ANALYSIS OF THE LEGAL REGIME FOR CONTRIBUTORY PENSION SCHEME IN NIGERIA

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A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE LLM

DEPARTMENT OF PRIVATE LAW,
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ZARIA, NIGERIA

NOVEMBER, 2018

Declaration

I declare that the work in this dissertation entitled ANALYSIS OF THE LEGAL REGIME FOR CONTRIBUTORY PENSION SCHEME IN NIGERIA has been carried out by me in the Department of Private Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

_____

Samira Salisu BUHARI
P16LAPR8017

Certification

This dissertation entitled ANALYSIS OF THE LEGAL REGIME FOR CONTRIBUTORY PENSION SCHEME IN NIGERIA by Samira Salisu BUHARI meets the regulations governing the award of the degree of Master of Law-LLM of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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Dedication

This work is dedicated to my late brothers Umar SalisuBuhari and AbdulhadiSalisuBuhari, may Allah SWT grant them eternal peace. Ameen.

Acknowledgement

I will begin this acknowledgement by giving thanks to Allah SWT for the blessing He bestowed on me including the wisdom, strength and patience to complete this dissertation. I also wish to thank in a special way, my parents, AlhajiSalisuBuhari, HajiyaRamatuBuhari and HajiyaZainabBuhari for their love and most particularly for teaching me the virtue of honesty and hard work.

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I want to place on record that the Chairman of my Supervisory Committee Dr. A. M. Madaki despite his busy schedule as the Dean of Law was always available to respond to my numerous inquiries. Similarly, I wish to register my appreciation to Dr. Ibrahim Abdulkarim, the Chairman of my Seminar Presentation. Sir, your incisive and scholarly comments greatly enriched this research. I am sincerely indebted to them. May Allah reward them richly.

My kids, Mohammed and Affiah deserve special appreciation. I appreciate their love, care and prayers. They have endured lots of deprivation occasioned by my absence from home while I pursed this program, I remember being absent for my son's graduation ceremony because I was away to write an exam during my course work, that was an ultimate sacrifice that I made and they were both understanding and prayed fervently for me to complete this research.

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Lastly, but by no means the least I want to appreciate my boss the Executive Vice Chairman of Aiteo Group. Firstly, for granting me permission to pursue this program and for the numerous occasions on which he has kindly approved my travel requests to Zaria in pursuit of my LLM program. Thank you immensely Sir. On my part, I pledge to use the knowledge and experience acquired to improve the company and Nigeria's pension challenges as a whole.

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Constitution of Federal Republic of Nigeria (Third Alteration) Act, 2010

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Pension Ordinance, 1951

Pension Reform Act, No.2, LFN, 2004

Pension Reform Act, 2014

Pensions Rights of Judges Decree No. 5, 1985

Personal Income Tax Decree 104, 1993

Security Agencies, Police, Customs, Immigration and Prison Services Act No.75, 1993

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Universal Declaration of Human Rights, 1948

LIST OF ABBREVIATION

BoT:	Board of Trustees
BPE:	Bureau for Public Enterprises
CPFA:	Closed Pension Funds Administrator
CPS:	Contributory Pension Scheme
DB:	Defined Benefit
ILO:	International Labour Organization
MDGs:	Millennium Development Goals
NPF:	National Provident Fund
NAICOM:	National Insurance Commission
NSITF:	National Social Insurance Trust Fund
NEEDS:	National Economic Empowerment & Development Stratagies
PAYG:	Pay As You Go
PENCOM:	National Pension Commission
PFA:	Pension Fund Administrator
PFC:	Pension Fund Custodian
PTAD:	Pension Transition Arrangement Directorate
RSA:	Retirement Saving Account
SEC:	Securities and Exchange Commission
UAC:	United African Company

ABSRACT

This dissertation appraised legal framework of contributory pension scheme CPS in Nigeria. Doctrinal method was adopted. Thus, the dissertation analyzed material from primary and secondary sources. The primary sources include information from national and international legal instruments on CPS, while the secondary sources include books, articles and internet materials on the subject matter. It was found that there are still problems relating to coverage of the scheme. For example, the Scheme does not apply to private organizations with more than 3 employees but less than 15 employees. The same applies to workers in the informal sector which constitute a good percentage of Nigeria's total labour force. Though, PenCom is in the process of setting up Micro Pension structure for such class of workers. However, there are challenges in the area of awareness and strong institutional structures. It is also found that saving or contribution under CPS is exposed to the risk of decline without controls measure as Federal Government failed to pay 1% of the total monthly wage bill payable of Public Services employees into the Pension Protection Fund to provide cover for such risk. Furthermore, there are states and organizations which are yet to register. This further raises question as to the effectiveness of PenCom as supervisory agency in the sector. The dissertation therefore recommended among others thatPenCom needs to issue regulations and guidelines to provide clarifications regarding contributions by employers with 3 to 15 employees. This is necessary because delay or failure to provide such guideline, could affect retirement plans of workers in private organizations with more than 3employes but less than 15 employees. With respect to workers in informal sector, Nigeria should learn from the success stories of other countries which have put in place strong institutional structures for micro pension to facilitate fund administration and made use of technological platforms including mobile money to increase coverage, remit pension contributions and pay retirement benefits. In order to compel Federal Government to fully implement Section 82 (1) of the Pension Reform Act, the law should empower the Federal Account Allocation Committee (FAAC) after sharing every monthly subvention, to deduct the 1% of the total monthly wage bill payable to employees in the Public Services and pay it into the Pension Protection Fund. Furthermore, Pension Reform Act should be elevated to become the applicable public sector pension law in every state.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Pension is benefit paid to an employee on retirement. It represents a reward for long duration of service and loyalty to an employer and it could be perceived as a deferred remuneration package.[1] The idea is to make employees financially independent during post-employment period. It is based on these realities that social security pension was conceived, particularly to essentially serve as tools for ensuring income security for women and men as they grow older.[2] This income is necessary for the dignity and wellbeing of older persons, and imperative to realize their rights. The goal is to provide adequate, affordable, sustainable, and robust benefits after retirement.[3] By adequate it means, pensions should be able to replace sufficient lifetime earnings of retirement income in order to prevent old age poverty. The world is ageing very fast as the number of people aged 60 and over worldwide has been increasing at an unprecedented rate.[4] The older population is growing faster than the total population in almost all the regions of the world[5]. In particular, the population of Africa is growing older faster, at a rate of 2.27 percent[6]. The percentage of those aged 60 years and over is projected to increase from 6 percent in 2012 to 10 percent in

[1]Ngozi, B. I. and Chris, I. N. (2016), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1), p.3.
[2]International Labour Organization (ILO), "Pensions and other social protection benefits for older persons: Insights from the ILO World Social Protection Report 2014/15", *Social Protection for All Policy Brief*, No. 3/2014, P.1.
[3]Odia, J.O., and Okoye, A.E., (2012), "Pensions Reform in Nigeria: A Comparison Between the Old and New Scheme", *Afro Asian Journal of Social Sciences*, 3, p.16.
[4]United Nations, (2010), "Current status of the social situation, well-being, participation in development and rights of older people worldwide", New York: Department of Economic and Social Affairs, Office of the Commissioner for Human Rights, p.22.
[5]United Nations, (2009), "World population ageing 2009", New York: Department of Economic and Social Affairs: Population Division, United Nations Publication, p.13.
[6]United Nations, (2011) World population prospects: The 2010 revision, Department of Economic and Social Affairs, Population Division, United Nations, New York, p.15.

2025[7]. Similarly, in West Africa, it is projected to increase from 5 percent in 2012 to 7.7 percent in 2025 and in Nigeria, from 5.3 percent in 2012 to 7.4 percent in 2025[8].

The international instruments adopted by the International Labour Organization (ILO) and the United Nations (UN) affirm that every human being has the right to social security. The ILO's Income Security Recommendation 67, for instance provides that social security should be afforded to all employed and self-employed[9]. Similarly, Article 22 of the Universal Declaration of Human Rights[10] states that everyone as a member of a society has the right to social security in the event of old age. The same provision is found in Article 9 of The International Convention on Economic, Social and Cultural Rights.[11] It goes without saying that the practical implementation of this right requires a major undertaking by the States.[12]

In Nigeria, the law regulating Contributory Pension Scheme is the Pension Reform Act[13] The new Act establishes uniform rules, regulations and standards for administration of Contributory Pension Scheme for both the private and public sectors in Nigeria to ensure that every person who works in either the Public Service of the Federation, Federal Capital Territory, States and Local Governments or the Private Sector, receives retirement benefits as and when due.[14] Essentially, the Act seeks to assist improvident individuals by ensuring contributors receive their benefits as and when due and to assist improvident individuals to save in order to cater for

[7]UNFPA, (2013), Linking Population, Poverty and Development, United Nations Population Fund, New York, p.22.
[8]Ibid.
[9] No 67, para 17, 1944.
[10] Universal Declaration of Human Rights, 1948.
[11]International Covenant on Economic, Social and Cultural Rights , 1966.
[12]Fapohunda, I. M. (2013), "The Pension System and Retirement Planning in Nigeria", *Mediterranean Journal of Social Sciences*, 4(2), p.14.
[13]Pension Reform Act, 2014.
[14] Dalley& Partners, (2015), "The Pension Reform Act 2014", News & Updates, R.F Dalley& Partners GabsdallHouse(3rd–4thFloor)26IgbosereRoadLagos Nigeria, *www.grfdalleyandpartners.com*, accessed on 30th November, 2017. 3:08. P.M.

their livelihood during old age.[15] The Scheme is contributory, meaning that the employer and the employee contribute into the fund. Some of the features of the Contributory pension Scheme includes:

a. it is contributory, and it is fully funded by the employees and employers.

b. There is a private third party custodian of the funds.

c. It has established a uniform method of a administering payments of retirements benefits in Public and Private Sector.

d. It has flexible, as pension arrangement is not affected by change of employment by an employee.

1.2 Statement of Problem

Nigeria is the seventh most populous country in the world with an estimated population of 173.6 million people.[16] Those aged 60 years and over constitute 5.3 percent of the population in 2012[17], while the percentage of those aged 65 years and above in 2013 is 4.8 percent[18]. Secondly, Nigeria has a very high percentage of workers in the informal sector. It is estimated that 70 percent of Nigeria's workforce of 51.6 million are in the informal sector[19] which lacks any form of social protection. Though a relatively small percentage of ageing population, this however, presents a daunting challenge of how to cater for the retirement needs of the increasing retired workers despite the enactment of a new Pension Reform Act in 2014.[20]

[15] S.1 (1), Pension Reform Act, 2014.
[16] United Nations Development Programmes (UNDP), (2014), Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience. Human Development Report, UNDP, New York, p.13.
[17] (UNFPA and HAI, 2012)
[18]UNDP, op.cit. p.14.
[19]Guga, A. (2014)," Good governance: A key driver to sustainable development in Nigeria",*International Journal of Education and Research*, 2(3), p.239.Fajana, S. (2011), "Decent Work Deficits in Nigeria: A Constituents Consensus", *International Labour Office*, Geneva, p.11.
[20]Pension Reform Act, 2014.

While the CPC Act is generally a satisfactory effort in the right direction , some of the changes introduced appears not have been well thought through thereby creating some gaps and inconsistences within the legal regime.

This is basically because the Act lacks critical or key provisions that can guarantee effective contributory pension scheme administration in Nigeria. Some of these challenges are:

1. Scope and coverage

By virtue of Section 2 (1) of the Pension Reform Act,[21] the scheme applies to employees in both the public and private sectors. Mandatory contribution is applicable to organizations in which there are 15 or more employees (previously 5 employees). This effectively reduces the number of employers and employees that are likely to benefit from the scheme. Given the low level of contributors under the Scheme, this change is counterproductive. Furthermore, Section 2 (2) of the Act requires only employers with a minimum of 15 employees to contribute to the new Scheme. The Act provides that in the case of private organizations with less than 3 employees, participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PenCom). However, the Act is silent on the applicability of the Scheme to private organizations with more than 3 but less than 15 employees. Also, what happens to employers with 5 to 14 employees regarding their past contributions under the old Act?

[21] Ibid.

2. Nature of contribution

Under Section 120 of the Act,[22] contributions are now to be based on monthly emoluments being the total emolument as defined in the employee's contract of employment provided it is not less than the total of the employee's basic salary, housing and transport allowance. This definition is vague and could be interpreted to mean that all items that are paid on a monthly basis (in addition to basic, housing and transport) would form part of the base on which the pension rates are applied. This potentially larger base could well mean that many employers will see an increase of over 100% in their pension contribution obligations while employees' net pay will reduce unless their employers chose to increase their salaries to accommodate the additional contribution. In addition, Section 4 (4) (b) of the Act provides that an employer can take full responsibility of the contribution but in that case, the contribution shall not be less than 20% of the employee's monthly emolument. Provisions like this no doubt aim at relieving the employees of their burden under the scheme by given employers who would like to take full responsibilities of contributing to the scheme an opportunity to do so. However, a closer look at the section would reveal that it does not make sense considering that the total contribution by both parties under Section 4 (1) of the Act[23] is 18%. In effect, this Section, instead of encouraging employers, will rather discourage them from taking full responsibility of contributing to the scheme.

[22] Ibid.
[23] Ibid.

3. Rate of contribution

Section 4 (1) of the Act[24] has reviewed upwards the minimum pension contribution. The rates of contributions to be made under the new Scheme by both the employer and employee are a minimum of 10% and 8% respectively (7.5% of the employee's monthly basic, housing and transport allowances by both parties under the repealed Act). While this would no doubt encourage growth in pension contributions, the fear is, this provision is most likely to increase the cost of employment and may force many employers to rationalize their staff strength or discourage them from effectively contributing to the scheme.

4. Lack of compliance by employers

The greatest implementation challenge is that of getting all private corporate entities to register with the scheme as provided by Section 4 (2) of the Act. There are today so many organizations employing fifteen staff and above which are yet to register including some tiers of government. This further raises question as to the effectiveness of the mechanism for monitoring compliance with the relevant provisions of the pension law in Nigeria. Furthermore, Section 105 of the Pension Reform Act [25] empowers Pension Commission (Pencom) to institute criminal proceedings against employers who persistently fail to remit Pension contributions of employees within stipulated time, however it is doubtful if PenCom is really carrying out this responsibility as some state governments who have registered find it difficult to remit their own portion of the contribution to the Account.[26] Making a law is not

[24] Ibid.
[25] Ibid.
[26]Ijeoma, N.B., Nwufo, C.I. (2015), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1), p.12.

just enough, the enforcement of such law and imposing appropriate sanctions on violators are crucial to the effectiveness of any law.

1. What is the scope of the legal for Contributory Pension Scheme in Nigeria?
2. What are the legal and operational challenges faced by Pension Commission in the regulation of pension funds in Nigeria?
3. What are the mechanisms for effectivemonitoring and enforcement of the relevant provisions of the pension law in Nigeria?

1.3 Aim and Objectives of the Research

The aim of this Dissertation is to critically appraise the legal regime for contributory pension scheme in Nigeria with the view to making recommendations to strengthen the pension law in the country toward effective pension administration in line with international best practices. The Dissertation seeks to achieve this through the following specific objectives:

1. To examine the legal framework on contributory pension scheme in Nigeria and to identify the gaps that may impede its effective implementation in the country.
2. To appraise the regulatory challenges of the Institution for contributory Pension Scheme in Nigeria.
3. To appraise the mechanisms for effective monitoring and enforcement of compliance with the relevant provisions of the pension law in Nigeria.

1.4 Scope of the Research.

This Dissertation is restricted to the critical appraisal of the legal regime for contributory pension scheme in Nigeria. Pension as an example of social security is a very wide area of law. The Dissertation is however restricted to contributory pension

scheme in Nigeria. Though, emphasis would also be placed on defined pension in order to appreciate the nature of challenges associated with the old pension scheme, and determine to what extent the new contributory pension scheme has taken care of such problems. Furthermore, the Dissertation would only examine the relevant International and Nigerian legislations as well as judicial authorities on social security. At the International and Regional levels, the dissertation would be limited to the examination of relevant instruments such as Universal Declaration of Human Rights and International Labour Conventions.

At the National level, the research will concentrate on the appraisal of the relevant provisions of the Pension Reform Act[27] being the main legislation regulating contributory pension scheme in Nigeria. Though, reference will be made to the repealed Pension Reformed Act 2004 particularly where it is necessary to show whether or not the challenges encountered in the repealed Act have been addressed in the new Act. The relevant provisions of the Constitution of Federal Republic Nigeria will also be examined.[28]

1.5ResearchMethodology.

Doctrinal method is adopted for this Dissertation. Being a library oriented research, the Dissertation will analyze materials derived from both primary and secondary sources. The primary sources include information from national and international legal instruments on Contributory Pension Scheme. While the secondary sources include books, journals, articles, newspapers and internet materials. The analysis of these materials will provide the basis for achieving the aim and objectives of this thesis.

[27]Pension Reform Act, 2014.
[28]Constitution of the Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as Amended).

