

OBSTACLES HINDERING EFFECTIVE IMPLEMENTATION OF THE CONTRIBUTORY PENSION SCHEME IN NIGERIA: THE WAY FORWARD

*Z. Adangor**

Abstract

The contributory pension scheme was first introduced in the country in 2004 to address the problems that had bedevilled the operation of the defined benefit scheme, particularly in the public service principal amongst which, were poor funding and endemic corruption. The innovations introduced under the contributory pension scheme included lessening the employer's responsibility for funding the pension scheme by imposing part of that burden on the employee and removing management of the fund contributed under the scheme from the control of government. However, more than a decade after the introduction of the contributory pension scheme, its effective implementation across the federation has continued to be hampered by the same core problem that assured the failure of the defined benefit scheme namely poor funding. It is argued that the provisions of the Pension Reform Act 2014 and the extant State Pension Reform Laws are adequate to guarantee the success of the contributory pension scheme if they are implemented and enforced according to their letters and spirit. Government being the largest employer of labour in the federation must demonstrate greater and sincere commitment to the performance of its financial obligation to contribute toward the

* PhD, BL, ACI Arb; Associate Professor of Law, Rivers State University, Port Harcourt Nigeria; Email: adango.zaccheus@ust.edu.ng; adazaky@yahoo.com.

scheme to the extent prescribed under the Pension Reform Act, 2014 and relevant State Pension Reform Laws.

Introduction

Pension in the public service of the Federation, State and Local Governments is one of the most soured topics in Nigeria's national discourse. It evokes a flurry of feelings amongst most Nigerians including agony, pain, frustration, and sometimes, palpable bitterness. The question always is: How could employees who had spent their productive years serving their country be treated so callously by their employers upon their retirement from service?

Only recently, the Speaker of the House of Representatives, Mr. Yakubu Dogara, accepted blame on behalf of the Federal Government of Nigeria for failing to pay pensioners in the public service of the Federation their retirement benefits as and when due. In his words,

The failure is on all of us, both those of us in the legislature and those in the executive. I will not say the executive alone. All of us failed and we must accept responsibility. I will accept the blame on behalf of the government and apologise to pensioners.¹

Until recently, the Federal Government owed its retirees arrears of accrued rights under the defined benefit scheme from 2013 to 2016, the total value of which was in excess of N286 billion (Two Hundred and Eighty-Six Billion Naira) only.² However, there are

¹ John Ameh, "Federal Government has failed pensioners, says Dogara" *Punch* (March 30, 2017)> <http://punchng.com/fg-has-failed-pensioners-says-dogara/>>accessed May 02, 2017.

² "Why FG delays payment of accrued pension benefits to retirees" *Vanguard* (January 28, 2017)> [http:// www.vanguard.com/2017/01/why-fg-delays-payment-of-accrued-pension-benefits-to-retirees](http://www.vanguard.com/2017/01/why-fg-delays-payment-of-accrued-pension-benefits-to-retirees)>accessed 03 May, 2017; Francis Arinze, 'Pensions' *Daily Trust* (February 24,

indications that the arrears of accrued rights owed federal retirees for the year 2014, 2015 and 2016 had been released to the National Pension Commission (PENCOM) for payment to retirees. It was also announced by the Minister of Finance, Mrs. Kemi Adeosun that the sum of N12.5 billion being outstanding accrued rights for January, February and March 2017 has been settled.³

Although the Rt. Hon. Speaker of the House of Representatives apologised to retirees only on behalf of the Federal Government, which was understandable, the position in the respective States of the federation is no better. Several States are owing retirees in the public service gratuities and other retirement benefits which were earned as accrued rights under the defined benefit scheme.

It is, however, gratifying to note that the Federal Government had recently agreed to release to the thirty-six States of the Federation the sum of N522.74 billion as part of reimbursement of over-deductions on Paris Club, London Club and other multilateral loans from State governments. The refund is to be made in tranches with the first tranche of N153.01 billion already set aside be paid to 14 States including Bayelsa, Plateau, Delta, Lagos, Oyo, Kwara, etc. Each State is to receive a maximum of N14.5 billion in the interim which approximates 25 per cent of the amounts claimed by the States.⁴ According to the Minister for Finance, Mrs. Kemi Adeosun, it was agreed by the governors that 50 per cent of any amount received by each State would be earmarked for payment of

2017)><https://www.pressreader.com/nigeria/daily-trust/20170224/281762744028155>> accessed 03 May, 2017.

³ Press Release, "Nigerian Gov't clears N54billion Pension backlog-Minister" *Premium Times* (April 5, 2017)> <http://www.premiumtimesng.com/business/nigerian-government-clears-n54billion-pension-backlog-minister.html>> accessed 05 May, 2017.

⁴ Sulaimon Olanrewaju, "Unpaid Salaries/Pensions: Buhari approves N523 billion for states, 14 states to get N153 billion next week" *Nigerian Tribune* (December 3, 2016)< <http://tribuneonline.com/unpaid-salaries-pensions-buhari-approves-N523-billion-for-states-14-states-to-get-N153billion-next-week>< accessed 04 May 2017

salaries and pensions to workers and pensioners in the public service of the State.⁵ Although the impact of the refund on the payment of arrears of pension benefits is yet to be felt across the federation, it is expected that the pitiable conditions of pensioners would be alleviated through judicious use of the refund by State governments.

The contributory pension scheme (CPS) was introduced following the pension reforms embarked upon by the administration of former President Olusegun Obasanjo. It was designed to guarantee the payment of pensions and other retirement benefits to retirees as and when due and to lessen the burden of government and other employers of labour in terms of funding pension scheme by making contributions towards the scheme the joint responsibility of the employers and employees.

However, the implementation of the contributory pension scheme across States of the Federation has been hampered not only by the failure of State governments to pay their monthly contributions and remit same to the Pension Fund Custodian but also by the lack of support for the scheme by the employees themselves.

This paper examines the obstacles hindering effective implementation of the contributory pension scheme in Nigeria and proffers solutions with a viewing to surmounting them. It is argued that the existing provisions in the Pension Reform Act 2014 and the extant State Pension Reform Laws are adequate to secure the success of the contributory pension scheme but that what is needed is the sincere commitment of the Federal and State governments to obey and enforce their provisions. It is further argued that the flexibility of the contributory pension scheme makes it amenable to

⁵ (Saxone Akhaine, Mathias Okwe, Collins Olayinka and others, “Government gives fresh conditions for release of Paris Club funds” *The Guardian* (March 21, 2017)><http://guardian.ng/news/govt-gives-fresh-conditions-for-release-of-paris-club-funds>>accessed 04 May 2017)

meet the individual needs of pensioners if the scheme is properly funded.

The paper is divided into five sections. The introductory section captures the background to the research particularly the agony and frustration that are now inextricably associated with pension schemes in Nigeria. The second section examines the issue of legislative competence over pension matters and the role assigned to State governments under the Constitution of the Federal Republic of Nigeria 1999 (as amended) with respect to pensions, gratuities and other benefits payable out of the consolidated revenue fund of the States. The third section of the paper traces the historical development of pension schemes in Nigeria from the defined benefit scheme based on the Pay-As You-Go system to the contributory pension scheme. The section also discusses the main features of the contributory pension scheme. The myriads of factors hampering implementation of the contributory pension scheme and solutions thereto are discussed in the fourth section, while the concluding remarks are contained in the final section.

