

AIR PASSENGERS' RIGHTS IN AFRICA: DEVELOPMENT, ENFORCEMENT AND CHALLENGES

By

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Abstract

This article appraises air passengers' rights in Africa by critiquing the development of the rights, enforcement and challenges faced in implementation of the rights. Using a doctrinal method, five African states are selected along geographical regional lines with each state representing a Regional Economic Community (REC) in the African Union (AU). The article finds that the passengers' rights in African states developed through international law and foreign jurisprudence. The adoption and legal transplant, however, pose challenges in effective implementation of the laws due to lack of adequate infrastructure in African states, and low capacity of African air carriers. To ensure the sustainability of air passengers' rights protection in Africa, the article proposes among others, government assistance, regulators' evaluation of practicability of compliance, and harmonisation of national laws with the Single African Air Transport Market (SAATM) framework.

1. Introduction

The protection of passengers' interests in air carriage is a major aspect of Africa's civil aviation.¹ The African Civil Aviation Policy states that one of the objectives of member states of the African Union is to 'encourage fair competition and protect the rights of consumers as well as increase their confidence in aviation services in the Continent'.² At the African regional level, there is the Single African Air Transport Market (SAATM) regulations on consumer protection,³ although the SAATM is not yet in full operation.

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1 African Civil Aviation Policy 2011 Section 5.4.1.1.

2 *Ibid.*

3 African Union Regulations on The Protection of Consumers of Air Transport Services, Annex 6 to the Yamoussoukro Decision (Assembly/AU/Dec 676 (XXX) - Decision on Legal Instruments) (SAATM regulations).

Currently, air passenger rights in African states are safeguarded under the individual legal frameworks of each state, which are all influenced greatly by international and foreign jurisprudence.

This article appraises the protection of air passengers' rights in Africa by examining the development of the rights, the legal frameworks for protection of the rights, and enforcement challenges. Five African states are selected along geographical regional lines with each state representing a Regional Economic Community (REC) in the AU. Nigeria is selected from the Economic Community of West African States (ECOWAS), South Africa is selected from the Southern African Development Community (SADC), Kenya is selected from the East African Community (EAC), Morocco is selected from the Arab Maghreb Union (UMA), and Cameroon is selected from the Economic Community of Central African States (ECCAS).

2. Development of Air Passengers' Rights in Africa

The legal frameworks of air passengers' rights in African states are derived from international law and foreign jurisprudence. These will be discussed in this section.

2.1. International law

In international law, air carrier liability framework provides a treaty basis for the rights of air passengers.⁴ This framework consists of the Warsaw Convention⁵ and the Montreal Convention⁶ which provide for rights to damages for bodily injury,⁷ death,⁸ delay of persons⁹ of baggage,¹⁰ loss or destruction of baggage.¹¹ The Conventions also set monetary value as liability limits for each event.

4 Tory A. Weigand, 'Accident, Exclusivity, and Passenger Disturbances under the Warsaw Convention' (2001)16(4) *American University International Law Review* 891, 899; James David Simpson, Jr., 'Air Carriers' Liability under the Warsaw Convention after *Franklin Mint V Twa*', *Wash & Lee L Rev* (1983) 40, 1463; Blair J. Berkley, 'Warsaw Convention Claims Arising From Airline-Passenger Violence' *UCLA Journal of International Law and Foreign Affairs* (2001-2002) 6(2), 499.

5 Convention for the Unification of Certain Rules Relating to International Carriage by Air, 12 Oct. 1929, Warsaw, ICAO Doc 7838, entry in force 13 Feb. 1933 (Warsaw Convention).

6 Convention for the Unification of Certain Rules for International Carriage by Air, 28 May 1999, Montreal, ICAO Doc 9740, entry in force 4 Nov. 2003 (Montreal Convention)

7 *Ibid.* Article 17

8 *Ibid.*

9 *Ibid.* Article 19

10 *Ibid.*

11 *Ibid.* Article 17(2)

The legal framework of aviation in Africa generally derives from treaty law as African states are parties to relevant treaties, some of which were signed by colonial governments. According to the Vienna Convention on Succession of States in respect of Treaties,¹² independent states are to declare whether to be bound by obligations and responsibilities arising from any valid international instrument entered into by their predecessors.¹³ In relation to each treaty, a newly independent State is not bound to maintain in force any treaty which was in force in its territory before the succession.¹⁴ The newly independent state may, by notification of succession, establish its status as a party to any multilateral treaty which was already in force at the date of succession,¹⁵ or which had been ratified but not in force at the date of the succession,¹⁶ or which had been signed but not yet ratified.¹⁷ The Warsaw Convention¹⁸ was adopted in 1929, a time when all African states were under colonial governments. African states thus became parties to the Warsaw Convention through succession.¹⁹ By the time the Montreal Convention²⁰ was adopted in 1999 however, all African states had gained independence. The Warsaw Convention and Montreal Convention have been incorporated in the laws of African states to apply to international air carriages. Some African states have also adopted the Conventions to govern domestic air carriages as well as will be discussed later in this article.

12 Vienna Convention on Succession of States in respect of Treaties Done at Vienna on 23 August 1978. Entered into force on 6 November 1996. UNTS vol. 1946, p. 3

13 Independent states are to declare their intention to be bound or not to be bound by predecessors treaties. For instance, Nigeria gained independence on 1 October 1960, by an exchange of notes, dated October 1, 1960, between the Commissioner for the United Kingdom in the Federation of Nigeria and the Prime Minister of the Federation of Nigeria, Nigeria agreed to assume, from October 1, 1960, all obligations and responsibilities of the United Kingdom which arise from any valid international instrument insofar as such instruments may be held to have application to or in respect of Nigeria are from October 1, 1960, enjoyed by the Federation of Nigeria. It is same with other African states. Article 11.

14 (n 12) Article 16

15 *Ibid.* Article 17

16 *Ibid.* Article 18

17 *Ibid.* Article 19. In this case, the newly independent state may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it. see *ibid* Article 19(1)

18 (n 5)

19 It has been noted that the general application of the European legal system in the colonies came after decolonization and in accordance with the will of the now independent authorities. This explains its present existent in the former colonies. See Sacco, R, 'Legal formants: A dynamic approach too comparative law (II)' (1991) 39 *Am J. Comp. L* 398

20 (n 6)

The work of the International Civil Aviation Organisation (ICAO) in the area of aviation consumer protection has also influenced air passenger rights in African states. ICAO's core principles on passenger rights²¹ serves as guidance to member states in their enactment of laws or other instruments that safeguard passengers' interests. Prior to the adoption of these principles by ICAO, the Montreal and Warsaw Conventions were the only means of obtaining some form of protection and redress against airlines in a number of African states.²² A number of African states did not have aviation specific consumer protection regulations, and general consumer protection rules were utilised for the protection of air passenger rights and interests.²³ At the Sixth Worldwide Air Transport Conference, African states under the auspices of AFCAC requested ICAO to develop extensive guidance materials to guide States in order to engender universality and commonality on these issues.²⁴

ICAO Principles recognise the need for a competitive air transport sector and the need for national regimes to strike an 'appropriate balance between protection of consumers and industry competitiveness.'²⁵ The rights of air passengers before, during and after travel are also recognised.²⁶ Before travel, air passengers have the right to access information on the air transport product such as total price, general conditions applying to the fare; and identity of the airline actually operating the flight.²⁷ During the carriage, the rights passengers possess include right to information on any special circumstances affecting their flight, right to receive due attention and assistance in situations of flight disruptions.²⁸ Passengers' rights after a carriage include efficient complaint handling procedures and adequate information about those procedures.²⁹ The SAATM consumer regulations take the same approach with that of ICAO Principles by 'observing that there is a need to strike a balance between, on the one hand, the right of airlines to operate efficiently in a liberalised and increasingly competitive market, and the right of the consumer to be assured of sufficient protection and information of his rights.'³⁰