1.6 Justification of the study

With the challenges being faced on how to effectively cater for the retirement needs of the increasing older population of retired workers in the country, the importance of engaging in research on contributory pension scheme in Nigeria cannot be over emphasized. This Dissertation is therefore justified on the ground that findings and recommendations would be made to enhance legal framework for contributory pension scheme and social protection policies in Nigeria. An improved regime for contributory pension scheme would play a number of important roles. First, it would enhance timely contribution to the scheme and strengthen the capacity of pension administrators. Secondly, this would in turn facilitate effective pension administration in the country. The combined effect of this is that it would enhance assessing adequacy of pension income and further allow pension funds to be invested to enhance economic growth and development of the country.

In addition, the research is justified on the basis that, provision of a comprehensive legal framework for contributory pension scheme in Nigeria and success recorded would serve as a precedent for other jurisdictions contemplating amendment of their contributory pension laws or introducing new ones in line with the international best practices. Finally, the research would provide additional material in the subject matter under consideration that would be beneficial for students, lawyers and the interested public.

1.7 Literature Review

There are publications which deal with contributory pension in Nigeria. For instance, Odia and Okoye[29] discussed the historical development of pension in Nigeria. They explained that Nigeria being a former colony of Britain received a pension tradition into her public sector that is entirely modeled after the British structure. According to the authors, the first legislative document on pension in Nigeria was the 1951 Pension Ordinance which had retroactive effect from January 1, 1946. The Ordinance provided public servants with both pension and gratuity. They stated that the National Provident Fund (NPF) scheme established in 1961 was the first legislation to address pension matters of private organizations in Nigeria. This was the first social protection scheme for the non-pensionable private sector employees in Nigeria. They explained further that the NPF was followed by Armed Forces Pensions Acts No. 103 also of 1972 and by the Pension Acts No. 102 of 1979. They also explained that the first private sector pension scheme in Nigeria set up for the employees of the Nigerian Breweries was in 1954. The United African Company (UAC) scheme followed in 1957. However, the problems of the old pension scheme led to the pension reforms of 2004. The Pension Reforms Act (PRA) of 2004 as amended in 2014 is the most recent legislation of the Federal Government of Nigeria which is aimed at reforming the pensions system in the country. It encompasses employees in both the public and private sectors. The PRA of 2004 came into being with a view to reducing the difficulties encountered by retirees in Nigeria under the old pension scheme. The new scheme is regulated and supervised by the National Pension Commission. This work is commendable in that it has provided a detailed literature on the historical

[29]Odia, J. O &Okoye, A. E. (2012), "Pensions reform in Nigeria: A comparison between the old and new scheme", *Afro Asian Journals of Social Services,* 3(3).

development of pension in Nigeria. However, since history is a process, this research would be interested in going further to determine whether the challenges that necessitated the evolution of pension in Nigeria since 1951 have been effectively taken care of by the Pension Reform Act of 2014. This discussion is important as it will bridge the gap of this historical journey and provides the basis for appreciating the next phase of this history.

Nwanne[30]examined the impact of contributory pension scheme on economic growth in Nigeria for theperiod of 2004-2012. He explained that compliance by the employees and employers is a major challenge to the PRA 2004. He contended that there are no stringent measures put in place to ensure compliance by the informal sector which is believed to employ over 35million Nigerians. According him, out of the estimated 51 million working population in both formal and informal sectors, only 3.89 million contributors representing 7.62% of the working population have complied with the scheme. He concluded that investment outlets of pension fundsshould be increased and efforts should be intensified to ensure greater compliance and mobilization ofsavings from contributors.Though, the author acknowledged that pension funds contributions are left un-invested and the consequence is that there will be diminution in income accruing to pensioners, his recommendations however seem to come short of addressing this challenge. This Dissertation will argue that the proper thing to do in such circumstance is to increase investment outlets of pension funds to ensure that investible pension funds are not limited to few investment classes which might lead to diminution of income.

[30]Nwanne, T. F. I. (2015) "Impact of Contributory Pension Scheme on Economic Growth in Nigeria", *Global Advanced Research Journal of Management and Business Studies*, Vol. 4(8).

Nwankwo,[31] also discussed the Implications of Pre and Post Pension Reform on the Economic Growth of Nigeria from 2000-2013. He explained that it is generally assumed that the pension reform in Nigeria helps in developing economic growth wherever the reform is adopted. However, this is not a clear-cut assertion, especially in developing countries like Nigeria which are faced with problems of underdevelopment, liquidity, fraudulent and corrupt practices in the public sector of the economy. The author argued that while PENCOM subscribes to the policy of complying fully with pension reform, only corporate organizations are engaged in pension reform services. He concluded that firms should comply with pension reform so as to enjoy the benefit of high increase in gross domestic products. He argued further that firms should adopt uniform compliance and disclosure standards of pension reforms for the purpose of control and measurement of performance. The author further suggested that there should be continuous enlightenment to the general public to create further awareness of pension reform and confidence in the system. The author must be commended for such a great exposition. However, his discussion on the challenges of contributory pension scheme in Nigeria appears to be too restrictive. For instance, problems such as fraud and corruption are not considered by the author. This research would suggest ways for tackling these problems.

Anyim[32] examined Pension Reform Act, 2004. They mentioned operators provided by the Pension Reform Act to include Pension Commission, Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs). The authors also explained that the National Pension Commission compute previous deductions made

[31]Nwankwo, O., (2014), "Implications of Pre and Post Pension Reform on the Economic Growth of Nigeria (2000-2013)", *Journal of Chartered Institute of Bankers of Nigeria*, October - December, 2014.
[32] Anyim, F.C., et'al, (2014), "A Critique of Pension Reform Act, 2004 in Nigeria", *Journal of Arts and Humanities (JAH)*, Volume -3, No.-7.

from staff salaries of employees and transfer it to the employees' respective RSAs. They explained that when an employee retires, he can withdraw a lump sum from the balance in his RSA provided that the balance after the withdrawal could provide an annuity or fund monthly payments that would not be less than 50% of his monthly remuneration as at the date of his retirement. They highlighted the areas that need reform to include: The need to enhance the powers of the National Pension Commission (PENCOM) in its regulatory and enforcement functions; To tighten the protection of pension fund and assets; To unlock the opportunities for development of pension assets for national development; To review the sanctions regime to reflect current economic realities; To provide for the participation of the informal sector. One major gap in this work is that it is too restrictive. It is restricted to Pension Reform Act 2004. This is no longer the law as it has been repealed by Pension Reform Act 2014. Understandably, the work could not have covered the 2014 Act because it was written before the Act was enacted. This research would appraise the current position under the new Act.

Taiwo[33] wrote on Pension Reform Act 2014. He explained that on July 1st2014, President Goodluck Jonathan signed into law the new Pension Reform Act 2014 which repealed the Pension Reform Act 2004 (repealed Act). The author stated that the key objective of the reform is to ensure contributors receive their benefits as and when due. He enumerated the advantages of the new Act to includechoice of Pension Fund Administrator; stiffer penalties as well as effective measures for dispute resolution. The author however further argued that the law is not free from some

[33]Taiwo, O. (2014), "Pension reform: Matters arising", *http//www.pwc.com/exweb/pwcpublications.nsf/docid,* accessed on 29th November, 2017. 5:18. P.M.

challenges. One of these is that the law only applies to employers with a minimum of 15 employees are required to contribute to the new Scheme. The Act provides that in the case of private organizations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PENCOM). The work must be commended for reflecting the current position of law on contributory pension in Nigeria. However, it should be pointed out that, apart from the challenges identified by the authors, another issue that deserves attention is that, under the Act an employer can take full responsibility of the contribution but in that case, the contribution shall not be less than 20% of the employee's monthly emolument. This does not make sense given that the combined contribution by both parties is 18%. Employers will therefore be discouraged from taking full responsibility.

Padraic[34] analyzed some international legal framework for the extension of social security. He explained that there are provisions guaranteeing the enjoyment, without discrimination, of the right to social security in the International Convention on the Elimination of All Forms of Racial Discrimination[35] and the International Convention on the Elimination of All Forms of Discrimination against Women[36]. According to him, the International Convention on the Protection of the Rights of All Migrant Workers and their Families[37] also contains an express provision on the right to social security. The author argued that the term "social security" first found its way into

[34]Padraic, K. (2014), "International Standards and Mechanisms on the Right to Social Security", *Law Faculty, National University of Ireland,* Galway.
[35] UN Doc. ST/HR/ International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 Dec. 1965, (Entered into force 4 January 1969).
[36] UN Doc. A/34/46 (1979) International Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 Dec. 1979, (Entered into force 3 Sept. 198).
[37] UN Doc. A/48/49 (1993) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted 18 Dec. 1990, (Entered into force 19 March 2003).

Article 22 of Universal Declaration of Human Rights in 1948,[38] which states that everyone, as a member of society has the right to social security. He maintained further that Article 25 also provides an obligation on States to enhance social security be it contributory or non-contributory benefits. The Article according to him, provides that everyone has the right to security in the event of unemployment. The author concluded with arguing that the development and monitoring of standards within the right to social security faces with many issues common to the development of all socio-economic rights. However, it is important to note that this international standard is meant to be given effect to through domestic legal framework. Thus, since the author only provided an analysis of the relevant provisions of this standard, the dissertation will go a little further to examine the level of compliance to this standard in Nigeria.

Maji[39] examined the management structure of the 2004 Pension Scheme in Nigeria. The author thoroughly explained the functions of the major operators in the pension industry such asPenCom, PFAs, and PFCs. Though the work is thorough and instructive, the only limitation of the work just like the previous ones is that, it is based on the repealed Pension Reform Act 2004. This research will examine their structures and functions under the new Act. The research will go further to discuss the current guidelines for the investment of pension funds issued by PenCom.

Ayegba and James[40] appraised pension fund administration in Nigeria and examined the extent of compliance by employer of labour in funding the Retirement Savings Account (RSA) of their employees as a requirement of the new contributory pension

[38] UN Doc A/810 (1948) Universal Declaration of Human Rights, UNGA Resolution 2200A (XX1).
[39] Maji, A. (2014), "Managing post-retirement conditions in Nigeria", *Journal of Good Governance and Sustainable Development in Africa,* 2(1).
[40]Ayegba, O., and James, I., (2013), "An Evaluation of Pension Administration in Nigeria",*British Journal of Arts and Social Science,* Vol.15 No.II.

scheme in Nigeria. They explained that the new scheme, to a large extent, places in the hands of the contributors (and of course their employer), the responsibility for the contribution that is available in the Retirement Savings Account (RSA) upon retirement. The authors argued that though successive governments have tried to encourage pension scheme from colonial period to date, the inability of government and private employers of labour to employ strategies for funding the new pension contributory scheme is worrisome as many public and private organizations find it extremely difficult to secure money to pay the entitlement of their retirees and pensioners leaving in agony and frustration. They concluded by recommending that the Nigerian government should encourage the option of having the banks where the salary accounts of employees are domiciled to make pension deductions on monthly basis possible and have it remitted to the Pension Fund Administrators. It is important to state that the authors restricted their analysis of the challenges of contributory pension in Nigeria. No mention is made of possible challenges on the part of the regulator. Issues such as non-remittances of pension contributions by corporations are matters worth given serious attention. Providing comprehensive legal framework that compels employers to remit contributions would of course be a good starting point. One area which the authors did not consider is the extent to which the regulator (National Pension Commission) enforces the relevant sanctions of the Pension Reform Acts on defaulting employers to improve on the existing compliance.

Ali[41] also examined administration of retirement benefits in Nigeria. The author explained that for many years, retirement of many employees is taken as a

[41]Ali, M., (2014), Managing post retirement conditions in Nigeria, Journal of Good Governance and Sustainable Development in Africa, 2(2).

threat rather than an issue of interest that is worth preparing for. He admitted that pension administration exists in order to provide the employees with the means of surviving on retirement and having a standard of living that is reasonable and consistent with what they enjoyed while in active service. The authors recommended that efforts should be made to identify strategies towards easing the pains and problems associated with retirement experienced both at the micro and at the macro level, bearing in mind that pension provision will continue to gain recognition as retirees place less reliance on family to look after them at old age, comprehensive accounting standards for retirement benefits must be established to protect the pension funds. Also, government needs to enlighten the public on the importance of planning towards retirement and the contributory pension scheme. This according to him, will go a long way to reduce the stress of having to cope with life after retirement. To deal with the issue of corruption at the pension board, government needs to look at first the organisations that are deducting and not remitting as this seems to be on the increase and see to the enforcement of sanctions/ penalties in the 2014 pension Act on defaulting employers so they can comply with the regulations. Punishments should also be meted out to those who steal pensioner's funds to prevent others who may have the mind and the erring operators to forestall more pension scams in the nation. The conclusion of this work has given rise to a number of issues that would require another research to settle. First, provisions relating to sanctions have been made in the 2014 pension Act. So, the problem is implementation. Thus, the concern now is the factors making it inherently difficult to implement or enforce these provisions on defaulting employers or those who steal pensioner's funds so as to serve as deterrence. Secondly, it is important as the author suggested to invest

pension funds in viable investments to ensure prompt and regular payments to the pensioners, but the work did not give a hint as to what type of investment would be viable in this regard. This work will highlight other investments outlet that are more likely to guarantee good return.

The goal of pension is to provide adequate and sustainable benefits. By adequate it means pension should be able to provide sufficient lifetime earnings of retirement income in order to cater for old age poverty. Ezi[42] examined adequacy of pension income in Nigeria. He explained that Pension is fundamentally a method of addressing and managing the risks of aging. However, in terms of coverage, the acknowledged difference between the formal and informal sector workers in developing countries has led to the assumption that people in the formal sector do not have to worry about pension. The author argued that despite Nigeria's oil wealth, the country's inadequate provision of social services has continued to constitute a hindrance to better living condition in the country. The author concluded that a key recommendation is that government should build up reliable essential services and basic infrastructure if pension is to achieve its adequacy goal. He argued that the majority of retirees use their income to purchase goods and services from an unregulated and unmonitored dominant market which affect the adequacy of their pension. This researcher agrees with the submission of the author. However, this research would argue further that prioritizing provision of free education at least up to secondary level and a student loan scheme for university as well as free primary healthcare for retirees by government will enable retirees to spend their pension on themselves.

[42]Ezi, B., (2014), *Adequacy of Pension Income in Nigeria*,Birkbeck, University of London.

As important as the contributory pension scheme is, one area of concern however is the sustainability of the new scheme through sound investment and efficient management of the huge pension fund asset. Ijeoma and Nwufo[43] examined the stability of the contributory pension scheme (CPS) in Nigeria. The authors explained that political sustainability of pension schemes in developing countries is a key issue. They further explained that the growth of public provision of old age support programs in developed countries has been explained by the strong political influence of pressure groups representing the old, such as gerontocracy. This according to them, is hard to find in developing countries, where the rise in the share of the old in the population has not been accompanied by a growth in public pension programs. In fact, they argued that the spread of pension reform, and pressure on public expenditure on the old point to the opposite trend reversed gerontocracy. In developing countries, pension schemes have served as a catalyst for the extension of social protection. Though, the authors contended that the result of the contributory pension Scheme has significantly impacted the development of the Nigeria Capital market. They further maintained that there is sound risk management and investment strategies in existence to ensure sustainability of the contributory pension scheme in Nigeria. The authors concluded that, for sustainability of the contributory pension scheme, Government should remove the exception clause from the new pension scheme. The scheme should apply to all public and private sector employees and pensioners. Government should encourage state and local governments in Nigeria to adopt the Pension Reform Act 2014, National Pension Commission (PENCOM) should continue the sanction of erring employers, employees, PFAs and PFC,

[43]Ijeoma, N.B., Nwufo, C.I. (2015), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1).

PENCOM should strictly monitor the operations of PFAs and PFCs, PENCOM should increase the minimum paid up capital requirement of PFAs and PFCs which is presently N 1 billion to N25 billion. However, the authors have not clearly shown the measures provided to ensure sound risk management and investment strategies in existence to ensure sustainability of the contributory pension scheme in Nigeria. Furthermore, they have not shown the challenges that could be encountered in the implementation of these measures and the effects such challenges could cause on the contributory pension scheme in Nigeria. This research would attempt to bridge gaps found in the above literatures reviewed.

1.5 **Organizational layout.**

This study is made up of Five Chapters. Chapter one gives a general introduction to the work. It outlines the statements of the problem, the objectives of the research, the scope, methodology, as well as justification of the study, literature review and organizational layout. Chapter Two is titled historical development of pension scheme in Nigeria. The chapter examines the development of pensions in Nigeria from Pre-2004 Reform. It highlights some of the problems with the previous pension regime in Nigeria that necessitated the 2004 Pension Scheme. The chapter further examines Post 2004 Pension Reforms in Nigeria which resulted in the Shift to Individual Accounts. The chapter concludes by discussing the concept of Defined Benefit and the Defined Contribution Pension Schemes in Nigeria.

