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INSIDER CONSPIRACY AND BREACH OF CIVIL AVIATION IN NIGERIA

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1.0 INTRODUCTION

The vulnerability of civil aviation, including but not limited to airport operations, to aviation crimes, is increasingly alarming. This is because all aspects of civil aviation operations are either known to terrorists or the security apparatus of civil aviation is leaked to the prospective terrorists by insiders. The word 'insiders' is defined by the International Air Transport Association as persons '...who exploit, or have intention to exploit their role, knowledge for unauthorized purposes. They may be full or part-time permanent employees, individuals on attachment or secondment, contractors, consultants, agency staff or temporary staff.'[1] An insider could, therefore, be 'virtually anyone, including an employee, contractor, consultant or anyone else who has legitimate access to [his] organization's information or assets'.[2] The foregoing definitions, certainly, make it extremely difficult to stick to one aspect of preventive and suppressive measure in tackling aviation insecurity. To this extent, the joint actions of the International Civil Aviation Organization (ICAO) as well as regional and national civil aviation organizations towards the prevention, suppression and eradication of all forms of unlawful interference with civil aviation, although have yielded some positive results, yet, still fall short of the expected intervention.

The recent changes in tactics of civil aviation terrorists; from hijacking, to sabotage, and to recruitment of insider aviation employees, who will participate in unlawful interference in civil aviation, are an example of areas that require sanitization by civil aviation authorities across the globe. This is because the rate at which the mitigating measures laid-down against acts of unlawful interference in civil aviation are being ignored by aviation workers has become increasingly alarming and worrisome. For instance, interference, such as transportation of illicit drug from one airport to another is now possible through conspiracy and breach of security trust on the part of aviation security personnel, other relevant security agencies and other aviation personnel aviation that constitute 'insiders'.

The act of providing aviation security for passengers and for baggage and cargo in any airport is, basically, a matter of both international and national trust. This is because one of

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1 See IATA 'Insider threat in civil aviation'https://www.iata.org> (5-5-2020).

2 See David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

the functions of government is to provide adequate safety and security for its citizens. In Nigeria, this function is entrusted to the country's aviation workers, especially relevant security agencies, including the National Drug Law Enforcement Agency (NDLEA) personnel, thereby who qualify as 'insiders' in institutional civil aviation.

The efforts of the Nigeria Civil Aviation Authority (NCAA) and the Federal Airport Authority of Nigeria (FAAN) in maintaining civil aviation safety and security in Nigeria have been challenged by certain recent occurrences, one of which manifested by certain aviation workers conniving with the personnel of some relevant security agencies, to smuggle illicit drugs into the baggage of a passenger at the Aminu Kano International Airport, Kano, Nigeria. Undoubtedly, this occurrence represents a typical example of insider threat to aviation safety and security in Nigeria. This Chapter, therefore, examines the nature of insider conspiracy for the purpose of transporting illicit drug by means of civil aviation and its implications on civil aviation security within the context of aviation security law.

2.0 CONCEPTUAL CLARIFICATIONS

'Insider threat' and 'insider' are synonymous and as a concept, either is germane to the understanding of the issues in discourse in this chapter and, for that reason, requires clarification. Various organizations, including the International Air Transport Association (IATA), the United States of America Transportation Security Administration (TSA) and the Federal Bureau of Investigation, have defined the concept from the perspectives of the findings of the various researches they carried out. In addition to the definition of 'insider' provided by IATA which was earlier discussed[3], TSA defines the term as 'one or more individuals with access and/or insider knowledge that allows them to exploit the vulnerabilities of the nation's transportation system with the intent to cause harm'[4], the Federal Bureau of Investigation (FBI) describes it as 'an individual who steals information to sell and/or provide to a foreign government'[5] and warns '[t]hat insider may steal solely for personal gain, or … may be a 'spy'-someone who is stealing company information in order to benefit another organization or country'[6].

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3 IATA 'Insider threat in civil aviation' https://www.iata.org>(5-5-2020). See JM Leffi and R.J. Wallace, 'The Unmitigated insider threat to aviation (Part 1): a qualitative analysis of risks', *Journal of Transportation Security, Doi 10.1007/s12198-01444.*

4 Frank Deffer, *Transportation Security Administration Has Taken Steps to Address the Insider Threat But Challenges Remain* (Washington, D C: US Department of Homeland Security, Office of the Inspector General, 2012), at 2.

