office of the Civil Aviation Security, *Criminal Acts against Civil Aviation* (Springfield, U.S. Department of Transportation, USA, 1996):. 42

⁹ Mary Schiavo, "The Chronology of Attacks against Civil Aviation." *Aviation Security Management* (2008): 187.

¹⁰ Office of the Civil Aviation Security, Op. Cit. 42.



as states remain coerced to give in, to the terrorists' demands. Azani and others observe that one successful attack in the industry strengthens the terrorists' motivation to continue carrying out the same activities in the industry.¹¹ The continually changing and un-predictive nature of the Modus Operandi (M.O) used by aviation terrorists poses a challenge to security agencies calling for the need to widely incorporate proactive measures to deter the attacks.

Kenya's aviation industry is not an exception in this case. In 2002 for instance, the country's major airports were put on high alert following an incident in which missiles were fired at an aircraft carrying 261 passengers and 10 crew members after taking off from Moi International Airport, Mombasa. Were it to be successful, the event would have resulted in massive fatalities and huge economic losses besides the psychological and political pressure associated with such events. Coupled with the Manda Airstrip attack in Lamu in January 2020 by the Al Shabaab terrorists, the country has witnessed an increase in the number of advisories by the U.S. government intelligence, warning of an imminent terror attack in Kenya's airspace. This indicates the high level of vulnerability of the country's aviation industry to terror attacks. This study set out to analyse the legal and regulatory responses adopted by Kenya to combat terrorism within its aviation industry.

1.2 Problem Statement

The devastating effects of a successful terror attack in the aviation industry (which often serves as a country's national symbol) extend to causing mass fatalities and damage to its installations and associated businesses. This in turn earns the attacked country a huge economic dent, besides causing it a political embarrassment. This has detrimental effects on both the human and national security of the attacked country. The various dimensions and intricacies of the aviation ecosystem which include airport grounds, installations within them, aircraft, air navigation facilities, airlines' facilities, and the airspace engender a number of threat vectors that the enemy can and does manipulate.

Recent responses to combating the phenomenon lean towards the adoption of proactive approaches that are more preventive rather than reactive. In line with this, the International Civil Aviation Organization (ICAO) has introduced standards and procedures which member countries have domesticated with a view of operationalizing them in the fight against aviation terrorism. As a member state, Kenya has domesticated and implemented these measures.

From the literature reviewed, no study so far has been conducted to critically and holistically examine the legal and regulatory responses to combat aviation targeted terrorism in Kenya. This means that making empirically informed recommendations on how to enhance the efficacy of the various approaches remains largely elusive. This ought not to be so since Kenya serves as a host to the East Africa Region's major entry and exit points for air transport of passengers and cargo. This study, therefore, set out to analyze the development of responses to combat terrorism within the aviation industry in Kenya.

II. LITERATURE REVIEW

There is limited empirical literature in the area of aviation terrorism as a field of study. According to Duchesneau and Langlois, aviation terrorism is, "a political act against civil aviation carried out by non-state actors who systematically target civilians and intentionally use violence to create terror and coerce authorities, at times by making demands."¹² Duchesneau, in his study, identifies three dimensions of aviation terrorism that make it a unique phenomenon.¹³ The first dimension is about the nature of the activities which he describes as terror acts directed at the civil aviation industry with the potential of putting the public's safety and security at risk.

An additional dimension is in regard to legal regimes. He notes that under the auspices of the International Civil Aviation Organization (ICAO), the aviation sector maintains certain legal and regulatory frameworks that are in turn strengthened by the national justice systems. He also outlines concerns about the complex law enforcement problems. Here, he observes that the prevalent aviation terror threats lack national boundaries, are interconnected, and should therefore be tackled at the international, regional, and local levels.¹⁴ In the same breath, policies and strategies to counter aviation-related terror attacks need to be cognisant of this fact.

¹¹ Eitan Azani, Lorena Atiyas, and Daniel Heberfield, *Trends in aviation terrorism* (International Institute for Counter-Terrorism (ICT), August 10, 2016). <https://www.ict.org.il/Article/1757/trends-in-aviation-terrorism> (accessed December 18, 2019).

¹² Jacques Duchesneau and Maxime Langlois, "Airport attacks: The Critical Role Airports Can Play in Combating Terrorism," *Journal of Airport Management* 11 no. 4 (2017): 343.

