

# OVERVIEW OF THE 2004 AND 2014 NIGERIAN CONTRIBUTORY PENSION SCHEME ACT

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## ABSTRACT

*The dejection and helplessness of pensioners waiting to be paid pension benefit under very frustrating verification process occasioned by the impunity in person fund administration led to the pension Act 2004. This ushered in the contributory pension that replaced the defined Benefit Pension with attendant review in 2014 to check mismanagement. The objective of this paper is to examine the contributory pension scheme, identify the inadequacies that will inhibit the efficacy and make the necessary recommendations. In the course of this study, it was discovered that the contributory pension scheme was selectively implemented, absent of life span annuity and also detected the current mode of diversion of pension assets. This paper utilized secondary source of data such as scholarly journal articles, seminar papers, internet materials and established circular and report. It therefore recommended that the implementation of the scheme by Government should be holistic and the interest and commissions accruable to the pension fund asset should be disclosed regularly to forestall financial misappropriation.*

## Introduction

The issue of pension has received much attention in many countries over the past decades. In fact, in recent times, pension has increasingly attracted the attention of policy makers in many countries as a means of facilitating privately funded retirement income savings by an ageing workforce (World Bank, 1994).

The issue of pension in Nigeria has become one of the salient issues in the country today as a result of the failure of the country's pension system. Pensioners live in pains and anguish every day. Their pains are intensified when they recalled how they spent several years working tirelessly and loyally for the country they believed in, but only to be paid in cash. Thousands of them died while waiting for the stipend that was not forthcoming. Families have been separated owing to their present situation of not meeting their financial obligations. Some as a result been mentally traumatized (Egun, 2012).

The first public sector pension scheme in Nigeria was the pension ordinance of 1951, with retroactive effect from January 1, 1946. The law allowed the Governor-General to grant pensions and gratuities in accordance with the regulations, which was reviewed from time to time with the approval of the secretary of state for Colonial Affairs in the UK government. Vast period at 10 years of service, pensions and gratuities were provided for in the legislation. They were not rigid as they could be reduced or withheld altogether if it was established to the satisfaction of the Governor – General that the officer was found guilty of negligence, irregularity or misconduct.

The pension in the public sector had undergone various developmental stages after the first pension ordinance. For example, the civil service pension scheme was established by the Basic Pension Decree 102 of 1979, the Local Government Pension was established by military fiat in 1977 and the Armed Forces Pension Scheme created through Decree 103 of 1979 with retroactive effect from April 1974. There was also the Pension, Rights of Judges Decree No. 5 of 1985 as amended by Amendment Decree No. 51 of 1988, 29 and 62 of 1991. The Police and other agencies pension scheme Decree No. 75 of 1993 which took retroactive effect from 1990 represented another landmark development in the history of the Nigeria Pension system.

Governmental parastatals and agencies directly funded by the Treasury had a unified Pension Scheme that was virtually managed by insurance companies and many were unable to honour their Pension obligation. The first private sector pension scheme in Nigeria was set up for the employees of the Nigerian Breweries in 1954, which was followed by United Africa Company (UAC) in 1957. National Provident Fund (NPF) was the first formal Pension Scheme in Nigeria established in 1961 for non-pensionable private sector employees. It was largely a saving scheme

where both employee and employers would contribute a sum of four naira (N4.00) each on monthly basis. The scheme provided for only one-off lump sum benefits. The Nigeria Social Insurance Trust Fund (NSITF) was established by Decree No. 73 of 1993 to take over the National Provident Fund (NPF) Scheme and provide enhanced pension scheme to private sector employees. (Okechukwu, 2011).

The first Pension Reform Act No. 102 was introduced before the Nigerian Second Republic by the Federal Government with effective date of 1<sup>st</sup> April 1974. The Act consolidated the enactment on Pensions and gratuity scales devised for public officers by Udoji Public Service Review Commission, 1974. The Pension Act 102 of 1979 was the basic law from which others Pension Laws in public service have developed as follows:

- (a) Armed Force Pension Act 103 of 1979
- (b) The Pension Right of Judges Act No. 5 of 1985
- (c) The amendment Act No. 51 of 1988, Act 29, 1991 (Nwanigbo, 2002).