Chapter Three analyses the Legal Regime for Contributory Pension in Nigeria. After a brief introduction, the chapter begins with the analysis of some international instruments creating the rights to social security. Accordingly, under this sub-head,

the chapter analyses instruments such as the Universal Declaration of Human Rights; and International Labour Convention. The chapter concludes by analyzing domestic Legal Regime for Contributory Pension Scheme in Nigeria with the view to determining its effectiveness and possible compliance with the relevant provisions of international legal instruments. Accordingly, the chapter examines laws such as the Constitution of Federal Republic of Nigeria and the Pension Reform Act 2014. Under the latter, particular emphasis was placed on its provisions relating to Coverage of the Pension Scheme; Basis and Rate of contribution; Offences and penalties and Dispute resolution.

Chapter Four examines Institutional Framework for the administration of contributory pension funds in Nigeria. The chapter began with a brief introduction and thereafter provides a trajectory of institutional framework of contributory pension scheme in Nigeria with emphasis on the National Pension Commission; Pension Fund Administrators; Closed Pension Administrator and Pension Fund Custodian. The chapter further examines the role of financial institution in pension management. It concluded by discussing issues and challenges in the administration of contributory pension funds in Nigeria. The chapter identifies the challenges to include poor contribution; weak or poor administration; corruption and delay in the implementation of the reforms in some states of the federation. Chapter Five summarizes the work, highlights some major findings and makes recommendations accordingly.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF PENSION SCHEME IN NIGERIA

2.1 Introduction

Workers need a secure source of income to see them through their lifetime, particularly after retirement.[44] To this extent, societies and governments have developed pension schemes to provide income security for their older citizens as part of the measures for reducing poverty after retirement.[45] In Nigeria, series of pension schemes have emerged before and after independence in the face of pressures from ageing populations in both formal and informal sectors.[46] However, in order to understand how the various Pension Reforms have impacted on pension entitlements of workers in the country, it is imperative to examine some significant historical development of Pension Scheme in Nigeria. This would set the scene of the study. Importantly also, historical contextualization is necessary to fully understand the interactive factors that determine the extent to which pension ensures adequate income in retirement and prevent pensioner poverty in Nigeria. Thus, in terms of specific objective, this chapter therefore seeks to examine the historical development of pension in Nigeria from Pre 2004, and to highlight the problems that necessitated the 2004 and 2014 Pension Reforms in the country with the view to determining the extent to which the reform has resolved the perennial problems of pension system in Nigeria. It is hoped that at the end of the chapter, the reader will have a clearer picture

[44]Asuquo, A.I.; Akpan, A. U. and Tapang, A.T. (2012), "Nigerian pension reforms and management: New strategies for rewarding past intellectuals towards sustainable development in the third world", *Global Journal of Management and Business Research*, 12, USA, p.32.
[45]Babatunde, M A. (2012), "The impact of contributory pension scheme on workers' savings in Nigeria", *Medwell Journals of social sciences*, 7, p.14.
[46]Fapohunda, T, M. (2013), "The pension system and retirement planning in Nigeria, *Mediterranean Journal of Social Sciences, Rome, MCSER-CEMAS, Sapienza, University of Rome*, Vol.4.,p.17.

of the study context and the trajectories of the Pension Reforms and how these have impacted on retired workers in the country.

2.2 Pre 2004 Pension Scheme

Prior to the colonial contact between Nigeria and Britain, the main form of social protection for the elderly in Nigeria was based on family contribution. Families lived together in a communal setting where resources were shared and there was no formal labour participation.[47] As a result, it is believed that, the traditional social security for the elderly is the extended family, especially their children.[48] However, not only has this form of social security become ineffective and unreliable for the elderly, the elderly also shoulder the responsibility of the family as principal breadwinners and caregivers for young children.[49]Our contact with the British colonial Master that include pension in Nigeria, which in turn, introduced formal labour and subsequently formal social security arrangements.[50] In other words, Nigeria being a former colony of Britain, inherited a pension tradition into her public sector that is entirely modeled after the British structure.[51]

The first pension legislation in Nigeria was the Pension Ordinance of 1951 which had a retroactive effect from 1st January, 1946. The legislation provided

[47]Ikeji, C. C.; Nwosu, U.W. and Ogaboh, A.M. (2011), "Contributory pension scheme, workers commitment, retention and attitude towards retirement in the Nigerian civil service", *Global Journal of Management and Business Research*, Vol. 11, USA, p.22.
[48]Odia, J. O &Okoye, A. E. (2012), "Pensions reform in Nigeria: A comparison between the old and new scheme", *Afro Asian Journals of Social Services*, 3(3), p.32.
[49]Garba, A. &Mamman, J. (2014), "Retirement challenges And Sustainable Development in Nigeria", *European Journal of Business and Management*, 6(39), p.95.
[50]Guga, A. (2014), "Good governance: A key driver to sustainable development in Nigeria", *International Journal of Education and Research*, 2(3), p.239.
[51]Ojonugwa, A., Isaiah, J. and Longinus, O. (2013), "An Evaluation of Pension Administration in Nigeria", *British Journal of Arts and Social Sciences*, 15(II), p.98.

pension and gratuity for public sector employees.[52] However, the Pension Ordinance was primarily designed for the British officials who moved from place to place within the vast British Empire and the intention was to guarantee continuity of service wherever they had worked. The Ordinance had limited application to Nigerian or indigenous employees and was granted at the pleasure of the Governor General. Pensions and gratuities were provided for in the legislation however, they were not a right as they could be reduced or withheld altogether if it was established to the satisfaction of the Governor-General that an officer was found guilty of negligence, irregularity or misconduct.[53] By implication, the pension Scheme at this period was not an automatic right of Nigerians who were discriminated against and were not sharing equal rights with the British officials.[54]

Another challenge was that the Pension Ordinance of 1951 did not cover private sector employees. Thus, within that period, there was no social protection scheme for the non-pensionable private sector employees in Nigeria. However, in 1954, the first private sector pension scheme was set up for the Nigerian Breweries' employees. This was followed by the United African Company (UAC) in 1957. The National Provident Fund (NPF) was established in 1961, shortly after independence, to address pension issues in the private sector.[55] In fact, the NPF was the first formal social protection scheme in Nigeria established by an Act of Parliament to provide income loss protection for employees as required by Recommendation 102 of the International Labour Organization Social Security (Minimum Standards)

[52]Odia, J. O. and Okoye, A. E. (2012), "Pensions Reform in Nigeria: A Comparison between the Old and New Scheme", *Afro Asian Journal of Social Sciences*, 3(3.1), p.11.
[53]Inhanlahimi, J. E, and Idolor, E. J. (2012), "Pension reform, public workers' productivity and welfare in Nigeria: Lessons for some African countries", *Indian Journal of Economics and Business Audience*,4, p.22.
[54]Eme, O.I. and Sam, C.U. (2011), "The Law and Administration of Retirement in Nigeria: A Historical Approach", *Kuwait Chapter of Arabian Journal of Business and Management Review*, 1(2), p.4.
[55]Inyokwe, O.S. (2013), "Corporate governance and pension management in Nigeria", *Journal of Humanities and Social Science*, Vol. 9.,p.33.

Convention.[56] It was mainly a saving scheme, and the monthly contribution was 6% of basic salary, subject to a maximum of N8.00 to be contributed in equal proportion of N4.00 each by the employer and the employee.[57] The scheme provided for only one-off lump sum benefit.[58] The NPF was followed by Armed Forces Pension Acts No. 103 of 1972 and the Local Government Pension Scheme established by military Fiat in 1977. This was to cater for pension matters among local government employees.[59] In 1979, the Pension Decree No. 102 of that year (replaced by Pension Act CAP 346 of 1990, Laws of Federation of Nigeria) was enacted based on the recommendation of Udoji Commission which included all consolidated enactments and circulars on pension as well as repealing existing pension laws hitherto in force.[60] Though enacted in 1979, the Decree has retroactive effect from 1st April, 1974.[61]The scheme was for all public servants except those who were on temporary or contract employment. The compulsory retirement age for such workers was 60 years except for High Court Judges that was 65 years and 70 years for Justices of the Court of Appeal and the Supreme Court. However, the earliest retirement age was put at 45 years provided the workers had put in 15 years of service or more.[62]

In 1985, the Pensions Rights of Judges Decree No. 5 of 1985 was enacted. This was subsequently amended by the Amendment Decree Nos. 51 of 1988, 29 and

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[56] International Labour Organization Social Security (Minimum Standards) Convention, 1952., International Labour Organization (2006). Federal Republic of Nigeria: Report to the government. Actural assessment of NSITF – accrued liabilities under the new pension scheme, ILO/TF/Nigeria/R.19, Geneva: International Labour Organization.

[57] Eche, P. (2011), "An Overview of the Various Pension Schemes in Nigeria and the Social Impact on the Beneficiaries", *available @http://www.authorstream.com/Presentation/pseche-784875*, accessed on 31st December, 2017. 4:11. PM.

[58] Ibid.

[59] Idowu, K.O. and Olanike, K.F. (2011), "Pension and Pension Reform in Nigeria", *available @* http://www.palgrave-journals.com/pm/journal/v15/n1/full/pm200931a.htmlaccessed on 19th December, 2017. 3:20. P.M.

[60] Nyong, B. C. and Duze, C.O. (2013), "The Pension Reform Act 2004 and Retirement Planning in Nigeria", *Journal of Economics and International Finance*, Vol. 3(2), p.32.

[61] Ibid.

[62] Ibid.

62 of 1991.[63] Furthermore, The Police and Other Government Agencies' Pension Scheme were established under the Pension Decree No.75 of 1987.[64] Thereafter, in 1993, the Academic Staff of Federal Universities Act No. 11 of 1993, as well as Security Agencies, Police, Customs, Immigration and Prison Services Act No.75 of 1993 were enacted.[65] In 1993, the NPF was converted to a limited social insurance scheme established by Decree No.73 of 1993 and administered by the Nigeria Social Insurance Trust Fund (NSITF). NSITF was aimed at providing enhanced pension schemes to private sector employees.[66] The NSITF took over the assets of the NPF and commenced operations in July 1994. Thus, all members of the NPF became members of the NSITF. It was a compulsory scheme for employers with 5 workers and above and their workers.[67]

In 1997, government enterprises known as parastatals were allowed to have individual pension arrangements for their staff and appoint Boards of Trustees (BOT) to administer their pension plans as specified in a Standard Trust Deed and Rules prepared by the Office of the Head of Service of the Federation. Each BOT was free to decide on whether to maintain an insured scheme or self-administered arrangement.[68] Pension activities were regulated in the pre-2004 era by three bodies namely: Securities and Exchange Commission (SEC) that licensed pension fund managers, National Insurance Commission (NAICOM) responsible for licensing and regulating insurance companies in the country and the Joint Tax Board (JTB) which

[63]Onyeonoru, I. P., Matthew, E. E., & David, I. (2013), "Social Policy and the Retrenchment of the Welfare State in Nigeria: The Old and New Pension Schemes and Lessons from the Nordic Model", *Journal of Developing Country Studies*, 3, p.34.
[64]Adams, R.A. (2015),*Public sector accounting and finance*, Lagos, Corporate publisher ventures, p.47.
[65]Ibid.
[66] Kpessa, M. W. (2011),"A comparative analysis of pension reforms and challenges in Ghana and Nigeria",*International Social Security Review*, 64 (2), p.96.
[67] Ibid.
[68]Casey, B.H. (2011),"Pensions in Nigeria: the performance of the new system of personal accounts",*International Social Security Review*, 64(1), p.11.

approved and monitored all private pension schemes with enabling powers from Schedule 3 of the Personal Income Tax Decree 104 of 1993.[69]

2.3 Challenges with the Pre-2004 Pension Schemes

The problem of the pre-2004 Pension Schemes became serious in many ramifications. The scheme became unsustainable due to a number of factors. First, though the system created a structure whereby government guarantees gratuity and pension, however the pension scheme is not funded by the setting aside of money from which the commitments could be serviced.[70] Consequently, the pension liabilities of the federal government as at 30th June,2004 stood at about N2 trillion.[71] The scheme accumulated a huge unsustainable pension deficit. For instance, according to the Bureau for Public Enterprises (BPE) report, the unfunded pension liabilities in NITEL and NEPA alone were estimated at N43 billion and N75 billion respectively.[72]

The rising pension liability was so critical that one time governor of Ogun State, Gbenga Daniels lamented that the imminent collapse of the PAYG scheme is real and very unsettling for a nascent democracy. According to him, "with the pension liability increasing every passing day, there is likelihood of the pension salary bill out-running the salary of our active workers in a few years".[73] Former President OlusegunObasanjo, seemingly concerned about the near destitution of the pensioners, observed that over the years, retirement in our societies has become

[69] Taiwo, O. (2014),"Pension reform: Matters arising", *available@ http//www.pwc.com/exweb/pwcpublications.nsf/docid*, accessed on 4th December, 2017. 2:12. P.M.
[70]Okechukwu, E andUgwu, S.C. (2011),"The law and administration and retirement in Nigeria: A historical approach",*Kuwait chapter of Arabian Journal of Business and Management Review*, (1)2, p.31.

[71]Dada, J. A. (2014), "Pension Reform Act 2004: A legislated Fraud?" Paper presented at the National Seminar on Pension Fraud in Nigeria: The Challenges of Employers, employees and union leaders held at Asaba, Delta State, Nigeria 25-27th February.
[72] Bureau of Labour Statistics (2010), "Programme perspectives: on defined-benefit plans", *Available @ http:/www.bls.gov/opub/perspectives/program-perspectives-vol2- issue3.pdf*, accessed on 28th December, 2017. 3:12.P.M.
[73]Ali, M. (2014), "Managing post retirement conditions in Nigeria",*Journal of Good Governance and Sustainable Development in Africa*, 2(2), p.111.

synonymous with suffering as if ageing were a curse rather than a blessing that it really is. He lamented that pensioners are often forgotten by their former employers who thus accentuates society's attitude that rejects pensioners as spent shells.[74]

The problem was further aggravated by politically motivated increases in salaries and pension entitlements. For instance, the proportion of pension to salaries increased from 16.7% to 30% between 1995 and 1999 without provision of funds to back them up created an unstable pension-to-active workers' ratio.[75] In the old system of pension scheme, pension entitlements are always expected to appreciate or increase with raises in the salaries of serving workers. Unfortunately however, demand for benefit increases are often met without harmonizingadequacy with affordability.[76]The case of Central Bank of Nigeria v Jacob OladeleAmao and others[77] provides a poignant illustration of the precarious situation of harmonization of increase in salary and pension entitlement under the old Pension Scheme in Nigeria. The facts of the case are as follow:

The applicants (respondent herein), were all former employees of the respondent (now appellant) and retired before 1991. They claimed they were being paid their pension as prescribed by Board of Central Bank of Nigeria (C.B.N). Following the issuance of 2 circulars by the Federal Government directing all statutory bodies to comply with white paper and circular of harmonization of pensions policy, the applicants initiated correspondence with the respondent demanding compliance

[74]Ibid. in fact most of the Nigeria Airways staff that were laid off sometimes in 2004 had not been paid the retiment benefit until 2018.
[75]Awosika, F. (2011), "Challenge of Pension Funding: The Nigeria Experience", Paper presented at the Annual Meeting of the Southern Political Science Association, *available @ http://www.allacadewmic.com/meta/p_index.html*, accessed on 29th December, 2017. 3:27. P.M.
[76]Mayah, E. (2012), "73,000 ghost accounts used in Nigeria pension scam", *African Review*, Friday, July 12, 2013. *http//www.africareview.com/News/Ghost-accounts-used-in- Nigeria-pewnsion-scam/-/9791801391454/-5ngyym/-index.html*, accessed on 27th December, 2017. 11:14. A.M.
[77] (2011) ALL RWLR Part 558 at pp. 806-811.

therewith in respect of their pension. The respondent promised to implement the policy. When the respondent failed to do so, the applicant instituted an action in Federal High Court, Lagos, seeking the declaratory and injunctive reliefs that on a true construction of the white paper and the circulars, they were entitled under the Federal Government policy on harmonization of pensions to payment of such pension as contained therein with effect from 1January, 1997 on emoluments currently earned by their serving counterparts, the respondent's decision to pay the applicants' pension on the basis of affordability and sustainability is *ultra vires*, null and void, order of the *mandamus* directing the respondent to pay the applicants all accrued pensions calculated with effect from 1 January, 1997 on emoluments currently earned by serving counterparts, as prescribed under the federal government policy on harmonization of Pension and Subsequently all such Pensions as and when the fall due. In the alternative, an order of mandatory injunction compelling the respondents to pay the applicants all accrued pension calculated as described as subsequently, all such pensions as when they fall due. The trial courts granted applicants' claims. Aggrieved, the respondents appealed to the court of appeal, which courts dismissed its appeal.

Aggrieved still, the respondent appealed to the Supreme Court. The Court dismissed the Appeal.