5 Federal Bureau of Investigation, *The insider threat: An Introduction to detecting and deterring an insider spy [brochure]* ((Washington, DC: Federal Bureau of Investigation, 2011) http://www.fbi.gov/file-repository/insider_threat_brochure.pdf/view>(21-5-2020). See also J.M. Leffi and R.J. Wallace, 'The Unmitigated insider threat to aviation (Part 1): a qualitative analysis of risks', *Journal of Transportation Security, Doi 10.1007/s12198-01444.*

6 Federal Bureau of Investigation, *The insider threat: An Introduction to detecting and deterring an insider spy [brochure]* ((Washington, DC: Federal Bureau of Investigation, 2011) http://www.fbi.gov/file-repository/insider_threat_brochure.pdf/view>(21-5-2020). See also JM Leffi and RJ Wallace, 'The Unmitigated insider threat to aviation (Part 1): a qualitative analysis of risks', *Journal of Transportation Security, Doi 10.1007/s12198-01444.*

US Airlines Association defines the concept as 'a current of former employee, contractor, vendor, or other business partner who has or had authorized access to an organization's information, abilities, products, or supply chain. This knowledge is then misused to negatively affect the organization or to do harm to the public'[7].Combining the definitions of TSA and FBI, Jennifer defines the term as roguish aviation workers, who exploit their credentials, access, and knowledge of air transport security procedures for personal gain or to inflict damage, referred to as insider threat, as one of the most pressing concerns of aviation security[8]; and Loffi and Wallace define the term as 'one or more individuals with access or insider knowledge that allows them to exploit vulnerabilities of the [n]ation's aviation systems with the intent to cause harm'.[9]

It is submitted that all the above definitions portend that insider threat is, basically, from within the aviation institutions across the globe. It, therefore, means that the insiders who pose threats to the industry include aviation security officers, aviation workers, security agents and contractors who have access to the restricted areas of airport operations, including but not limited to, where aircrafts are parked.

It is also deducible that insider threat may be for personal gain or for benefitting another person or organization. This is possible, for instance, where the insider colludes with terrorists to perpetrate an act of unlawful interference in civil aviation or where he smuggles illicit drug or gun into a civil aircraft or into the baggage of air transport passenger. Criminal intent is, therefore, the *mensrea* of the threat because intention of the insider to cause threat is very fundamental to conviction of the insider upon proof of criminal activities (or *actusreus*) including smuggling, trafficking in drugs, weapon or human smuggling, theft, spying, unauthorized release of information, sabotage, corruption, impersonation and terrorist attack.[10]It is submitted that the main reason for the ease with which insiders perpetrate their evil act is that all aviation employees are granted access to restricted areas having been given Security Display Identification Badge (SIDA) and that this ought not to be so.[11]

3.0 PANDEMIC OF INSIDER THREATSTO CIVIL AVIATION

It is submitted that the main threat to aviation security and safety is aviation current employees and those that have retired from the services of civil aviation and that this

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7 AEP Aviation Insider Threat Team, *Aviation Insider Threat: What We know, Our Findings and What We Recommend*, Public-Private Analytic Exchange Program, 2017, at7.

8 AG Jennifer, *Aviation Security: Airport Perimeter and Access Control Security Would Benefit from Risk Assessment and Strategy* (Washington, D.C.: U.S. Government Accountability Office, 2016) p. 15.

9 JM Leffi and R J Wallace, 'The Unmitigated insider threat to aviation (Part 1): a qualitative analysis of risks', *Journal of Transportation Security, Doi 10.1007/s12198-01444.*

10 US Government Office, *Aviation Security: National Strategy and Other Actions Would Strengthen TSA's Efforts to Secure Commercial Perimeters and Access Control* (Washington DC: US Government Office, 2009), p. 2. See also Centre for the Protection of National Infrastructure (CPNI) *CPNI Insider Data Collection Study: Report of Main Findings* (London: Centre for the Protection of National Infrastructure, 2013), which is report of research conducted on the behavioural pattern of insider threats.

11 John Roth, *TSA Can Improve Aviation Workers Vetting (01G-15-98)* (Washington, DC: US Department of Homeland Security, Office of Inspector General, 2015), at 8.

threat is so much that it can be said to be pandemic in nature. It is easy for the insider to identify and exploit vulnerable areas of the aviation security is because the insider possesses intimate knowledge of air transport operations,[12] since he is in position of trust and, for that purpose, may hold an access badge to an airport's airside'[13] and other security areas.