21 ICAO Core Principles on Consumer Protection

22 'African Air Transport And The Protection Of The Consumer' Presented by 54 Member States , Members of the African Civil Aviation Commission at the Worldwide Air Transport Conference (Atconf) Sixth Meeting Montréal, 18 to 22 March 2013 ATConf/6-WP/47 18/2/13 Para. 1.5

23 *Ibid.* Para. 1.3

24 *Ibid.* para 7.1

25 (n 21)

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

29 *Ibid.*

30 (n 2) Preamble

2.2. Influence of Foreign Law

Air passenger-rights regimes in African states are significantly influenced by laws in other jurisdictions. African states often search for global best practices in the area of law reforms and such practices are emulated.³¹ Laws and regulations are thus modelled after those of specific jurisdictions. A prominent example of foreign laws/regulations on passengers' rights that have been deliberately adopted and adapted by states in Africa is EU Regulation 261/2004.³² A look at Part 19 of the Nigerian Civil Aviation Regulations 2023 (Nig. CARs)³³ reveals ample modelling after Regulation 261/2004. The SAATM regulations³⁴ have also been modelled after Regulation 261/2004 of the EU.³⁵ Similarly, Regulation EU 261/2004 has influence on the consumer protection framework as it relates to air carriage in South Africa. The Office of the Consumer Goods and Services Ombudsman in South Africa makes ample reference to the EU 261/2004 in its Advisory Note 9 which is to guide consumers as to their rights and obligations under the Consumer Protection Act (CPA) with regard to over-selling and over-booking.³⁶ The Zambian civil aviation consumer protection regulations have also taken after EU Regulation 261/2004.³⁷

In addition, courts in African states follow interpretation of similar laws or regulations concerning air passenger rights in other jurisdictions. An example is *Saks v Air France*³⁸ which has become a *locus classicus* for the

31 The Nigerian Companies Act of 1968 (now replaced by Companies and Allied Matters Act, 2020. Federal Republic of Nigeria. Official Gazette. No. 124. Lagos - 10th August, 2020. Vol. 107 was a replica of the UK Companies Act 1948. Irish company statutes are similar to English ones, Kenya's Companies Act 1962 is to a large extent a verbatim copy of the UK Companies Act 1948,

32 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 Feb. 2004 Establishing Common Rules on Compensation and Assistance to Passengers in the Event of Denied Boarding and of Cancellation or Long Delay of Flights, and Repealing Regulation (EEC) No 295/91, OJ L 46, at 1–8, 17 Feb. 2004, (Regulation 261/2004). The Regulation has been described as the 'most iconic legislation on air passenger rights.' see Vincent Correia, & Noura Rouissi, 'Global, Regional and National Air Passenger Rights – Does the Patchwork Work?'. Air & Space Law (2015) 40(2) 123, 125.

33 Nigerian Civil Aviation Regulations 2023 Part 19

34 African Union Regulations on The Protection of Consumers of Air Transport Services, Annex 6 to the Yamoussoukro Decision (Assembly/AU/Dec 676 (XXX) - Decision on Legal Instruments) (SAATM regulations).

35 See *ibid*.

36 Consumer Goods and Services Ombudsman, Advisory Note 9: Over-Selling And Over-Booking section 3.1.2

37 Zambia Civil Aviation Requirements Part 25 on Protection of consumers of Air Transport Services.

38 470 U.S. 392 (1985)

interpretation of 'accident' under the two liability conventions. Another example is *El Al Israel Airlines v Tseng*³⁹ which serves as an interpretation of the preemptive provision contained in Article 29 of the Montreal Convention. This precedent was followed by the Nigerian Supreme Court in *Harka Air Services (Nig.) Ltd. v Keazor*⁴⁰ and the Nigerian Court of Appeal in *Otoakhia v Aero Contractor Nigeria Ltd*⁴¹ among others.

Adoption of foreign law and regulations can also be by way of bilateral air service agreements (BASAs) signed by an African state and the foreign state. In such case, the BASA may provide that the law of the foreign state party will be applicable to air carriages covered under the BASA and the African state will be required to incorporate those laws into its legal system. The Euro-Mediterranean Aviation Agreement between the EU and Morocco⁴² is an example of this. Under the Agreement, the applicable rules applicable to civil aviation are EU regulations. These rules were thus adopted into the Moroccan legal framework and according to the Agreement, the European Community is to evaluate the implementation and application of the rules by Morocco.⁴³

Inadvertently, foreign laws on air passengers' rights have also become part of African laws through legal transplant. The liability limits as set out in the conventions were greatly influenced by US domestic law which eventually found its way into the laws of African states. The history of the Montreal Convention reveals the impact of US on the increment of liability limits set out in the limits.⁴⁴ US rejected the proposed doubling of the liability limits for death and injury of passengers at the Hague Conference as it considered the limits too low. The US thus denounced the Warsaw Convention in 1966 because the limits proposed by the conference was deemed inadequate and lower than what obtained domestically in the US.⁴⁵ The Montreal Conference

39 525 U.S. 155 (1999)

40 (2011) 13 NWLR (Pt 1264) 320 (SC).

41 (2014) LPELR-23319 (CA), 24.

42 Euro-Mediterranean Aviation Agreement between the European Community and its Member States, of the one part and the Kingdom of Morocco, of the other part, Brussels, 12 Dec. 2006. European Communities No. 1 (2008) *Official Journal L* 386 , 29/12/2006 P. 0057 – 0088

43 (n 42) Annex IV

44' Peter H. Sand, 'The International Unification of Air Law'(1965) 30 *Law and Contemporary Problems* 400, 415 This was applied in cases such as *LeRoy v Sabena Belgian World Airlines* S.D.N.Y., March 17, 1964) and *Tuller v KLM* 292 F.2d 775 (D.C. Cir. 1961). Post World War II however saw the measure for calculating compensation that is, personal income, overtake the liability limits specified in the Warsaw Convention. There was thus a need to amend the Warsaw Convention.

45 Lee S. Kreindler, 'The Denunciation of the Warsaw Convention (1965) 31 *J. Air L. & Com.* 291, 293

thereafter considered the proposal of the US in setting the limits in the Montreal Convention. Some air passengers' rights obtainable in the US thus found their way into the jurisprudence of African states through domestication of this Convention.

The question at this juncture is the practicality of enforcement of the passenger rights incorporated by African states from foreign jurisdictions, such as EU regulation 261/2004.⁴⁶ The position of the International Air Transport Association (IATA) on consumer protection is that there should be a balance between ensuring adequate consumer protection and overburdening the industry with the costs of excessive regulatory compliance.⁴⁷ Thus, passenger entitlements enshrined in regulations should reflect the principle of proportionality and the impact of extraordinary circumstances.⁴⁸ Airline companies have consistently made it known that compliance with the relevant compensation regimes is tasking.⁴⁹ The US proposal in 2023 to make new rules for the enforcement of passengers' right to care and compensation during flight cancellations and lengthy delays⁵⁰ was criticised by IATA on the ground that it would among others, lead to significant operational cost implications and financial burden for airlines.⁵¹ As articulated by IATA, airlines in Africa face high operational costs⁵² and the feasibility of the airlines to effectively comply with financial obligations under passenger rights regime will be slim.⁵³

46 (n 32)

47 Resolution on IATA Core Principles On Consumer Protection at the 69th IATA Annual General Meeting Cape Town, South Africa 2-4 June 2013.