Legislative Competence over Pension Matters

A basic feature of our federal system is that the Constitution of the Federal Republic of Nigeria (1999 as amended) delineates the sphere of influence of each level of government in order to ensure that one level of government does not encroach into the sphere assigned to the other under the Constitution.⁶ Autonomy of levels of government in a federation is thus defined by reference to the sphere of influence assigned to each level of government which is protected against encroachment by another level of government. In order to ensure smooth division or delineation of governmental power between the federal and state governments, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter

⁶ See *A-G., Lagos State v. A-G., Federation* [2003] 12 NWLR (Pt. 833) 1, 195-197, *A-G., Abia State v. A-G., Federation* [2006] 16 NWLR (Pt. 1005) 265, 390-391. *A-G., Federation v. A-G., Lagos State* [2013] 16 NWLR (Pt. 1380) 249 @ 327 368.

simply referred to as “1999 Constitution”) employs two legislative lists, namely (i) the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution, which contains matters reserved only to the National Assembly and (ii) the Concurrent Legislative List set out in the First Column of Part II of the Second Schedule to the Constitution, contains matters over which the National Assembly and the Houses of Assembly of States of the Federation may legislate to the extent defined under the Constitution.⁷ Any matter not contained in either the Exclusive Legislative List or the Concurrent Legislative List is treated as a residual matter and falls within the exclusive legislative competence of the Houses of Assembly of the States of the federation.⁸

The exclusivity of the items contained in the Exclusive Legislative List to the National Assembly has been well emphasised by I. T. Muhammad, JSC in his concurring judgment in *A-G., Federation v. A-G., Lagos State*:⁹

The exclusivity referred to in the Exclusive Legislative List, although not comprehensively defined, may, perhaps, refer to a point where the enactment in question is capable of excluding all others, shutting out other considerations, not shared by or divided between others. . . Therefore, apart from the National Assembly, no other legislative assembly whether of state or local government (if any) can legally and effectively legislate on any matter listed under the exclusive legislative list.

⁷ Section 4(2) and 4(4)(a) of the 1999 Constitution.

⁸ *A-G, Federation v. A-G, Lagos State* (n6) 304-305, 343-344; *Edet v. Chagoon* [2008] 2 NWLR (Pt. 1070) 85 @ 103.

⁹ *A-G, Federation v. A-G, Lagos State* (n6) 344; See also *Oyeniran v. Egbetola* [1997] 5 NWLR (Pt. 504) 322 “131.

It is submitted that in ascertaining the exclusivity of a legislative item or matter in the Exclusive Legislative List, care must be taken to examine the precise words used by the Framers of the Constitution in assigning the matter to the National Assembly. This will enable the court to determine whether or not the entire subject-matter is placed within exclusive federal competence or merely an aspect of that subject-matter that concerns or appertains to the federal government.

In this regard, Item No. 44 of the Exclusive Legislative List, Part I of the Second Schedule to the 1999 Constitution deals with pensions and other retirement benefits. It vests the National Assembly with legislative competence over “Pensions, gratuities and other-like benefits payable out of the Consolidated Revenue Fund or any other public funds of the Federation.”

Having regard to the fact that the 1999 Constitution establishes both the Consolidated Revenue Fund and Public Fund of the Federation and the Consolidated Revenue Fund and Public Fund of the States of the federation, it is very arguable that the legislative competence of the National Assembly over pensions, gratuities and other like-benefits is limited only to pensions, gratuities and other retirement benefits payable to employees in the public service of the federation from the Consolidated Revenue Fund or other public funds of the Federation.¹⁰

Therefore, the National Assembly has no legislative competence to enact any law on pensions, gratuities and other-like benefits payable out of the Consolidated Revenue Fund or any other public funds of the State of the Federation established under Section 120 (1) of the 1999 Constitution. It is submitted that payment of pensions, gratuities and other retirement or death benefits to employees in the public service of the State of the Federation from the Consolidated Revenue Fund or any other public of the State falls under the residual legislative powers of the Houses of

¹⁰ See Sections 80 (1) and 120 (1) of the 1999 Constitution.

Assembly of the States of the Federation. Accordingly, any legislation enacted by the National Assembly on pension, gratuities and other-like benefits payable out of the Consolidated Revenue Fund of the Federation cannot operate nationally but rather, will be limited in its application to only employees in the public service of the Federation and the Federal Capital Territory.

The foregoing submissions are supported by the decision of the apex court in *Abdullahi v. Military Administrator, Kaduna State*¹¹ where the apex court held that it is the State Pension Law rather than the Federal Pension Act that applies to employees in the Public Service of the State of the Federation.

However, attention must also be drawn to a contrary decision by the Court of Appeal, (Port Harcourt Division) in *Edebor v. Elf Petroleum Nigeria Ltd.*,¹² where it held, relying on Item 44 of Exclusive Legislative List, Part I of the Second Schedule to the 1999 Constitution, that pensions, gratuities and any other like-benefits payable out of the Consolidated Revenue Fund or any other Public Funds of the Federation “are within the exclusive legislative list which can only be legislated upon by the National Assembly.” With deepest respect to the learned Justices of the Court of Appeal, the above quoted portion of the judgment cannot be supported in law. As already pointed out, only pensions, gratuities and other-like benefits payable to employees in the public service of the Federation out of the Consolidated Revenue Fund of the Federation or any other Public Funds of the Federation fall within the legislative competence of the National Assembly. The applicable law in relation to pension, gratuities and any other-like benefits payable to employees in the public service of the State of the Federation out of the Consolidated Revenue Fund of the State or any other Public Funds of the State is the State Law on Pension.¹³

¹¹ [2009] 15 NWLR (Pt. 1165) 417 @ 434, 440-441.

¹² (2001) LPELR – 4878 (CA) 1 @ 15.

¹³ See *Abdullahi v. Military Administrator, Kaduna State* (n11) 434, 440 - 441.

Unarguably, it is in exercise of the residual legislative powers under the 1999 Constitution that virtually every State of the Federation has enacted its own Pension Law to regulate payment of pensions, gratuities and other retirement benefits to employees in its public service.¹⁴ The Pension Act 2014 itself recognises the existence of State Laws on pension in its section 119 which provides that where “any other enactment or law relating to pensions is inconsistent with the Act, this Act shall prevail.”

Historical Development of Pension Schemes in Nigeria

Pension is a post-retirement payment made to an ex-employee by his ex-employer as a reward for past services rendered to the employer. It may be funded either solely by the employer or jointly by both the employer and the employee. Pension may consist of lump payment coupled with payment of monthly instalments. The primary goal of any pension scheme is to provide income to the employee and his dependants after his retirement from service.¹⁵

Nigeria has had a long and chequered history of pension schemes operated by different levels of government. Prior to the 1914 amalgamation of the Protectorate of Northern Nigeria and the Colony and Protectorate of Southern Nigeria, these two blocks of what later became Nigeria, had operated separate and distinct pension schemes.¹⁶

¹⁴ See Rivers State Pension Reform Law, 2009; Lagos State Pension Reform Law, 2007;

¹⁵ Eme Okechukwu and Sam Chijioke, “The Laws and Administration of Retirement in Nigeria: A Historical Approach” (2011) 1 (2) Kuwait Chapter of Arabian Journal of Business and Management Review 1, 4; Chizueze C. Ikeji, U. W. Nwosu and Agba A. M. Ogaboh, “Contributory Pension Scheme, Workers Commitment, Retention and Attitude towards Retirement in the Nigerian Civil Service” (2011) 11 Global Journal of Management and Business Research 51, 52.