Similarly, managing and administering pension funds under the Defined Benefits have posed a major challenge to government in Nigeria. Pension is expected to guarantee an employee certain comfort in his or her inactive year is critical to the sustenance of the life of individual and the society.[78] However, the erstwhile system

[78]Garba, A. &Mamman, J. (2014),"Retirement challenges And Sustainable Development in Nigeria",*European Journal of Business and Management*, 6(39), p.96.

was characterized by mismanagement of the Pension Funds which in turn inflicted severe pains and misery on retirees who offered several years of meritorious services to the nation and their fatherland.[79] While depreciating the attitude of Statutory organizations, Central Bank of Nigeria in the instance case, and the need for the Central Bank of Nigeria to be humane in treatment of its retired workers, Onnoghen JSC (as he then was)[80] Said:

> It is rather unfortunate that the effort of the Federal Government to put smile on the face of the pensioners of the appellants so as to alleviate their suffering having regards to the harsh economy realities of this country have been almost frustrated by argument on legal technicalities whilst the people involved as senior citizens of this country who have contributed their quota to the development of the nation during their prime, but look at the way an organization like the appellant is treating them. All that the federal government seeks to do, by the circulars, is to harmonized pension the public service "so as to bring the pensions of officers who retired before 1 January, 1991, which were based on their basic salaries only, in line with pensions of officers who retire thereafter, which were based on their basic salary and certain approved allowances" yet appellant appears not to see the injustice or inequity the government

[79] "The Plight of Pensioners in Nigeria", *available @ http://www.kyaritijani.com/node/32, accessed on 11th December*, 2017. 6:31.P.M.

[80] Per Onnoghen JSC P. 837 para C.G as he then was in Central Bank of Nigeria v Jacob OladeleAmao and others (Supra) at p. 28

> seeks to redress. To ensure that the respondents do not benefit from the good intension of the Federal Government, appellant contends, even in the face of statutory and constitutional provisions to the contrary, that the Central Bank of Nigeria is not part of the Federal public Service for the purpose of pension and other retirement benefits. It is important for every organization in this country, including the appellant, to wear a human face in its treatment of the people, particularly, the senior citizens, because it will be anybody's turn tomorrow to be a senior citizen. We must reexamine our attitude towards the senior citizens of this country so as not make them regret their sacrifice in whatever capacity. The respondents need be put to the expenses of litigating this matter in the first place let alone all the way to the Supreme Court[81]."

In addition, there was endemic fraud and corruption which also inflicted avoidable pains and misery on retirees.[82] The system was operated in such a way that any individual, corporate outfit or even government could simply use pension fund under the guise of borrowing.[83] The 18-page report by the AbdulrashedMaina stank with details of organized crime in government offices… had revealed that since 1976, N3.3 trillion had been deducted from the pensions fund nationwide without proper accountability. Shocking also was the fact that while the serving workers lined their

[81] (Supra) p 30

[82] Francis, C. A., Olasunmbo, A. O., & Rose C. O., (2014), "A Critique of Pension Reform Act, 2004 in Nigeria", *Journal of Arts and Humanities (JAH)*, Volume -3, No.-7, p.78.

[83] Fapohunda, I. M. (2013), "the Pension System and Retirement Planning in Nigeria", *Mediterranean Journal of Social Sciences*, 4(2), p.13.

pocket with the loot, an average of 50,000 pensioners had not been paid their pension since retirement in the past 42 years.[84] The scale of fraud in the federal pension scheme is first just huge, shocking and scandalous, in that disheartening stories involving very senior officials, including a Permanent Secretary and Director of Pensions who allegedly stole billions of naira have continued to emerge.[85] The Economic and Financial Crimes Commission (EFCC) in conjunction with the Pension Verification Committee reportedly discovered N180m, N50m and $2m in an account of a certain Deputy Director (Finance and Accounts) and N12m in the account of a 29-year old lady, who is also a clerk in the office, among others, who equally shared in various sums in pension booty. In fact, report revealed that stolen pension fund, ranging from N2bn, N3bn, N4bn, N9bn, N25bn, and N32bn to N152bn has been discovered by the Pension Task Force Team on different occasions in the course of investigation.[86] These are funds carefully and specifically budgeted for the up-keep of pensioners to protect them against the risk of poverty in old age, but unfortunately, these monies are siphoned into private coffers.

It is also argued that there is high labour turnover in Nigeria, thus the movement of workers especially to the United States of America and the United Kingdom may also be connected with the irregular and non-payment of retirement benefits.[87] There is no gainsaying the fact that under pre-2004 Pension Scheme, individuals at old age face the reality of looking after themselves by relying on family

[84]Oniye, A.O, (2012),"Problems associated with retirement and implications for productive Adult life",*Nigerian Journal of Gender and Development*, 4(1), p.112.
[85]Onuoha, R. (2012),"Pension Fraud not Related to Contributory Pension Scheme", Vanguard, 10 May. Available *@http://www.vanguardngr.com/2012/05/pension-fraud-not-related-to- cps*, accessed on 16th December, 2017. 10 :19. A.M.
[86] Alabadan, S. (2011), "Nigeria PenCom Clarifies Fraud in Civil Service Pension", *available @ http://allafrica.com/stories/.html*, accessed on 31st December, 2017.5:19. P.M.
[87]Oparanma, A.O. (2011),"Challenges of Nigerian civil servants Retirees", *Journal of Management and Society*, 1(3), p.18.

for wellbeing and future survival. These challenges led to the 2004 Pension Reform also known as the Contributory Pension Scheme.

2.4 2004Pension Reforms in Nigeria:

In the past decade, there has been a global pension reform. The World Bank has played a key role in supporting and financing Chile's Pension Model. The Chilean pension model, introduced in 1981, became the World Bank's paradigm private pension system and was promoted to the rest of the world.[88] The continued reference to Chile's experience was based on the idea of re-investing pension funds to stimulate economic development.[89] The Chilean Model was adopted in Nigeria in 2004.[90] Unfortunately, while the Nigerian government was beginning to give serious attention to pension reforms using the Chilean Model in 2005, the Chilean model was being criticized by supporters of the scheme and the World Bank had come to conclude that the Chilean reform model has not promoted economic development as was set out for from the beginning.[91] In Nigeria, it was easy to doubt the possibility of using pension funds to achieve any meaningful economic development because if the huge amount of oil revenue could not transform the economy, then it is doubtful if pension funds (workers retirement savings) will achieve that objective.

Be that as it may, as part of its reform agenda, the Federal Government of Nigeria under the leadership of the Former President OlusegunObasanjo, constituted various committees headed by Chief AjibolaOgunsola and Mr. FolaAdebola at

[88]Green, M., (2012), "Co-producing Ineffective States: Social Knowledge, Social Policy and Social Citizenship in Africa and in development, Effective States and Inclusive Development" *Research Centre (ESID) Working Paper*, p.14.
[89]Hewitt, A. (2012), "Hot topics in retirement", Available *@http:/www.aon.com/attachements/ humancapital-consulting/2012-Hot-Topics-in-Retirement-highlights.pdf*, accessed on 28th December, 2017. 4:16.P.M.
[90]Ijeoma, N.B., Nwufo, C.I. (2015), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1), p.2.
[91]Ibiwoye, A., Ajijola, L., (2012), "An Actuarial Analysis of the Payout Options in Nigeria's Contributory Pension Scheme", *International Journal of Business Administration*, 3, p.45.

different times to look at the challenges of pension schemes in Nigeria and proffer solutions. FolaAdebola's committee report was enacted into the Pension Reform Act 2004 and came into operation on 1st July, 2004.[92] The reform was a part of the main policy pursued by the Obasanjo administration to address the Millennium Development Goals (MDGs) which is anchored on National Economic Empowerment and Development Strategies (NEEDS). [93] The macroeconomic framework of NEEDS under empowering the people involves issues relating to health, education, environment, integrated rural development, gender, and geopolitical balance as well as pension reforms.[94] The previous pension scheme which was in crisis was then replaced with a Contributory Pension Scheme by the Act to give the retired citizens a better life after retirement.[95]

This Pension Scheme is, according to Federal Government, sustainable and has capability to achieve the ultimate goal of providing a stable, predictable and adequate source of retirement income for each worker in the country.[96] The main objectives of the Act is to ensure that every person that worked in either the public or private sector in Nigeria receives their retirement benefits as and when due to cater for their livelihood during retirement, as well as to establish uniform rules, regulations and standards for administration of pension matters and establish strong regulatory and supervisory framework for the Scheme.[97] The Act was also intended to serve as a tool towards realization of the goal of savings mobilization, which can lead

[92]Eme, O.I,.Uche, O.A. &Uche, I.B. (2014),"Pension Reform Act 2014 and the future of pension",*Arabian Journal of Business and Management Review*, 4(2), p.155.
[93] Ibid.
[94]NEEDS Document (2004) Nigeria: "National Economic Empowerment and Development Strategy (NEEDS)", the NEEDS Secretariat, National Planning Commission, Federal Secretariat, Abuja.
[95]Dostal, M.J. (2011), "Pension Reform in Nigeria Five Years on: Great Leap or inappropriate Policy Design"? Paper presented at 60th conferenceof Political Studies Association (PSA), *University of Edinburgh, Scotland*,p.6.
[96]Ibid.
[97] S.1 (1), Pension Reform Act, 2004.

to effective management of retirement benefits in Nigeria.[98] It was also intended to reduce government expenditure, thereby releasing funds to direct key policy challenges and initiatives. [99] This is expected to help reduce fiscal burden characterized by DB (PAYG) pension scheme and indeed avoid burdening future generations.

The 2004 Pension Reform Act in Nigeria is a total deviation from the previous pension schemes. It is contributory in nature, i.e. pension funds and assets are provided to match pension liabilities.[100] It is fully funded, privately managed, and based on individual account for both the public and private sector employees in Nigeria.[101] The parties each contribute a minimum of 7.5% of the employee's monthly emoluments (comprising monthly basic salary, transport and housing allowances) in the case of the public service, the Federal Capital Territory (FCT) and the private sector.[102] In the case of the military, the employer (Government) contributes 12.5%, while the employee contributes 2.5%. This makes a total of 15%.[103]

To ensure the smooth functioning of the scheme in terms of regulation, administration and management, the government established a body known as the National Pension Commission (PENCOM) to administer the scheme.[104] The National Pension Commission was empowered to compute previous deductions made from staff salaries of the above category of employees. The sum computed is to be transferred to the employees' respective Retire Saving Accounts (RSAs) to be

[98] Ibid
[99] Ibid
[100]Nwanne, T. F. I. (2015),"Impact of Contributory Pension Scheme on Economic Growth in Nigeria",*Global Advanced Research Journal of Management and Business Studies*, Vol. 4(8), p.334,
[101] Ibid.
[102]S.9 (1-5) and S.102, (1), Ibid.
[103]S.9 (2), Ibid.
[104] S. 17 (1), Ibid.

managed by his Pension Funds Administrators (PFAs).[105] Thus, in practice, money is contributed into individual employee's Retirement Savings Account (RSA) and when he/she retires, there will be money in his/her RSA to pay his/her pension. Each employee opens RSA with any licensed Pension Fund Administrator (PFA) of his/her choice.[106] It is privately managed. The employer pays directly to the Pension Fund Custodian (PFC) the total contributions, which will be managed and invested by the PFA of the employee's choice.[107]

Employee's access to his RSA is only allowed upon retirement.[108] If an employee retires at the age of 50 years or more he can have immediate access to the RSA.[109] Similarly, if he retires before the age of 50 years he can have immediate access to his RSA on the condition that the retirement is due to mental or physical incapacity.[110] But if the retirement is in accordance with the terms and conditions of employment he will not access his RSA until after six (6) months of such retirement if he does not secure another employment.[111] However, where an employee makes additional or voluntary contribution into the RSA, he can withdraw such money before retirement or attainment of the age of 50 years.[112] A retired employee can withdraw a lump sum from the balance in his RSA provided that the balance after the withdrawal could provide an annuity or fund monthly payments that would not be less than 50% of his monthly remuneration as at the date of his retirement.[113] An annuity is an income purchased from an approved life insurance company, which

[105]Ibid.
[106] S.11 (1), Ibid.
[107]S.44 (1) and 46 (1), Ibid. "gozi, B. I. and Chris, I. N. (2016), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1), p.5.
[108]S.4 (1), Ibid.
[109]Ibid.
[110]S.3(1), Ibid.
[111]S4 (1), Ibid.
[112]S.4 (5), Ibid.
[113] S.4 (3), Ibid.

provides monthly or quarterly income to the retiree during his lifetime.[114] The balance in the RSA, after withdrawal of the lump sum, will be used to procure an annuity that provides regular income to the contributor or fund a programmed withdrawal.[115] A programmed withdrawal is a method by which the employee collects his retirement benefits in periodic sums spread throughout the length of an estimated life span.[116]

Contributions made into the National Social Insurance Trust Fund (NSITF) which operates as a pension scheme for private sector employees before the commencement of the new pension scheme is required to remain with the NSITF for a minimum period of five (5) years from the take-off date of the new scheme.[117] NSITF is mandated to establish a company to be licensed by PENCOM as a PFA, which will manage the funds.[118] In the case of funded pension schemes in the Public Service of the Federation and the Private Sector, employers are empowered to undertake actuarial valuation of their employees' accrued benefits and credit the RSAs of employees with such funds.[119] An actuarial valuation here means a valuation or calculation made taking cognizance of risks or expected life span of the employee.[120]

2.5 Pitfalls of Pension Reform Act, 2004

Some of the Pitfalls of Pension Reform Act, 2004 which are fundamental or substantial to compromise or undermine the overall objectives of the Act include none coverage of some categories of workers such as State government and Local

[114]Adejoh, E. (2013), "An Assessment of the Impact of Contributory Pension Scheme to Nigerian Economic Development", *Global Journal of Management and Business Research*, 13(2), p.21.
[115]S.4 (3) Pension Reform Act, op.cit.
[116]Adebayo, A.I. and Dada, R. (2012), "Pension Crisis in Nigeria: causes and solution", *Journal of Applied Chemistry*, 3(2), p. 31.
[117]S.40 (2), Pension Reform Act, op.cit.
[118]S.42 (1), Ibid.
[119]Idowu, K.O., Olanike, K.F., 2011, "Pensions and Pension Reform in Nigeria", *An International Journal*, 15, p.11.
[120]Ibiwoye, A., and Ajijola, L., (2012), "An Actuarial Analysis of the Payout Options in Nigeria's Contributory Pension Scheme", *International Journal of Business Administration*, 3, p.45.

Government employees.[121] Thus, the workers not cover by the Scheme continued to face the challenges of Defined Benefits highlighted above.[122] In addition, public and private sector employers and employees pay seven and half percent of their salary as pension contribution while Military personnel pay two and half percent of their salary and Federal Government pays twelve and half percent on their behalf. This negates the 1999 Constitution on the principle of equality. Besides, the Act exempts employees who at the commencement of the Act are entitled to retirement benefits in the existing scheme before this Act but have three or less year to retire and also judicial officers. The Act also abolished the right to gratuity. In the Defined Benefits, a gratuity is a lump sum payment while pension is a periodic payment, normally on monthly basis for the remaining part of the pensioners' life. The present Act abolished the right to a gratuity thus denying the employee the chance of lump sum payment to take care of cogent and immediate needs.[123]

Furthermore, the 2004 Pension Reform Act has not been able to completely resolve the problem of delay in Payment of Retirement Benefits. The objective of the Act is to among others, remove or reduce the hardships associated with payment of pension benefits.[124] However, the Act has not really achieved this as sometimes retired workers take more than six months after retirement before accessing their benefits from their Pension Administrators.[125] Another problem is, Section 4 of the Pension Reform Act[126]which provides that an employee who retires before 50 years

[121]Nyong, B.C. and Duze, C.O. (2011), "The Pension Reform Act 2004 and Retirement Planning in Nigeria", *Journal of Economics and International Finance*, 3(2), p.112.
[122] Ibid.
[123]Olanrewaju, E.A. (2011), "The Pension Reform Act 2004 and Wellbeing of Nigerian Retirees: A Sociological Evaluation of its Provisions", *International Journal of Humanities and Social Sciences*, 1(21), p.332.
[124] S. 1 (1), Pension Reform Act,op.cit.
[125] Umar, M.A. (2015), "Overview of the Contributory Pension Scheme", *Department of Banking and Finance's Town & Gown Seminar*, p.4.
[126]Pension Reform Act, op.cit.

on request can withdraw 25% lump sum to his credit in the RSA but the withdrawal can only be made 6 months after retirement and such a person should not have secured another employment. Suppose the employee dies before the expiration of the six months, he is thus denied the enjoyment of benefit from his personal savings. There is also the problem of non-remittance of deducted contributions by employers.[127] Section 11 (7) of the Act stipulates a penalty of 2% total contributions by an employer for non-remittance or delay in remittance of contributions to Pension Fund Custodians (PFC). [128] The penalty seems not to be strictly enforced by PENCOM as some state governments who have registered find it difficult to remit their contribution to the Account. [129] In addition, compliance by Private Sector employers and employees is a major challenge to the Act. There are no stringent measures put in place to ensure compliance by the Private as well as Informal Sector which is believed to employ over 35million Nigerians. Out of the estimated 51 million working population in both formal and informal sectors, only 3.89 million contributors representing 7.62% of the working population have complied with the scheme.[130]