¹³ Jacques Duchesneau, *Aviation Terrorism: Thwarting High-Impact Low-Probability Attacks*. Unpublished PhD Thesis, Royal Military College of Canada, 2015, 41

¹⁴Ibid, 61.

Avihai on the other hand conceives aviation terrorism as, “a deliberately violent act sometimes indiscriminate that is aimed at commercial civil aircraft or against passengers and crew onboard conducted by individual clandestine agents or subnational groups to promote general political objectives but not to fulfill personal objectives exclusively.”¹⁵ Despite being one of the few scholars who have attempted to define terrorism in the aviation industry, his definition is limiting. Aviation attacks are not only directed to commercial and civil aircraft as it is implied here. A recent terror attack of the military airstrip in Lamu, Kenya indicates that the target of attack extends beyond civil and commercial aircraft. Avihai’s conception of aviation terrorism also implies that the targets of attack are only passengers and crew on board. This is far from reality. There are many recorded aviation terror attacks launched from the airport grounds targeted at airport employees as well as airport infrastructure and key installations. A case in point is the Rome and Vienna airports attacks in 1985 in which attackers used assault rifles and hand grenades aimed at both passengers and personnel in airport terminals.

To illustrate this, Bart delineates three key categories of aviation terror informed by the target which he identifies as aircraft, aviation infrastructure, and air cargo.¹⁶ In his work, “Aviation Terrorism: The Essence of the Phenomenon, Systematics, Typology,” Glen also concurs that the target of attack extends beyond the passengers and aircraft. He notes that the subject or object of attack can be organizations, apparatus, and people involved in aviation activity, or being beneficiaries of such activity.¹⁷ This, therefore, implies that responses to terror threats in the aviation industry must address the entire aviation ecosystem which includes the aircraft, airspace, aviation infrastructure, and cargo.

Choi observes that aviation terrorism is not suddenly going to disappear due to its international and symbolic nature which makes it an attractive means for terrorists to make a statement. Such attacks have a potential for multi-governmental involvement, a fact that gives terrorists the ever-desired wide publicity.¹⁸ It is also an effective tactic for terrorists to create the mass impact that attracts mass media coverage as was in the case of the 9/11 attack. In concurrence, Duchesneau and Langlois observe that aviation terrorism has the potential of projecting a global reach to cover a wider audience given the rapid transmission of information necessitated by global technological advancement.¹⁹

Regarding the impact of aviation terrorism, Krull argues that a successful attack on an airline which is a symbol of its country of origin has significant negative effects on the government causing it political embarrassment, besides the mass casualties, economic, social, and psychological implications such as instilling fear among members of the public.²⁰ Choi adds that although the number of direct victims of aviation terrorism may be small statistically, the impact is greater than any other type of attack on the civil population politically, economically, and psychologically. This makes aviation terrorism an effective tactic for terrorists.²¹

Tactics used in aviation terror attacks are varied. Bart, for instance, points out that perpetrators use acts such as bombing, shooting, hijacking, and smuggling in of weapons and persons as well as cargo-related crimes to execute their intentions as demonstrated in figure 1 below. To this, Duchesneau adds the aspect of suicide missions which can be carried out either inflight or on the ground.²² Wilkinson also acknowledges these tactics in his advice that airport security systems must be able to effectively deal with the continuing threat of aircraft hijacking, sabotage bombing, bombing, and shooting attacks on airport terminals and against aircraft on the ground. This implies that mechanisms to address the threat need to equally cover the entire aviation ecosystem both on the ground and in the airspace.

¹⁵ Hillel Avihai, *Aviation Terrorism: Evolution, Motivation and Escalation* (Saarbrücken: VDM Verlag, 2009): 35

¹⁶ Elius Bart, *National Aviation Security Policy, Strategy, and Mode-Specific Plans: Background and Considerations for Congress* (Library of Congress Washington DC: Congressional Research Service, 2009): 7.

¹⁷ Glen Andrzej, *Aviation Terrorism. The Essence of the Phenomenon, Systematics, Typology* (Siedlce University of Natural Sciences and Humanities, 2018): 61.

¹⁸ Jin-Tai Choi and Robert B. Munson, “Aviation Terrorism: Historical Survey, Perspectives and Responses,” *Springer* (1993): xi.