¹⁶ See Pension Proclamation (No. 14) of 1901 (Northern Nigeria) and Pension Ordinance (No. 4) of 1902 (Southern Nigeria). See also Ade Akinbosade, “Management of Pension Funds through Effective Records keeping” Being Text of a Paper Presented at the 6th Conference of Chairmen, Commissioners, Permanent Secretaries, Heads of Pension Administration and Management

The first national legislation on pension in Nigeria was the Pension Ordinance 1951 which was introduced by the British Colonial Administration but was deemed to have come into effect in 1946. The Ordinance empowered the Governor-General with the approval of the Secretary of State for Colonial Affairs to grant pensions and other benefits in accordance with the regulations made thereunder. Although an employee could only qualify for pension if he had been in continuous employment or service for a period of not less than 10 years, it is clear from Section 6(1) of the Ordinance that pension was at the absolute discretion of the government and could be withheld or withdrawn in appropriate cases.

The Pension Ordinance 1951 was published, after several amendments, in the 1958 edition of the Laws of the Federation of Nigeria and Lagos as the Pension Act.¹⁷ The Regional governments also enacted their respective Pension Laws which applied within the regions although the provisions of these laws were identical with those of the Pension Act.

The resolve of the Federal Military Government to standardise pension schemes in Nigeria informed the promulgation of the Pensions Decree 1979¹⁸ which following the return to democratic rule, became the Pension Act, 1979.¹⁹ Although the Pensions Act was enacted in 1979, its application was made retrospective to 1st April, 1974. According to its long title, it was an Act to “consolidate all enactments dealing with pensions, war pensions and disability benefits and gratuities for civilian employees in the

Staff in Pension Boards, Bureaus/Offices and Commissions in States, Local Governments and Interested Agencies held at The Administrative Staff College of Nigeria, Topo-Badagry, 10th – 12th April, 2017, 31 at 35; Edogbanya, Adejoh, “An Assessment of the Impact of Contributory Pension Scheme to Nigerian Economic Development” (2013) 10 (2) Global Journal of Management and Business Research 47, 49 – 50.

¹⁷ Cap 147 Laws of the Federation of Nigeria and Lagos 1958.

¹⁸ No. 102 of 1979.

¹⁹ Cap 346 Laws of the Federation of Nigeria, 1990.

public service of the Federation.” Consistent with its declared principles to consolidate all enactments on pensions, the Act repealed all pre-existing federal legislation on pensions.²⁰

Whilst the Pension Act 1979 regulated pension scheme in the public sector, the National Provident Fund Act, 1961 was enacted to regulate pension scheme in the private sector. The Act was followed by the Nigerian Social Insurance Trust Fund Act 1993 which made provisions for enhanced pension scheme for employees in the private sector.

The pension scheme established under the Pension Act 1979 was the defined benefit scheme (Pay-As-You-Go) which was characterised by the payment of a pre-determined sum of money as gratuity and monthly pension to the employee. The basic feature of this scheme was that it was funded solely by the employer both in the public and private sectors.²¹ Thus, under the defined benefit scheme, payment of gratuities and pensions to pensioners was entirely the responsibility of the employer as the employee was not required to make any contribution toward the scheme.

In relation to employees in the public service of the federal and state governments, implementation of the defined benefit scheme was characterised by uncertainties associated with budgetary allocations, poor funding, civil service bureaucracy, inefficiency and endemic corruption.²² The result was the perennial failure of governments to meet their pension liabilities which by 2010 were estimated at over N2 trillion.²³ Beside the limited coverage of the defined benefit scheme which stood at 1.3% for both public and

²⁰ See 25(2) and the Third Schedule to the Act.

²¹ Apart from the Pensions Act, 1979, there were other Pension legislation dealing with specific categories of employees including the Armed Forces Pensions Act (No. 103) 1979, Pension Rights of Judges Act (No. 5) 1985, the Police and other Agencies Pensions Scheme Act (No. 75) 1993; See Amos Olusola Ikotun, *Contemporary Issues in Contributory Pension Scheme in Nigeria* (His Covenant Publication, Lagos 2012) 10 – 12.

²² Okechukwu and Chijioke (n15) 1.

private sectors as at 1990, most of the over “300 parastatals scheme were bankrupt.”²⁴

With respect to the private sector, most workers were not covered by any form of retirement scheme and in few organisations where one form of retirement benefit scheme or the other existed, the schemes were largely unregulated thus leaving employees at the mercy of their employers.²⁵

Introduction of the Contributory Pension Scheme

It was with a view to addressing the intractable problems associated with the defined benefit scheme that the former President Olusegun Obasanjo’s administration embarked on far-reaching reforms in the pension sector in the country which culminated in the enactment of the Pension Reform Act, 2004 which took effect on 25th June, 2004.²⁶ However, barely ten years after its coming into force, the Pension Reform Act, 2004 was repealed and replaced by the Pension Reform Act, 2014.²⁷ According to its long title, it is an Act designed to make “provision for the uniform contributory pension scheme for public and private sectors in Nigeria and for related matters.”

The Pension Reform Act 2014 establishes for any employment in the Federal Republic of Nigeria, a Contributory Pension Scheme for payment of retirement benefits of employees to whom the scheme applies.²⁸

Section 1 sets out the objectives of the Act which are to:

²³ World Bank, “The Nigerian Pension System” (World Bank Core Course on Pension, November 2010) 4> available @ www.pencom.gov.ng>accessed 11th May, 2017.

²⁴ World Bank (n23) 4.

²⁵ World Bank (n23) 4

²⁶ Act No. 2 of 2004

²⁷ Act No. 4 of 2014.

²⁸ Section 3(1) of the Act.

- i) 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 Federal Capital Territory, the Public Service of the State Governments, the Public Service of the Local Government Councils and the Private Sector;
- ii) make provision for the smooth operations of the contributory pension scheme;
- iii) 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
- iv) assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age.

Section 2 makes the provisions of the Act applicable 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. In the case of the private sector, the scheme shall apply to employees who are in the employment of an organization in which there are 15 or more employees.²⁹ However, employees in organizations with less than three employees as well as self-employed persons shall be entitled to participate under the scheme in accordance with the guidelines issued by the National Pension Commission established under Section 17 of the Act.³⁰

It is clear from a community reading of section 2(1), (2) and (3) of the Pension Reform Act 2014 that subscription to the contributory pension scheme established under section 3 of the Act falls into two classes, namely:-

²⁹ Section 2(2) of the Act.

³⁰ See Section 2(3) of the Act.