48 IATA Core Principles on Consumer Protection

49 Sarah Jane Fox & Luis Martín-Domingo, 'EU Air Passengers' Rights Past, Present, And Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)' (2020) 85 J. AIR L. & COM. 271-307, 273

50 US Department of Transportation, 'DOT to Propose Requirements for Airlines to Cover Expenses and Compensate Stranded Passengers' Newsroom <https://www.transportation.gov/briefing-room/dot-propose-requirements-airlines-cover-expenses-and-compensate-stranded-passengers> accessed 23 March 2026.

51 IATA, 'US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delay' Press Release No. 19 9 May 2023 <https://www.iata.org/en/pressroom/pressroom-archive/2023-releases/2023-05-09-02/> accessed 25 March 2026; Noor Ain, 'Navigating Passenger Compensation: Implications for Airlines and Consumers' J. AIR L. & COM. (2024) 89 507.

52 IATA, 'Strengthened Profitability Expected in 2025 Even as Supply Chain Issues Persist' Press Release No. 58, 10 December 2024 <https://www.iata.org/en/pressroom/2024-releases/2024-12-10-01/> accessed 23 March 2026.

53 In Nigeria with robust passenger rights regime for example, flight delay and cancellation are common and air carriers usually allude to technical factors as a reason for such disruption. In such situations, passengers hardly receive any care or compensation by airlines.

3. Legal Frameworks and Enforcement of Air Passenger Rights in Africa

While all states in Africa have general consumer protection regimes that cater for all sectors, not every African state has a legal framework that is specifically for air passengers. Besides the liability conventions⁵⁴ which every African state has ratified one or both, some African states rely on general consumer protection frameworks for passengers in air transport. This section examines the air passenger rights covered under the relevant legal frameworks in the selected states. General consumer protection legal frameworks in the relevant states will only be considered where a state has no aviation specific legal framework.

3.1. Nigeria

The framework of air passengers' rights in Nigeria is greatly influenced by international law and foreign law. Nigeria is a party to the Montreal Convention⁵⁵ and the Convention has been domesticated by the Civil Aviation Act 2022.⁵⁶ Even though the Montreal Convention was adopted to govern only international carriages, the Convention has been made to be applicable to both international⁵⁷ and domestic carriages in Nigeria.⁵⁸ Passengers on domestic flights therefore, also have the right to damages for bodily injury,⁵⁹ death,⁶⁰ delay of persons⁶¹ and baggage,⁶² loss or destruction of baggage.⁶³ The liability limits prescribed for domestic flights however slightly differ

54 (n 5); (n 6).

55 ICAO, Current lists of Parties to Multilateral Treaties, Convention For The Unification Of Certain Rules For International Carriage By Air Done At Montreal On 28 May 1999 https://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf accessed 20 March 2026.

56 Civil Aviation Act No. 30 2022 Section 50(5). Nigeria is also a party to the Warsaw Convention. The Warsaw Convention of 1929 was domesticated by the Carriage by Air (Colonies, Protectorates, and Trust Territories) Order 1953 Vol. XI of the 1958 Laws of the Federation of Nigeria which has now been repealed. The Montreal Convention of 1999 was originally domesticated by the Civil Aviation Act 2006 which is now repealed by the current Act of 2022.

57 Civil Aviation Act *ibid.* section 55(1)

58 The Civil Aviation Act further provides that the Montreal Convention as modified in the second schedule to the Act shall apply to domestic carriages within Nigeria. see *ibid.* section 55(2)

59 Civil Aviation Act 2022 (n 56) Schedule 2 Article 17

60 *Ibid.*

61 *Ibid.* Schedule 2 Article 19

62 *Ibid.*

63 *Ibid.* Schedule 2 Article 17(2)

from that contained in the Montreal Convention.⁶⁴ Section 55(3) of the Civil Aviation Act further specifies an advance payment of 30,000 USD within 30 days from the date of such accident, by the air carrier to persons entitled to be compensated in order to meet their economic needs.⁶⁵ This is applicable to both international and domestic flights.

Besides the rights covered by the Montreal regime and the Civil Aviation Act, some other rights of passengers are covered under the Nigerian Civil Aviation Regulations 2023 (Nig. CARs). These rights are the right to information, right to fair market practices,⁶⁶ compensation,⁶⁷ reimbursement, rerouting and care.⁶⁸ The rights under these regulations are very similar to those covered by the EU 261/2004. The air carrier is mandated to disclose information about the flight and also has an obligation to inform passengers of their rights.⁶⁹ The passenger has the right to compensation in the event of involuntary denied boarding,⁷⁰ lengthy delay⁷¹ and for inconvenience caused in the event of delayed baggage. Similarly to the conventions, a passenger does not have a right to compensation when the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.⁷²

Passengers have a right to compensation when there is flight cancellation unless they are informed of the cancellation at least twenty-four hours before the scheduled time of departure for domestic flights,⁷³ and seven days for international flights.⁷⁴ The rights to reimbursement and rerouting are alternate rights from which a passenger can choose when applicable. The Nig. CARs

64 *Ibid.* Article 21(1) Schedule 2.

65 *Ibid.* Section 55(3).

66 (n 33) Part 19.20.1.1. This includes disclosure of the entire price to be paid by the passenger. A form of misleading advertising prohibited is the display of deceitful departure time by air an air carrier at its counter, advert material or website. *Ibid.* Part 19.20.1.3.

67 *Ibid.* Part 19.8

68 (n 33) Part 19.10

69 (n 33) Part 19.1.

70 Denied boarding is defined in the Nig. CARs as ‘a refusal by an airline to carry passengers who hold confirmed reservation and valid travel documentation, although they have presented themselves for check-in and/or boarding at the time stipulated by the airline, on grounds of oversold service. (n 40) Part 19.1.2.1.

71 For domestic flights, a lengthy delay is when the expected time of departure is more than six hours after the time of departure previously announced

72 (n 33) Part 19.6.1.2.

73 *Ibid.* Part 19.7.1.1.(c).

74 *Ibid.* Part 19.7.1.1.(d).

make these rights available to passengers when events of denied boarding,⁷⁵ long delay,⁷⁶ or cancellation⁷⁷ occur.

Even though Nigeria has a robust legal framework for air passengers' rights,⁷⁸ these rights are hardly enforced by air carriers and this is documented in various literature.⁷⁹ The government has also made it known on several occasions of its intention to enforce consumer and passenger rights.⁸⁰ According to NCAA reports,⁸¹ between January and March 2023, a total number of 18,288 domestic flights were operated in Nigeria. Out of these, there was delay on 10,128 flights, and 284 cancellations.⁸² The right to the necessary information on flight status is often times breached by airlines in Nigeria,⁸³ and this has led to outbursts from passengers on many occasions sometimes causing unruly passenger behaviour.⁸⁴ The right to reimbursement and rerouting is also often breached by airlines as airlines after cancelling a flight, refuse to provide passengers with the options of immediate reimbursement or rerouting as required.⁸⁵ The right of passengers to assistance

75 *Ibid.* Part 19.5.1.4.

76 *Ibid.* Part 19.6.1.1.(b).

