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Appraisal of the Nigerian Pension Scheme

Mabel Ijeoma Ezeuko

Research Fellow, National Judicial Institute, Mohammed Bello Centre, Abuja, Nigeria

Abstract

Pension is an integral part of the employee benefits or welfare system, one which encourages service, commitment and loyalty to work. Pension is benefit paid to an employee on retirement or after attaining the statutory required age. Hitherto the establishment of the pension commission and the subsequent Pension Reform Act of 2004; the pensions schemes in Nigeria were unsuccessful in their attempt to meet up their financial obligations to their subscribers. This paper looks holistically on the Nigerian Pension Scheme, pointing out its strengths and weaknesses and proffering lasting solutions.

Keywords: Nigerian pension scheme, pension offences, retirement

1. Introduction

The welfare of employees in any organization is paramount for the continuous existence of such organization. Pension is an integral part of the employee benefits or welfare system, one which encourages service, commitment and loyalty to work. Pension is benefit paid to an employee on retirement or after attaining the statutory required age. An occupational pension scheme is an arrangement under which an employer provides pension for employees when they retire or gives deferred benefits to members who leave. It is a system designed to provide the employees of an organization with a means of securing on retirement a standard of living reasonably consistent with that which they enjoyed while in service.ⁱ

Hitherto the establishment of the pension commission and the subsequent Pension Reform Act of 2004; the pensions schemes in Nigeria were unsuccessful in their attempt to meet up their financial obligations to their subscribers. Over the years the management of pension scheme in Nigeria has been inundated by multiple and diverse problems such as inadequate funding, inadequate subventions and grants, poor documentation and filing in pension offices, direct release of pension funds to underwriters, accumulated arrears of pensioners, inability to determine appropriate investment portfolios, lack of accountability, corruption and embezzlement of funds.ⁱⁱ

The public service which operated the defined benefits scheme and the payment of retirement benefits were budgeted annually and were fraught with a lot of problems, one of which was that when budgetary provisions were made, delays as to the release of funds made it difficult for the pensioners to receive their payments on time. The private sector on the other hand, did not cover many employees and when it did, it was one fraudulent story or another.

The subscribers of the pension scheme when they retired and therefore became entitled to their funds had to travel from far and wide for physical verifications. Most of these pensioners were old and tired, yet were expected to make themselves available in order to receive their payments.

It became imperative for the then administration of President Olusegun Obasanjo to address the unfortunate situation. This culminated in the enactment into law of the Pension Reform Act of 2004 and the subsequent enactment of the Pension Reform Amendment Act 2014.

This piece of literature is an attempt to highlight the success and pitfalls of the Pension Reform Act 2014. It also explores the pension scheme of other developed jurisdictions with a view to correcting the failures of the Nigerian Pension Scheme.

2. Pension Rights in Nigeria

The Constitution of the Federal Republic of Nigeria 1999 in Section 173 provides:

- Subject to the provisions of this Constitution, the right of a person in the public service of the federation to receive pension or gratuity shall be regulated by law.
- Any benefit to which a person is entitled in accordance with or under such law as is referred to in subsection (1) of this section shall not be withheld or altered to his disadvantage except to such extent as is permissible under any law, including the Code of Conduct.
- Pensions shall be reviewed every five years or together with any Federal civil service salary reviews, whichever is earlier.
- Pensions in respect of service in the public service of the Federation shall not be taxed.

Section 210 of the same Constitution also provides protection of pension rights of public servants in the State.

In *Central Bank of Nigeria v. Amao*ⁱⁱⁱ the Court stated per Garba JCA;

"The Federal Government has the power and right, through the appropriate process and manner, to prescribe the pension and other retirement benefits of employees of the Central Bank of Nigeria being an agency of the Federal Government. This power and right are inherent in the Federal Government and cannot be denied in whatever circumstances by the agency. The Federal Government has the exclusive power and right to legislate on pensions, gratuities and other like benefits payable out of the consolidated revenue fund or any other public funds of the Federation. It was in exercise of that power that the Pensions Act, Cap. 341 Laws of the Federal Republic of Nigeria, 1990 was enacted by the Federal Government to provide specifically for pensions and other retirement benefits payable to all employees in the public service of the Federation which were to be paid out of either the consolidated revenue fund or any other public funds."