- i) Compulsory subscription which applies to all employees in the public service of the Federation, public service of the Federal Capital Territory, public service of the States, public service of the Local Governments and employees in the private sector who are employed in organizations in which there are 15 or more employees.³¹
- ii) Voluntary subscription which applies to employees in the private sector who are employed in organizations with less than 15 employees including self-employed persons.

However, Section 5 of the Act provides for exemption from the contributory pension scheme. Three categories of persons are exempted from the scheme. First, section 5(1) (a) of the Act exempts members of the Armed Forces, the Intelligence and Secret Services of the Federation.³²

Secondly, Judicial Officers are also exempted from the scheme.³³ Judicial Officers as defined under section 318 of the 1999 Constitution means the Chief Justice of Nigeria; Justices of the Supreme Court; President and Justices of the Court of Appeal; Chief Judge and Judges of the Federal High Court; Chief Judge and Judges of the High Court of the Federal Capital Territory, Abuja; Chief Judge and Judges of the High Court of a State of the Federation; Grand Kadi and Kadi of the Sharia Court of Appeal of the Federal Capital Territory; President and Judges of the

³¹ Under Section 1(2) of the Rivers State Pension Reform Law, 2009 the Scheme shall apply to all pensionable employees in the public service of the State, Local Government Councils, Territory Institutions and all Parastatals established by the State Government, excluding political office holders and political appointees; see also section 1(2) of the Lagos State Pension Reform Law, 2007.

³² Given the definition of Armed Forces under Section 217 of the 1999 Constitution as consisting of the Army, Navy and Air Force, the section effectively exempts members of these forces from the Contributory Pension Scheme; see also Section 1 of the Armed Forces, Cap. A20 LFN 2004.

³³ Section 5(1) (a) of the Act and Section 291 of the 1999 Constitution (as amended).

Customary Court of Appeal of the Federal Capital Territory; Grand Kadi and Kadi of the Sharia Court of Appeal of a State; and President and Judges of the Customary Court of Appeal of a State.

Thirdly, any employee who is entitled to retirement benefits under any pension scheme existing before the 25th day of June, 2004, being the commencement of the Pension Reform Act, 2004, but as at that date had 3 or less years to retire.³⁴ Employees exempted under Section 5 (1) (b) of the Pension Reform Act, 2014 or under Section 12(1) of the Rivers State Pension Reform Law, 2009 (as amended) shall continue to derive benefit under existing pension scheme in accordance with the Pay-As-You-Go system provided for in the Second Schedule to the Act or under the provisions of other enabling laws. It is expected that the last batch of employees in the Public Service of the Federation or the Federal Capital Territory, Abuja to have benefited from the exemption would have retired on or about 26th day of June, 2007, whilst in Rivers State, the last batch of employees to have enjoyed the exemption would have retired in 2012.

Features of the Contributory Pension Scheme

As noted earlier, the contributory pension scheme differs from the defined benefit scheme in several ways. First, unlike the defined benefit scheme, where the pension and other retirement benefits payable to an employee are fixed and determinable at the point of retirement based on the formula provided in the Schedule to the Act or other applicable Laws, the retirement benefits payable under the contributory pension scheme are not fixed, but rather depend on the level of contributions made by the employer and employee toward the scheme and the returns on investment made by the Pension Fund Administrator.

³⁴ See Section 5(1) (b) of the Act; Section 12 (1) of the Rivers State Pension Reform Law, 2009 as amended by Section 3 of the Rivers State Contributory Pension Scheme for Employees in the Public Service (Amendment) Law, 2012 which also prescribes 3 years exit window for employees; see also Section 13 of the Lagos State Pension Reform Law, 2007

Secondly, contribution to the scheme is the joint responsibility of the employer and employee unlike the position under the defined benefit scheme where the employer funds payment of gratuities and monthly payment solely. Section 4(1) of the Pension Reform Act 2014 prescribes that the rate of contribution based on the monthly emolument of the employee shall be a minimum of 10 (ten) per cent by the employer and a minimum of 8 (eight) per cent by the employee.³⁵ The rates of contributions prescribed under State Pension Laws, however, are lower than the rate prescribed in the Pension Reform Act. For instance, under section 13 of the Rivers State Pension Reform Law, 2009 (as amended) the rate of contribution is a minimum of 7.5% (per cent) for the employer and a minimum of 7.5% (per cent) for the employee.³⁶

The rates of contribution prescribed in the Act may, upon agreement between any employer and employee, be revised upwards, from time to time provided that the National Pension Commission is notified of such revision.³⁷ The Act also makes provision permitting the employer to pay additional benefits to the employee upon retirement as well as permitting the employer to elect to bear the full responsibility for funding the scheme provided that in such a case, the employer's contribution shall not be less than 20 per cent of the monthly emoluments of the employee.³⁸ Furthermore, an employee may, in addition to the total contributions being made by him and his employer, make voluntary contributions to his retirement savings account and the rate of contribution, may upon agreement between an employer and an

³⁵ Monthly Emolument is defined under 120 of the Act to mean a total sum of basic salary, housing allowance and transport allowance.

³⁶ See also 14 (1) of the Lagos State Pension Reform Law.

³⁷ See 4(2) of the Act.

³⁸ See Section 4(4) (a) & (b) of the Act; Section 13(2) of the Rivers State Pension Reform Law, 2009; Section 14(2) of the Lagos State Pension Reform Law, 2007.

employee, be revised upwards from time to time and the National Pension Commission shall be notified of such revision.³⁹

Thirdly, in addition to the contribution required of the employer under section 4 (1) of the Act, every employer shall maintain a Group Life Insurance Policy in favour of each employee for a minimum of three times the annual total emolument of the employee and premium shall be paid not later than the date of commencement of the cover.⁴⁰

Fourthly, the contributions required to be made by the employer and the employee under Section 4(1) of the Act shall be paid on monthly basis into the Retirement Savings Account (RSA) of each employee opened in the name of the employee with any Pension Fund Administrator of his choice.⁴¹ The employer is mandated to deduct at source the monthly contribution of the employee and not later than 7 working days from the day the employee is paid his salary, remit an amount comprising both the employee's and employer's contributions to the Pension Fund Custodian specified by the Pension Fund Administrator for the employee.⁴² Upon receipt of the contributions remitted in accordance with Section 11(3) of the Act, the Pension Fund Custodian shall notify the Pension Fund Administrator who shall cause to be credited the retirement savings account of the employee for whom the employer had made the payment.⁴³ Where an employee fails to open a

³⁹ See Section 4(3) of the Act; Section 15(1) & (2) of the Rivers State Pension Reform Law, 2009; Section 16(1) & (2) of the Lagos State Pension Reform Law 2007.

⁴⁰ S. 4(5) of the Act; S. 14 of the Rivers State Pension Reform Law; S. 15 of the Lagos State Pension Reform Law, 2007.

⁴¹ Section 11(1) of the Act; S. 17 (1) of the Rivers State Pension Reform Act, 2009; S. 18(1) of the Lagos State Pension Reform Law, 2007.

⁴² Section 11(3) (a) (b) of the Act, compare Section 17(5) (b) of the Rivers State Pension Reform Act which prescribes a period of 10 working days for remittance of the contributions to the Pension Fund Custodian specified by the Pension Fund Administrator on behalf of the employee.

⁴³ S. 11(4) of the Act; S. 17(6) of the Rivers State Pension Reform Law, 2009.