77 *Ibid.* Part 19.7.1.1.(b).

78 African Union, Study on Competition Rules, Dispute Settlement Mechanism and Consumer Protection; Third Session of the African Union Conference of African Ministers of Transport Malabo, Equatorial Guinea 7–11 Apr. 2014. para. 249

79 Aliyu Mustapha, 'An Appraisal of Air Passenger Protection Laws for Delay of Flight in Nigeria', (2017) 7(1) International Journal of Social Science and Humanity; Stella Nwakoby & Adinnu Elton Chukwujekwu, 'Impact of Consumer Protection Laws On Aviation Industry In Nigeria' (2020) 2(1) International Journal of Comparative Law and Legal Philosophy; Adejoke O. Adediran, 'Current Regulation of Air Carriers' Liability and Compensation Issues in Domestic Air Carriage in Nigeria, (2016) 81 Journal of Air Law and Commerce.

80 Lilian Ukagwu, 'Govt to enforce rules on flight delays, cancellations' (*Punch News* 3 September 2023) <https://punchng.com/govt-to-enforce-rules-on-flight-delays-cancellations/> accessed 25 March 2026.

81 Nigeria Civil Aviation Authority Executive Summary on International And Domestic Flight Operations (January – March, 2023).

82 *Ibid.*

83 See Bassey Udo, 'Passengers stranded as Aero Contractors cancels flight from Sokoto' (*Premium Times* 3 March 2017) <https://www.premiumtimesng.com/news/top-news/225154-passengers-stranded-aero-contractors-cancels-flight-sokoto.html?tztc=1> accessed 20 March 2026; Yusuf Babalola, 'JUST-IN: Angry Passengers Besiege Dana Air Counter, Demand Ticket Refund' (*Leadership News*, 21 July 2022) <https://leadership.ng/just-in-angry-passengers-besiege-dana-air-counter-demand-ticket-refund/> accessed 22 March 2026.

84 An instance was when passengers besieged the counter of an airline at the airport to demand refund of their ticket fares. See Yusuf Babalola, *ibid.*

85. See Ifeoma Okeke, 'Passengers stranded at Lagos airport as Arik Air cancels flight over aircraft's technical fault' (*Business Day*, 24 November 2020)

or care is also often breached by airlines. An instance was when a flight was delayed and reached the destination at 12:30 midnight. Passengers were stranded with nowhere to spend the night at the destination airport and some missed their connecting international flight. The passengers were not given the assistance of lodging among others as required under the Nig. CARs.⁸⁶

Aggrieved passengers can obtain redress through various redress mechanisms. Passengers can claim damages for a breach of their rights in the formal court. In this regard, passengers claim for damages for events covered under the Montreal Convention, and damages under contract law for non-performance of carriage. Passengers may not want to approach the court for breach of right covered by the Nig. CARs where the compensation prescribed is considerably not much. In such a case, the administrative mechanisms of the Nigerian Civil Aviation Authority (NCAA) can be employed.⁸⁷

3.2. South Africa

South Africa has ratified the Montreal Convention and the Convention is domesticated by the Carriage by Air Amendment Act No. 15 of 2006.⁸⁸ The Montreal Convention thereby applies to international flights operating in South Africa subject to other considerations.⁸⁹ Passengers on international flights thus have the right to damages for death; bodily injury; delay of persons, baggage or cargo; and loss or destruction of baggage or cargo as provided under the Montreal Convention. The Act however does not extend the scope of the Montreal Convention to cover domestic carriages. The Act empowers the Minister to by notice published in the gazette, to apply any of the provisions of the Montreal Convention to domestic carriage subject to any exceptions, adaptations and modifications as may be specified in the notice.⁹⁰

<https://businessday.ng/aviation/article/passengers-stranded-at-lagos-airport-as-arik-air-cancels-flight-over-aircrafts-technical-fault/> accessed 8 March 2026. See also Nan, 'Arik passengers stranded in Kaduna Airport for 4 days' (*The Guardian*, 7 January 2017) <https://guardian.ng/news/arik-passengers-stranded-in-kaduna-airport-for-4-days/> accessed 20 March 2026.

86 See Olamide Fadipe, 'Delayed Flight: Air Peace sues passengers for alleged assault' (*Premium Times*, 29 May 2018) <https://www.premiumtimesng.com/news/top-news/270174-delayed-flight-air-peace-sues-passengers-for-alleged-assault.html> accessed 20 March 2026.

87 (n 56) Section 91.

88 Carriage by Air amendment Act No. 15 of 2006 section 1. South Africa is also a party to the Warsaw Convention and it was domesticated by the Carriage by Air Act, No. 17 of 1946 which has been amended by the Amendment Act. The Warsaw however continues to apply to international carriages involving states which are only party to the Convention and not to the Montreal Convention.

89 Such as where the other relevant state(s) is not a party to the Montreal Convention and the Montreal Convention will not be applicable.

90 (n 88) Section 6

There is currently no notice in the gazette to this effect, and so passengers on domestic flights in South Africa do not have the rights provided for under the Montreal Convention.

There is no air passengers' bill of rights or an aviation specific consumer protection legislation safeguarding the rights of passengers in South Africa. Air passengers' rights can only be derived from the general consumer protection legal framework. The Consumer Protection Act safeguards consumer rights in all sectors including aviation, even though it does not cover consumer rights that are peculiar or specific to air carriage. Air passengers have a right to fair market practices as service providers including airlines are prohibited from making false misrepresentation about services.⁹¹ Passengers have the right to disclosure and information under the Consumer Protection Act.⁹² The Act also safeguards the right to refund and compensation in a case of over-selling or over-booking.⁹³

It is noteworthy that this provision does not adequately protect passengers in cases of denied boarding due to flight overbooking. The right to compensation for overbooking under the Act can only be enforced if a passenger suffers loss as a result of the denied boarding. Indirect or consequential damages are excluded under the Act.⁹⁴ In the same vein, the Act does not provide for compensation for delay. The Advisory Note of the South African Consumer Goods and Services Ombudsman clarifies that section 47 of the Act does not provide for compensation for loss of time.⁹⁵ While the Act covers refund, refund cannot be obtained by passengers if the event necessitating the refund was due to circumstances beyond the control of the air carrier.⁹⁶ Meanwhile, under aviation regimes,⁹⁷ refunds can be obtained once certain events occur, regardless of whether or not the circumstances are beyond the control of the air carrier.⁹⁸

Passengers' rights on domestic flights are limited to those covered by the Consumer Protection Act since the Montreal Convention does not apply to air carriages within South Africa.⁹⁹ Enforcement of passengers' rights of

91 Consumer protection Act Section 41

92 *Ibid.* Section 22

93 *Ibid.* Section 47(3)

94 Consumer Goods and Services Ombudsman, Advisory Note 14: Over-Selling And Over-Booking 6.

95 *Ibid.*

96 (n 91) Section 47

97 (n 32) Articles 5(1)(a), 6(1)(c)(iii), 4(3) (EU), (n 33) Part 19.5.1.4, 19.6.1.1.(b), 19.7.1.1.(b) (Nigeria). Regulations Amending the Air Passenger Protection Regulations: SOR/2022-134 Canada Gazette, Part II, Volume 156, Number 13 Paragraphs 10(3)(b), (c) (Canada).