The pandemic of insider threat began in the 1980s[14] but the prominent ones started in2007 when two airlines employees trafficked fourteen guns and eight pounds of marijuana on board a commercial airline at Orlando International Airport, Florida.[15] In 2009,Rajib Karim, an information technologist, who was an employee with British Airways, used his employment status and opportunity to be able to identify vulnerabilities resulting in unlawful attack of the aviation security system. He also conspired with some baggage handlers to 'place an explosive device onboard a U.S.-bound aircraft.'[16]In 2012, several TSA screeners were charged for allowing large amounts of illicit drugs to pass through the X-ray baggage devices at the Los Angeles Airport.[17]In 2013, Terry Lee Loewen, an avionics technician, made an attempt 'to detonate a vehicle-borne improvised explosive device outside the passenger terminal of Mid-Continent Airport from the secure (runway) side of the airport'.[18]In the same year, some British airport workers conspired to smuggle cocaine at Heathrow Airport.[19]

In 2014, Mark Quentin Henry, an employee of Delta Airlines, took advantage of being an employee to avoid security screening and to successfully smuggle 153 firearms unto seventeen different flights, between Atlanta and New York City.[20] A catastrophic incidence happened when an insider, a mechanic, at Sharm El-Sheik International Airport, placed an explosive device resulting in the sabotage of the Russian aircraft Metrojet Flight

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12 Kara Kennedy, 'Aircraft Security: Protection from the insider threat', *The Global Journal of Airport and Airlines Security*http://www.asi-mag.com,(20-2-2020).

13 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

14 See IATA 'Insider threat in civil aviation'https://www.iata.org>(5-5-2020).

15 Joe Sharkey, 'Gun Smuggling on Plane Reveals Security Oversight', *The New York Times*, 29 December, 2014http://www.nytimes.com/2014/12/30/business/gun-smuggling-on-plane-reveals-security-oversight.html?_=0>(20-5-2020).

16 BBC, 'Terror Plot BA Man RajibKarim Gets 30 Years,' *BBC News*, 18 March, 2011, http://www.bbc.com/news/uk-12788224, (20-2-2020).

17 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

18 Cassandra Lucaccioni, '61st Terrorist Plot against the US: Terry Lee Loewen Plot to Attack Wichita Airport' 4110 (December 2013) *The Issue Brief*,http://www.heritage.org/research/reports/2013/12/terry-lee-loewen-terrorist-plot-in-wichita-kansas-airport, > (22-3-2020).

19 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

20 S Bryan, Mitigating Insider Threats in the Domestic Aviation System: Policy Options for the Transportation Security Administration, 2017, Master Thesis Submitted to Naval Graduate School, Monterey, California, xii.

9268,leading to the deaths of two hundred and twenty-four passengers.[21] Also on the 26 September 2014, a communication technician, intentionally, set fire into the Chicago Air Route Traffic Control Center and distorted flight plan, radar feed and other important data required in controlling and directing over 6,000 aircrafts in the US, as a result.[22] The perpetrator was sentenced to 12 years imprisonment having his action adjudged as the worst airport sabotage.[23]

Furthermore, in 2016, two airport workers believed to have conspired with Al-Shabaab, smuggled and placed a laptop containing explosive device on to the aircraft Daallo Flight 159 heading from Mogadishu, Somalia to Djibouti, which later exploded.[24] Recently in Nigeria, some NDLEA officers conspired with FAAN workers and planted an illicit drug (Tramadol) in a baggage and tagged same in a passenger's name aboard an aircraft to Saudi Arabia.[25]

From the historical analyses above, it is evident that the attacks resulting from insider threats include destruction of airport facilities, facilitation of access of terrorists or other unauthorized persons to restricted areas, unauthorized disclosure of key and important security information or data, theft and financial corruption taking the form of drug smuggling to and from the countries through the air transport industry. Buam categorizes insider threat into intentional and unintentional.[26] It is not all the civil aviation employees that have the intention to constitute insider threat. While some acts constitute threat by way of negligently handling aviation operations, for example, failure to strictly comply with the aviation security laid-down rules and procedures, this can be referred to as unintentional threat. On one hand, intentional insider threat is that involving malicious intention of the employee of an aviation organization to attack that organization with the aim of short-changing it;[27] for example, the case of a security agent who conspired with terrorists to plant detonation into an aircraft or a security agent who, intentionally, disclosed security information to terrorists.

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21 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

22 Kara Kennedy, Aircraft Security: Protection from the insider threat, *The Global Journal of Airport and Airlines Security*https://www.asi-mag.com,(20-3-2020).

23 ibid.

24 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

25 Samson Toromade, 'Buhari orders return of student arrested for drug trafficking in Saudi Arabia', *Palse*, (29 April,2019)<https://www.pulse.ng/news/local/zainab-aliyu-buhari-orders-return-of-student-arrested-in-saudi-arabia/2ftep1y>(13-7-2019).