Retirement Savings Account within a period of six months after assumption of duty, his employer shall, subject to guidelines issued by the Commission request a Pension Fund Administrator to open a nominal Retirement Saving Accounts for such employee for the remittance of his pension contributions.⁴⁴

Fifthly, the monthly contributions made by the employer and employee into the Retirement Saving Account of the employee is removed completely from the custody, control and management of the employer because the fund in each employee's Retirement Savings Account is managed by the Pension Funds Administrator and the Pension Fund Custodian. Thus, a remarkable feature of the contributory pension scheme is that pension funds contributed under the scheme are managed privately by Pension Funds Administrators and held by Pension Funds Custodians duly licenced approved by the National Pension Commission and registered by the Pension Boards/Bureaus or Commissions established by the respective States of the Federation.⁴⁵

To be sure while the Pension Funds Administrator shall open retirement savings account for all employees with a personal identity number (PIN) attached, invest and manage pension fund's assets in accordance with the provisions of the Act and provide books of account on all transactions relating to pension funds managed by it, the Pension Funds Custodian shall hold pension funds and assets in safe custody on trust for the employee and beneficiaries of the retirement savings account and on behalf of the Pension Fund Administrator, settle transactions and undertake activities relating to the administration of pension fund investments including the collection of dividends, bonus, rental income, commission and related matters.⁴⁶

⁴⁴ Section 11(5) of the Act.

⁴⁵ See Sections 54, 55, and 65 of the Act.)

⁴⁶ See Sections 55 and 57 of the Act; Sections 45, 46 and 48 of the Rivers State Pension Reform Law, 2009.

In order to secure and protect the interest of retirement savings account holders, Section 85 (1) of the Pension Reform Act prescribes that pension fund shall be invested by the Pension Fund Administrators with the objectives of safety and maintenance of fair returns on amount invested. Under Section 85(2) of the Act, pension funds and assets shall only be invested in accordance with regulations and guidelines issued by the National Pension Commission from time to time. Section 86 of the Act provides for the modes of investment of pension funds which shall include bonds, bills and other securities issued or guaranteed by the Federal Government, the Central Bank of Nigeria, State Governments and Local Governments; bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities and listed on a stock exchange registered under the Investment and Securities Act, ordinary shares of Public Limited Companies listed on a securities exchange registered under the Investments and Securities Act; bank deposits and bank securities, real estate development investment and specialist investment funds and other financial instruments as the Commission may from time to time approve.⁴⁷

Thus, it is obvious from the provisions of the Act that pension funds and assets are secured and guaranteed. In this regard, several provisions relating to the safety of pension funds and assets can be identified. Under Section 70 (2) of the Act, no Pension Funds Custodian shall utilize any pension fund or assets in its custody to meet its own financial obligations to any person whatsoever. Similarly, a Pension Fund Administrator or Pension Fund Custodian shall not divert or convert pension funds and assets as well as any income or brokerage, or commission arising from the investment of pension fund or asset or by any other means.⁴⁸

⁴⁷ PENCOM has issued several regulations and guidelines including Regulations on Valuation of Pension Fund Assets (Dec7, 2006; Regulations for the Administration of Retirement and Terminal Benefits; Regulations for Auditing Pension Funds (April, 2009).

⁴⁸ See Section 77(4) of the Act.

Section 88 of the Act prohibits a Pension Fund Administrator from investing pension fund or assets in shares or other securities issued by the Pension Fund Administrator or its Pension Fund Custodian or a shareholder of the Pension Fund Administrator or its Pension Fund Custodian.

Further security is provided under Section 89(1) of the Act which prohibits a Pension Fund Administrator from selling pension fund assets to itself, or any shareholder, director, affiliate, subsidiary, associate, related party or company of the Pension Fund Administrator, or any employee of the Pension Fund Administrator, or spouse or affiliates of any shareholder of the Pension Fund Administrator. Section 116 (1) of the Act exempts pension funds from liquidation process or garnishee proceedings. By virtue of the said provision, no pension funds or assets kept with a Pension Fund Custodian under the Act shall be used to meet the claims of any of the Pension Fund Custodian's creditors in the event of liquidation of the Pension Fund Custodian and neither shall the pension life annuity funds and assets in the custody of any Insurance Company be seized or be subject of any execution of judgment debt or be used to meet the claims of any of their creditors in the event of winding up, liquidation or otherwise cessation of business of the insurance company in all cases.

In order to give effect to the provisions of the Act, particularly those relating to the safety of pension funds and assets, Part XIV of the Act creates offences, penalties and enforcement powers. Under section 90(1) of the Act, a person who contravenes any of the provisions of the Act commits an offence and where no penalty is prescribed, shall be liable on conviction to a fine of not less than N250, 000.00 or to term of not than one year imprisonment or to both fine and imprisonment. Offences relating to diversion, misappropriation and conversion of pension fund and assets are created in sections 100 and 101 of the Act.

Three major points clearly emerge from the foregoing discourse. First, is the freedom of choice which the employee is guaranteed under the Pension Reform Act, 2014. The choice of Pension Fund Administrator is entirely that of the employee and he reserves the right to transfer his retirement saving account from one Pension Fund Administrator to another not more than once in a year.⁴⁹

Secondly, once an employee who has contributed to the scheme retires, his pension and other retirement benefits become payable no longer directly by his employer but by his Pension Fund Administrator. In relation to employees in the public service, this implies that the payment of a retiree's retirement benefits is removed and insulated from the uncertainties associated with budgetary appropriation and allocation and the bureaucracy of the public service. Payment of retirement benefits is handled professionally and efficiently by the Pension Fund Administrator and Pension Fund Custodians in accordance with regulations and guidelines issued by PENCOM without any interference by the employer.

Thirdly, the operation of the entire Contributory Pension Scheme is closely regulated and supervised by the National Pension Commission and the State Pension Boards/Bureaus. The principal objects of the National Pension Commission shall be to enforce and administer the provisions of the Act, co-ordinate and enforce all other laws on pension and retirement benefits, and regulate, supervise and ensure the effective administration of pension matters and retirement benefits in Nigeria.⁵⁰ In furtherance of its supervisory and regulatory powers, the Commission is empowered to 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 funds under the Act, and establish

⁴⁹ Section 13 of the Act.

⁵⁰ See 18 of the Act, Section 22 of the Rivers State Pension Reform Law, 2009.

standards, benchmarks, guidelines, procedures, rules and regulations for the management of pension fund under the Act.⁵¹

Finally, given the contractual relationship between the holder of a Retirement Savings Account and the Pension Fund Administrator, it is open to the retiree to agree, subject to the provisions of the Pension Reform Act or any applicable State Laws, with the Pension Fund Administrator on how the balance in his RSA should be disbursed. Thus, under Section 7(1) of the Act, a holder of a Retirement Savings Account shall upon retirement or attaining the age of 50 years, whichever is later, utilize the amount credited to his retirement savings account in the following ways:

- (a) Withdrawal of a lump sum from the total amount credited to his retirement savings account provided that the amount left after the lump sum withdrawal shall be sufficient to procure a programmed fund withdrawals or annuity for life in accordance with extant guidelines issued by the Commission from time to time;
- (b) Programmed monthly or quarterly withdrawals calculated on the basis of an expected life span;
- (c) Annuity for life purchased from a Life Insurance Company licenced by the National Insurance Commission with monthly or quarterly payments in line with guidelines jointly issued by the Commission and National Insurance Commission.⁵²

Sub-section (2) of section 7 of the Act provides that where an employee retires, disengages or is disengaged from employment in accordance with section 16(2) and (5) of the Act, the employee may with the approval of the Commission, withdrawal an amount of money not exceeding 25 per cent of the amount credited to his retirement savings account, provided that such withdrawals shall only be made after four months of such retirement or cessation of

⁵¹ See also Section 27 of the Rivers State Pension Reform Law, 2009.