98 See EU regulation 261/2004; Nigerian Civil Aviation Regulations 2023.

99 See Carriage by Air Amendment Act No. 15 of 2006

rerouting, compensation, and assistance for domestic flights are thus based on the conditions of carriage of the air carrier.¹⁰⁰ An instance where the differences in the regimes governing international and domestic flights was illustrated was when the Air Operators Certificate (AOC) of Comair was suspended for a period of 24 hours by the South African Civil Aviation Authority (SACAA) in 2022.¹⁰¹ Comair operates Kulula airways and British Airways in South Africa.¹⁰² During the period of suspension of the AOC, flight services on both Kulula, which operates domestic flights, and British Airways operating international flights, were disrupted.¹⁰³ While Comair offered passengers on British Airways option to refund their ticket or rebooking, passengers on Kulula were offered a credit for their ticket valid for six months.¹⁰⁴ Although, Kulula later changed its position and offered passengers a refund,¹⁰⁵ Kuuala was able to offer a ticket credit to passengers because it was not bound according to its conditions of carriage, to offer a refund¹⁰⁶ unlike under EU 261/2004 which governs British Airways flights.

The legal framework for air passengers' rights in South Africa has been criticised¹⁰⁷ as not fully protective of the rights and interests of passengers

100 Chris Christodoulou & Jaili Nicolaou, 'South Africa', in *Aviation Law Review* 210–224, at 212 (Sean Gates ed., Law Business Research 2013)

101 SACAA, 'Civil Aviation Authority Suspends Comair Air Operator Certificate' Media Statement 12 March 2022. The suspension was ordered following an investigation into the spate of safety incidents at the Operator. The suspension was precautionary and was for a period of 24 hours. The operator was required within the period of suspension to demonstrate to SACAA that the risk and safety management systems are effective in managing potential hazards. See *ibid*.

102 Comair entered into an alliance with British Airways (BA) and signed a BA franchise agreement in October 1996.

103 Wendell Roelf, 'South African airline Comair's fleet grounded indefinitely' Reuters 13 March 2022 <https://www.reuters.com/business/aerospace-defense/safricas-comair-airlines-fleet-grounded-indefinitely-says-regulator-2022-03-13/> accessed 20 March 2026

104 Wendy Knowler, 'Kulula's no refunds policy leaves passengers fuming' Business Day' 17 March 2022

<https://www.businesslive.co.za/bd/companies/transport-and-tourism/2022-03-17-kululas-no-refunds-policy-leaves-passengers-fuming/> accessed 20 March 2026

105 Anita Froneman, 'kulula makes u-turn on refund policy' Getaway 22 March 2022 <https://www.getaway.co.za/travel-news/kulula-makes-u-turn-on-refund-policy/> accessed 20 March 2026

106 See kulula.com Terms and Conditions Section 6

107 Kimberley Kersten, 'SA lags on air pax compensation' South Africa's Travel News 28 October 2024

<https://www.travelnews.co.za/article/sa-lags-air-pax-compensation#:~:text=Section%2017%20of%20the%20CPA,flight%20departs%20from%20the%20EU> accessed 20 March 2026.

particularly when compared with other jurisdictions like Canada,¹⁰⁸ and the EU.¹⁰⁹ Meanwhile, situations where passengers' rights need to be enforced do arise. For instance, in December 2025, the on time performance (OTP) for domestic flights was 79% while that for international flights was 71% making an average of 77.5% against a target of 88.5%.¹¹⁰ The variance was attributed to external factors such as weather in Europe which delayed incoming international aircraft.¹¹¹ While passengers can claim damages for injury suffered in the courts, the National Consumer Commission (NCC) is also a major redress mechanism for aggrieved passengers.¹¹²

3.3. Kenya

Kenya is a party to the Warsaw Convention (as amended by the Hague Protocol 1955)¹¹³ and the Montreal Convention.¹¹⁴ The Warsaw Convention is domesticated by the Carriage by Air Act No. 2 of 1993 (CBAA)¹¹⁵ and is made to apply to domestic air carriages.¹¹⁶ Passengers on international flights therefore have the rights provided for in the Montreal Convention, while passengers on domestic flights have the rights specified in the Warsaw Convention as amended by the Hague Protocol. Other rights of passengers are contained in the Consumer Protection Act 2012 (CPA).¹¹⁷ While the CPA is applicable to all sectors, some aviation specific passengers' rights are covered in Part XI of the Act. Part XI provides for passengers' right to care including overnight accommodation or meals in the event of long delays and flight cancellation.¹¹⁸ There are also general provisions which are applicable to consumers of air transport. The right to information is safeguarded under the CPA and it applies to air passengers to the effect that airlines and other service

108 See Regulations Amending the Air Passenger Protection Regulations: SOR/2022-134 Canada Gazette, Part II, Volume 156, Number 13, Section 18

109 (n 32) 261/2004

110 Airport Company of South Africa, 'ACSA Network Delivers Robust Performance Post-2025 Peak and Strong FY 2026/27 Outlook' Media Statement 10 February 2025 <https://www.airports.co.za/news?item=427#:~:text=Notably%2C%20the%20network%20experienced%20its,recording%201%2C352%20air%20traffic%20movements.> Accessed 19 July 2025.

111 *Ibid.*

112 (n 91) section 72

113 Protocol on Modification of the Convention Relating to Unification of Certain Rules in International Carriage by Air, signed in Hague on September 28, 1955 (the Hague Protocol).

114 (n 6) See Kenya Law Treaty Database, Civil Aviation <https://kenyalaw.org/treaties/treaties/subjects/Civil-Aviation> accessed 20 March 2026.

115 Carriage by Air Act No. 2 of 1993 Long title

116 *Ibid.* Section 3

117 Consumer Protection Act No. 45 of 2012 (CPA)

118 *Ibid.* Section 91(2)

providers must give passengers clear and comprehensible information about their flight.¹¹⁹

The right of passengers to be protected against unfair and deceptive practices is provided for in the CPA¹²⁰ as well as in the Competition Act.¹²¹ A domestic carrier, Airline Fly 540 was investigated in 2022 for deceptive practices and unconscionable conduct under the Competition Act. Some of the allegations against the air carrier were false and misleading information on its capability to provide air transport services to passengers and the possibility of amending flight itinerary; arbitrary and/or short notice cancellation of flights; and inordinate delays in refunding consumers.¹²² The air carrier was given a cease and desist order by the Competition Authority of Kenya following sustained allegations. Although there is no specific provision on the right of passengers concerning involuntary denied boarding in the Competition Act, it is deemed and treated as an unconscionable conduct and misleading representation. In *Christopher Godman v Kenya Airways PLC*,¹²³ the passenger was involuntarily denied boarding and the Competition Authority ordered the air carrier to refund the unused ticket. The air carrier was also ordered to make commitments as to informing passengers of the reason for being involuntary denied boarding, paying compensation, and refunding affected passengers an amount equal to the cost the consumer incurred in procuring the ticket.¹²⁴

The right to refund is covered by the CPA and passengers can claim refund if they are not carried by the air carrier. In *Khumalo v Kenya Airways Limited*¹²⁵ the passenger was denied boarding due to the loss of her international passport. The Kenyan National Civil Aviation Administrative Tribunal found that the air carrier had not breached the contract of carriage because the plaintiff did not possess the necessary travel document as at the time of carriage. Nevertheless, the air carrier was ordered to refund the ticket payment for the trip not used.¹²⁶

The CPA indicates that regulations are to be made on passengers' rights to care, or during delays, cancellations, overbooking among others.¹²⁷ No regulations have however, been made to that effect. The right to air passengers to redress is enhanced by the establishment of a tribunal under the Civil