The Pension Acts 103 of 1979 like its counterpart 102 of the same 1979 consolidated all enactment dealing with Pension, disability benefits and gratitude scales devised for armed forces, public service organization established by decree in Federal and edict in the State operated Pension Schemes similar to what the obtains in the civil service. Local Government system also established pension schemes for their staff with a separate board known as the Local Government Pension Board. It was established to take care of the local government staff that have retired from 1<sup>st</sup> April 1979, (Orewa and Adewumi 1983). For the Universities, they had a single plan which covered them all, known as the Nigeria universities joint superannuation scheme, which was also identical to private sector insured provident fund plans (Okafor, 2005).

The pension Decree 102 of 1979 was enacted in 1979 with retrospective effect from 1<sup>st</sup> April, 1974. This Decree repealed all pension laws from 1<sup>st</sup> January 1946 to 31<sup>st</sup> March 1974. Example of such repealed laws includes Pension act 1946, Pension Act 1958 and the Police Pension Decree 1996. Under this Decree, all enactments on pension, incorporated pensions and gratuity scales of all public offers recommended by the Udoji Public Service Review Commission Report 1974 was consolidated. It formed the basic pension law by which all recent pension laws are built. For instance, at the level of parastatal and Government owned Companies, the pension rules are replica of the pension act 102 of 1979. The Scheme

spelt out conditions of payment of entitlements withdrawal from the scheme as well as forfeiture of pension right among others. Despite the above provision, the scheme was marred with widespread corruption. There were rampant complaints of diversion of pension fund to other uses by pension officials (Bassey, et al 2010).

One of the major problems of the old pension fund administration in Nigeria (Defined Benefit Scheme) was the non-payment or delay in the payment of pension and gratuity by the Federal and State Governments. For instance, the pension backlog was put at about N2.56 trillion as at December, 2005. In fact, pension fund administration became a thorny issue with millions of retired Nigerian workers living in abject poverty and they were often neglected and not properly catered for after retirement (Orifowomo, 2006).

Another problem that frustrated the successful implementation of the defined benefit pension is corruption. Nigeria is ranked the topmost corrupt Country of the World (Transparency International 2008). In the recent pension probe, Abdulrasheed Maima, the Chairman of the Presidential Pension Reform Task Team, which was set up under the office of the Head of Civil Service of the Federation, with the mandate to restructure the pension system in Nigeria, ensure that pensioners who have served the nation are no longer denied a meaningful life at old age. Some of the shocking experiences the team had, reveals how an average of N295 million to N300 million was being pilfered every other day through cheques and cash from the police pension account (The Guardian, 2012).

There has been little or absent of most pensioners' records in pension office all over the country. In most office, file was poorly handled leading to misplacement and loss of relevant documents. This improper record keeping aided fraud in the system according to the Chairman of the Pension Tax Force, over 71,000 ghost pensioners were discovered in the Civil Service, 2014 in the Police Pension Office while 133 were duplicated names, who collect multiple pensions monthly in the same police pension office (Abiosode, 2012). Other problems were incompetence staff, administrative bottlenecks, bureaucracies etc.

The objectives of this paper is to x-ray the contributory pension scheme (2004 and 2014 Acts), identify the challenges and make necessary recommendations that will actually enhance the scheme to be pensionable to the pensioners.

## **Contributory Pension Scheme The Pension Reform Act 2004**

The Federal Government of Nigeria being aware of the plight of the retired workers came out in 2004 with a new Pension Reform Act which is described contributory, fully funded, privately managed pension scheme that is based on individual's accounts. It ensures that everyone who has worked received his or her retirement benefits as and when due to alleviate poverty on retirement and curb the situation where pension entitlements are delayed or not paid. An employee contributes a percentage of his salary and the employer contributes a percentage of the employee's salary toward the retirement benefit of the employee. The total contribution will be paid out by the employer directly to the Pension Assets Custodian (PAC) and will be managed and invested by the Pension Fund Administrator (PAC) of the employee choice. Thus to give the employee immediate ownership to his or her pension benefits. (Aibieyi, 2009).