¹⁹ Jacques Duchesneau and Maxime Langlois, “Airport Attacks: The Critical Role Airports Can Play in Combating Terrorism.” *Journal of Airport Management* 11, no. 4 (2017): 342–354. p.343

²⁰ Katie E. Krull, Op. Cit. 6–7.

²¹ Jin-Tai Choi and Robert B. Munson, “Aviation Terrorism: Historical Survey, Perspectives and Responses,” *Springer* (1993): xii

²² Jacques Duchesneau and Maxime Langlois, Op. Cit. 343

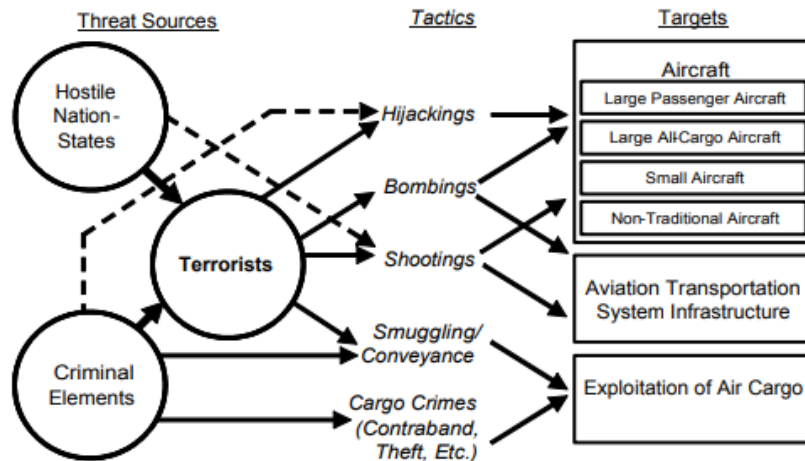


Figure 1 Dimensions for defining aviation terrorism

Source: (CRS analysis of *The National Strategy for Aviation Security*, Department of Homeland Security, March 26, 2007)

Salient also in Avihai’s definition above is the question of perpetrators of aviation terrorism who he identifies as individuals and sub-national groups.²³ Duchesneau agrees with the assertions that aviation terrorism attacks are carried out by non-state actors.²⁴ This, however, is limiting and far from the truth. A case in point is one in which the Libyan government authorities took advantage of the existing terrorist groups to carry out attacks indirectly against the Pan AM 103 flight in 1988, leading to 270 fatalities.²⁵ The Libyan government was heavily sanctioned by the United Nations Security Council for this act. Generally, the varied assertions presented above denote a lack of a standardized way of conceiving the concept of “aviation terrorism”.

Efforts to define aviation terrorism indicate a trend to tailor the concept in a way that suits the author’s particular objectives. Despite the definitional variations, salient is the fact that some words are commonly used. These include “deliberate”, “use of violence”, “threat to use violence”, “political motivation”, “creation of fear”, and “multiple targets”. The convergence of these definitions around certain terminologies indicates that terror activities bear specific characteristics distinct from other attacks and therefore can easily be identified and distinguished with other criminal activities within the aviation industry. This is useful in the formulation of policies and strategies that are specific in addressing terrorism.

III. METHODOLOGY

The study employed the exploratory research design. This design is appropriate for a research problem in cases where there are few documented studies for reference.²⁶ Secondary data was collected from government publications, websites, internal records and reports, conference proceedings, research articles, and books, among others. The data collected were analysed thematically, based on the approach laid out by Miles and Huberman’s framework for data analysis.²⁷

IV. FINDINGS & DISCUSSIONS

4.1 The Legal Strategies Adopted by Kenya’s Aviation Industry to Combat Terrorism

Generally, there have been many devastating terrorist attacks in Kenya. Being at the heart of domestic and international transportation, and a key pillar in the country’s economic growth, concerns on the level of security in the aviation industry have been on the increase. Coupled with the happenings of 9/11, Kenya’s aviation industry authorities – Kenya Airports Authority (KAA), Kenya Civil Aviation Authority (KCAA), and the government have been prompted to invest

²³Hillel Avihai, Op. Cit. 35.

²⁴ Jacques Duchesneau and Maxime Langlois, Op. Cit. 343.

²⁵ Louise Richardson, *What Terrorists Want: Understanding the Enemy, Containing the Threat* (Random House Incorporated, 2007): 52.

