

OPINION

State should provide new and bold aviation policy

A great injustice is being perpetrated against Kenyans, but they seem not to be aware of it. Or maybe they are helpless, and have just adopted the usual stoic countenance in accepting all that is handed to them. The injustice is about the airspace. The airspace is a natural resource, just like land and water. Indeed the government, through the Kenya Civil Aviation Authority (KCAA), earns Sh4 billion from providing air navigation services in the airspace.

The sky used to be the preserve of birds and a few adventurous aviators. But this is no longer the case. What happens in the airspace above our heads is of concern to all of us; indeed a whole economy is developing in the “lower sky” of a few hundred metres. This has brought issues of safety, security and privacy to the fore. The nascent economy has the potential to provide thousands of jobs and to unlock several innovations. This has, however, all been put in abeyance. The back and forth in the Remotely Piloted Aircraft System (RPAS) regulations has clearly exposed the deficiencies of rule-making in aviation. It has also resulted in lost opportunities for a whole industry.

The injustice perpetrated against Kenyans has arisen as a result of both commission and omission. KCAA has been accused of being heavy handed and acting in regulatory overreach. This is, however, a case of blaming the messenger. Waiting for KCAA to come up with a facilitative policy is like expecting police to come up with a comprehensive policy on security. No, the blame lies elsewhere.

Innovations in M-Pesa were possible because Safaricom was fortunate to operate in a lacuna in the banking law; what was not prohibited was deemed to be allowed. There was no active law against mobile money transfer. Policy and regulation played catch-up once the sector burgeoned. This is, however, not possible in aviation that operates under, justifiably, strict regulations. There are no such gaps in the aviation law. These laws provide several prohibitions.

The first misstep in the drones saga occurred during 2015’s Jamhuri Day celebrations. A media drone taking footage of the proceedings was immediately recognised as a potential threat to security. This gave the military an opportunity to barge into an area out of their mandate — civil security is a police function. They ordered a blanket ban on all RPAS. KCAA quickly acquiesced. The regulator started demanding clearance from the military before processing applications to operate a drone in the country from January 2016.

The military is the villain for yet another reason. They are accused of hoarding large sections of the airspace and only allowing civil aviation to use small portions. The Integrated National Transport Policy recognises that “a large portion of Kenyan airspace is dedicated to full-time use by the military”. These “deficiencies” in Kenya’s airspace are recognised as undesirable and lead to use of circuitous air routes, leading to higher operational costs. The policy document laments that “discussions with the military authorities with a



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Technology will always provide challenges. What has been invented cannot be un-invented. We should grab the opportunity provided by the emerging technologies but implement measures to guarantee safety, security and privacy.”

view to reducing this imbalance have not been successful. Consequently, the mechanisms for allocating Kenyan airspace tend to deny users their optimum flight paths/profiles, forcing them to divert and use less economic routes/paths. This results in delays or longer flight times.” Next time when complaining about high airfares, you will know where to apportion part of the blame! Does the Kenyan airspace belong to the military, to be measured out in small doses to other legitimate users? That such incursions into civil resources are possible are the result of abdication of responsibility by another

section of government. The Ministry of Transport makes policy for the aviation industry. Current aviation policy is contained in the Integrated National Transport Policy. The policy is mainly focused on markets and trade issues. Maintenance and training get some mention. Manufacturing has, however, been given a short shrift. Further, the policy did not anticipate the innovations leading to RPAS. The policy on aviation requires a big shake-up to align it with the requirements of the 21st century.

The regulations that issue from this policy are stuck in the era of “don’t”. The proposed RPAS regulations, which are now in limbo, issue from this mindset. They are basically a lawyers’ document. It is full of prohibitions, is restrictive and prescriptive. Such a document will not provide an impetus for innovations. The voice of the Engineers’ Board of Kenya has been silent in all this.

The 10 “thou shalt not” commands of the Old Testament were eventually replaced by a single positive commandment in the New Testament. The aviation industry similarly needs to move from the prohibitive constraints of the twentieth century to a more participatory and accommodative regulation regimen. The “don’ts” in our regulations should now be reframed. Each regulation should demand compliance through positive imperatives; operators should be required to demonstrate how their operations meet the safety, security and privacy concerns. We require a positive policy framework that is not driven by fear, but by the appreciation of the ability of aviation to provide

jobs and inject innovation into the economy.

More importantly, the aviation policy must guide development of the industry in modern times. A new focus on manufacture of aircraft and components should be clearly stated and supported. The designs of light aircraft are not complex as is commonly thought. The manufacture of drones should also be encouraged. This can be achieved in Science and Innovation Parks hosted at universities and polytechnics. These will provide “sandbox” facilities for innovators. RPAS test sites and aerodromes should be established.

The airspace ceded to the military must be reclaimed. It should be handed over to an independent body for management. This could provide a foundation for providing airways for drones, both civil and military. A division should be created in KCAA to handle only drone issues. There are currently about 1,500 aircraft on the Kenyan register. Applicants for registration of drones even before the draft regulations were promulgated were several times more than the number of aircraft currently in the register. It is estimated that about 5,000 drones will be registered within the first year of legalisation. Drones are poised to claim a large chunk of the aerial services market. They are ideal for infrastructure inspection, filming and survey.

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