Pension was defined by Ubaezonu, J.C.A in *Momodu V National Union of Local Government Employees*^{iv} as an accrued right of an employee, be the right in money or other consideration, on retiring from the services of his employer and satisfying the conditions for payment of the said pension. It is a right which cannot be unilaterally taken away by the employer.

Entitlement to pension and gratuity is a vested right, which can only be taken away by the dismissal of the employee from his employment. Once the dismissal is declared unlawful and the employee has spent the number of years stipulated in the conditions of service in the employer/organization, he is entitled to draw his pension and be paid his gratuity. In other words, whether an employee is eligible for pension and gratuity can be decided only by reference to the conditions of service. In the instant case, the respondent never claimed for pension and gratuity.^v

From the foregoing, it can rightly be said that Pension Rights emanate from and have the full backing of the Constitution of the Federal Republic of Nigeria 1999¹ Other subsidiary legislations of both Federal and State Government Agencies and Departments have made Pension Rights mandatory for the benefit of the employees working or have worked in such Agencies and Departments.

Pension is simply the amount set aside either by an employer or an employee or both to ensure that at retirement, there is something for employees to fall back on as income. It ensures that at old age workers will not be stranded financially. It is aimed at providing workers with security by building up plans that are capable of providing guaranteed income to them when they retire or to their dependents when death occurs. The reason for pension scheme stems from the fact that first an organization has a moral obligation to provide a reasonable degree of social security for workers especially those who have served for a long period. Secondly, the organization has to demonstrate that it has the interest of its employees at heart through pension schemes. The most popular way to determine the amount of an employee's pension is to base payment upon a percentage of the employee's earnings computed at an average over several years multiplied by the number of years the employee has served the company.

3. The Pension Reform Act 2014

The Pension Reform Act 2014² was signed into law by President Goodluck Jonathan came into force on the first of July 2014. The Act repealed the Pension Reform Act NO.2, 2004.

The objectives³ of the Act are to – establish a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the Public Service of the Federation, The Public Service of the State Governments, the Public Service of the Local Government Councils and the Private Sector; make provision for the smooth operations of the Contributory Pension Scheme;

ensure that every person who worked in either the Public Service of the Federation, Federal Capital Territory, States and Local Governments or the Private Sector receives his retirement benefits as and when due; and assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age.

The provisions of the Act apply to any employment in the Public Service of the Federation, the Public Service of the Federal Capital Territory, the Public Service of the States, the Public Service of the Local Governments and the Private Sector with 15 or more employees.⁴

4. Definition of Terms

Contributory Pension Scheme⁵ (CPS) – Nigeria practices a Contributory Pension Scheme that is fully funded. This is the mandatory contribution of money by the employer and the employee into a designated account. The employee contributes a minimum of eight percent of his monthly emoluments and the employer, a minimum of ten percent of the employee's monthly emoluments.⁶

Retirement Savings Account (RSA) – Every employee to whom this Act applies shall maintain an account in his name with any Pension Fund Administrator of his choice and notify his employer of the Pension Fund Administrator chosen with particulars of the account.⁷

¹Pension Rights under the Constitution focuses more on employees in the Public sector; however, the Pension Reform Act 2014 includes both employees in the Public and Private sector.

² Hereinafter referred to as the 'Act'

³ Section 1 Pensions Reform Act 2014

⁴ Section 2 *ibid* except those referred to in Section 5 (1)(b) of the Act.

⁵Section 3 (1) Pension Reform Act 2014

⁶ Section 4 (1) *ibid*

⁷ Section 11 (1) (2) *ibid*

Pension Fund Custodians (PFC) - are responsible for the warehousing of the pension fund assets. The employer sends the contribution directly to the custodian who notifies the Pension Fund Administrators of the receipt of the contribution. They are financial Institutions that must have a minimum net worth of N5, 000,000,000.00 and a total balance sheet of not less than N125, 000,000,000.00.⁸ There are currently four -PFC's licensed by the National Pension Commission.

Pension Fund Administrators (PFA) - are licensed to manage Pension fund Assets on behalf of pension fund contributors. They are mandated to open Retirement Savings Accounts for employees, invest and manage the pension funds in a manner as the commission may from time to time prescribe. They maintain books of accounts on all transactions relating to the pension funds they administer, provide regular information to the employees or beneficiaries and pay retirement benefits to employees in accordance with the provisions of the Pension Reform Act 2014. The PFA's do not have direct access to the funds. There are 21 PFA's licensed by the National Pension Commission. The arrangement between the PFA's and PFC's has gone a long way in streamlining and strengthening the efficacy of the pension administration in the country.