Furthermore, Pension Fund Administrators have not been proactive enough in the investment of pension contribution held by them. For instance, in 2010, a total of N2, 029.77billion was contributed by employers and employees. However, only 65% of this amount was invested in government securities, money market instruments and to a lower extent on equities. The implication is that pension funds contributions are left un-invested and the consequence is that there will be diminution in income

[127]Imhonopi, D., and Urim, U.M., (2013) "Leadership crisis and corruption in the Nigerian public sector: An albatross of national development", *the African Symposium*, 13, p.78.
[128] Ibid
[129]Ijeoma, N.B., Nwufo, C.I. (2015), "Sustainability of the Contributory Pension Scheme in Nigeria", *Journal of Business & Management Studies*, 1(1), p.12.
[130] Ibid.

accruing to pensioners.[131] The Act further empowers the PFC to invest the pension funds but it did not state how workers can benefit from the accruals of the returns on the investment and assets emanating from their contributions. Section 4 of the Act stipulates that a holder of RSA upon retirement or attaining the age of 50 years shall utilize the balance standing in his RSA for a programmed monthly or quarterly withdrawal on the basis of an expected life span.[132] However, the Act did not explain how the expected lifespan of an individual can be determined. It also did not explain who will supply the shortfall to maintain the retiree for the rest of his or her life if the actual lifespan of the estimated expected lifespan of the retiree is longer than estimated expected lifespan? In addition, the Scheme is bedeviled by the problem of corruption. The scheme was infested with corruption and blossoming thievery of pension funds by those entrusted with the management of the schemes and there seems to be no serious measures in place to tackle the monster.[133]

Following public outcry on the need for amendments to the Pension Reform Act, the Federal Government of Nigeria in April, 2013 forwarded an executive bill to the National Assembly to review some aspects of the Pension Reform Act, 2004. A new Pension Reform Act 2014 was signed into law on 1 July 2014 by President Goodluck Jonathan.[134] This repealed the Pension Reform Act 2004[135] and is in force to regulate the administration of uniform contributory Pension Scheme for both the private and public sector in Nigeria. To ensure that every person who works in either the Public Service of the Federation Federal Capital Territory, States and Local

[131]Nnanta, N.E., Okoh, C.I., and Ugwu, C.S. (2011), "Implications of the New Pension Reform for Social Security Planning in the Local Government", *Arabian Journal of Business and Management Review*,1(4), p.21s.
[132]S.4 (1), Pension Reform Act, op.cit.
[133]Kayode, O., (2013), "An Empirical Analysis of Transport Infrastructure Investment and Economic Growth in Nigeria", *Social Sciences*, 2, p.179.
[134] G.R.F Dalley and Partners, (2015), "the Pension Reform Act 2014",News and Updates, available *@www.grfdalleyandpartners.com*, accessed on 17th December, 2017. 3:55. P.M.
[135]S. 117 (1), Pension Reform Act, 2014.

Governments or the Private Sector, receives retirement benefits as and when due.[136] Essentially, the Act seeks to assist improvident individuals by ensuring that they save in order to cater for livelihood during later years. In Nigeria at the moment, Pension Reform Act 2014 is the major law applicable to Contributory Pension Scheme, and detail analysis of the relevant provision of this law would be made in Chapter Three of the Dissertation.

2.6 The Defined Benefit and the Defined Contribution Pension Schemes in Nigeria

By virtue of Section 5 (1) of the Pension Reform Act[137] and a federated system of governance, two types of pension schemes operate in Nigeria, namely, the defined benefit scheme (DB) known as PAYG and the defined contributory scheme (DC) known as CPS (Contributory Pension Scheme).[138] It is noteworthy that while the Federal and FCT civil service are operating the new CPS, DB scheme operates in some States' Civil Service.[139] Although both DB and DC schemes aim to provide income at retirement, they differ significantly with respect to the risks faced by employers and employees, the sensitivity of benefits to inflation, the flexibility of funding, and the importance of governmental supervision.[140]

Defined benefit (DB) schemes are publicly managed payroll-tax financed pay-as-you-go schemes.[141] In this scheme, current workers make contributions based

[136]S. 1 (1), Ibid.
[137]S.5 (1), Ibid., exempts some category of persons from the scheme. This category is made up of the following: existing pensioners, employees who were entitled to retirement benefits before the 25th June, 2004 and who had three (3) years or less to retire and those covered by the provisions of Section 291 of the Constitution of the Federal Republic of Nigeria.[137] These are Judicial Officers appointed to the Supreme Court or Court of Appeal, including members of the Armed Forces, the Intelligence and Secret Services of the Federation. By implication, this category of persons will continue under the DB.
[138]Ijeoma, N.B., Nwufo, C.I., op.cit. p.15.
[139] Ibid, p.18.
[140]Lloyd-Sherlock, P., et'al,(2012), "Pensions, poverty and wellbeing in later life: Comparative research from South Africa and Brazil", *Journal of Aging Studies*, 26, p.245.
[141] Lopes, A., (2013), *Measuring social class in later life*, Cambridge University Press, p.24.

on their earnings. Pensions are then paid out of current revenue (usually by the state, from tax revenue) rather than out of accumulated funds.[142] In essence, DB transfers resources directly from current workers to retired workers making them redistributive across generations. A DB plan pays an individual a benefit that is defined by a formula, usually without reference to either the amount of contributions an individual has made to the plan or the level of investment returns that the pension plan has earned on its assets. Irrespective of the benefit formula, the pay-out is usually based on a person's last drawn salary and the monthly retirement income payment continues until death.[143]

On the other hand, Contributory Pension Scheme or Defined Contribution (DC) which is also referred to as private pension is based on deferred wage theory.[144] This defers some compensation until an employee retires while the employer promises to provide a pension payment in exchange for current services. Here the contributions, both employee and employer (or by an individual within a personal pension type policy) are stated (defined) but the eventual level of pension benefits is unknown; this will depend not only on the continuing level of contribution over the years but also on the investment performance of the accumulating fund and the annuity applicable when the fund vested (i.e. when benefits start to be taken).[145] Thus, in practical terms, DC Scheme requires the employee and employer to make contributions to the employee's pension fund based on the employee's monthly earnings, and the value of the pension received at retirement is equal to the value of the employee's account balance, which also includes an investment return on the contributions made. DC

[142]Ibid.
[143]Oshewolo, S., and Oniemola, R.M., (2011), "The Financing Gap, Civil Society and Service Delivery in Nigeria", *Journal of Sustainable Development in Africa*, 13, p.261.
[144]Peng, I., (2012), "Social and political economy of care in Japan and South Korea", *International Journal of Sociology and Social Policy*, 32, p.642.
[145] Ibid.

shifted the burden of financial risk of pension from the employer to the employee thus removing the web of government guarantee.[146] DC is a typically funded scheme that is neither redistributive across nor within generations. It usually has fixed contributions but variable benefits.[147] The benefits often depend on the level of contributions made by the employee and employer and the investment return earned by the assets over the employee's lifetime.[148] Thus, the individual bears any potential risk. At retirement, the individual meets the Pension Fund Administrators (PFA) and agrees on the mode of withdrawal.[149] Withdrawal could be a lump sum, programmed withdrawals, an annuity bought from the insurance company with the funds accumulated in the account or through a combination of these.[150] A small percentage of the accumulated asset is paid as a lump sum on retirement.[151] When a programmed withdrawal is chosen, the pension is determined annually by the PFA on the basis of the life expectancy and the rate of return on assets.[152] In the case of annuity, the funds are permanently transferred to an insurance company that determines the amount of the pension.[153] Funeral costs and survivor benefits are covered in the case of death of the pension holder.

In Nigeria, civil servants in states that operate the DB scheme are guaranteed to receive gratuity and a regular amount of money every month based on their number of working years and their last paid salary. The percentage of earning replaced varies

[146]Raghuram, P., (2012), "Global care, local configurations–challenges to conceptualizations of care", *Global Networks*, Vol.12, p.174.
[147] Redwood, D., et'al, (2013), "What level of pension contribution is needed to obtain an adequate retirement income?"*Pensions Policy Institute, London*, p.34.
[148] Ibid.
[149]Soma, N., and Yamashita, J., (2011), "Child care and elder care regimes in Japan", *Journal of Comparative Social Welfare*, Vol. 27, p.141.
[150]Soma, N., and Yamashita, J., Chan, R.K.H., (2013), "Comparative framework for care regime analysis in East Asia", *Journal of Comparative Social Welfare*, Vol. 29, p.113.
[151]Ibid.
[152]Hinz, R., (2011),"The World Bank's Pension Policy Framework and the Dutch Pension System: A Paradigm for the Multi-Pillar Design", *Netspar Discussion Paper,* 05, p.7.
[153]Hujo, K., (2014), *Reforming Pensions in Developing and Transition Countries: Trends, Debates and Impacts, Reforming Pensions in Developing and Transition Countries*, Palgrave, Macmillan, p.52.

from 66 to 100 percent depending on their level or position before retirement. Permanent secretaries, the highest position in the civil service and low earners receive 100 percent while assistant directors receive 66 percent depending on the ministry they retire from.[154] However, the government is burdened with payment of pensions and gratuity. The competing demands on the government's consolidated fiscal resources meant that retirement benefit payments were often sacrificed to ensure the payment of salaries and to finance developmental projects.[155] Thus, it was a common spectacle to see pensioners forming unending queues at designated centers, in a bid to collect pension payments, with occasional reports of demonstration as well as deaths in such queues on account of exhaustion and related causes.[156] For instance, in 2012, there was a demonstration by the Nigeria Union of Pensioners (NUP) in Bayelsa State for non-payment of their gratuity.[157]

The Contributory Pension Scheme, to a large extent, has resolved this problem by placing in the hands of the contributor (and of course their employer), the responsibility for the contribution that is available in the Retirement Savings Account (RSA) upon retirement.[158] With this measure, there is no need for pensioners to queue up at government offices for verification and collection of their monthly pensions. They do not need to queue up to be verified because their monthly pensions are paid straight into their bank account. Another major difference is that while pensioners in the old system travel long distances to be verified, the local office of the Pension Fund Administrator (PFA) manages that level of interface without challenges, thereby

[154]Casey, B.H., (2011), "Pensions in Nigeria: The performance of the New System of Personal Accounts", *International Social Security Review*, Vol. 64, 1, p.14.
[155]Ibid.
[156]Fayankinnu, E.A., (2012), "Life after Labour: The Case of Female Retirees from the Nigerian State Civil Service in South-western Nigeria",*Journal of Arts, and Social Sciences*, 46, p.16.
[157]Ibid.
[158]Fonchingong, C.C., (2013), *Growing Old in Cameroon: Gender, Vulnerability, and Social Capital*, University Press of America, p.24.

removing the need for continuous verification of pensioners.[159] One other most fundamental difference between the two is the fact that, the DC avails the contributors or pensioners a lot of information, ranging from monthly balances and contributions and the lump sum available upon retirement to monthly pension.[160] Pensioners under this Scheme depend on pension authorities to inform them about what they are entitled to.[161] Information guarantees knowledge and with this comes power which has been placed in the hands of the contributors and pensioners.

Though, since under DC, pension payment depends on the contributions of employers and employees throughout their employment years, contributions from employers, workers whose employers failed to remit their contributions will face a predicament when they retire due to an inadequate pension asset balance in their fund.[162] Workers with low salary and therefore low contributions are likely to face similar problems, as they get a replacement percentage of a low salary which consequently may not ensure adequate retirement income.[163] Thus, it could still be argued that in some instances, DC scheme also exposes retirees to risk because the growth of the contributions made by both employer and employee is dependent on the size of the contributions made and the country's economic conditions.[164] Pension system does not function in separation from the social and economic reality of a given country.[165] Therefore, in cases where employers failed to remit their contributions or where workers have low salary and therefore low contributions, the DC scheme may

[159] Ibid.
[160] Folbre, N., (2014), "The Care Economy in Africa: Subsistence Production and Unpaid Care", *Journal of African Economies*, Vol. 23, 5, p.156.
[161] Ibid.
[162] Foster, L., Smetherham, J., (2013), "Gender and Pensions: An Analysis of Factors Affecting Women's Private Pension Scheme Membership in the United Kingdom", *Journal of Aging & Social Policy*, Vol. 25,7, p.217.
[163] Ibid.
[164] Gunu, U. and Tsado, E. (2012), "Contributory Pension System as a Tool for Economic Growth in Nigeria", *International Journal of Business and Behavioural Sciences*, 2(8), p.8.
[165] Gideon, J., (2012), "Engendering the Health Agenda? Reflections on the Chilean Case, 2000-2010", *International Studies in Gender, State & Society*, 19, p.335.

not adequately insure such workers against poor investment performance of the funds and hence does not seem to have any safety net within it.[166] Furthermore, in the defined benefit scheme, different retirement age favors workers, who can retire earlier and receive benefits for a longer period. In DC Scheme, however, earlier retirement can adversely affect workers' benefits because they have a shorter working period to accumulate assets.[167] Though, in Nigeria context, this may not be a problem as mandatory retirement age for civil servants in Nigeria is 60 years or 35 years of service whichever comes first.

In conclusion, this chapter has examined the Historical Development of Pension Scheme in Nigeria particularly from Pre-2004. It has shown that the various DB Scheme which operated in the country from 1951 to 2004 were characterized by a number of problems. These include: The Scheme was funded by the Federal Government through budgetary allocations hence the burden became great for the Government to bear; there was also the problem of uncoordinated administration; outright fraud and diversion of allocated funds as well as ineligible pensioners on the pension payroll. This necessitated the 2004 Pension Reform which introduced Contributory Pension Scheme to give the retired citizens a better life after retirement. The main objective of the Act was to ensure that retired workers in either the public or private sector in Nigeria receive their retirement benefits as and when due to cater for their livelihood during old age. The Scheme is contributory in nature, thus, the employers and their employees are required to contribute to the Pension Funds. To ensure the smooth functioning of the scheme, the government established a body known as the National Pension Commission (PENCOM) to administer it through

[166]Gideon, J., (2014), *Gender, Globalization, and Health in a Latin American Context*, Palgrave Macmillan, p.13.
[167]Ibid.

licensed PFAs and PFCs. However, the Pension Reform Act 2004 also was not free of Some Pitfalls. For instance, the Act did not cover State government and Local Government workers; delay in Payment of Retirement Benefits also continues under the Act; there is also the problem of non-remittance of deducted contributions by employers as well as lack of adequate sanctions and corruption. These problems led to the enactment of Pension Reform Act 2014 which repealed the 2004 Act. In Nigeria, Pension Reform Act 2014 is the major law regulating Contributory Pension Scheme, and detail analysis of the relevant provision of this law would be made in Chapter Three to determine the extent to which the Reform has resolved the problems of pension system encountered under the 2004 Act for enhanced pension administration in the country.

CHAPTER THREE

ANALYSIS OF THE LEGAL REGIME FOR CONTRIBUTORY PENSION SCHEME IN NIGERIA

3.1 **Introduction**

The essentials of life which underpin all human rights are found within the right to social security.[168] The right to social security marks a distinct stage of development of human civilization. Where it is absent, human beings are unable to live with dignity and are reduced to basic survival, with all the worst consequences for society and future progress.[169] As a member of the international community, Nigeria has expressed desire to provide some form ofsocial security or retirement benefits to help workers plan for their retirement.[170]This effort has led to the ratification as well as enactment of a number of international and domestic legal instruments to enhance the provision and administration of contributory pension in Nigeria.[171] Thus, by implication, the Contributory Pension Regime in Nigeria consists of both international and domestic. It is however worthy to note that the international legal instruments creating rights to retirement benefits are given effect primarily through national laws, implemented by national courts and national enforcement organizations, thus placing great reliance upon the integrity and competence of those

[168]Ngozi, B. I. and Chris, I. N. (2016), *Sustainability of the Contributory Pension Scheme in Nigeria*, Journal of Business & Management Studies, 1(1), p.4.
[169]Odia, J.O., and Okoye, A.E., (2012), Pensions Reform In Nigeria: A Comparison Between The Old And New Scheme, Afro Asian Journal of Social Sciences 3, p.18.
[170]Fapohunda, I. M. (2013), *The Pension System and Retirement Planning in Nigeria*, Mediterranean Journal of Social Sciences, 4(2), p.17.
[171]Nwanne, T. F. I., (2015),*Impact of Contributory Pension Scheme on Economic Growth in Nigeria,*Global Advanced Research Journal of Management and Business Studies, Vol. 4(8) p. 338

institutions.[172] This chapter therefore seeks to analyze both the relevant provisions of the international and domestic legal framework for contributory pension so as to determine whether Nigeria's Contributory Pension Law is in consonant with the relevant treaties and obligations with the view to making recommendations that could enhance the contributory pension scheme in Nigeria in line with the international best practices.