²⁶ Earl Babbie, *The practice of social research*. 11th Edition (Thompson, Wadsworth, Belmont, 2007).

²⁷ Matthew Miles and Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage: Newbury Park, 1994): 10.



in stringent security measures to safeguard the industry against terrorism. A number of legal measures have been progressively initiated to strengthen the security of all aspects of Kenya's commercial civil aviation against terror attacks.

4.1.1 Protection of Aircraft Act, 1970

Revised in 2012, this Act is one of the earliest legislations that Kenya assented to in the fight against terrorism in its aviation industry. It affected the following conventions to which Kenya is a signatory: the Tokyo Convention on offences and certain other acts committed on board aircraft, the Hague Convention for the suppression of unlawful seizure of aircraft, and the Montreal Convention for the suppression of unlawful acts against the safety of civil aviation. The Act provides for aircraft hijacking offences and other offences relating to aircraft. It also provides for the jurisdiction of the Kenyan courts in certain cases and provisions for extradition.²⁸ Like the global responses, Kenya's first approach to combating terrorism in its air industry was reactionary, taking the same trend and pattern as that of international civil aviation. This means that the measures adopted responded to an attack after its occurrence. Nonetheless, the enactment of this Act is also an indication of Kenya's commitment to implementing aviation security measures adopted by ICAO member states.

4.1.2 The Constitution of Kenya, 2010

Article 2(6) of the Constitution of Kenya provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.²⁹ By virtue of being a signatory of ICAO, Kenya has domesticated all treaties and conventions relating to countering unlawful acts against its aviation industry which include terrorism.³⁰ The ICAO conventions and treaties, therefore, form the philosophical foundations of all civil aviation legislation and regulations in Kenya.³¹ Furthermore, the provision allows any revisions or reviews to the conventions to automatically become part of Kenya's law without any delay. This enhances timely adoption of reviewed responses to the terrorism phenomenon which are likely to happen given the phenomenon's multi-faced and evolving nature.

4.1.3 The Civil Aviation Act, 2013

The Act supersedes the Civil Aviation Act of 2002 which established KCAA to regulate and oversee aviation safety and security as guided by the provisions of the Convention on the International Civil Aviation. It prohibits acts of unlawful interference which include: seizure of aircraft in flight or on the ground, hostage-taking on board aircraft or at airports, possession of a weapon or hazardous device intended for criminal purpose onboard aircraft or at an airport, use of aircraft in service for purposes of causing death, serious bodily injury or threats to cause bodily harm to passengers, crew, and others and destroying or damaging air navigation facilities or interfering with their operations.³²

The Act not only addresses how to respond to modern aviation terrorism acts, but also the varied tactics employed by perpetrators to attack the industry namely, hijackings, ground attacks, sabotage, and suicide missions, and cyber-terrorism. It also addresses the question of the use of threats, conspiracy, and attempted acts intended to jeopardize the safety of civil aviation and air transport.

Its provisions demonstrate the government's commitment to legally address terrorism in its aviation industry using a proactive approach as opposed to the previous reactive approach.³³ The measures guarantee a better and forward-thinking security structure that has a high potential of mitigating terror attacks in the industry if applied appropriately.

4.1.4 Kenya Security Laws Amendment Act, 2014 (Section 75)

To deal with the multi-faced terror problem in the country, the government crafted the Kenya Security Laws Amendment Act 2014 which sought to amend among others the National Transport and Safety Act and the Kenya Citizenship and Immigration Act.³⁴ The Act provided for the establishment of a mechanism for coordinating counter-terrorism measures

²⁸The Protection of Aircraft Act, 1970 (Rev. 2012). 8

²⁹ Samuel A. Nyanchoga, "The Constitution, National Security Council and the War on Terror in Kenya," *Africa Amani* 7 no.1 (2017): 11

³⁰ Nelson K. Mwikya and S. Angeline Mulwa, "Implementation of Aviation Safety Standards and Performance of Air Transport Industry: A Conceptual Perspective," *African Journal of Business and Management*, 1 no. 2 (2018):23

³¹ The Constitution of Kenya, 2010

³² The Kenya Civil Aviation Act, 2013

³³ Mercy Muendo, "Evolution of the Kenyan Aviation Transport Industry from Colonisation to the Present: Towards Legal Compliance with the International Standards of Aviation Law," *SSRN Journals* (2018): 1-18.