The Act was enacted in 2004 partly as a result of the failure of the past scheme to address the pension needs of Nigerians and partly as a result of the quest by stakeholders to evolve a scheme that can cater for both public and private sector employees (Bassey, 2010).

### **Main Feature**

1. It establishes a uniform contributory pension scheme for the public and provide sectors in Nigeria.
2. It prescribes that retirement benefits shall be funded by both the employer and employee.
3. It privatizes the management for all pensions in the country.
4. Pension funds are to be privately managed and invested by professional pension fund managers.
5. It provides for strict regulation of the activities of pension and fund administrators and custodians of pension fund assets under uniform law and regulations for both and private sectors.
6. It establishes a National Pension Commission charged with the responsibility for matters relating to the regulations, supervision and effective administration of all pension schemes and for matters connected therewith.

According to Ahmed (2005), states that the overall philosophy of the pension reform are to

1. Ensure that every person who worked in either the public office of the Federation, Federal Capital Territory or Private Sector receives his retirement benefits as and when due.
2. Asset improvident individuals by ensuring that they save in order to cater for their livelihood during old age.
3. Establish a uniform set of rules, regulations and standards for administration and payment of retirement benefits for the public service of the federation, Federal Territory and the private sector.
4. Adopt major reform instead of cosmetic adjustments of the past.

### **Objectives of The Pension Reform**

1. To establish sustainable pension system
2. To empower the worker to gain control over his retirement savings Account (R.S.A.)
3. It minimizes the incentives for early retirements.
4. Ensure transparent and efficient management of pension funds.
5. Promotes savings culture.
6. Secures compliance by all affected and promote wider coverage.
7. Establishes strong regulatory and supervisory framework (National Pension Commission, 2004)

### **Nature of The Scheme**

Atom (2007) enumerated the nature of the scheme of contributory – full funded and based on individual accounts that are privately managed by pension fund Administrators (PFA), while the pension assets will be beheld by pension Assets Custodians (PAC).

All workers in the Public Service of the Federation and all workers in the Private Sector where the total number of worker is five (5) are eligible to participate in the scheme. The only people exempted are all existing pensioners and workers with less than 3 years from 1<sup>st</sup> July, 2004 and the category of officers covered by Section 291 of 1999 Constitution (Judicial Officers).

The scheme provides that both the employer and employee contribute a minimum of 15% of the employee's basic salary, housing and transport allowance to Retirement Saving Account, (RSA) – 7.5% by the employer and 7.5% by employee in government ministries and agencies and private sector – 12.5% by employer and 2.5% by employee in Military.

The employer may bear the full burden if he so wishes but the contribution must not be less than 15%.

The Act stipulated that an employee opens a Retirement Savings Account in his name with Pension Fund Administrator of his choice. This account belongs to the employee and remains his own for life. He is free to transfer his service at any time whether from public to private or vis-a-vis without changing his account. Contribution should be remitted within 7 days of salary payment to the pension Asset Custodian who must notify the PFA who must the PFA within 24 hours of the receipt of the contribution. This is to enable the PFA credit the retirement of the savings account of the employees so that the PFA can invest the money in order to yield returns to the employee. The money can be used to purchase government bonds, stock, securities, etc

It is also stipulated that every employer maintain a life insurance policy in respect of every employee for a minimum of 3 times the annual emolument in case of the death of the employee in service. As employee who retires normally is not entitled to this insurance policy.

#### **Withdrawal From The Account**

This can only be done only at the age of 50 or upon retirement which ever come later. And this withdrawal may take any of the following forms:

- Programmed monthly or quarterly withdrawal (to be arranged with PFA).
- Purchase of annuity for life through a licensed life insurance company with monthly or quarterly payments.
- A lump sum from his account provided that what is left is sufficient to pay 50% of his monthly remuneration as at the date of retirement.
- Where an employee retires under paragraph (c) of sub-section 3 of the pension Act that is if under 50 years, lump sum withdrawal is 25% provided that no employment is secured within 6 months.

#### **Pension Reform Bill 2014**

The following are the major highlights of the Pension Reform Act 2014.