26 David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

27 ibid.

4.0 THE ROLE OF NATIONAL DRUG LAW ENFORCEMENT AGENCY IN AVIATION SECURITY

The NDLEA was established in 1989 to prevent and suppress the unlawful and illegal transportation, consumption, processing, manufacturing and possession of illicit drugs of all forms in Nigeria.[28] Despite this major counternarcotics measure, some persons are still deeply involved in unlawful consumption, transportation, importation, exploration, cultivation, sale, manufacture and possession of illicit drugs.[29] For this reason, various nations of the world have, through the instrumentality of law, created institutions saddled with the responsibility of suppressing or eradicating anything that has to do with the illicit drug. Sadly, Nigeria, glaringly, remains both a hub of and transit route for illicit drugs. In this connection, a commentator[30] opines:

> The preponderance and increase in seizures of illicit drugs activities in Nigeria is alarming and suggests the country's growing importance not only as a transit nation but as drug abuse nation for illicit drug trafficking from Latin America countries to America and Europe.[31]

While the foregoing observation is correct, the establishment of the NDLEA to curb the illegal trafficking, consumption, manufacture, among others, of illicit drugs, is germane for the purpose of cleansing the country's local and international airports from this unlawful activity. Thus, it is necessary to know the role of this important agency, the most prominent of which is in the realm of aviation security in Nigeria. This all-important role is to guide against trafficking in illicit drugs through air transportation and the role is carried out by conducting a security search on the body of air transport passengers and their baggage/luggage.[32] Despite the efforts of the Federal Government of Nigeria to counter all dealings in illicit drugs, increasingly large quantities of these drugs are still being trafficked through the country's borders, such as, land, sea and airports. It is submitted that one of the fundamental agents responsible for this is that this unlawful act has been facilitated through the connivance of some airport employees, aviation security agents and other relevant security officers who constitute insider threat to the civil aviation industry. This submission is reinforced by the incident that happened in Amino Kano International Airport, which is now discussed.

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28 Rawlings Akonbede Udama, 'The National Drug Law Enforcement Agency' (2013) 6:24*The Journal of International Social Research,*at354.

29 ibid.

30 Rawlings Akonbede Udama, 'The National Drug Law Enforcement Agency' (2013) 6:24 *The Journal of International Social Research,*at354.

31 ibid, at 356.

32 Oral interview; Ismail Adua Mustapha of Department of Business Law, Faculty of Law, University of Ilorin, Nigeria. The experience was gathered when travelling from Muritala Muhammed International Airport, Ikeja, Lagos, Nigeria, to Kuala Lumpur International Airport, Malaysia, sometime in November, 2014. Note that agency procedure in this respect has not changed till date.

4.1 The Cases of Zainab Aliyu and Others at the Aminu Kano Airport

Zainab Aliyu, a student of Maitama Sule University, Kano, Nigeria had on 24 December, 2018, travelled from Malama Aminu Kano International Airport, Kano, Nigeria via Ethiopia Airlines, for the lesser hajj. She travelled in company of Maryam Aliyu, her mother and Hajarat Aliyu, her sister. On 26 December, 2018, Zainab Aliyu was arrested in Saudi Arabia on the allegation of smuggling illicit drug- Tramadol. Upon interrogation, she claimed innocent of the alleged crime and raised a defence that the alleged drug was planted into her luggage by unknown persons.[33]

After the arrest, Zainab's father filed a petition at the NDLEA to investigate and uncover the real perpetrators of the unlawful act. The result of a discreet investigation conducted revealed that Zainab was a victim of a cartel that specialized in the act of unlawful interference in civil aviation by planting illicit drugs into the luggage of passengers. Seven members of the cartel were, subsequently, arrested and it was established that 'the tramadol-bearing luggage was planted on Zainab without her knowledge'.[34] The concluding remark of the NDLEA Reportis to the following effect: 'Based on the investigation carried out, it has been revealed that the said Zainab Habibu Aliyu is not the owner of the second luggage tagged in her name,'[35]The Report of the NDLEA over the matter subsequently served as a documentary evidence that gingered the authority of Saudi Arabia to release the victim on 2 May 2019 with one other Nigerian, Ibrahim Abubakar who had earlier been arrested for the same offence.[36] From the foregoing facts, the following legal implications are noteworthy:

(i). The act of planting an illicit drug in an air passenger's luggage wascriminal conspiracy to breach aviation security trust; and
(2). The act was an unlawful interference in civil aviation.