3.2 International Legal Regime for Contributory Pension

Over the years, international law has come to increasingly rely on treaties for regulating the affairs of nations.[173] This trend has become even more compelling as such treaties have established standards by which the conducts of states are exercised and measured even in matters that are within their national purview and jurisdiction.[174] In Nigeria, Section 254 (c) (2) of the Constitution[175] particularly provides for the application of any international convention, treaty or protocol on labour which Nigeria has ratified. This development is applauded because, before the coming into effect of the Third Alteration Act[176], Nigeria was constantly under the criticisms of the International Labour Organization (ILO) for failure to domesticate international labour conventions duly ratified. The Third Alteration Act is therefore commendable in that it has successfully removed the constitutional clog in the wheel of enforcement of international labour conventions duly ratified by Nigeria.[177] The court is now empowered to invoke and enforce the arrays of international

[172] United Nations, (2010), *Current status of the social situation, well-being, participation in development and rights of older people worldwide*, New York: Department of Economic and Social Affairs, Office of the Commissioner for Human Rights, p.24.
[173] United Nations, (2011) *World population prospects: The 2010 revision*, Department of Economic and Social Affairs, Population Division, United Nations, New York, p.17.
[174] http://www.dfatgov.au/treaties/making/making1/html> Accessed 25th October, 2016, 2:22. P.M.
[175] Federal Republic of Nigeria (Third Alteration) Act, 2010.
[176] Ibid.
[177] Atilola, B., (2015), *National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act*, available @ nicn.gov.ng/…/ accessed 28th January, 2018. 2:11. P.M.

labourconventions duly ratified by Nigeria (but not yet domesticated) and most of which have acquired the force of customary international law recognized by civilized nations of the world.[178] Thus, the major international legal instrument which is germane to any discussions on pension or retirement benefits is the provisions of the various International Labour Organization (ILO) Conventions.[179] This segment of the dissertation therefore seeks to examine the international standards and mechanisms for achieving the right to social security arising from the following international instruments.

3.2.1 Analysis of international legal Regime for Contributory Pension

Provisions relating to old age or retirement are found under Universal Declaration of Human Rights (UDHR)[180] Article 25 obliges States to provide social security enough as to guarantee standard of living in the event of unemployment or old age. Interestingly however, this international recognition of the right to social security by UDHR has resulted in the growth of social welfare measures at national and otherUnited Nations (UN) instrumentssuch as International Labour Organization (ILO).[181] ILO work in the field of social security has been pioneering. The Philadelphia Declaration recognizes the obligation of the ILO to further among nations of the world programs which will have to achieve "the extension of social security to provide a basic income to all in need of such protection.[182]To this end,

[178]Ibid.
[179] Such as International Labour Organization (ILO), Pensions and other social protection benefits for older persons: Insights from the ILO World Social Protection Report 2014/15,
[180]UN Doc A/810 (1948) *Universal Declaration of Human Rights,* UNGA Resolution 2200A (XX1).
[181]Padraic, K. (2014), *International Standards and Mechanisms on the Right to Social Security,* Law Faculty, National University of Ireland, Galway, p.9.
[182]Philadelphia Declaration of 1944, 'ILO Declaration Concerning Aims and Purposes of ILO' International Labour Office, 26 Official Bulletin 1 (1944)

ILO has setstandards to ameliorate the working conditions of workers and to ensure that they enjoy social security after retirement.[183]

These universal standards are embodied in a number of Conventions such as the Social Security (Minimum Standards) Convention.[184] This Convention makes provisions for nine (9) branches of social security namely medical care,[185] sickness,[186] unemployment, [187] old age, [188] employment injury, [189] family, [190] maternity, [191] invalidity,[192] and survivor's benefit.[193] The principles anchored in the Convention are: guarantee of defined benefits; participation of employers and workers in the administration of the schemes; general responsibility of the state for the due provision of the benefits and the proper administration of the institutions; collective financing of the benefits by way of insurance contributions or taxation. Thus, the Convention allows State Parties to adopt defined benefits (DB) or defined contribution (DC) or both so long as it would guarantee workers' right to social security. To ensure that there is compliance to this obligation, all States which have ratified the Convention are required to provide a report annually on its implementation by providing the relevant legal and statistical information requested in the standard Report Form.[194] This requests detailed information, both legislative and statistical in relation to the key areas of social security as set out above. Part XI sets out the standards for rates of periodic social security payments. This should be at least the recommended

[183]Ibid.
[184]Social Security (Minimum standards) Convention, 1952, (Convention No.102).
[185]Part II of the Convention.
[186] Part III, Ibid.
[187] Part IV, Ibid.
[188] Part V, Ibid.
[189] Part VI, Ibid.
[190]Part VII, Ibid.
[191]Part VIII, Ibid.
[192] Part IX, Ibid.
[193] Part X, Ibid.
[194] ILO. *Report Form for the Social Security (Minimum Standards) Convention, 1952 (No. 102).* Geneva: ILO. 1980.

percentage of the total previous earnings of the beneficiary or his breadwinner, and of the amount of any family allowances payable to a person with the same family responsibilities as the standard beneficiary.[195] The previous earnings are to be calculated according to prescribed rules, and may be based on classes of earnings for particular types of work.[196]

At any rate**,** the ILO Social Protection Floors Recommendation[197] completes this framework by calling for a guarantee of at least basic income security to all persons in old age, as well as access to essential health care, as part of nationally-defined social protection floors.Furthermore, Equality of Treatment (Social Security) Convention[198] has extended the right to social security which is designed to non-nationals including refugees and stateless persons. Equal treatment is guaranteed regardless of residence, on condition of reciprocity. States accepting obligation are bound to make payment on the basis of invalidity, old age, as well as survivor's employment and family benefits.[199] But the states can prescribe minimum period of residence for granting benefits of old age. The Convention on Maintenance of Social Security Rights[200] supplemented the above ILO Conventions. The convention specifically requires the Members to provide schemes of maintenance and to determine formula for awarding old age and survivor's benefits and pensioners benefit in respect of occupational diseases in case of contributory benefits, by agreement between parties. Each member is also required to promote the development of social services to assist persons covered by this convention,

[195] *Ibid.,* Part XI.
[196] Ibid.
[197] 2012 (No. 202)
[198] Equality of Treatment (Social Security) Convention,1962 (Convention No.118).
[199] Ibid.
[200] Convention on Maintenance of Social Security Rights, 1982.

particularly migrant workers, in their dealings with the authorities and institutions as well as promote the welfare of the person and his family. [201] Supplementary Recommendation to the Convention relating to Invalidity, Old Age and Survivor's Benefit [202] further calls for the extension of protection to persons under casual employment and to all economically active persons.

From the forgoing, it is obvious that there is a strong desire at the international level to refine, sharpen and enforce the international standards and mechanisms of human rights law for promoting the right to social security. This is no doubt predicated on the realization that pensions are essential tools for ensuring income security for women and men as they grow older. This income, along with access to quality health services, is necessary for the dignity and well-being of older persons, and imperative to realize their rights.[203]

3.3 Domestic Legal Regime for Contributory Pension Scheme

In Nigeria, the major domestic legal instruments dealing with contributory pension scheme are the Constitution of the Federal Republic of Nigeria[204] and the Pension Reform Act.[205] It is important to note however that, not all provisions of these laws are relevant to the subject matter of this dissertation. Hence, in order to remain within the scope and objective of this work, these laws would not be analyzed according to the numerical order of the legal provisions. Instead, only the relevant provisions relating to the contributory pension scheme will be analyzed. In doing this, particular emphasis will be placed on grey areas that need further legislative attention.

[201] Ibid.
[202] No. 113, 2012.
[203] Grech, A.G., (2013), *How best to measure pension adequacy*, CASE, 172, London, p.25.
[204] Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as Amended).
[205] Pension Reform Act, 2014.

3.3.1 Pension Reform Act

By the provision of the constitution of the Federal Republic 1999 (as amended) section 5 and item no. 44 of Part 1 of 2nd schedule to the constitution, the Federal Government has the Exclusive power and right to legislates on pension, gratuities and other like benefits payable out of the consolidated revenue fund or any other public funds of the federation[206].

Also,the Constitution has provided the basis and ambit within which the framework for contributory pension scheme operates. For instance, Sections 173 (1) of the Constitution [207] specifically provides statutory recognition to the provision of retirement benefits to certain categories of workers in Nigeria**.** The Section requires that 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.In Nigeria, the current law regulating pension is the Pension Reform Act[208]. Section 117 of the Act[209] repeals the Pension Reform Act No.2 Laws of the Federation of Nigeria 2004. The objective of the Act as stated under Section 1(1)(2)[210] is to regulate the administration of uniform contributory Pension Scheme for both the private and public sector in Nigeria; and to ensure that every person who works in either the Public Service of the Federation Federal Capital Territory, States and Local Governments or the Private Sector, receives retirement benefits as and when due. Essentially, the Act seeks to assist improvident individuals by ensuring that they save

[206] Central Bank of Nigeria vs Jacob OladeleAmao and others (2011) ALL FWLR pt558 P.833
[207] Federal Republic of Nigeria, Cap. C23, LFN, op.cit.
[208] Pension Reform Act, op.cit.
[209] Ibid.
[210] Ibid.

in order to cater for livelihood during later years.[211] The object of the Act clearly reflects Article 25 of the UDHR[212] and the requirements of the ILO Social Protection Floors Recommendation[213] which calls on members to guarantee at least basic income security to all persons in old age, as well as access to essential health care, as part of nationally-defined social protection measures. Changes in the Act have a moreprofound and broader effect onemployers and employees of both the public and private sector. Some of these changes include:

3.3.1.1 Expansion of Coverage of Contribution

Section 2(2) of the Pension Reform Act[214] expands the coverage of the Contributory Pension Scheme (CPS) to private sector Companies with fifteen (15) employees and above as opposed to 5 or more employees provided under the previous law. Employees of organizations with less than three (3) employees may also voluntarily participate in the scheme in accordance with guidelines issued by the Commission. Decreasing the scope of participation of the contributory pension scheme for employers in the private sector from minimum of five employees to three employees is more likely to enables wider participation for the informal private sector.[215] This is indeed a commendable development for employees in small scale employment as they would not be left out of the contributory benefit to secure their future. In addition, under Section 2(3) of the Act[216] self-employed persons are entitled to participate under the Scheme in accordance with guidelines to be issued by the

[211]Dada, J. A. (2014), *Pension Reform Act 2004: A legislated Fraud*? Paper presented at the National Seminar on Pension Fraud in Nigeria: The Challenges of Employers, employees and union leaders held at Asaba, Delta State, Nigeria 25-27th February.
[212]UN Doc A/810 (1948) *Universal Declaration of Human Rights,* UNGA Resolution 2200A (XX1).
[213]2012 (No. 202)
[214] Pension Reform, op.cit.
[215]Dalley& Partners, (2015),The Pension Reform Act 2014 – Nigeria: News & Updates, R.F Dalley& Partners GabsdallHouse(3rd–4th Floor)26IgbosereRoadLagos Nigeria, www.grfdalleyandpartners.com, accessed on 30th November, 2017. 3:08. P.M.
[216] Pension Reform, op.cit.

Commission notwithstanding the requirement of 3 or more persons. This is in line with Governments drive to capture the informal sector under the Pensions Scheme.[217] Thus, from the coverage of the Scheme under the Act, it implies that non-nationals in Nigeria especially refugees and stateless persons can also contribute to Scheme to cater for their old age as required by Equality of Treatment (Social Security) Convention[218].

3.3.1.2 Upward Review of the Rate of Contribution

In compliance to the ILO Convention on Maintenance of Social Security Rights[219] which requires the Members to provide schemes to determine formula for awarding old age benefits in case of contributory benefits, Section 4 of the Act[220] has reviewed upward the rate of contribution by employers and employees into pension funds. The Section provides that contribution shall be a minimum of ten percent (10%) by the employer and eight percent (8%) by the employee. It should be noted that these deductions are made before taxation of the employee's monthly emolument. Though, by the above Convention, the formula for the determination of old age benefits must be based on the agreement between parties. It is however doubtful if the present formula for calculating workers' retirement benefits was arrived at through mutual agreement between the parties. Be that as it may, the current position is an improvement from what was obtained under Section 9 (1) of the repealed Act[221] which provided for contribution by the employee and a matching contribution by

[217]Maji, A. (2014),*Managing post-retirement conditions in Nigeria*, Journal of Good Governance and Sustainable Development in Africa, 2(1), p.113.
[218]Equality of Treatment (Social Security) Convention,1962 (Convention No.118).
[219]Convention on Maintenance of Social Security Rights, 1982.
[220]Pension Reform, op.cit.
[221]S.9 (1), Pension Reform Act, 2004.

his/her employer to ensure a minimum contribution of 15% into the Retirement Saving Account (RSA). The Section further reviews upwards, the minimum Pension Contribution from 18% to 20% of monthly emolument in cases where the employer elects to bear the full responsibility of the Scheme. Clearly this is designed to provide additional benefits to the workers' RSA and thereby enhance respective monthly pension benefits upon retirement.[222]

It is imperative to note further that the scope of the monthly emolument under Section 120 of the Act[223] has been expanded to mean total emoluments as may be defined in the employee's contract of employment but shall not be less than a total of basic salary, housing allowance and transport allowance. While this may be commendable, the standard for rates of monthly social security payments under the Act is not encompassing enough. Under the Social Security (Minimum Standards) Convention[224], such standard include the amount of family allowances payable to a person with the same family responsibilities as the standard beneficiary.[225] Another important innovation under Section 4 (4) of the Act[226] is that, it allows an employer, if he so wishes, to take full responsibility of the contribution but in that case, the contribution shall not be less than 20% of the employee's monthly emolument. While taking full responsibility of the total contribution is optional, an employer obliged to take or maintained a Group Life Insurance Policy in favour of the employee for a minimum of thrice the employee's annual total emoluments similar to the old Act.[227]

[222]Taiwo, O.et'al, (2014), *Pension Reform Act 2014 Key Highlights and Salient Points,* PricewaterhouseCoopers Limited, p.4.
[223] Pension Reform Act, op.cit.
[224]1952, (Convention No.102) Part XI, op.cit.
[225]*Ibid.,* Part XI.
[226] Ibid.
[227] S. 4(5), Ibid.

3.3.1.3 Investment of Pension Funds

Section 85 of the Pension Reform Act[228] allows all contributions made under the Act to be invested by the Pension Fund Administrators with objectives of safety and maintenance of fair returns on amount invested. Interestingly, the Section permits the creation of additional permissible investment instruments to accommodate initiatives for national development, such as investment in the real sector, including infrastructure and real estate development. Pension Funds Administrators could make such investment within or outside Nigeria. This is provided without comprising the paramount principles of ensuring the safety of pension fund assets. In essence, the Act expands the scope of investments in which pension funds can be invested and this includes specialist investment funds and other financial instruments PenCom may approve.[229] While this is commendable on one hand, care should be taken not to lose sight of the need to protect and preserve contributors' wealth.

To encourage the growth of such investment, the Act provides tax to pension funds. Section 10 of the Act[230] clearly mentions that any interests, profits, dividends, investments and other income accruable to pension funds or asset are not taxable. In addition, under subsection (4), withdrawal of voluntary contribution is no longer subject to tax if withdrawn after 5 years. This implies that such withdrawal would be subject to tax if it is made before the end of 5 years from the date the voluntary contribution was made. In other words, tax is limited only to the returns on such contributions if withdrawn within 5 years. It should be implied however that where such returns relate to exempt income like interest on government securities, then tax

[228] Ibid.
[229] Taiwo, O. (2014),*Pension reform: Matters arising*, available@www.pwc.com/exweb/pwcpublications.nsf/docid, accessed on 4th December, 2017. 2:12. P.M.
[230] Pension Reform Act, op.cit.

should not apply.[231] Though, Sections 173 (4) of the Constitution[28] seems to limit this exemption to public pension funds. The Section specifically state that, "pensions in respect of service in the public service of the Federation shall not be taxed". By implication, it means that this constitutional provision has no application to private sector pension funds. However, subsection (2) appears to overrule subsection (1) by validating the tax waiver granted by Act to any form of pension funds. The subsection states that, 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 tohis disadvantage except to such extent as is permissible under any law, including the Code of Conduct. It follows that the exemption can validly apply to pension funds both in public and private sector.

3.3.1.4 Access to Benefit in event of loss of Job

The employees who have been involved actively in the contributory pension scheme often complain about recovery of pension after loss of job, the worry centers around the stipulated waiting period after a job loss.[232] To remedy this situation, Section 16 of the Act[233] has reduced the waiting period for accessing benefits in the event of loss of job by employees from six (6) months (2004 pension reform) to four (4) months. Thus, where an employee loses his job, he can quickly go to the bank to access his benefits after 4 months.