³⁴ Nelson K. Mwikya and S. Angeline Mulwa, Op. Cit. 23.



in all entry and exit ports in the country, including airports.³⁵ Consequently, the multi-agency body, “Border Control and Operations Co-ordination Committee (BCOCC)” was formed and enforced with a mandate to coordinate activities of security supporting agencies deployed at the aviation industry among other entry and exit points. The multi-agency body also exercises oversight authority over operations of the respective security agencies in the aviation industry.

4.2 Regulatory Strategies Adopted to Combat Terrorism in Kenya’s Aviation Industry

These refer to the prescribed rules and guidelines relating to the actions to be taken by those working within Kenya’s aviation industry to carry out the intent of the industry’s legal instruments which is to combat terrorism.

4.2.1 The Civil Aviation (Security) Regulations, 2019

According to article 37 of the Chicago Convention, Kenya as a member state is obligated to comply with ICAO Standards and Recommended Practices (SARPs).³⁶ KCAA develops regulations and guidance materials on various operational matters concerning how security will be handled on a day-to-day basis in the industry. Key among these are the security regulations. To operationalize the Civil Aviation Act, 2013, the authority established the Civil Aviation (Security) Regulations, 2019 which seek to incorporate new and emerging security needs and ICAO requirements on International Civil Aviation Security. The regulations are addressed to, all aerodromes in Kenya, passengers, persons working in the aviation industry, occupants of airport buildings, and persons on land adjoining or adjacent to or within the vicinity of airports or air navigation installations that do not form part of the airport.³⁷ The strength in these regulations is demonstrated in their appreciation of the fact that optimal aviation security entails the concerted efforts of all the actors who are directly or indirectly involved in performing the outlined security measures that are meant to improve the security system of the industry, and as a result, thwart terrorism and its related activities.

4.2.2 Preventive Security Measures

Among the security aspects considered in the regulations that directly address terrorism in the industry are the regulations on Preventive Security Measures contained in Part IV of the Civil Aviation (Security) Regulations, 2019. These are aimed at protecting passengers, crew, aircraft, airports, and aviation facilities and preventing acts of unlawful interference within the industry. Among others, they entail access restrictions and screening measures. The measures are also meant to ensure that the persons and goods allowed to access the airport areas are only those that have been thoroughly screened and whose intentions are known beforehand.³⁸ The screening regulations not only affect the air transport passengers, but also the aircrew, industry staff, businessmen who operate business establishments within the industry’s premises, and the air cargo.³⁹ All these have the potential of being used to execute terror and related activities in the industry. When well applied, the measures play an important role in mitigating terror activities thereby improving the industry’s security.

4.2.3 National Civil Aviation Security Training Program

The training program aims to ensure that personnel of all entities involved with or responsible for the implementation of various aspects of aviation security are properly trained on the appropriate standards for tasks in accordance with the national civil aviation security program. Such training help in increasing the personnel’s understanding of specific security areas as a means of mitigating risks and vulnerabilities that terrorists can take advantage of.⁴⁰ Among the subjects covered are enhanced screening procedures, passenger profiling, and strict access control. The training also takes the form of on-the-job training and familiarization tours to foreign airports for benchmarking.⁴¹

4.2.4 Aviation Security Audits and Reviews

Through the Aviation Security Department, KCAA also conducts aviation security audits, inspections, system tests, investigations, and surveys on airports, airlines, cargo agents, and inflight catering operators, among others.⁴² The audits

³⁵ The Kenya Security Laws (Amendment) Act, 2014.

³⁶ Nelson K. Mwikya and S. Angeline Mulwa, Op. Cit. 23

³⁷ The Kenya Civil Aviation (Security) Regulations, 2019.

³⁸ David Poggiolini, “Intensifying Security at Kenya’s Airports: Aviation,” *Transport World Africa* 5, no. 1 (2004): 46.

³⁹ Masadia A Agoi, *Critical Success Factors and Risk Management Procedures at Kenya Airports Authority*, Unpublished Masters Research Project, University of Nairobi, 2013, 36.

⁴⁰ Ibid. p.42

⁴¹ David Poggiolini, Op.Cit. 46.