Pension Transitional Arrangement Directorate (PTAD) - is an agency of the Federal Government under the Ministry of Finance established in August 2013 in compliance with the provisions of Section 42⁹. Section 45 stipulates the functions of PTAD to include: make budgetary estimates for existing pensioners and the officers exempted from this scheme.¹⁰ Prepare and submit the monthly payroll of pensioners to the office of the Accountant-General of the Federation for the direct payment from the budgetary allocation maintained with the Central Bank of Nigeria to pensioners bank accounts. Issue payment instructions to the office of the Accountant-General of the Federation.

Maintain a comprehensive database of pensioners under their respective jurisdiction. ascertain deficits in pension payments, if any, to existing pensioners or the categories of officers exempted under Section 5 (1)(b) of this Act and carry out such other functions aimed at ensuring the welfare of pensioners as the Commission may from time to time direct.

Render monthly returns to the Commission on existing staff, pensioners, deceased pensioners and on any other issue as may be required by the Commission from time to time.

The updated Act has some welcome innovations which are as follows;

- An increase in the contribution rate from fifteen percent (15%) to eighteen percent (18%). A minimum of ten percent (10%) from the employer and eight percent (8%) from the employee respectively.
- Employers with less than 3 employees and self-employed persons are now entitled to participate under the new scheme.
- The establishment of a Pension Protection Fund to serve as a hedge for the funding of minimum pension guarantee.
- Stiffer penalties for the contravention of the Act.
- PFAs are now able to invest the pension funds in foreign investments but within the confines of the PENCOM guidelines.
- Introduction of tax-exempt status for the pension fund invest income.
- The RSA holders are now able to withdraw a maximum of twenty five percent 25% of the pension assets as equity contribution towards payment of a residential mortgage.

There are now newer pension offenses¹¹

5. The National Pension Commission

The National Pension Commission (PENCOM) was established¹² by the Pension Reform Act (PRA) 2004 and later PRA 2014 to ensure effective administration of the Nigerian Pension Industry. It has been empowered by the PRA 2014 to superintend on all pension matters in Nigeria including supervision and regulation of the Contributory Pension Scheme (CPS) and the old Defined Benefits (DB) Scheme as well as the Pension Transitional Arrangement Directorate (PTAD).

The Commission operates under a board of Directors with a Director General as the Chief Executive officer managing the day to day affairs of the Commission. The functions of the Pension Commission are set out in Section 23 of the Act and they include: regulate and supervise the Scheme established under this Act and other pensions schemes in Nigeria; issue guidelines, rules and regulations for the investment and administration of pension funds; approve, license, regulate and supervise pension fund administrators, custodians and other institutions relating to pension matters as the Commission may from time to time, determine; establish standards, benchmarks, guidelines, procedures, rules and regulations for the management of the pension funds under this Act; ensure the maintenance of a national data bank on pension matters; carry out public awareness, enlightenment and education on the establishment, operations and management of the Scheme; promote capacity building and institutional strengthening of Pension Fund Administrators and Pension Fund Custodians; receive, investigate and mitigate complaints of impropriety made against any Pension Fund Administrator, custodian, employer, staff or agent; promote and offer technical assistance in the application of the

⁸ The reason for this very high standard in my opinion is to prevent financial institutions without robust balance sheets from getting licenses to operate, in order to prevent fraud.

⁹ibid

¹⁰ Ibid Section 5 (1) (b) exempts the following categories of persons mentioned in Section 291 of the Constitution of the Federal Republic of Nigeria, 1999 from the Contributory Pension Scheme. They are members of the Armed forces, the intelligence, secret services of the Federation and any employee who is entitled to retirement benefits under any pension scheme existing before the 25th day of June 2001, being the commencement date of the Pension Reform Act 2004 but as at that date had 3 or less years to retire.

¹¹Further dealt with as a sub topic in this article

¹² Ibid Section 17

contributory pension scheme by the States and Local Government Councils in accordance with the objectives of this Act; and perform such other duties which, in the opinion of the Commission are necessary or expedient for the discharge of its function under this Act.