119 Section 87(1)

120 Section 15

121 Competition Act No. 12 of 2010 section 55

122 *Christopher Godman v Kenya Airways PLC* CAK/CPD/06/165/A May 21, 2020

123 *Ibid.*

124 *Ibid.*

125 (2022) KENCCART 173 (KLR)

126 *Ibid.* Para. 53

127 (n 117) section 93(2)(b)

Aviation Act 2024. The tribunal is to have jurisdiction on consumer protection compliance and enforcement activities. This includes areas such as right violations, unfair and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights.¹²⁸

3.4. Cameroon

Cameroon is a member state of the Economic and Monetary Community of Central Africa (CEMAC).¹²⁹ Air transport in CEMAC member states is governed by CEMAC instruments as well as national laws and regulations of each member state. The CEMAC Civil Aviation Code¹³⁰ was adopted to facilitate the free movement of goods and persons within the region. Interestingly, the Code has incorporated the Montreal Convention to be applicable to domestic air transport,¹³¹ while international flights can be governed by either the Warsaw Convention as amended by the Hague Protocol or the Montreal Convention.¹³² The fact that the Warsaw regime is applicable to international carriages in CEMAC states has been subject to criticisms.¹³³ Nevertheless, the CEMAC legislators might have given an option for both Warsaw and Montreal Conventions because most CEMAC member states had not ratified the Montreal Convention when the Code was adopted. Currently, only Central African Republic is not a state party to the Montreal Convention.¹³⁴ It appears that the Montreal Convention will be applicable to international carriages in states that have ratified the Montreal Convention. Cameroon has ratified the Montreal Convention¹³⁵ and the Convention has been transposed into Cameroon's national law by Decree No.

128 Section 74(f)

129 CEMAC Constitutive Treaty 16 Mar. 1994

130 Civil Aviation Code of The Economic and Monetary Community of Central Africa Regulation No. 10/100-CEMAC-0066-CM-04, 22 Jul. 2012

131 *Ibid.* Article 7.2.2.

132 *Ibid.*

133 See Comfort Fuah Kwanga, 'Liability Of The Air Carrier For Personal Injury: The Extent Of Compensation Under The CEMAC Civil Aviation Code' (2019) 5 South Asian Law Review Journal 182, 183

134 ICAO, Current Lists of Parties to Multilateral Air Law Treaties https://www.icao.int/sites/default/files/secretariat/legal/CurrentListofParties/Mtl99_EN.pdf accessed 20 March 2026.

135 Decree No. 2003/038 of 4 February 2003 ratifying the Convention for the Unification of certain Rules for International Carriage by Air Montreal 1999

2009/0052/PM.¹³⁶ The Convention was also modified and made applicable to domestic carriages. The rights of passengers under the Decree are same as under the Montreal Convention.¹³⁷

CEMAC developed Regulation No. 06/07-UEAC-082-CM-15¹³⁸ establishing air carrier liability regime in the event of breach of rules of boarding procedures of passengers in the airports of Member States. The regulation covers denied boarding, unreasonable delay, and flight cancellation of flight.¹³⁹ Passengers under the Regulation, have the right to reimbursement or rerouting in cases where the air carrier refuses to carry the passenger.¹⁴⁰ Passengers also have a right to compensation in situations where the air carrier denies them boarding.¹⁴¹ The Regulation specifies the rights of passengers to compensation for flight cancellation,¹⁴² and flight delay.¹⁴³ The right of passengers to care such as free lodging, food, and telecommunication are specified in Article 9. The Regulation establishes the obligation to inform victims of their rights and the rules for financial compensation.¹⁴⁴ Passengers can claim their rights under any other regime alongside those specified in the Regulation as Article 10 of the Regulation provides that it applies without any prejudice to any other contractual liability of the air carrier. The Regulation is similar to EU 261/2000 and Nig. CARs which are generic and offer relief to all passengers rather than for individual losses provided for under the Warsaw and Montreal conventions.¹⁴⁵

An issue that affects the rights of passengers is the binding effect and applicability of CEMAC instruments in the jurisdiction of each member state. It can be seen that the passenger rights framework under the CEMAC regime is quite robust, however, whether the CEMAC regime is automatically enforceable is another thing. Article 41(3) of the Treaty Establishing the

136 Decree No. 2009/0052/PM of 22 January 2009 Establishing The Liability of Air Carriers and Compensation Rules In The Event Of Damage Caused To Passengers, Baggage And Goods. It is noteworthy that the CEMAC Civil Aviation Code has to be transposed into national laws to be applicable in member states.

137 Article 3 of the Decree covers the right of passengers to damages for death and bodily injury the event of accident, damage to checked baggage. liability limit is 100,000 SDRs. Article 4 covers

138 Regulation No. 06/07-UEAC-082-CM-15 of 11 March 2007 establishing the liability regime of air carriers in the event of violation of the rules governing the boarding of passengers at the airports of the Member States

139 *Ibid.* Article 2

140 *Ibid.* Article 5

141 *Ibid.* Article 5(2)(i), Article 5(2)(ii)

142 *Ibid.* Article 7

143 *Ibid.* Article 8

144 *Ibid.* Article 4

145 (n 84)

Economic and Monetary Community of Central Africa (CEMAC Treaty)¹⁴⁶ specifies that regulations are binding in their entirety and directly applicable in all CEMAC member states.¹⁴⁷ It follows that Regulation No. 06/07-UEAC-082-CM-15 is applicable to passengers in Cameroon regardless of whether the Regulation has been transposed into the national laws of Cameroon.¹⁴⁸ Nevertheless, the rights of passengers in CEMAC member states are enforced according to the provisions of the CEMAC Civil Aviation Code. For example, the Brazzaville airport in Congo (a CEMAC member state) stipulates the rights of passengers on its website, and it states that the rights are described in the conditions of carriage and are subject to national and international legislation applicable to the air carrier. It goes further to state that for the Congolese air carriers, 'these requirements are described in the Civil Aviation code of the Central African Economic and Monetary Community (CEMAC).'¹⁴⁹

Enforcement of passengers in Cameroon is hindered by institutional challenges. The Cameroon Civil Aviation Authority (CCAA) oversees the economic aspects of Cameroon's aviation sector which encompasses the rights of passengers and the broader consumer protection regime.¹⁵⁰ The CCAA implements the applicable legal instruments on passenger rights by monitoring quality of service by providers, and handling consumer complaints.¹⁵¹ Nevertheless, the CCAA has disclosed challenges facing its operations to include financial constraint, insufficient specialists in the field of economic regulation and training in the area of economic regulation.¹⁵² At the wider CEMAC region, there is uneven application of the Civil Aviation Code

146 Treaty Establishing the Economic and Monetary Community of Central Africa (CEMAC) signed March 16, 1994 in N'Djamena, Chad, entered into effect on June 25, 1999.

147 *Ibid.* Article 41; Ndze Buh Emmanuel, 'Impact of the Central African Economic and Monetary Community's merchant shipping instruments on Cameroon's maritime legislation' (2021) 3(3) *Maritime Technology and Research* 280-298, 293

148 See Sabrina Lando, Samuele Rosa, and Gwenaelle Suc, 'CEMAC: A Regional Approach to Enhancing Governance' in Monique NEwiak, Aex Segura-Ubierno & Abdoul Aziz Wane (eds) *Good Governance in Sub-Saharan Africa: Opportunities and Lessons* (International Monetary Fund 2022) 91.