⁵² See also Section 7 of Rivers State Pension Reform Law, 2009.

employment and the employee does not secure another employment.⁵³

Clearly, therefore, the contributory pension scheme as structured in the Pension Reform Act, 2014 and other extant State Pension Laws guarantees the retiree considerable flexibility which allows him the option of deciding whether or not to opt for lump sum payment together with programmed monthly or quarterly withdrawals or only programmed monthly or quarterly withdrawals as his circumstances may dictate.

Challenges Facing the Contributory Pension Scheme

There are several challenges militating against effective implementation of the Contributory Pension Scheme in Nigeria which are briefly discussed below.

i) Negative Attitude of employees toward the Scheme:

There is a general apathy or resentment toward the scheme by employees. This may have stemmed from the financial obligation which the scheme imposes on the employees to contribute toward the scheme jointly with their employers in the ratio prescribed under the Pension Reform Act or other applicable State Laws. When it is recalled that the employers bear the entire financial responsibility of funding the defined benefit scheme, the resentment of employees toward the contributory pension scheme can be better appreciated. From the employee's perspective, the contributory pension scheme depletes the amount available to him as monthly salary since a specified proportion thereof is deducted at source from his basic, housing and transport allowances. Given the hard economic times and the paltry take home pay of most workers especially those in the public service, the deductions from their monthly emoluments constitute a huge drain on their purse. Thus, employees question the morality of making them to contribute to the scheme since the received knowledge is

⁵³ See also section 7(2) of the Rivers State Pension Reform Law 2009.

that the provision of pension for employees is the sole responsibility of employers at least to compensate the former for their years of meritorious service.

The result of the above negative perception is that across the federation, several employees who could not benefit from the exemption provided for under the Pension Reform Act, 2014 and extant State Pension Laws opted for voluntary retirement under the defined benefit scheme before the coming into operation of the contributory pension scheme. It is also arguable that opposition against the scheme by employees is responsible for the slow pace of adoption and implementation of the scheme in several States. This may also account for the lack of credibility which the scheme enjoys amongst workers in the public service across the federation.

ii) **Governments' Ambivalent Attitude toward the Scheme**

From the point of view of government, there is no doubt that the contributory pension scheme is attractive and preferable to the defined benefit scheme not least because it reduces its financial obligation to fund pension since that responsibility is now shared with employees. However, there are potential areas of friction between State governments and the National Pension Commission. As earlier noted, the funds contributed to the scheme by employers and employees are not managed by governments, but rather by Pension Fund Administrators and Pension Fund Custodians who are not directly responsible or answerable to the State governments. The Pension Fund Administrators and Pension Fund Custodians are answerable directly to the National Pension Commission, which itself, is an agency of the federal government and therefore, not liable to the regulatory authority of the State or Local governments.

To put it differently, although States and Local governments make contributions to the scheme for the benefit of their

employees, the control and management of the funds contributed by these two tiers of government are placed under the charge of private organizations licenced and approved by PENCOT which is a federal agency. Whilst individual State Pension Boards/Bureaus may possess the right to register Pension Fund Administrators and Pension Fund Custodians to manage pension funds for their employees, the choice of Pension Fund Administrators and Pension Fund Custodians is limited and circumscribed by the list of Pension Fund Administrators and Pension Fund Custodians already licenced and approved by PENCOT. Thus, State Pension Boards/Commissions/ Bureaus cannot register Pension Fund Administrators and Pension Fund Custodians not licenced and approved by PENCOT.

Given, therefore, that Pension Fund Administrators and Pension Fund Custodians are licenced and approved by PENCOT, rather than by State Pension Boards/Bureaus/Commissions, there is a natural tendency by these corporate entities to ensure that they comply with the directives of PENCOT, rather than those issued by the State Pension Boards/Bureaus/Commissions.

One area where this friction is noticeable, is the resolve by many State governments to exercise a right of lien over the balance in the employee's retirement saving account for the purpose of utilizing that amount to off-set the employee's indebtedness to government. For instance, under section 7(3) of the Rivers State Pension Reform Law 2009, an employee who has retired or who has been dismissed from service shall obtain and present a certificate of clearance from his last place of employment before the Pension Fund Administrator gives such employee access to government's contributions and interest accruals in his retirements saving account. However, a certificate of clearance shall not be issued to any employee where:

- (a) The employee is indebted to the employer in cash or kind in which case, the total amount of debt outstanding or value of employer's property unduly withheld by the employee shall be deducted from the employee's account and paid over to the employer; or
- (b) The employee's dismissal from service is in consequence of disciplinary proceedings brought against the employee, in which case, he shall not be entitled to that part of his pension which was contributed by the employer.

PENCOM, however, has objected to the exercise of any right of lien or the use of certificate of clearance by employers to clog access to RSAs by the employees arguing that under the Contributory Pension Scheme, RSAs are individual accounts and access to them is the exclusive right of the account holder. PENCOM has also argued that under the Contributory Pension Scheme, retirement benefits which consist of the credit balance in an employee's RSA is earned, paid and remitted on a monthly basis and that since the employer's contribution covers the period for which the employee was in service, it would be illegal and unfair to withhold the employer's contributions in the event of dismissal from service at a later date.

The divergent positions taken by PENCOM and the State governments and the refusal of Pension Fund Administrators to pay back to the State coffers money claimed to be due and owing the States from the RSAs of dismissed employees have pitched the Pension Fund Administrators against States. This palpable loss of control by State Pension Agencies over the activities of Pension Fund Administrators has in no small measure eroded the confidence of State Pension Agencies in the scheme.

iii) **Problems of poor funding and non-enforceability of extant Pension Laws.**

Perhaps the greatest challenge facing the contributory pension scheme in the public sector is poor funding arising partly from the dwindling resources at the disposal of government and partly from the lack of commitment to comply with and enforce provisions of extant Laws on pension. By Section 11(3) (b) of the Pension Reform Act, 2014, the employer shall not later than 7 working days from the day the employee is paid his salary, remit an amount comprising the employee’s contribution to the Pension Fund Custodian specified by the Pension Fund Administrator for the employee.⁵⁴

Clearly, the statutory obligation placed on the employer under the Act is twofold: first, the employer is required to deduct at source the employee’s contribution from his monthly emolument and remit same to the Pension Fund Custodian specified by the Pension Fund Administrator within 7 working days from the day the employee is paid his salary. To be sure, it is not enough for the employer to deduct the employee’s contribution at source; same must also be remitted to the Pension Fund Custodian specified by the Pension Fund Administrator within the period specified in section 11(3)(b) of the Act.