The slogan on the Pension Commission website is *'we ensure benefits are paid as and when due'*^{vi}. This rings true as the Commission will rightly qualify as one of the major breakthroughs of Nigerian's present democratic dispensation. Since the inception of the Pension Reform Act 2004 and the subsequent amendment in 2014 and the establishment of The Pension Reform Commission, there has been an increase in attention by Policy makers especially in the Capital Market. With the Director General at the helm of affairs, the Commission has in a period of just over a decade, built up funds more than 26 billion USD.

It is interesting to note that the strict regulation in the industry by the effective and efficient Pension Commission, Nigeria is an industry leader in Africa, even though Nigeria's Contributory Pension Scheme started just about over a decade ago, about seven million and counting public and private sectors employees have opened Retirement Savings Accounts with the Pension Fund Administrators. With the collaboration between the Economic and Financial Crimes Commission (EFCC) and the Pension Commission, compliances to remittances are improving gradually. For instance, N45 billion or 70 percent of the total expected remittance was remitted to 1,607,361 RSA's in December 2015, while average monthly remittance of pension contributions has moved from N35 billion in 2011 to over N55 billion in 2015. Importantly, under the watchful eyes of PENCOM and its high regulatory drive, pension assets have grown from about N2 trillion deficits at inception to N5.4 trillion in assets today.^{vii} The Commission is known as a stickler to rules and as such would go after erring PFA's.

6. Pension Offences

The Pension Offences in the Act of 2014 is quite similar to that in the Act of 2004 save for the few changes that will be discussed below. Part XIV of the Act 2014 sets out the Offences, Penalties and Enforcement Powers. An offence under the Act shall be tried in a court of competent jurisdiction¹³ which includes the Federal and State High Courts and the High Court of the FCT as well as the National Industrial Court and the prosecution for offences shall be instituted before the court in the name of the Federal Republic of Nigeria. There has been an upward review of penalties in the Act.

In Section 101, a Pension Fund Custodian who contravenes Section 70 of the Act¹⁴, commits an offence and is liable on conviction to a fine of not less than N10, 000,000.00 and each of its director or principal officers is liable to a fine of not less than N5, 000,000.00 or to a term of not less than 5 years imprisonment or both such fine and imprisonment. This was unlike the 3 years imprisonment in the Pension Reform Act of 2004.

Section 99 (4) of the Act also has an upward review of penalty. Here, a Pension Fund Administrator or Pension Fund Custodian that reimburses or pays a staff, officer or director directly or indirectly a fine imposed under this Act commits an offence and is liable on conviction to a fine of not less than N5,000,000.00 and also forfeits the amount repaid or reimbursed to the staff, officer or director.

Section 100 of the Act which deals with the penalties for misappropriation of pension funds has also introduced further penalties in its Section 100 (2) and (3). In addition to a prison term of 10 years and a fine of three times the amount misappropriated¹⁵, a convicted person would refund the amount misappropriated as well as forfeit to the federal government any property, asset or fund with accrued interest or the proceeds of any unlawful activity under the Act in his/her possession, custody or control.^{viii}

The Act introduced a new offence of Attempt in its Section 99 (2), where it provides that any person or body who attempts to commit any offence specified in this Act commits an offence and is liable, on conviction, to the same punishment as is prescribed for the full offence in the Act.

6.1. Pension Scheme Going Forward

It is encouraging to note that the new pension scheme is now on a course and running smoothly, it is no where near perfect but it is making great strides. Pensioners are cashing out. The turnaround time between retirement and actual cashing out is long. The PFA's have to make the transition from salary to pension seamless. It can take up to a year from retirement to start receiving pension, although when they do receive it, it is paid on time.

There is a need to market the pension scheme to small business owners for themselves and their employees. About 8.41 million Nigerians are presently captured in the CPS. This is quite low considering the number of people in the workforce. There is hope as the Pension Commission is planning on introducing the micro pension scheme which intends to cover the informal sector about get as many as 60 million citizens on board thereby increasing the existing N8.45 trillion to an addition N3 trillion.^{ix}

¹³ Section 105 of the Pension Reform Act 2014.

¹⁴ That is, the utilization of Pension Funds to meet its own financial obligation to any person.

¹⁵ Similar to Section 86 of the Pension Reform Act 2004.

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