⁴² Nelson K. Mwikya and S. Angeline Mulwa, Op. Cit. 23.



include a regular and mandatory Universal Security Audit Program (USAP) meant to identify and correct deficiencies experienced in the implementation of security-related Standards and Recommended Practices (SARPs).⁴³ Kenya participated in the audits in the years 2004 and 2008. A follow-up audit was also conducted in 2013 by the ICAO Universal Safety Oversight Audit Program (USOAP). Corrective Action Plans are currently ongoing by KCAA. Proper implementation of this measure in combating terrorism activities in the aviation industry ensures that flaws in the system are detected and fixed in time before terrorists take advantage of the vulnerabilities and risks therein to advance their schemes. The measure supports the proactive approach towards thwarting terrorism activities in the aviation industry.

V. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The study shows that due to the many devastating terrorist attacks in Kenya, Kenya's aviation industry authorities – Kenya Airports Authority (KAA), Kenya Civil Aviation Authority (KCAA) and the government through relevant security Ministries, Departments, and Agencies (MDAs) have been prompted to invest in stringent security measures to safeguard the industry against terrorism. A number of legal measures have been progressively initiated to strengthen the security of all aspects of Kenya's commercial civil aviation against terror attacks. These include the protection of Aircraft Act, 1970 (revised in 2012). The Act is one of the earliest legislations that Kenya assented to in the fight against terrorism in its aviation industry. Further, Article 2(6) of the Constitution of Kenya provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. By virtue of being a signatory of ICAO, Kenya has domesticated all treaties and conventions relating to countering unlawful acts against its aviation industry which include terrorism. The ICAO conventions and treaties, therefore, form the philosophical foundations of all the civil aviation legislation and regulations in Kenya. Another Act put in place in Kenya is The Civil Aviation Act, 2002 (revised 2013), which established KCAA to regulate and oversee aviation safety and security as guided by the provisions of the Convention on the International Civil Aviation and the Kenya Security Laws Amendment Act, 2014 (Section 75) which provided for the establishment of a mechanism for coordinating counter-terrorism measures in all entry and exit ports in the country including airports. There are also numerous regulatory strategies adopted to combat terrorism in Kenya's aviation industry which refer to the prescribed rules and guidelines relating to the actions to be taken by those working within Kenya's aviation industry to carry out the intent of the industry's legal instruments that are geared to combat terrorism. The country has also put in place elaborate regulations on Preventive Security Measures contained in Part IV of the Civil Aviation (Security) Regulations, 2019. These are aimed at protecting passengers, crew, aircraft, airports, and aviation facilities and preventing acts of unlawful interference within the industry. Further, the country has instituted a training program that aims to ensure that personnel of all entities involved with or responsible for the implementation of various aspects of aviation security are properly trained on the appropriate standards for tasks in accordance with the national civil aviation security program. Such training help in increasing the personnel's understanding of specific security areas as a means of mitigating risks and vulnerabilities that terrorists can take advantage of. The country also undertakes Aviation Security Audits and Reviews. These include a regular and mandatory Universal Security Audit Program (USAP) meant to identify and correct deficiencies experienced in the implementation of security-related Standards and Recommended Practices (SARPs). It can thus be concluded that Kenya has adopted elaborate legal and regulatory responses to combat terrorism in its aviation industry. These have been largely successful in combating aviation terrorism in Kenya.

5.2 Recommendations of the Study

Based on the study findings, the study recommends as follows;

There is a need for regular reviews of various legal and regulatory responses to combatting terrorism in Kenya to enhance their efficacy and responsiveness to the dynamism of international terrorism. Furthermore, the training strategies should be strengthened through increased funding to enhance the domestication of the various legal and regulatory responses in the various security agencies in Kenya. KCAA should also increase the frequency of aviation security audits, inspections, system tests, investigations, and surveys on airports, airlines, cargo agents, and inflight catering operators among others in response to increased sophistication of international terrorism.

⁴³ The Kenya Civil Aviation (Security) Regulations, 2019.