The legal implication of the above findings shall be dealt with seriatim.

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33 The Punch 'Alleged drug trafficking: FG secures release of Zainab Aliyu from Saudi detention'<https://punchng.com/alleged-drug-trafficking-fg-has-secured-release-of-zainab-aliyu-says-buharis-aide/>(13-7-2019).

34 Samson Toromade, 'Buhari orders return of student arrested for drug trafficking in Saudi Arabia', *Palse*, (29 April,2019)<https://www.pulse.ng/news/local/zainab-aliyu-buhari-orders-return-of-student-arrested-in-saudi-arabia/2flep1y>(13-7-2019). ThePunch 'Alleged drug trafficking: FG secures release of Zainab Aliyu from Saudi detention' <https://punchng.com/alleged-drug-trafficking-fg-has-secured-release-of-zainab-aliyu-says-buharis-aide/>(13-7-2019).

35 Samson Toromade, 'Buhari orders return of student arrested for drug trafficking in Saudi Arabia', *Palse*, (29 April,2019)<https://www.pulse.ng/news/local/zainab-aliyu-buhari-orders-return-of-student-arrested-in-saudi-arabia/2flep1y>(13-7-2019).

36 Sahara Reporter, 'Zainab Aliyu, Abubakar Return To Nigeria After Wrongful Arrest in Saudi Arabia For Drug Trafficking' *Sahara Reporter* 14 May, 2019 http://saharareporters.com/2019/05/13/zainab-aliyu-abubakar-return-nigeria-after-wrongful-arrest-saudi-arabia-drug-trafficking(13-7-2019). See also Yusha'u A. Ibrahim, Richard P Ngbokai, 'Hafsah Abubakar Matazu and Musa Abdullahi Krishi, Nigeria: Alleged Drug Trafficking - Why Zainab Was Freed By Saudi Authorities', *Daily Trust* 1 May, 2018 <https://www.dailytrust.com.ng/alleged-drug-trafficking-why-zainab-was-freed-by-saudi-authorities.html>(13-7-2019).

4.1.1 Criminal Conspiracy to Commit Breach of Aviation security trust

The learned authors of Black's Law Dictionary define the term: 'conspiracy' as 'an agreement by two or more persons to commit an unlawful act; a combination for an unlawful purpose'.[37] The act of conspiracy is well known and recognized as an offence in Nigerian criminal jurisprudence. Thus, it has statutory flavor under both the Criminal[38] and Penal[39] Codes respectively. The Penal Code[40] defines the term as: 'When two or more persons agree to do or cause to be done (a) an illegal act, or (b) an act which is not illegal by illegal means; such an agreement is called a Criminal Conspiracy'[41]

It is submitted that the ingredients of the offence are:(i)an agreement between two or more persons;(ii) the agreement must relate to doing an illegal or unlawful act; (iii) or doing a legal or lawful act by an illegal or unlawful means; and (iv) steps had been taken to perpetrate the illegal act.[42] In this circumstance, it is instructive to state that ingredient number (i) is the mother of other ingredients, as conviction for conspiracy cannot be secured unless the prosecution succeeds in proving it.

Also, the Criminal Code[43] describes what the offence is in the following words:

(a) Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Nigeria would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.[44]

(b) Any person who conspires with another to commit any offence which is not a felony, or to any act in any part of the world, which if done in Nigeria would be an offence but not a felony and which is an offence under the laws in force in the place where it is proposed to be done, is

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37 Bryan A Garner (ed.), *Black's Law Dictionary* (Second Pocket Edition, West Group, 2001), 133. For a full discussion on 'Conspiracy', see AO Filani, 'An Overview of the Law of Conspiracy in Selected Jurisdictions', 8:2 (2018)8:2*American International Journal of Contemporary Research*, 45-60; >http://wwwdoi:10.30845/aijcr.v8n2p6,(25-3-2020).

38 Criminal Code, Cap. C38, LFN, 2004.

39 Penal Code, Cap P3, LFN, 2004.

40 Note that this is operational in some States in the Northern part of Nigeria, such as, Kwara, Niger, Sokoto and Kaduna. However, Zamfara, a State also in the Northern part of Nigeria, has adopted new code known as Shari'ah Penal Code that is applicable in the State.