Secondly, the employer is also required to remit its own contribution to the Pension Fund Custodian specified by the Pension Fund Administrator for the employee within the same 7 working days from the day the employee is paid his salary.

It is important to mention that the duty placed on the employer under Section 11(3) of the Act is denoted by the word “shall” which implies that the said duty is mandatory or peremptory and does not admit of any discretion on the part

⁵⁴ See also section 17(5) of the Rivers State Pension Reform Law 2009.

of the employer. The word “shall” within the contemplation of the provision is synonymous with the word “must” which implies that the employer is bound to carry out or perform the said duty within the period specified under by the Act. In the case of *Ifezue v. Mbadugha*⁵⁵ it was held by the Supreme Court (per Bello, JSC, as he then was) that “. . . whenever a statute declares that a thing ‘shall’ be done, the natural and proper meaning is that a peremptory mandate is enjoined.”⁵⁶

The mandatory character of the duty placed on the employer under Section 11(3) of the Act is fortified by the fact that sub-section (6) of Section 11 of the Act prescribes a penalty for breach of section 11(3) of the Act. Under section 11(6), an employer who fails to deduct or remit the contributions within the time specified in sub-section (3)(b) of section 11 shall, in addition to making the remittance already due, be liable to a penalty to the stipulated by the Commission. Sub-section (7) of section 11 prescribes that the penalty specified in sub-section (6) of the section shall not be less than 2 per cent of the total contribution that remains unpaid for each month or part of each month the default continues and the amount of the penalty shall be recoverable as a debt owed to the employee’s retirement savings account, as the case may be.⁵⁷

Section 12(1) of the Act goes further to enact that the contribution of the Federal Government to the retirement benefits of employees of the public service of the Federation

⁵⁵ [1984] 5 S. C. 79 @ 88.

⁵⁶ See also *Mokelu v. Federal Commissioner for Works and Housing* [1976] ANLR 224 @ 228.

⁵⁷ The imposition of penalty under Section 11(6) of the Act displaces the principle that where a statute provides that a thing shall be done without imposing any penalty for non-compliance, “shall” may be treated as directory only. Pls see *A. T. Ltd. v. A. D. H. Ltd* [2007] 15 NWLR (Pt. 1056) 118 @ 150 – 151; *Adeosun v. Governor, Ekiti State* [2012] 14 NWLR (Pt. 1291) 581, *Incorporated Trustees of Nigerian Baptist Convention v. Governor of Ogun State* (2016) LPELR – 41134 (CA).

under section 11(3) of the Act, shall be a charge on the Consolidation Revenue Fund of the Federation and by virtue of section 12(3) of the Act, the Accountant-General of the Federation shall make the deductions of the contributions specified in Section 11(1) of the Act.⁵⁸ Section 17(10) of the Rivers State Pension Reform Law 2009 provides more explicitly that the Accountant-General of the State shall at the request of the Rivers State Pension Board effect the deductions of the employer's and employee's contributions.

While the above provisions are no doubt sufficient to guarantee adequate funding of the contributory pension scheme, the real problem has been that of non-enforceability of the provisions. Unarguably the execution and implementation of laws enacted by the legislature is one of the primary functions of the executive under our constitutional, democracy.⁵⁹ However, considering the fact that members of the National Pension Commission and the State Pension Boards/Bureaus are appointees of the President or State Governors, it is difficult to expect those appointees to exert much pressure on the President or State Governors with respect to compliance with the provisions in question. It is even doubtful if the Accountant-General of the Federation or State will comply with the directive issued by PENCOM or the State Pension Board/Bureau/Commission to effect the said deductions from the Consolidated Revenue Fund of the Federation or State without the prior authorization of the President or Governor.

Another area of non-implementation is payment of accrued pension rights. Under Section 15(1) of the Pension Reform Act, 2014, the years of service earned by an employee under the pension scheme that existed before the commencement of

⁵⁸ See also section 17(8) and (10) of the Rivers State Pension Reform Law, 2009.

⁵⁹ See S. 5(1)(b) and 5(2)(b) of the 1999 Constitution.

the Pension Reform Act, 2004 on 25th day of June, 2004 constitute accrued pension rights to retirement benefits which will be recognized in the form of an amount acknowledged through the issuance of Federal Government Retirement Benefits Bonds by the Debt Management Office in favour of the employee. The Bonds issued under the provision shall be redeemed upon the retirement of the employee and the amount so redeemed shall be added to the balance of the retirement saving account of the employee.⁶⁰

In other words, payment of retirement benefits and pensions earned by employees under the defined benefit scheme is to be guaranteed by the government through the issuance of a Federal or State Government Retirement Bond in favour of each employee which shall become redeemable upon the retirement of the employee and the value thereof shall be transferred and remitted to the balance outstanding in the retirement savings account of the employee. Section 15(4) & (5) of the Pension Reform Act provides that the accrued pension rights and entitlements of employees of the public service of the federation and the Federal Capital Territory shall be reviewed from time to time in line with the provisions of section 173(3) of the 1999 Constitution (as amended) and that the variation so derived from the salary reviews shall be provided by the Federal Government or the Federal Capital Territory and credited directly into the retirement savings account of individual retiree.⁶¹

Unfortunately, payment of accrued pension rights to retirees has been a major obstacle to the implementation of the contributory pension scheme. Considering that most

⁶⁰ See 18 of the Rivers State Pension Reform Law, 2009; Section 19 of the Lagos State Pension Reform Law, 2007.

⁶¹ The Rivers State Pension Reform Law, 2009 & the Lagos State Pension Reform Law, 2007 do not contain any provisions on review of accrued pension rights which would seem to imply that such right cannot avail retirees in both States.

employee in the public service of the Federation, Federal Capital Territory, States and Local Governments had actually spent greater part of their service years under the defined benefit scheme prior to the pension reform, the bulk of their pensions and retirement benefits will be funded by their employers as accrued rights and non-payment of these benefits have had debilitating impact on the retirees.

Like is the case with the non-payment and remittance of monthly contributions by employers, there appears to be a lack of commitment or political will to confront this problem frontally. Government must begin to see itself as bound by its own laws if any progress is to be recorded in the implementation of the contributory pension scheme across the federation.

iv) **Corruption and poor data on pension liabilities**

Corruption is also a major challenge facing the pension scheme in Nigeria. Although the management of the contributory pension scheme vests with Pension Fund Administrators and Pension Funds Custodians, there are aspects of the process particularly documentation of prospective retirees that are being handled by civil servants in different Ministries, Departments and Agencies (MDAs). An employee who has served his notice of retirement in accordance with extant civil service regulations is expected to obtain and process relevant retirement forms starting from his place of primary posting to the Ministry of Finance. There are fears that prospective retirees are being exploited by civil servants during the documentation process with the result that many are not able to complete their documentation several months after the effective date of their retirement.

There are also indications that civil servants engage in several dubious practices including extorting money from retirees as consideration for processing their files and in some cases,

acting as “agents” on behalf of the retirees in consideration of payment of agreed percentage of the employee’s pension and retirement benefits. Retirees who fail to agree to these criminal arrangements sometimes have their files hidden or simply kept away thereby paralysing their documentation. These practices account for the lack of predictability in the documentation of retirees and explain why employees are pay rolled for payment of pension not necessarily in the order of their effective date of retirement. These criminal practices by civil servants have eroded confidence in the pension scheme in the public service.