149 Brazzaville International Airport, Passengers Rights <https://www.brazzaville-airport.com/passenger-rights/>

150 Decree No. 2019/174 of 09 April 2019 on the reorganization and functioning of the Cameroon Civil Aviation Authority

151 'Putting In Place A System For Economic Supervision In Cameroon' presented by Cameroon International Civil Aviation Organisation (ICAO) Assembly 42nd Session 29 July 2025 A42-WP/574 EC/47 29/7/25 Para. 2.2.

152 *Ibid.* Para. 4

by member states.¹⁵³ Regulatory enforcement challenges and oversight capabilities also differ across member states. While a state like Cameroon is hindered by institutional and financial constraints,¹⁵⁴ others may not experience these same challenges.

3.5. Morocco

Morocco is a member state of the Arab Maghreb Union (UMA). Morocco is a party to the Montreal Convention¹⁵⁵ and has incorporated the Convention in its domestic laws.¹⁵⁶ The Montreal Convention also applies to domestic carriages in Morocco.¹⁵⁷ Law No. 40.13 specifies the rights of passengers in situations of denied boarding, flight cancellation and substantive delay.¹⁵⁸ Passengers have a right to compensation and assistance in the event of an involuntary denied boarding,¹⁵⁹ flight cancellation, delay.¹⁶⁰ In the event of a flight cancellation, passengers have the right to be furnished with information on alternative flights, without additional charges.¹⁶¹ Right of passengers to reimbursement is also provided for denied boarding.¹⁶²

Morocco signed the Euro-Mediterranean Aviation Agreement¹⁶³ with the EU in 2006¹⁶⁴ and by virtue of the Agreement, some EU regulations are to be applicable to Morocco for the implementation of the Agreement.¹⁶⁵ The EU 261/2004 which establishes rules on compensation and assistance to passengers, is one of these regulations and the applicable provisions in the regulation are Articles 1–17. The relevant provisions of EU 261/2004 are

153 Jacques Raymond Tédongap, ‘CEMAC Aviation Ministers push for a Harmonized Air Sector Regulation’ CEMAC Eco Finance <https://cemac-eco.finance/cemac-aviation-ministers-push-for-a-harmonized-air-sector-regulation/> accessed 19 July 2026

154 (n 152)

155 (n 67)

156 Law No. 40.13 on Civil Aviation of 16 Jun. 2016 Article 214

157 *Ibid.*

158 *Ibid.* Part 8

159 *Ibid.* Article 222

160 *Ibid.* Article 223

161 *Ibid.* Article 224

162 *Ibid.* Article 222.

163 (n 49).The agreement aims to create the conditions for a gradual opening of market access for all European Community and Moroccan airlines. *Ibid.*

164 The agreement has provisionally applied since 12 December 2006 and entered into force on 19 March 2018. See Access to European Union Law, Summaries of EU Legislation- Euro-Mediterranean aviation agreement between the EU and Morocco <https://eur-lex.europa.eu/EN/legal-content/summary/euro-mediterranean-aviation-agreement-between-the-eu-and-morocco.html#:~:text=The%20agreement%20aims%20to%20create,146%20officially%20concludes%20the%20agreement> accessed 20 March 2024

165 (n 42) Article VI

however, only applicable to flights considered in the Agreement.¹⁶⁶ That is, direct flights from the EU and Morocco and vice versa. Passengers on the relevant flights therefore have rights in the events of flight cancellation, delay and denied boarding as provided under EU 261/2004. Passengers have a right to reimbursement when a flight is cancelled¹⁶⁷ or for a delay of more than five hours,¹⁶⁸ and also for denied boarding.¹⁶⁹ The right of passengers to rerouting is established as an alternative to reimbursement and passengers can choose between the two alternatives.¹⁷⁰ Passengers have a right to compensation when their flight is cancelled subject to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.¹⁷¹ The right to compensation also extends to an event of involuntary denied boarding.¹⁷² EU regulation 251/2004 also specifies the right of passengers to care in events of delay,¹⁷³ cancellation,¹⁷⁴ and denied boarding.¹⁷⁵

4. Impediments to Enforcement of Passengers' Rights in Africa

In as much as many African states have a regime in place for the rights of air passengers and some states even have aviation specific legal frameworks exclusively covering air passenger rights, the rights of air passengers are still often violated. This means that the existence of legal frameworks establishing and protecting these rights is not sufficient, as there may still be enforcement challenges. Two major factors impeding the enforcement of air passengers' rights in African states will now be discussed.

4.1. Inadequate Aviation Infrastructure

Aviation infrastructure such as airports and air traffic control (ATC) centres, is vital for the effective delivery of air transport services. The airport as an infrastructure includes runways and taxiways, airport buildings and services, and ground support equipment. The ATC includes air traffic control, air navigation, search and rescue services, and aeronautical meteorological

166 *Ibid.* Annex VI

167 (n 32) Article 5(1)(a)

168 *Ibid.* Article 6(1)(c)(iii)

169 Article 4(3)

170 Art. 8(1)(b),(c)

171 *Ibid.* Article 5(3). 'Extraordinary circumstances' has been interpreted in several cases such as *Jet2.com Ltd v Huzar* (2014) Bus LR 1324 (2014) EWCA, Civ, 791; *Corina van der Lans v Koninklijke Luchtvaart Maatschappij NV (KLM)* Case C-257/14 (judgment delivered on 17 Sep. 2015)

172 (n 32) Article 4(3)

173 *Ibid.* Article 5(1)(a)

174 *Ibid.* Article 6(1)(c)(1)

175 *Ibid.* Article 4(3)

services among others.¹⁷⁶ Lack of the necessary infrastructure affects the rights of passengers in that it enables the violation of the rights and hinders the enforcement of the rights. Lack of functional air traffic and navigation services can hinder effective directions to pilots and can lead to flight delays or cancellations during turbulence. Also, lack of efficient meteorological aviation facilities and services will inhibit quality aviation weather forecast¹⁷⁷ and can lead to flight cancellation as airlines will not be able to plan their flights well ahead of time in the absence of sound predictions of weather conditions.

An instance of flight disruption was the failure of South Africa's Air Traffic & Navigation Services (ANTS) to provide instrument flight procedures due to lack of 'critical air traffic control staff and navigation systems'.¹⁷⁸ This caused a lot of flight disruptions whereby flights were cancelled for an extended period of time. It was reported that between 19 July and 9 October 2022 in Tambo airport, the situation led to 3,892 delayed flights, 77 cancelled flights and 12 diversion.¹⁷⁹ In such situations, passengers are not likely to receive any compensation because their right to compensation does not operate when the cancellation, delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.¹⁸⁰

4.2. Capacity constraints

The lack of operational capacity by an air carrier will hinder its optimal performance. Capacity constraints can lead to flight delays due to operational challenges. Insufficient aircraft or crew members by an air carrier makes the carrier unable to perform effectively when there is a busy schedule. Some airlines have less than three aircraft in their fleet, meanwhile, their flight schedule is busy. This often results in flight cancellation and collapsing of two or more flights into a single flight thereby causing delay to passengers on

176 ICAO Manual on Air Traffic Controller Competency-based Training and Assessment (1st edn., ICAO, 2017)

177 VE Weli, and UE Ifediba, 'Poor Weather Conditions and Flight Operations: Implications for Air Transport Hazard Management in Nigeria' *Ethiopian Journal of Environmental Studies and Management* (2014) 7 235, 236.