41 Penal Code, S. 96(1). See also *Erim v State* [1994] 5 NWLR (Pt 346) 522 at 534.

42 HS Gour, *The Penal Law of India,* (10th Edn Allahbad Law Publishers, 1982) 1094. See also, Waziri *v* State [1977] 3 NWLR (Pt 496) 689 at 723; Oladejo *v* State[1994] 6 NWLR (Pt 348) 101 at 127. See also, AO Filani, 'An Overview of the Law of Conspiracy in Selected Jurisdictions', 8:2 (2018) *American International Journal of Contemporary Research*, 45-60; http://wwwdoi:10.30845 /aijcr.v8n2p6,(25-3-2020).

43 Applicable in States in the Southern part of Nigeria.

44 Criminal Code, s516.

guilty of a misdemeanor and is liable to imprisonment for two years...[45]

(c) Any person who conspires with another to effect any of the following purposes:

i. to prevent or defeat the execution or enforcement of any Act, Law, Statute or Order; or
ii. to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or
iii. to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value, or
iv. to injure any person in his trade or profession, or
v. to prevent or obstruct, by means of any acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation; or
vi. to effect any unlawful purpose; or
vii. to effect any lawful purpose by any unlawful means;...'[46]

A look at the description of 'conspiracy' under the Criminal Code reveals that the offence is wider in scope than it is in the Penal Code. It is submitted, however, that both Codes share the same elements, which must be proved by the Prosecutor. It needs to be emphasized that the Zainab Aliyu incident happened at the Aminu Kano International Airport, Kano, Kano State, in the Northern part of Nigeria. The Code applicable to that incident, therefore, is Penal Code, which shall, now, be relied upon in ascertaining whether or not there was a breach. This is because the circumstances of each case dictate what and which of the elements of the offence must be proved although, for the sake of emphasis, whatever the circumstances, ingredient number one must be proved. Therefore, the relevant ingredients in this case are number (i), (ii) and (iv).

(a) Agreement Between Two or More Persons

This is the important of all the ingredients of the offence of conspiracy as the requirement of the agreement between *two or more persons* to commit an offence must be satisfied; otherwise, the allegation of conspiracy will be dismissed.[47] It is submitted that in the Zainab Aliyu Case, a discreet investigation conducted by the NDLEA in the matter revealed that there was an agreement between persons to commit the crime. Consequently, the alleged confession to the commission of smuggling illicit drugs and tagging luggage containing illicit drug with a passenger's name by a staff of FAAN and six officers of the NDLEA, clearly, satisfied this requirement. This submission is supported by a Report credited to the NDLEA Commander in-Charge of Aminu Kano International Airport, as follows:

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45 ibid, s517.

46 ibid, s518.

47 See Chris C Wigwe, *Introduction to Criminal Law in Nigeria*, (Mounterest University Press, Ghana, 2016),170-176.

> ...the NDLEA launched into an investigation that led to the arrest of 10 suspects.....the investigation is not a day's job: when Zainab was arrested at Saudi Arabia, the father visited us here at the airport, insisting that his daughter was innocent of the crime she was being accused of. This informed our decision to conduct a thorough investigation into the matter. The first thing we did was to look at the date they took off from the airport. From our records, we were able to establish that 10 people were on duty that very day. We went after them; we arrested the 10 of them and commenced serious interrogation. Initially, they denied being involved in the case, but after being detained for days, they started confessing their level of involvement. The number of the suspects was later reduced to six as the other four were confirmed to be innocent. These suspects owned up to the crime. In fact, the lady among them openly confessed to the father of Zainab and pleaded for forgiveness.[48]

It can be safely concluded that the above Report of discrete investigation, patently, demonstrates that ingredient number one has been satisfied.

(b) Doing an Illegal or Unlawful Act

It is submitted that, as at the time of writing this Chapter, the alleged confessional statements of the suspects have not been put to test in a court of competent jurisdiction. However, the content of the statements would suggest that they agreed to an illegal or unlawful act to wit; smuggling of illicit drug and tagging luggage containing illicit drug with an innocent passenger's name.

(c) Taking Steps to Perpetrate the Act

The case of *Oladejo v State*[49] is instructive in this respect. In that case, the court states that'. . . under the Penal Code, mere agreement does not amount to conspiracy unless there has been an overt act done in the execution or pursuit of the agreement'.[50] By case law, therefore, conviction cannot be secured, only, on the basis of the act of the FAAN and NDLEA officers agreeing to illegally transport illicit drug from Aminu Kano International Airport, Nigeria to Saudi Arabia. Rather, in order to secure conviction, it must further be established that the officials, actually, executed their agreement via air transport; and it is submitted that, in the Report of the discrete investigation conducted by the NDLEA, these officials confessed to executing their agreement through air transport. For the avoidance of doubt, the relevant part of the Report is to the following effect: '...The number of the suspects was later reduced to six as the other four were confirmed to be innocent. These .... suspects owned up to the crime. In fact, the lady among them openly confessed to the father of Zainab and pleaded for forgiveness[51]