- (a) Upward Review of the Penalties and Sanctions.
- Pension Reform Act 2014 has created new offences and provided for stiffer penalties that will serve as deterrence against

mismanagement or diversion of pension funds' assets under any guise. Thus, operators who mismanage pension fund will be liable on conviction to not less than 10 years' imprisonment or fine of an amount equal to three-times so misappropriated or diverted or both imprisonment and fine.

- Power to institute criminal proceedings against Employers for Persistent Refusal to remit pension contribution.
  - The 2014 Act also empowers Pencom, subject to the fiat of the Attorney General of the Federation.
- (b) **Corrective Actions on Failing Licensed Operators**
- The Pension Reform Act 2004 only allow PenCom to revoke the license of erring pension operators but does not provide for interim remedial measures that may be taken by PenCom to resolve identified challenges in licensed operators. Accordingly, the pension Reform Act 2014 now empowers PenCom to take proactive corrective measures on licensed operators whose situations, actions or inactions jeopardize the safety of pension assets. This provision further fortifies the pension assets against mismanagement or system risks.
- (c) **Restructuring the System of Administration of Pension under the Defined Benefits Scheme (PTAD)**
- The Pension Reform Act 2014 makes provisions for repositioning of the Pension Transition Arrangement Directorate (PTAD) to ensure greater efficiency and accountability in the administration of the Defined Benefits Scheme in the Federal Public Service such that payment of pensions would be made directly into pensioners' bank accounts in line with the current policy of the Federal Government.
- (d) **Coverage of the CPS and Informed Sector Participation**
- The Act expanded the coverage of the contributory Pension Scheme (CPS) in the private sector organizations with three (3) employees and above, in line with the drive toward informal section participation.
- (e) **Upward Review of Rate Pension Contribution**
- The Pension Refund Act 2014 reviewed upwards, the minimum rate of pension contribution from 15% to 18% of monthly emolument, where 8% will be contributed by employee and 10% by the employer. This will provide additional benefits to workers.

Retirement Savings accounts and thereby enhance their monthly pension benefits at retirement.

- (f) **Access to Benefits in Event of Loss of Job**
  - The Pension Reform Act 2014 has reduced the waiting period for accessing benefits in the event of loss of job by employees from six (6) months to four (4) months. This is done in order to identify with the yearning of contributors and labour.
- (g) **Opening of Temporary RSA for Employees that Failed to Do So**
  - The Pension Reform Act 2014 makes provision that would compel an employer to open a Temporary Retirement Savings Account (TRS) on behalf of an employee that failed to open an RSA within three (3) months of assumption of duty. This was not required under 2004 Act.
- (h) **Consolidation of Previous Legislations Amending the PRA 2004**
  - The Pension Reforms (Amendment) Act 2011 which exempts the Personnel of the Military and the Security Agencies from the CPS as well as the Universities (Miscellaneous) provisions Act 2012, which reviewed the retirement age and benefit of University Professors.
  - The 2014 Act has incorporated the third Alteration Act, which amended the 1999 constitution by vesting jurisdiction on pension matters in the National Industrial Court. – (PENSION-REFORM ACT 2014)

### **Implications Of The Contributory Pension Scheme On Human Resource Management**

- (1) The new pension act makes it necessary for an employee who has been summarily dismissed from service to at least be entitled to his own share of the contribution in his Retirement Savings Account (RSA). Though, such employee would forfeit his employer's contribution, he can then forge ahead with life with his own contribution. This is unlike the old pension scheme, which case such employee would leave the service with nothing.
- (2) Corruption in Nigeria has been traced basically to low wages, insecurity of tenure and poor and ineffective pension schemes. So, in a bid for employees to secure their basic life necessity, and their future after retirement; they tend to embark on massive looting of the treasury, especially of the government. The unimaginable

disparity between the take home pay of the retirees of old and the new pension scheme among the middle level and the rank and files of the public service can lead to massive embezzlement and sharp practices in various public sector