However, Section 16 (2)of the Act[234] creates another condition to be satisfied before a contributor maybe allowed to withdraw from his retirement account. It requires that an employee who disengages from employment or is disengaged before the age of 50

[231]Dada, J. A., op.cit.p.5.
[28] Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as Amended).
[232]Adams, R.A. (2015),*Public sector accounting and finance*, Lagos, Corporate publisher ventures, p.49.
[233] Pension Reform Act, op.cit.
[234] Ibid.

and is unable to secure employment within 4 months of disengagement is allowed to make withdrawals from the account not exceeding 25% of the total amount credited to the retirement savings account. To boost retirement in the country, A pension protection fund has been created under the new Act to include annual subvention of 1% of the total monthly wage bill payable to employees in the public sector, an Annual Pension Protection Levy (the percentage of which is to be determined by PenCom) and income from investments of the Pension Protection Fund. The objective of the Fund is to guarantee a minimum benefit to contributors in the event of any shortfalls in the investment of pension funds and any if withdrawn within 5 years. Tax is limited to any other use Pen Com may determine from time to time[235]. Furthermore, Section 42 of the Act[236] creates a newly implemented provision for the repositioning of the Pension Transition Arrangement Directorate (PTAD). This is to ensure greater efficiency and accountability in the administration of Contributory Pension Scheme in the Federal Public Service such that payment of pensions would be made directly to pensioners' bank accounts in line with the current policy of the Federal Government.

3.3.1.5 Right to Choose Pension Fund Administrator

The Pension Reform Act[237] interestingly, did not only comply with Part X, of the Social Security (Minimum Standards) Convention[238] by ensuring that institutions are established for administration of contributed pension funds, Section 11 (1) of the Act[239], has further given the right to choose their PFA. This right has been extended to cover employees whose employers operate a closed pension scheme. Such

[235]Taiwo, O., op.cit.
[236] Pension Reform Act, op.cit.
[237] Ibid.
[238]Social Security (Minimum standards) Convention 102, op.cit.
[239] Ibid.

employees now have the right to choose an external PFA. Where an employee fails to open a Retirement Savings Account (RSA) within 6 months after assumption of duty, his employer can now request a PFA to open a nominal RSA for such employee for the remittance of his pension contribution.[240] Furthermore, under Section 53 (2), any company set up by theNigeria Social Insurance Trust Fund (NSITF) under the repealed Act shall continue to operate as a PFA. It follows that the funds contributed shall be computed and credited into the respective retirement savings account opened under the Act.[241] Any person who has retired before the commencement of the Act shall be entitled to make withdrawals from the account although not exceeding 25% of the total amount credited to the retirement savings account.[242]

3.3.1.6 Corrective Actions on Failing Licensed Operators

Under Section 59 (1) and (2) of the Act[243]PenCom receives new powers entitling it totake proactive corrective measures against unlicensedoperators whose actions or inactions jeopardize the safety ofPension Assets. This provision further fortifies the Pension Assets againstmismanagement and/or systemic risk.[244]The repealed Act only allowed PenCom to revoke the license of erring pension operators but does not provide for other interim remedial measures that may be taken by PenCom to resolve identified challenges in licensed operators.[245] Accordingly, the new Act now empowers PenCom to take proactive corrective measures on licensed operators whose situations, actions or inactions jeopardize the safety of pension assets.

[240] S.11, (5), Ibid.
[241]S. 53 (2), Ibid.
[242]S. 7 (2), Ibid.
[243] Ibid.
[244]Maji, A. (2014),*Managing post-retirement conditions in Nigeria*, Journal of Good Governance and Sustainable Development in Africa, 2(1), p.113.
[245]Anyim, F.C., et'al, (2014), *A Critique of Pension Reform Act, 2004 in Nigeria,* Journal of Arts and Humanities (JAH), Volume -3, No.-7, p.34.

To further strengthen the power of the Commission to take proactive corrective measures against unlicensed operators, Section 64(5) of the Act obliges them notwithstanding the provisions of the Companies andAllied Matters Act, to withdraw the powers of the board ofthe Pension Fund Administrator or Pension FundCustodian over the pension funds and assets held oradministered by the company and may appointadministrators with relevant qualifications who shallsuperintend the transfer of the assets and funds held oradministered by the Company and exercise the powersof the board where necessary in accordance with the Act.In such circumstance, the Commission is further empowered under Section 64(6) of the Act[246] to cause the Retirement Savings Accounts beingmanaged by the Pension Fund Administrator whoselicense was revoked under subsection (1) of this Sectionto be transferred to another Pension Fund Administratoror Administrators as the case may be; and(b) Transfer the pension fund and assets being heldby a Pension fund Custodian whose license wasrevoked under subsection (1) of this section to anotherPension Fund Custodian or Custodians as the case maybe.In order to protect employees from dealing with such fraudulent or unlicensed PFA or Custodian, Section 64(7) of the Act[247] obliges the Commission to publish by notice in the Federal Gazette, the list of the Pension Fund Administrator or Pension Funds Custodians whose licenses have been revoked.

To assist it in carrying out its functions and ensuring compliance with the provisions of the Act, every Pension Fund Administrator is obliged by Section 78 of the Act[248] to establish Risk Management Unit and Investment Strategy Unit. The Risk Management Unit is empowered to determine the risk profile of the investment

[246] Ibid.
[247] Ibid.
[248] Ibid.

portfolios of the Pension Fund Administrator; draw up programs of adjustments in the case of deviation; determine the level of reserves to cover the risks of the investment portfolios; advise the Pension Fund Administrator on maintaining adequate internal control measures and procedures and carry out such other functions relating to risk management as the Pension Fund Administrator may from time to time determine.[249] While the Investment Strategy Unit is mandated to formulate strategies for complying with investment guidelines issued by the Commission; determine an optimal investment mix consistent with risk profile agreed by the board of the Pension Fund Administrator; evaluate the value of the daily market–to-market portfolios and make proposals to the board of the Pension Fund Administrator; review the performance of the major securities of the investment portfolios of the Pension Fund Administrator on periodic basis, and carry out such other functions relating to investment strategy as the board of the Pension Fund Administrator may from time to time, determine.[250] Section 78 of the Act generally encourages the creation of additional permissible investment instruments to accommodate initiatives for national development such as investment in the real sector, including infrastructure and real estate development.

3.3.1.7 Upward Review of the Penalties and Sanctions

The Pension Reform Act includes a few novel provisions with respect to offences and penalties. The Section 99 of the Act[251] criminalizes an attempt to commit an offence and imposes the N250, 000 penalties as the offence itself. This is in addition to a prison term of 10 years and a fine of three times the amount misappropriated, 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

[249] S.78 (2)(a-e), Ibid.
[250] S.78 (3)(a-e), Ibid.
[251] Ibid.

of any unlawful activity under the Act in his/her possession, custody or control. In case of Pension Fund Custodians (PFCs), Section 99 (4) of the Act imposes a penalty of at least 10million Naira upon conviction, where the PFC fails to hold the funds to the exclusive preserve of the PFA and PenCom or where it applies the funds to meet its own financial obligations (in the case of a director, 5 million Naira or a term of 5 years imprisonment or both). While under Section 100 of the Act, a PFA who misappropriate or divert pension funds is liable on conviction to a fine equal three times the amount diverted.

The sanctions provided under the repealed Act were no longer sufficient deterrents against infractions of the law. There are more sophisticated modes of diversion of pension assets, such as diversion and/or non-disclosure of interests and commissions accruable to pension fund assets, which were not addressed by the repealed.[252] Consequently, the new Act has created new offences and provided for stiffer penalties that will serve as deterrence against mismanagement or diversion of pension funds' assets under any guise. Thus, operators who mismanage pension fund will be liable on conviction to not less than 10 years' imprisonment or fine of an amount equal to three-times the amount so misappropriated or diverted or both imprisonment and fine. The decision by law makers to impose stiffer punishment is a clear reflection of the encouraging growth in pension contributions and the need to deter infractions in respect of this burgeoning sector. In other words, the inclusion of more penalties targeted at individuals is expected to serve as a deterrent to pension crimes. Furthermore, as it is clear that the benefit of pension is on the high side, some

[252]Anyim, F.C., et'al, op.cit., p.35.

adamant employees still refuse to join the scheme, thus, Section 11 (5) of the Act[253] in such situation, compels an employer to open a Temporary Retirement Savings Account (TRSA) on behalf of an employee that failed to open an RSA within three (3) months of assumption of duty. This was not required under 2004 Act.

3.3.1.8 Dispute Resolution

Any employee aggrieved with his employer or PFA is obligated under Section 106 of the Pension Reform Act [254] to approach PenCom for redress before exploring arbitration or commencing an action in the Court. Under the repealed Act, the avenues for dispute resolution were limited to Arbitration and the Investment and Securities Tribunal.[255] However, in the new Act, in addition to these, Section 105 of the Act[256] vested jurisdiction in a Court of 'competent jurisdiction' which includes the Federal and State High Courts including the High Court of the FCT as well as the National Industrial Court. The court may lift the veil of incorporation where necessary and ensure speedy and just determination of any case before it. Thus, it follows that where the Commission failed to resolve the grievance, the matter could be referred to Arbitration under Section 107 of the Act and subsequently to a Court of competent jurisdiction where Arbitration fails. The vestingof jurisdiction in three superiorcourts of record suggests or most likely an indication that the lawgives more opportunities forquick dispensation of justiceand dispute resolution. This is apositive development as it givesmore contributors confidence inthe Scheme.

[253] Pension Reform Act, op.cit.
[254][254] Ibid.
[255]Taiwo, O.,op.cit.p.36.
[256]Pension Reform Act, op.cit.

It should be noted however that, under Section 108 of the Act[257] the Public Officers Protection Act applies to any suit commenced against any officer of PenCom. Accordingly, the Section prevents the institution of an action against an officer or employee of PenCom for any act done in execution of the Act or any other law if not commenced within 3 months of the act or in the case of a continuous act, within 6 months after the act ceases. Furthermore, no action can be taken against PenCom except after the expiration of one month following the service upon the Commission of a notice setting out the cause of action, particulars of the claim, name and place of abode of the intended plaintiff and the reliefs sought.[258] The requirement of a pre-action notice is a condition precedent to be fulfilled by a person aggrieved by PenCom or any of its officers before such persons can approach the courts.[259] Perhaps, the advantage ofthis measure is that it would give PenCom the opportunity to resolve such matters before they escalate into a full blown litigation. In addition, under Section 105 of the Act[260], a new and encouraging addition is provided. Unlike the 2004 Pension Reform Act, this Section empower Pencom to institute criminalproceedings against employers who persistently fail todeduct and/or remit Pension contributions of employeeswithin stipulated time, subject to obtaining the fiat of theAttorney General of the Federation.

3.3.1.9 Exemption from the Scheme

Persons exempted under the Actare substantially the same asunder the repealed Act. Section 5 (1) (a)-(d) of the Act[261], exempts the following class of persons: The first

[257] Ibid.
[258] S.108 (2), Ibid.
[259] S.110 (1), Ibid.
[260] Ibid.
[261] Ibid.

categories of persons mentioned in Section 291 (3) of the Constitution.[262] The Section list such persons to include any person who has held office as a judicial officer for a period of not less than fifteen years shall, if he retires at or after the age of sixty-five years in the case of the Chief Justice of Nigeria; a Justice of the Supreme Court; the President of the court of Appeal or a Justice of the Court of Appeal or at or after the age of sixty years in any other case. These persons are covered by defined benefit (DB). Thus, they are entitled to pension for life at a rate equivalent to their last annual salaries and all their allowances in addition to any other retirement benefits to which they may be entitled. The second category is any employee who is entitled to retirement benefits under the pension scheme existing before the 25th day of June 2004. The third class of persons areProfessors covered by the Universities (Miscellaneous Provision (Amendment) Act[263]. The Act has consolidated earlier amendment to the 2004 Act, which was passed by the National Assembly. This includes the Pension Reform (Amendment) Act[264] which exempts the personnel of the Military and the Security agencies from the Contributory Pension Scheme.

Thus, by implication, the retirement benefits of the above exempted workers would be regulated under the DB system, which of course, is outside the scope of this work. Suffice it to mention however that, the scope of the exemption seems to be too wide. One really questions the rationale behind some of the exemption especially considering that the ineffectiveness of the DB was what resulted in the contributory pension scheme.

[262] Constitution Federal Republic of Nigeria, Cap. C23, LFN, op.cit.
[263] Universities (Miscellaneous Provision (Amendment) Act, 2012.
[264] Pension Reform (Amendment) Act 2011.

3.3.1.10 Gaps Identified In the Pension Reform Act Of 2014

While the Pension Reform Act is generally a step in the right direction, some of the changes introduced appear not to have been well thought through and some of the changes appear to have been made at the last minute thereby creating some gaps, ambiguities and inconsistencies within the law. For instance, the Scheme applies to employees in both the public and private sectors. Mandatory contribution is applicable to organizations in which there are 15 or more employees (previously 5 employees). This effectively reduces the number of employers and employees that are likely to benefit from the scheme. Given the low level of contributors under the Scheme, this change is counterproductive. Furthermore, the Act provides that in the case of private organizations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PENCOM). However, the Act is silent on the applicability of the Scheme to private organizations with more than 3 but less than 15 employees.

Further still, PenCom is yet to provide clarifications or issue guidelines regarding contributions by employers with 3 to 15 employees. The same applies to workers in the informal sector. This class of workers which constitute over 59 million workers growing at a rate of 3% per annum which makes up approximately 70% of Nigeria's total labour force.[265] Though, PenCom is in the process of setting up an appropriate Micro Pension structure, there will however be challenges faced in implementing a Micro Pension Scheme which will range mostly from creating awareness and engendering trust to operational difficulties.[266] Part of the problem is lack of strong

[265]Mary Iwelumo, (2018), "Micro Pensions-The New Frontier",*Journal of Financial Services in Nigeria*, (2), p.11.
[266] Ibid.

institutional structures that can support Micro Pension to facilitate fund administration through the use of technological platforms including mobile money to increase coverage, remit pension contributions and pay retirement benefits. Developing countries such as Kenya, Indonesia, Vietnam and Jamaica encountered similar challenges while trying to introduce Micro Pension Schemes. However, they were able to overcome these challenges by putting in place strong institutional structures for the Scheme. This facilitated fund administration. They also used technological platforms including mobile money to increase coverage, remit pension contributions and pay retirement benefits.[267]

Furthermore, in order to provide compensation arising from such investment risk, Section 82 (1) of the Pension Reform Act requires the Federal Government to pay 1% of the total monthly wage bill payable to employees in the Public Services into the Pension Protection Fund for the payment to eligible pensioners for losses arising from such risk. However, PenCom has failed to mount pressure on the government to implement this provision. This seems to highlight one major weakness of PenCom. In addition, the retirement savings of the lower class which constitutes about 75% of the working population in formal sector, with salary range between N18, 000-N50, 000, may not be sufficient to provide them a meaningful income on retirement. Such employees need to save more than 8% of their salary if they intend to enjoy a better social security after retirement. Unfortunately, this also means that there would be sharp depreciation in their standard of living.

[267]Ibid.

Furthermore, employees may find some satisfaction in the fact that employers would contribute at least 10% of monthly emoluments if they are lucky to keep their jobs. The implication of this increase on the part of the employers is that, they must prepare for either an increase in staff cost or some restructuring of staff compensation to maintain the contribution at the current levels. In other words, this may increase the cost of employment which could force some employers to take drastic measures such as rationalization of staff strength. In addition, if Section 4 of Act[268] truly intends to encourage an employer to take full responsibility of the contribution, then requiring him to contribute as much as 20% of the employee's monthly emolument may likely defeat that objective. This does not make sense given that the combined contribution by both parties is 18%. In practice, this can discourage employers from taking full responsibility.

Another problem is the expansion of the definition of monthly emoluments. The issue is not that it is defined to mean the total emolument as defined in the employee's contract of employment provided it is not less than the total of the employee's basic salary, housing and transport allowance. But the concern is, this definition is vague and could be interpreted in several ways. Pending clarification from PenCom, one of the credible interpretations that could be considered by companies is that all items that are paid on a monthly basis (in addition to basic, housing and transport) would form part of the base on which the pension rates are applied. This potentially larger base could well mean that many employers will see an increase of over 100% in their pension contribution obligations while employees' net pay will reduce unless their employers chose to increase their salaries to

[268] Pension Reform Act, op.cit.

accommodate the additional contribution. Finally, the Act does not specify a commencement date. Perhaps, this lacuna could be excused as Section 2 of the Interpretation Act[269] is to the effect that where no date of commencement is contained in an Act, the commencement day shall be the day the Act is passed or signed into law. Unless a commencement date is inserted before the Act is gazetted, the commencement date will be 1st July, 2014.

In closing, this chapter analyses legal regime for contributory pension scheme in Nigeria with particular emphasis on the Pension Reform Act.[270] It has been shown that the Act has expanded the scope of participation of the contributory pension scheme and among others, reviewed upward the penalties and sanctions to pension defaulters and employers which of course means that the Act is an improvement of the former. Indeed, the Act has introduced measures made that have the potential to assist improvident individuals by ensuring that they save in order to cater for livelihood during later years. However, despite this, there still some unresolved issues regarding its coverage. A notable example is lack of provision on the applicability of the Scheme to private organizations with more than 3 but less than 15 employees.