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48 Kolade Adeyemi, 'How we busted drug cartel that implicated Zainab, by NDLEA Chief', *The Nation*, 5 May, 2019https://thenationonlineng.net/how-we-busted-drug-cartel-that-implicated-zainab-makia-ndlea-boss/(13-7-2019). See also Chijioke Jannah, 'NDLEA uncovers airport cartel planting hard drugs in passenger's luggage', *Daily Post*, 24 April, 2019 <https://dailypost.ng/2019/04/24/ndlea-uncovers-airport-cartel-planting-hard-drugs-passengers-luggage/>(13-7-2019).

49 [1994] 6 NWLR (Pt 348) 101.

50 ibid, at127.

51 Adeyemi (n48). See also Jannaj (n48).

It can, thus, be safely concluded that the need to prove this ingredient is as important as that of ingredient number one. This is because the incident under consideration occurred in the Northern part of Nigeria where Penal Code is strictly applicable. In emphasizing the important of proof of the ingredients of offences under the Penal and Criminal Codes, the Nigerian Court of Appeal in *Njovean v State*[52] maintains that criminal conspiracy in the Penal Code is constituted by an agreement to do an illegal act as well as the doing of the illegal act in pursuance of the agreement, while criminal conspiracy in the Criminal Code involves only an agreement to do an unlawful act. It is, therefore, more tasking to prove conspiracy in the Northern part of Nigeria.

4.1.2 The Act of Unlawful Interference in Civil Aviation

'Unlawful interference in civil aviation' can be defined as any act that is inimical to the smooth operation of an aircraft or that has the tendency of distorting the smooth operations of an airport, the consequences of which include but are not limited to death of aviation employee or passenger; destruction of aircraft or airport facilities. It is noteworthy that the act of insider constituting threat to civil aviation is grossly unlawful within the context of civil aviation security law and is severely punished. For example, Article 4 of the 2010 Beijing Convention[53] requires contracting State parties to severely punish terrorists or anybody who conspires with terrorists to carry out unlawful interference in civil aviation. Article 3 of the United Nations Convention on International Civil Aviation Organization (the Chicago Convention) 1944[54] warns contracting parties to desist from misuse of aircraft. It is submitted that the act of assisting or conniving by an agent of the State, by way of either assisting or in connivance with another to smuggle illicit drug from one destination to another via air transport, constitutes misuse of aircraft which must be severely punished in all ramifications.

Also, assisting or conspiring with another to place detonation into the body of an aircraft or in baggage of a terrorist, for the purposes of bombing the aircraft, amounts to unlawful interference in civil aviation that must be severely dealt with. An example of this is Rajib Karim, an insider employee of British Airways who had identified a vulnerable area of the airport operations and unlawfully attacked the aviation security system. He also conspired with some baggage handlers to "place an explosive device onboard a US-bound aircraft".[55] Another example are TSA screeners at the Los Angeles Airport who, in 2012, were charged for allowing large amounts of illegal drugs to pass through the X-ray baggage

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52 Njovean *v* State [1973] 8 NSCC257 at 280.

53 2010. Beijing Convention on the suppression of unlawful Acts Relating to International Civill Aviation, done at Beijing on 10 September 2010, 50 ILM 144 (2011). For detailed discussion, see Ismail Mustapha Adua, International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria (Unpublished PhD thesis, IIUM, 2014).

54 Chicago Convention on International Civil Aviation 1944 adopted on 7 December 1944 and entered into force on 4 April 1947; ICAO Doc 7300/9, Ninth Edition, 2006. For detailed discussion on the power and functions of the ICAO in maintaining aviation security in general, see Ismail Mustapha Adua, International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria (Unpublished PhD thesis, IIUM, 2014).

55 BBC, 'Terror Plot BA Man Rajib Karim Gets 30 Years' *BBC News*, 18 March, 2011 <https://www.bbc.com/news/uk-12788224,(23-3-2020).

devices.[56] These cases of conspiracy and insider threats are clear acts of unlawful interference in civil aviation.

The recent Zainab Aliyu happening in Nigeria, earlier discussed in this Chapter, is another example of unlawful interference in civil aviation. This is so, especially because if it the planted tramadol had been a bomb, the planters; that is the NDLEA officials would have succeeded in destroying the aircraft that carried the passengers to Saudi Arabia and a lot of causalities would have been recorded. Also, if the planted drug had been any of the unwanted apparatus that could be used to hijack the aircraft, the hijackers would have, unlawfully, seized the aircraft with ease. It is against the background of the foregoing analyses that the act of planting drug into the baggage of a passenger, through the connivance of the aviation employees and security agents among others, could be described as unlawful interference in civil aviation under aviation security law.