178 Ray Mahlaka, 'Mayday! Serial SA flight delays expose systemic air traffic failures that threaten aviation safety' *Daily Maverick South Africa* 30 Nov 2024 <https://www.dailymaverick.co.za/article/2024-11-30-mayday-serial-sa-flight-delays-expose-systemic-air-traffic-failures-that-threaten-aviation-safety/> accessed 18 March 2026.

179 Kiran Molloy, 'SA's flight disruptions – no end in sight' *Southern & East African Tourism Update* 22 November 2024 <https://www.tourismupdate.co.za/article/sas-flight-disruptions-no-end-sight>

180 (n 91) Section 47.

some flights. Given that not all the aircraft in the fleet of an airline will be operating, it is possible that an airline may have only one or two operating aircraft.

Another aspect of capacity constraints of an air carrier is financial challenges which can disrupt operations. Many airlines in African states are in financial turmoil and their financial challenges were further exacerbated with the Covid-19 pandemic.¹⁸¹ Some airlines in African states were not offered bailouts by their governments after the Covid-19 pandemic. Financial constraints inhibit air carriers' operations which may result into flight disruptions. An instance was when Comair operations were grounded by the CAA due to safety reasons. The aircraft of Comair had various landing gear malfunctions, engine failures and engine malfunctions. Scheduled flight operations were consequently disrupted and passengers were left stranded and frustrated.¹⁸² Although the right of passengers to refund was enforced by Comair, it is very unlikely that an airline facing financial constraints and struggling with operations will be able to enforce the right of passengers to compensation for delay or flight cancellation as required. Even though Comair resumed operations on 17 March 2022, the airline announced on 31 May 2022 that it was suspending its flights till it would secure funding.¹⁸³

4.3. Fragmented Laws and Regulations

Even though African states have each ratified at least one of the two major international conventions on air carriers' liability,¹⁸⁴ air passengers' rights in Africa are still fragmented.¹⁸⁵ There are different national laws and regional regulations applicable to air carriages within Africa as discussed in earlier sections of this discourse. Fragmented laws on air passenger rights make enforcement of those rights cumbersome and gives rise to the challenge of

181 Tom Collins, 'African airlines face mass bankruptcies without government assistance' *African Business* 20 July 2020 <https://african.business/2020/07/economy/african-airlines-face-mass-bankruptcies-without-government-assistance> accessed 6 March 2026

182 Peter Rogers, 'A refresher on flight delays and compensation' *Norton Rose Fullbright South Africa* 28 March 2022 <https://www.polity.org.za/article/a-refresher-on-flight-delays-and-compensation-2022-03-28>

183 Editor, 'Comair suspends flights pending receipt of funding' *Aviator* 31 May 2022 <https://newsroom.aviator.aero/comair-suspends-flights-pending-receipt-of-funding/> accessed 5 March 2026

184 See ICAO 'Current lists of parties to multilateral air law treaties' <https://www.icao.int/secretariat/legal/current-list-of-parties> accessed 19 July 2026.

185 Henoc Dossa, 'Africa's Fragmented Rules Leave Air Travelers Struggling for Compensation' *Ecofin Agency* 8 July 2026. <https://www.ecofinagency.com/news-infrastructures/0807-57186-africas-fragmented-rules-leave-air-travelers-struggling-for-compensation> accessed 19 July 2026.

uncertainty.¹⁸⁶ Passengers are uncertain of their rights, and air carriers are unsure of liability laws applicable to intra-African flights. Ultimately, the rights are not adequately protected and there are also be institutional shortcomings.¹⁸⁷ This differs from the EU where the EU Single Aviation Market is regulated by common rules for the operation of air services in the community.¹⁸⁸ The liability of air carriers to flights in the EU is governed by the Montreal Convention,¹⁸⁹ while the EU regulation 261/2004 offers protection to passengers when some events occur during air transport.¹⁹⁰

The SAATM presents an opportunity for fragmented laws on Passengers rights to be replaced with harmonised continental common rules. The SAATM regulations on consumer protection¹⁹¹ specifies the rights of passengers and consumers of air transport services within Africa,¹⁹² provides a basis for compensation for breach of the rights and a mechanism for the consumer to seek redress.¹⁹³ It also guarantees protection of passengers against unfair treatment in the provision of services¹⁹⁴ and the responsibilities of service providers in the air transport industry are spelt out.¹⁹⁵ On joining the SAATM, African states are to harmonise their national laws and regulations with the SAATM regulations.¹⁹⁶ While the SAATM is however, not yet fully operationalised, it is expected that its full operationalization will address the challenge of fragmentation of air passengers' rights within Africa.

5. Conclusion

The air passengers' rights regime in African states is influenced by the liability conventions as well as foreign jurisprudence, particularly, EU Regulation 261/2004. Regardless, there are differences in the legal protection

186 Irene Larsen, *Regime of Liability in Private International Air Law - with Focus on the Warsaw System and the Montreal Convention of 28 May 1999* (Aarhus:Aarhus Universitet, 2001) 4

187 (n 22) Para. 1.2.

188 Treaty on the Functioning of the European Union, OJ C 326/27 [2012] Article 91(1).

189 Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air OJ L 285, 17.10.1997, p.1.

190 (n 32)].

191 African Union Regulations on The Protection of Consumers of Air Transport Services, Annex 6 to the Yamoussoukro Decision {Assembly/AU/Dec 676 (XXX)- Decision on Legal Instruments}

192 *Ibid.* Articles 2(2), 16 - 18

193 *Ibid.* Articles 3(2), 19 - 21

194 *Ibid.* Article 3(1)

195 *Ibid.* Articles 8, 11, 12, 14, 15

196 Immediate Measures Towards Actualizing the Declaration of Solemn Commitment by African Union States to the Implementation of the Yamoussoukro Decision 1999 and the Establishment of a Single African Air Transport Market By 2017, item No. 3. AUC letter ref. no. CIE/L/20/188.16 of 18th May 2016.

afforded to passengers across African states. While at least one of the two liability conventions is applicable to international carriages, the law applicable to passengers' rights on domestic carriages vary across African states. Passengers on domestic flights in a state like Nigeria can exercise rights contained in aviation specific regulations, while only the rights contained in generic consumer protection law is available to domestic passengers in South Africa. As discussed in an earlier section in this discourse, the Comair saga which affected Kulula Airways and British Airways both operated by Comair,¹⁹⁷ demonstrated an inadequacy of South Africa's legal framework in that regard, as applicable to domestic flights. Even though there was a policy change later to refund the passengers on Kulula Airways,¹⁹⁸ the situation points out the need for legal reforms to make the Montreal Convention applicable to domestic flights as well.

In as much as passengers' rights in some African states are heavily influenced by international law, the ineffective implementation of those rights underscores the need to reconsider capability issues on the part of air carriers. While adequate protection of passengers' rights is crucial, capability of enforcement of the rights by airlines is also of utmost importance. Considerations should be made by regulators and policy makers of the practicability of compliance with regulations incorporated from foreign jurisdictions and appropriate measures should be made. African states need to prioritise key aviation infrastructure that impede the enforcement of passengers' rights in their respective jurisdictions. In addition, the sustainability of the air transport industry in Africa is an imperative. African governments therefore need to assist airlines with required aids to facilitate their operations. There is also need for African states to strive towards the full operationalisation of the SAATM by harmonising their national laws and regulations with those of the SAATM. This will address the challenge of fragmentation of air passenger rights in Africa.

197 (n 101)

198 (n 105)