- (3) The contributory pension scheme helps to reduce labour flight. For example, certain category of employees, such as university professors, military generals, high court judges, etc. who retires with their full salaries and other entitlements have these benefits paid promptly and effectively under the new scheme. Those in this category of advanced manpower would definitely see the need while they should not be part of the brain drain process.
- (4) The Pension Reform Act also helps in checking exploitation of labour in the private sector of the economy. Prior to the enactment of the Act, most private sector organizations do not pay pensions to their employees no matter the number of years they put into service. Those who pay something similar are those who pay just gratuity to their employees.
- (5) Also, the act ensured that almost all employees in Nigeria are under the coverage of the new pension scheme, this it did by making it mandatory for any person that employs up to five workers to be part of the scheme. Persons who are not in formal employment can also be part of the new pension scheme by making individual voluntary contributions, that would in turn guarantee his old age economic security.
- (6) The scheme affords workers the privileges of mobility of labour. Since they can move from one organization to another in search of better conditions of service, or even retire to their own private business irrespective of the age they have in their employment, without forfeiting their pension wealth.

### **Challenges of the New Contributory Pension Scheme**

- (1) One major challenge of this scheme is its implementation modalities. The scheme was well intended but the successful implementation is another issue that need to be critically examined. The National Pension Commission (PenCom), the regulating agency for the new scheme lacks visible monitoring unit that ensures compliance of the private sector organizations to the dictate of the Pension Act. In Nigeria, one would hardly observe any small

or medium scale private establishment with over 5 employees, who are part of the scheme. For example, most private primary and secondary schools, private maternities and hospitals, religious institutions, as well as medium scale factories, eateries and other marketing outfits have started the implementation of the new pension scheme. Whereas, the Federal Government mandated all private organizations who employ 5 or more workers to embark on the scheme with effect from January, 2005, No visible governmental machinery on ground to ensure compliance by the aforementioned agencies. This indeed, is a setback for the new pension scheme.

- (2) The scheme it is mainly popular among public servants, very little about it is known in the private establishments. This scenario has led to the private sector employees not demanding the implementation of the scheme by their employers, as many of them are not even sure if the private sector employees are included in the scheme. This problem becomes compounded due to the exclusion of most private organisation's workers from active unionism. So, agitating for such right without unionism is an up-hill task for the private sector employees.
- (3) Another major challenge of the scheme is the fact that Nigeria as a country has lost credibility both within and outside the country, due to the widespread corruption that has engulfed virtually all sectors of the polity, religious institutions and the universities inclusive. These were institutions that were held sacrosanct with regard to proper moral and behavioural conduct. With respect to the aforementioned statements, one would find it very difficult to believe without doubting that the PenCom, Pension Fund Administrators and Custodian would be free from sharp practices inimical to the interest of contributors.
- (4) Another major challenge of the scheme is the prediction that the male employees may likely live up to 15 years after retirement, while the female employees may likely live up to 18 years after retirement, and so distributes the monthly pension benefits accordingly. But it did not state further what would happen to the employees should they live beyond the predicted ages, considering the fact that there are no aged people's benefit in Nigeria.

- (5) Clark and Quinn (1999), observed that limitation of researchers by a lack of data needed to estimate the effect of pensions on productivity and labour mobility. They hinted that few direct estimates of the effect of pensions on worker's productivity have been attempted. According to them, despite the limitations, evidence indicates that workers who are covered by pension plans are more likely to engage in training, and also have higher productivity. They argued further that, pension participants have lower turnover rates and greater job tenure.
- (6) The provision that an employee who retires under the age of 50 years cannot hope on his gratuity/pension upon his retirement to set up his own private practice or business is appalling. According to Bob Ojujoh (2005), it is servitude to state that an employee who retires under the age of 50 years cannot enjoy the fruit of his hard labour as this act provides is most cruel. This engage an employee against his will or wish indirectly throughout his productive life until he would no longer be much useful to himself on leaving service cannot be qualified by any better word than slavery.
- (7) Workers contribution is too high. After the 7.5% is deducted from the workers' salary, the remaining take home salary will not be sufficient to cater for their needs
- (8) According to Ogbinaka (2011) part of the problem of the Pension Reform Scheme is that the Federal Government is implementing the Reformed Pension Act selectively. The pension act stipulates that every worker in both the public and private institutions should be part of the scheme. In spite of this provisions, some institutions are not part of the scheme. The judiciary is still operating the old Pension system.