5.0 PREVENTION AND SUPPRESSION OF INSIDER THREAT

While the effects of insider threat to commercial aviation include sabotage, corruption and exposure of security information, aviation stakeholders, researchers and academics have suggested methods of preventing and suppressing same. For instance, Bryan has suggested that aviation institutions should, as a matter of importance, adopt a passive, defensive and comprehensive information technology monitoring.[57] However, the challenge involved in this suppression strategy is its prohibitive cost implication, as there will be need to purchase electronic gadgets and to recruit an experienced internet expert to monitor the electronic formation.

According to FAAN, mitigating strategies such as aviation employees' profiling, periodical renewal of On-Duty Card (ODC) and background checks on aviation personnel are the major suppression and preventive devices against insider threats to commercial aviation. Saleh Dunoma, a former Managing Director of FAAN states thus:

> [Y]ou cannot rule out the issue, but what we do in order to forestall that is that anybody that comes and wants to access any part of the airports, whether staff, personnel from government agencies or workers of our concessionaires, must go through some checks before [h]e access[es] On-duty card.[58]

The foregoing security arrangement is *in tandem* with what is suggested by Ojikutu when he proposes that the aviation worker must be brought to face security scrutiny to prevent

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[56] See David BaMaung, 'Security: The hidden 'insider' threat of the aviation sector', 4 *International Airport Review*<https://www.internationalairportreview.com/article/73985/security-the-hidden-insider-threat-of-the-aviation-sector/>(13-7-2019).

[57] See Bryan S. Bean, Mitigating Insider Threats in the Domestic Aviation System: Policy Options for the Transportation Security Administration (Master Thesis Submitted to Naval Graduate School, Monterey, California, 2017), at 9.

[58] See Shegfun, 'Insider Threat: FAAN to Fortify Security at Airports'<https://newtelegraphonline.com/insider-threat-faan-fortify-security-airprot/>(20-5-2020).

and suppress insider threat.[59] It is suggested that these checks should be random spontaneous and in an unpredictable manner.[60]

6.0 CONCLUSION

This Chapter concludes that one of the post-September 11 challenges to the aviation security is insider threat to aviation organizations, which has attained the status of a pandemic. It is a way of carrying out the terroristic acts against civil aviation where insiders are engaged by the terrorists to unleash terror on civil aviation operations. This is one of the changes in tactics adopted by terrorists after the earlier methods of carrying out terror acts were contained by the aviation security stakeholders' in the aftermath of the 9-11 incidents. However, the issue of civil aviation security cannot be achieved in isolation. The industry requires a multi-dimensional approach coupled with the unreserved cooperation of both internal and external civil aviation stakeholders in order to prevent and suppress the challenges posed by insider threat irrespective of whether the threat is intentional or unintentional. It is submitted that the external stakeholder referred to in this Chapter is the government, through the instrumentality of law, as well as security agents who are to execute the law. It is not that the laws regulating the transport of illicit drugs are not in place, but their implementation is weak and that is why it is so easy to transport illicit drug through the aviation industry to and from Nigeria.

It is also submitted that part of the internal mechanism that must be put in place to address the challenge of illicit transport is for the authorities and/or employers of airport workers as well as the security agents to conduct background checks on prospective employees before they are employed to a very sensitive security sector, such as the aviation industry. This is because the security of the aviation industry of a nation amounts to the security of that nation. It is further submitted that the culprits, irrespective of their positions, must be punished, as required by local and international laws.

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[59] See Wole Oyebode, 'Airport Security and 'enemies' within', *The Guardian* 15 July, 2016 https://www<an-ng.cdn.ampproject.org.>, (20-5-2020).

[60] See K ECharle, *Efficiency and Effectiveness of TSA's Visibile Intermodel/Prevention and Response Program Within Rail and Mass Transit Systems* (Washington, D.C: U S Department of Homeland Security, Office of Inspector General, 2012). See also Alan Black, Mitigating the Aviation Insider Threat (Master's Thesis, Naval Postgraduate School, 2010). See Bryan .S. Bean, Mitigating Insider Threats in the Domestic Aviation System: Policy Options for the Transportation Security Administration (Master Thesis Submitted to Naval Graduate School, Monterey, California, 2017), at 9.