Related to the problem of corruption is that of poor data resource on pensioners and pension liabilities of government at various levels. One of the manifestation of corruption in the system is the deliberate distortion of records on pensioners and their entitlements which have resulted in the fraudulent increase in government pension liabilities. Sometimes fictitious names are inserted into the records and fraudulently allocated pension and retirement benefits thereby over-bloating government pension liabilities.

The Way Forward

In this section of the paper, it is proposed to formulate and discuss solutions to the myriad of problems that have bedevilled effective implementation of the contributory pension scheme across the federation.

i) **Commitment to the performance of statutory duty**

As shown above, the existing statutory provisions are sufficient and adequate to guarantee effective implementation and success of the contributory pension scheme. The problem has always been lack of implementation of extant statutory provisions and refusal to perform statutory duties explicitly imposed on government.

There is always a presumption that the legislature does nothing in vain and that whenever it enacts a new law to repeal or amend an existing law, such alterations in the new law are directed against defects which have been noticed in the existing law about the time the new law was passed.⁶² Given also that the legislature is an ideal institution that does not make mistakes,⁶³ it is submitted that the legislature intends that the obligation imposed on government to make monthly contributions toward the contributory pension scheme including payment of accrued rights by way of issuance of government bonds made redeemable upon retirement of the employee is one that is capable of performance by government and ought to be performed.

Arguably, government does not have a discretion to choose which law to obey and which one to disregard. The provisions of every extant law imposing one obligation or the other on government and other employers including payment of pensions and other retirement benefits to retirees must be considered binding on it just as they are binding on the citizenry. Payment of pensions and other retirement benefits to retirees is as much an enforceable duty owed employees by their employers as the payment of salaries and other emoluments to serving workers. Payment of pensions and other retirement benefits by employers is therefore clearly not act of favour to be offered to employees at the pleasure of the employers.

A new orientation on the part of employers including governments at various levels which emphasizes utmost good faith in fulfilling mandatory statutory obligations is urgently needed. The payment and remittance of monthly contributions and payment of accrued rights must, therefore,

⁶² See *Ado v. Dijie* [1984] 5 N.C.L.R. 260 @ 272; *Schroder & Co. v. Major & Company (Nigeria) Ltd* [1989] 2 NWLR (Pt. 101) 1.

⁶³ See *Alhaji v. Egbe* (1986) 1 NWLR (Pt. 16) 361 @ 370.

be seen as an obligation which must be fulfilled without any excuse by the employer.

ii) **A watchful and vigilant Regulator**

The success or failure of the contributory pension scheme will depend to a large extent, on the exercise of the regulatory powers vested in the National Pension Commission (PENCOM) and the State Pension Boards/Bureaus under the Pension Reform Act and other extant State Pension Laws. The Pension Reform Act charges PENCOM with both regulatory and supervisory power over the contributory pension scheme. The regulatory power of PENCOM extends both to government and the Pension Fund Administrators and Pension Fund Custodians.

One area where firmness is required on the part of the Regulator is payment and remittance of monthly contributions by employees and employers. The Commission and the State Pension Boards/Bureaus/Commission are vested with power to impose penalty on the employer where the employer fails to deduct and remit the employee's and employer's contributions within the time prescribed by the Act and extant State Pension Laws.⁶⁴ This power, if properly exercised, may exert the needed pressure on employers particularly governments at various levels to meet their statutory obligations.

Even if enforcement of the penalty against the employer may prove difficult, the Commission and the State Pension Boards/Bureaus must be bold to impose the penalty and communicate same to the employer in appropriate cases.

iii) **Building a reliable data bank**

⁶⁴ See S. 11(6) & (7) of the Act; S. 17(7) of the Rivers State Pension Reform Law, 2009.

The importance of proper, comprehensive and credible data bank to the success of the contributory pension scheme cannot be over-emphasised. It is only through such records that the identities of pensioners, their entitlements and the extent of government's liabilities could be verified and authenticated. These records may include the employee's full name, sex, date and place of birth, file number, names of children, next-of-kin, records of service including date of first appointment, promotions earned and letter of last promotion.⁶⁵

Given the advancements made in Information and Communication Technology, it is recommended that the public service at Federal, State and Local Government levels, should develop comprehensive data banks on its work force which will show at a glance, the status of every employee including his date of birth, date of first appointment and date of retirement. With such record, the MDAs will be a position to notify staff of their retirement dates to enable them commence their retirement documentation timeously. The completion of an employee's documentation before his effective date of retirement could facilitate expeditious payment of pensions and other retirement benefits and thereby avert the practice of paying pensioners "initial pension" which is the arrears of monthly pension calculated from the employee's effective date of retirement to the date he receives his first monthly pension.

iv) **Aggressive enlightenment and advocacy campaigns**

This paper has already discussed the negative attitude of employees toward the contributory pension scheme which is largely borne out of misconception. One way of addressing this problem effectively is for PENCOM and the State Pension Boards/Bureaus in collaboration with the Pension Fund Administrators to launch aggressive and regular

⁶⁵ See generally Ikotun (n21) 133 – 136.

enlightenment and advocacy campaigns during which the benefits and inherent flexibility of the scheme could be highlighted to the workers. The campaigns could also be used to address some of the misconceptions about the operation of the scheme notable amongst which is that the scheme does not guarantee payment of any lump sum to retirees. As shown earlier, payment of lump sum to a retiree under the contributory pension scheme is a matter of choice by the retiree and same has to be worked out with the Pension Fund Administrator subject to the restriction imposed by the Pension Reform Act and other extant State Pension Laws.

Conclusion

The contributory pension scheme is a progressive scheme for employer and employee both in the public and private sectors. It seeks to address some of the problems associated with the defined benefit scheme in the public sector, namely funding and endemic corruption by lessening government's contribution toward the scheme and removing control and management of fund contributed toward the scheme from government and vesting same in private corporate entities supervised and regulated by the National Pension Commission (PENCOM).

The scheme offers employees freedom of choice of Pension Fund Administrators and enormous flexibility in the utilization of the balance in the employees' Retirement Savings Accounts (RSAs). Given that the RSA is a personal account, each employee is able to access the balance in the RSA as dictated by his personal circumstances.

The Pension Reform Act 2014 and other extant State Pension Laws also guarantee employees considerable security of the fund contributed toward the scheme besides securing for them the right to earn returns on the investment of their funds.

Unarguably, therefore, the contributory pension scheme represents a remarkable improvement on the defined benefit scheme and should guarantee employees greater satisfaction and security for the future.

However, poor implementation of the provisions of the Pension Reform Act and other extant State Pension Reform Laws has continued to hamper effective implementation of the contributory pension scheme across States of the federation. What is needed is sensitization of employers both in the public and private sector to demonstrate greater commitment to fulfilling their statutory responsibilities under the Pension Act and State pension legislation. Government could address the issue of poor funding by setting aside 5% of its total monthly wage bill for purpose of funding past service liabilities as prescribed under section 36 of the Rivers State Pension Reform Law, 2009.