### **Findings**

The following are the findings of the discussion on Pension Reform Acts of 2004 and 2014.

1. The contributory pension scheme is selectively Operated by the Federal Government of Nigeria
- According to Ogbinaka (2011) The Pension Act stipulates that every worker in both the Public and Private Institutions should be part of the scheme. In spite of this provision, some institutions are exempted from the scheme the Military and Security Agencies as

well as the review of the retirement age and benefits of University Professors.

2. There are currently more sophisticated mode of diversion of pension assets such as non-disclosure of interests and commissions accruable to pension fund assets. -
3. Workers contribution is too high. After the 8% and tax deducted from the worker's salary, the remaining take home salary will not be sufficient to cater for their needs mostly especially with the constant devaluation of the worker's salary due to inflation.
4. Unlike the Defined Benefit Scheme backed by the Pension Act 102 of 1979 which provides that a retired officer earn pension for life, this new act negates this provision. Under this act, an officer is expected to enjoy programmed monthly or quarterly payments for the period calculated on the basis of span of annuity from a life insurance company instead of the former life span retirement benefit (pension).
5. The disparity between the defined benefit and the contributory scheme in the payment of the gratuities and pension are of great margin. One would have expected that new scheme to be indeed pensionable to pensioners rather than plugging them more into poverty by receiving less.

### **Conclusion**

The Old Pension Scheme was beset with a lot of challenges and problems. The funding of the outstanding pensions and gratuities became an onerous issue for the Government as the scheme was marred by widespread corruption and gross inefficiency and ineffectiveness. Those entrusted with the fund indulged in misappropriation and embezzlement.

The new pension scheme was put in place to eradicate the problem associated with the Defined Benefits (DB) over the years. The reform is to ensure prompt payment of retirement benefits, facilitate efficient savings culture among Nigerian towards old age and the development of simple, transparent and sustainable pension system in the country.

The new scheme is also bedeviled with certain challenges, such as selective implementation of the scheme by the Government thereby making it unpopular in both the public sector and private establishment. The disparity in the pension entitlement between the old and new pension scheme which is of great margin, and renders the new pension unattractive.

Also the age prediction of pension payment for 15 years for male and 18 years for female is worrisome as those who will be alive after the predicted years will be left without pay.

Several recommendations have been proposed. For adequate regulation and effectiveness of the pension fund administrator and Custodians, there is need for monitoring by the Pen Com and the National Assembly. The penalty for any defaulter with respect to the implementation of the scheme should be severe to serve as deterrence to others.

The new scheme should be made more attractive by infusing the qualitative (lump sum) gratuity and life pension of the defined Benefit scheme into the contributory pension scheme. While the predicted pension payment age (15 years male and 18 years female) should be extended to life time.

### **Recommendations**

Based on this study, the following recommendations are made.

1. The National Pension Commission should be primarily concerned with ensuring the safety of savings by the pension fund administrators and pension fund custodians in the following ways:
  - (a) The Commission should be required on yearly basis to make public the lists of pension fund administrators (PFAs) and pension fund custodian (PFCs)
  - (b) The External Auditors of (PFAs) and (PFCs) should as a matter of urgency to always report specific problem to the Commission.
  - (c) The Commission should be authorized to conduct inspections on the activities of the pension fund administrators, pension fund custodians and pension departments once or twice a year.
2. Pension Fund Administrators should be mandated to issue regular statement of account to the employees regularly.
3. The monthly deduction of 8% from the employees' salaries is too high and should be reduced.
4. The Commission can penalize any employer that violates the pension reform acts.
5. Any defaulting pension fund administrator and pension fund custodians should be made to face a stiffer sanction to serve as a deterrent to others.

6. The financial disparity in term of gratuity and pension between the old and new pension scheme should be worked on so as to make the new scheme actually pensionable.
7. The pension scheme should be implemented holistically, states, local government, federal parastatals and institution should be included.
8. The pensionable age of 50 years as a criterion for pension gratuity and pension should be reduced to 10 years of service as it was operated in defined benefit pension scheme.

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