REFERENCES

- Agoi, Masadia A. *Critical Success Factors and Risk Management Procedures at Kenya Airports Authority*. Unpublished Masters Research Project, University of Nairobi, 2013, 36.
- Andrzej, Glen. *Aviation Terrorism. The Essence of the Phenomenon, Systematics, Typology* (Siedlce University of Natural Sciences and Humanities, 2018): 61.
- Avihai, Hillel. *Aviation Terrorism: Evolution, Motivation and Escalation* (Saarbrücken: VDM Verlag, 2009): 35
- Azani, Eitan, Lorena Atiyas and Daniel Heberfeld. *Trends in aviation terrorism* (International Institute for Counter-Terrorism (ICT), August 10, 2016). <https://www.ict.org.il/Article/1757/trends-in-aviation-terrorism> (accessed December 18, 2019)
- Babbie, Earl. *The practice of social research*. 11th Edition (Thompson, Wadsworth, Belmont, 2007).
- Baker, David. "Tourism and Terrorism: Terrorists Threats to Commercial Aviation Safety & Security." *International Journal of Safety and Security in Tourism and Hospitality* 1, no. 12 (2015): 1. p.1
- Bart, Elius. *National Aviation Security Policy, Strategy, and Mode-Specific Plans: Background and Considerations for Congress* (Library of Congress Washington DC: Congressional Research Service, 2009): 7.
- C Krause, Kent. "Putting the Transportation Security Administration in Historical Context." *Journal of Air Law & Commerce*. 68 (2003): 237
- Choi, Jin-Tai and Robert B. Munson. *Aviation Terrorism: Historical Survey, Perspectives, and Responses*." Springer (1993): xi.
- Duchesneau, Jacques and Maxime Langlois. "Airport attacks: The Critical Role Airports Can Play in Combating Terrorism." *Journal of Airport Management* 11 no. 4 (2017): 343.
- Duchesneau, Jacques. *Aviation Terrorism: Thwarting High-Impact Low-Probability Attacks*. Unpublished Ph.D. Thesis, Royal Military College of Canada, 2015, 41
- Krull, Katie E. *The Threat Among Us: Insiders Intensify Aviation Terrorism* (Pacific Northwest National Lab., 2016): 7.
- Mary Schiavo, "The Chronology of Attacks against Civil Aviation." *Aviation Security Management* (2008): 187.
- Mellah, Salima. "The Massacres in Algeria, 1992–2004." *Extracts from a Report Presented by the Justice Commission for Algeria*. Berlin: *Algeria Watch* (2004): 8
- Miles, Matthew, and Michael Huberman. *Qualitative Data Analysis: An Expanded Sourcebook* (Sage: Newbury Park, 1994): 10.
- Muendo, Mercy. "Evolution of the Kenyan Aviation Transport Industry from Colonisation to the Present: Towards Legal Compliance with the International Standards of Aviation Law." *SSRN Journals* (2018): 1–18.
- Mwikya, Nelson K. and S. Angeline Mulwa. "Implementation of Aviation Safety Standards and Performance of Air Transport Industry: A Conceptual Perspective." *African Journal of Business and Management*, 1 no. 2 (2018):.23
- Nyanchoga, Samuel A. "The Constitution, National Security Council and the War on Terror in Kenya." *Africa Amani* 7 no.1 (2017): 11
- Office of the Civil Aviation Security. *Criminal Acts against Civil Aviation* (Springfield, U.S. Department of Transportation, USA, 1996): 42.
- Poggiolini, David. "Intensifying Security at Kenya's Airports: Aviation." *Transport World Africa* 5, no. 1 (2004): 46.
- Richardson, Louise. *What Terrorists Want: Understanding the Enemy, Containing the Threat* (Random House Incorporated, 2007): 52.
- Schiavo, Mary. *A Chronology of Attacks against Civil Aviation*. (Aviation Security Management, 2008): 140.
- Selth, Andrew. "International Terrorism: A New Kind of Warfare." *The Russian Journal* 132, no. 1 (1987):65.
- Tidhar, Roni. "Being Naive is Not an Option: The Threat of Terrorism to the Aviation Industry." *International Airport Review*. (2019): Retrieved from: <https://www.internationalairportreview.com/article/69862/threat-of-terrorism-aviation-industry>. p.1.

Laws and Statutes

- The Constitution of Kenya, 2010.
- The Kenya Civil Aviation (Security) Regulations, 2019.
- The Kenya Civil Aviation Act, 2013.
- The Kenya Security Laws (Amendment) Act, 2014.
- The Protection of Aircraft Act, 1970 (Rev. 2012), 8.