[269] Interpretation Act, CAP 123, LFN, 2010.
[270] Pension Reform Act, op.cit.

CHAPTER FOUR

INSTITUTIONAL FRAMEWORK FOR PENSION ADMINISTRATION IN NIGERIA

4.1 Introduction

Reforms in Nigeria's pension scheme have created new large pools of assets that require active management. This is largely due to the progress in the membership and contributions to the pension schemes from both the private and public sector.[271] Interestingly, there are opportunities emanating from the regulations and also from some channels to deploy or invest these pension funds.[272] Though, while the growth in pension funds is important and commendable, the foremost concern is, there are few channels to effectively manage and deploy or invest these funds and assets for the benefit of the workers. Worst still, there are regulatory restrictions and investing limits that may inhibit further growth potential and competitiveness in the pensions' industry.[273] This chapter therefore seeks to examine the effectiveness of pension institutions or agencies in Nigeria in the area of administration and investment of pension funds. To achieve this, the chapter would take an analytical look at the regulatory opportunities for investors on the investment of pension funds in the country so as to strike a balance between profitable investments on the one hand, and the security of investible assets on the other, and to examine whether there is a sound risk management capable of ensuring sustainability of the scheme.

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[271] Egwuatu, P. (2015, March 02), *Pension funds hit N4.5trn with 6 million contributors*, *Vanguard News*. Retrieved from http://www.vanguardngr.com/2015/03/pension-funds-hit-n4-5trn-with-6-million-contributors/#sthash.SnlhXu2X.dpuf.

[272] Iloani, F. A. (2016, *Nigeria's pension funds now over N5trn – Pencom DG*, *Daily Trust*. Retrieved from http://sweetcrudereports.com/2015/10/06/nigerias-pension-funds-now-over-n5trn-pencom-dg/ Leriba Consulting Lltd, (2015), *The growth of the Nigerian pensions industry*, *Occasional Research Report*.

[273] Ahmed, I. K., et'al, (2016), *Effects of contributory pension scheme on employees' productivity: Evidence from Lagos state government,* African Journal of Business Management, Vol.10 (16), p.384.

4.2 Institutional Framework for Pension Administration in Nigeria

There four major operators or institutions responsible for administration of pension funds in Nigeria. These are: National Pension Commission, (PENCOM) Pension Fund Administrator (PFA), Closed Pension Fund Administrator (CPFA), and the Pension Fund Custodians (PFC). Each of the operators carries out its functions efficiently and effectively in a well-organized and professional manner. The successful role of these four operators is important and key in achieving the desired success of the scheme. Functions of these key players are:

4.2.1 National Pension Commission

Central to the administration of the new pension scheme in Nigeria is the Pension Commission (PenCom). This is a Federal Government agency whose principal objective or functions include the regulation and supervision of effective administration of pension matters in Nigeria; approval, licensing and supervision of all pension fund administrators and establishment of standards, rules and issuance of guidelines for the management and investment of pension funds.[274] In Nigeria, investment of pension fund assets is regulated by PenCom.[275] The commission will achieve the above by ensuring that payment and remittance, of contributions are made and beneficiaries of retirement savings accounts are paid as at when due.

In the discharge of its mandate to transfer the NSITF Contributions to Members RSAs, in 2017, the Commission continued the supervision of the transfer of NSITF contributions into beneficiaries' RSAs. In this regard, eight hundred and thirty-eight (838) NSITF transfer applications amounting to N149.51 million werereceived. Over 98 percent (822) of the applications were processed and N53.92million was remitted

[274]As provided for under Sections 85-91 of the Pension Reform Act, 2014.
[275]Ibid.

to the RSAs owners of the processed applications.[276] From 2004 to 2017, N9.63billion has been transferred to the RSAs of 133.893 NSITF Members.[277]During the same period, NSITF payment applications of the sum of N2.93million were received from eighty-nine (89) NSITF members. The Commissionprocessed the payment of eighty-seven (87) applications totaling N2.91 million. A totalof N2.90 billion has been processed and paid to 35,430 NSITF Members cumulativelyfrom 2004 to 2017.[278]In addition, the monthly pensions of 3,360 NSITF Pensioners were processed and approved for payment of the sum of N19.32 million during the third quarter of 2017. In all, the total sum of N4.02 billion was approved and paid as monthly pension to NSITF Pensioners from November 2006 to 2017.[279] The Commission also continued the refund of employee portion of contributions to the personnel of the Military and other Security Service Agencies exempted from the CPS. In 2017, the Commission processed 254 applications for refund. The sum of N39.83 million was refunded to the pension contributors while the sum of N127.13 million representing the contributions made by the Federal Government on their behalf was returned to the Contributory Pension Account.[280]

PenCom has made effort to recover outstanding pension contributions and interest penalty from defaulting employers. In 2017 alone, the Commission maintained the services of 55 consultants to continue the recovery of outstanding pension contributions with penalty from defaulting employers. Following the issuance of demand notices to defaulting employers whose liabilities had been established by the

[276]Onwuka, I. O., (2018), *Tackling Infrastructural Gap in Nigeria: The Pension Fund Option,* Applied Economics and Finance Vol. 5, No. 2, p.81.
[277]Price water house Coopers Limited, (2017), *The Nigerian Pension Industry Securing the Future,* available @www.pwc.com/ng, accessed on 24th March, 2018. 6:13. P.M.
[278]Ibid.
[279]Uzor, B.C., and Anekwe, S.C., (2018), *The Contributory Pension Scheme and the Fate of Retired and Retiring Nigerian Workers,* Academic Research in Business and Social Science, 8 (3), p.527.
[280]Ibid.

consultants, some employers have remitted the outstanding pension contributions and penalty.[281] Consequently, the sum of N1.34 billion was recovered. This brings the total recoveries made since inception of the Recovery Agents' activities in 2012 to N13.58 billion in 2017.[282]

Furthermore, in the discharge of its mandate of creating public awareness and education on the scheme, the Commission developeda road map covering a period of 12-18 months for the engagement of labour unions,State governments and their employees, to positivelyinfluence compliance to the scheme. In order to ensure asmooth implementation of the Plan, the Commission conducted a sensitizationworkshop for members of the Bauchi State House of Assembly and employees of OyoState.[283] In each of the sessions, members were enlightened on the benefits of the CPSand how to resolve issues regarding the implementation of the Scheme. TheCommission also conducted training on the workings of the CPS for themanagement and staff of the Zamfara State Pension Commission, Zamfara StateLocal Governments Pension Board and Kaduna State Pension Bureau. Training wasalso conducted on returns rendition for Pension Desk Officers (PDOs) of the FCTArea Councils as well as those of the Ministries, Departments and Agencies of theFCT.The Zonal Offices also conducted a total of 23 enlightenment campaigns on the CPSin all the six (6) geopolitical zones of the country. The Commission heldimplementation meetings with the Committee on Implementation of the CPS in Abia and Anambra States. In addition, representatives from Benue and Ekiti States

[281]Odewole, P.O. (2017), *The Controversy on the Implementation of the Contributory Pension Scheme (CPS) in Nigeria: The Accounting Perspective*, International Journal of economics, Finance, and Management, 5 (2), p.111.
[282] Ibid.
[283]Odewole, P. O., and Oladejo, T. M. (2017) *Implementation of Contributory Pension Scheme (CPS) and the Challenge of Appropriate Emplyees' Pension Deductions in Nigeria*: *The Financial Managers' Review*, Global Journal of Management and Business Research, 17 (7), p.316.

also held meetingswith the Commission in order to facilitate the implementation of the CPS.[284]

Consequent upon these efforts, the pension industry recorded a 1.57 percent growth in the scheme membership during the third quarter of 2017, moving from 7.65 million contributors at the end of the preceding quarter to 7.78 million.[285] The growth in the industry membership was driven by the Retirement Savings Account (RSA) Scheme, which had an increase of 120,628 contributors representing 1.59 percent. As a result of this, membership of the CPFA dropped by 84 members.[286] Furthermore, a breakdown of the RSA registrations indicates a 0.65 percent (22,224) increase in membership of the public sector over the second quarter of the same year to stand at 3,435,337. This figure represents 44.84 percent of the total RSA registration as at the third quarter of 2017.[287] The private sector shows a continuous dominance in RSA membership with 55.16 percent (4,253,003) of the total RSA registration as at the reporting period, moving from 4,154,599 in the second quarter of 2017. The sector also witnessed a growth of 2.37 percent (98,404) in the third quarter of 2017.[288] The total monthly pension contribution made by contributors from both the public and private sectors into their RSAs was N4.38 trillion as at the end of third quarter, 2017. This shows an increase of N135.22 billion representing 3.18 percent over the total contributions as at the end of the second quarter of 2017. The total contribution shows that the Public sector contributed 51.34 percent of the total contributions, while the Private sector contributed the remaining 48.64 percent.[289]

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[284]Ibid.
[285]PenCom Third Quarter Report, September, 2017.
[286]Ibid.
[287]Ibid.
[288]Premium Times (2017) Contributory Pension Scheme vs. Pension Reform Act 2014 Amendment: A Preamble, available @*www.premiumtimes.ng.com,* accessed on 10th March, 2018.4:34.P.M.
[289]Ibid.

4.2.2 Pension Fund Administrator

Pension funds can only be managed by Pension Fund Administrators (PFAs) licensed by PENCOM to perform the following functions: Open Retirement Saving Account (RSA); Invest and manage pension funds and assets; Maintain books of account relating to pension funds managed by it; Provide regular information on investment strategy, returns and other performance indicators to PENCOM and employees and Payment of retirement benefits.[290] Generally, all funds realized under the CPS areinvested by the Pension Fund Administrator (PFA) with the objectives of safety and maintenance of fair returns on the amountinvested.[291] Though, such funds can only be invested in accordance withregulations and guidelines issued from time to time by PenCom.[292]

4.2.2.1 Available Opportunities for the Investment of Pension Funds

Pursuant to Section 115 of the Pension Reform Act[293], PenCom is empowered to make regulations, rules or guidelineson investment of pension funds. Consequent upon this, a "Regulation on Investment ofPension Fund Assets" was issued in April, 2017. The general objective of the Regulations is how to makeinvestible pension fund assets align with developments in the financial market, and also make themresponsive to the needs of registered contributors to the pension fund. Section 4 of the Regulations[294] specifies some of the technical and specialist areas of investment, where PFAs will need expert financial and legal advice to invest in. These include:

[290]Goodluck, E. G. (2014), *Remarks at the Opening of the World Pension Summit*, Africa Special, Monday 7th July, p.3.
[291]Section 85(1), Pension Reform Act, op.cit., and Section 2.1, Regulation on Investment of Pension Fund Assets, 2017. Essien, E. B. and Akuma, M. S. (2014),*The new Contributory Pension Scheme in Nigeria: Gleaning from Past Pension Schemes*,Journal of Economics and Finance, Vol. 2, Issue 5, p. 34.
[292]Eme, O. I., et'al, (2014), *Pension Reform Act 2014 and the Future of Pension Administration in Nigeria*, Arabian Journal of Business and Management Review, Vol. 4, No. 2, p.156.
[293]Pension Reform Act, op.cit.
[294]Regulation on Investment ofPension Fund Assets, 2017.

Bonds, Sukuk, Treasury Bills and other securities (including bonds denominated in foreign currencies) issued by the Federal Government and the CBN or their agencies as well as special purpose vehicles and companies created or owned by the Federal Government of Nigeria; Bonds and Sukuk issued by eligible State and Local Governments or State Government Agencies or wholly owned companies of the State Government; Bonds, Sukuk, Debentures, redeemable/convertible Preference Shares and other debt (noninterest) instruments issued by listed corporate entities; Bonds (including Sukuk) and debt securities issued by eligible unlisted companies; and Asset Backed Securities including Mortgage Bonds, Mortgage Backed Securities and Infrastructure Bonds or Sukuk; Ordinary Shares of public limited liability companies listed on a securities exchange registered by SEC; Money Market instruments of banks and Commercial Papers issued by corporate entities; Open/Close-ended/Hybrid Investment Funds, including Exchange Traded Funds and Non- Interest (Shariah) Compliant Investment Funds, which are registered with the SEC; Specialist Investment Funds, whose underlying assets are tangible physical assets, including Real Estate Investment Trusts (REITs); Private Equity Funds; and Infrastructure Funds which must all be registered with SEC; Supranational Bonds and Sukuk issued by a Multilateral Development Finance Organizations (MDFO) such as the World Bank Group, African Finance Corporation, African Development Bank and other MDFOs recognized by SEC; and Global Depositary Receipts/Notes (GDRs/Ns), Eurobonds and Sukuk issued by listed Nigerian companies.

For investment in Infrastructure Projects by Pension Funds, Section 5.2.3 of the Regulation[295] provides that pension fund assets can be invested in infrastructure

[295] Ibid.

projects through eligible bonds or debt securities, provided that certain requirements are satisfied. In particular, pension funds must be: (a) awarded to a concessionaire through an open and transparent bidding (b) not less than N5 billion in value (c) managed by a concessionaire with a good track record; (d) in accordance with, and meet due process requirements of the Public Private Partnership Policy, as certified by the Infrastructure Concession and Regulatory Commission and approved by the Federal Executive Council; (e) of the nature of core infrastructure, these assets include railways, toll roads, airports, ports, power and gas, pipelines, and other infrastructure projects that may be approved by the PenCom from time to time. Such assets can yield long-term and predictable revenue streams which match the long-term liabilities of a pension fund covering the same period, which makes a good fit.

In view of the foregoing, leveraging on Nigeria's pension assets for infrastructural development requires a sustained partnership between the federal and state government on one hand, and the PenCom and the PFAs on the other hand. The federal government may float infrastructure bonds that could attract PFAs' subscription, subject to the approval of PenCom from time to time.[296] Report indicates that PenCom seeks to invest about 40 percent of the country's pension funds in infrastructure and housing by 2019.[297] This is commendable as it is likely to facilitate the upgrading of the country's ailing infrastructure and provide investment opportunities for new ones. Besides, a long-term perspective and equal matching of infrastructural projects, pension funds will pave way for the adoption of pension

[296] BGL Group, (2016), *BGL Pension Report: Situating Nigeria in the Global Pension Industry*, Lagos, Nigeria, p.5.
[297] Aremu, K. (2016), *Leveraging Pension Assets to Bridge Infrastructural Gap*, Zenith Economic Quarterly, 12(4), p.35.

assets as a means of financing Nigeria's infrastructure gap.[298] Furthermore, given adequate guarantee of pension funds, investors and retirees could enjoy higher returns over a long time. It may also provide safety nets for the investment of pension assets under the special investment funds and other financial instruments[299] as stipulated by the investment guidelines.

In a bid to encourage investment of pension assets, the Central Bank of Nigeria (CBN) has proposed various initiatives for leveraging pension funds for infrastructural development. Nigeria Infrastructure Guarantee Scheme (NIGS) is one of such initiatives aimed at providing reasonable assurance for the financial instruments that will be likely used for infrastructure projects. The scheme will also provide at least 80 percent guarantee for any project approved by the Infrastructure Concession Regulatory Commission (ICRC) subject to a maximum of $1billion.[300] Similarly, the Nigerian Pension Fund Asset Guarantee Scheme (NPFAGS) will secure the portion of pension funds used for infrastructural development. NPFAGS' operational modality will also follow a similar trajectory as NIGS.[301] Another proposal that is intended to secure pension assets is Nigerian Infrastructure Project Revenue Guarantee Scheme (NIPRGS). This is designed to provide guarantee for the expected cash inflows from any project executed. It is instructive to note that these guarantees could be financed by the Nigeria Infrastructure Fund (NIF).[302] Another initiative worth mentioning here is the Special Purpose Entity (such as Build Nigeria Infrastructure Bond). This initiative is responsible for raising infrastructure bonds

[298] Ibid.
[299] Essien, E. B. and Akuma, M. S. (2014), *The new Contributory Pension Scheme in Nigeria: Gleaning from Past Pension Schemes*,Journal of Economics and Finance, Vol. 2, Issue 5, p. 34.
[300] Aremu, K.,op.cit., p.12.
[301] National Pension Commission, (2015), 2015 Annual Report & Statement of Accounts, available @ www.pencom.gov.ng, accessed on 12th March, 2018. 2:21. P.M.
[302] Ibid.

from the pension assets. This will be guaranteed by the Central Bank of Nigeria (CBN) and some income generating assets of the government.[303]

Infrastructure development through deployment of pension assets may lead to multiplier effects, and ultimately impact positively on Nigeria's economic growth and development. Indeed, thousands of direct and indirect jobs could be created in sectors such as trade and commerce, ICT (especially broadband infrastructure), transport, power, health, education and water supply, among others. According to Inderst, stocks of physical infrastructure could raise a country's gross domestic product (GDP) by an estimated 2 percent in the short run.[304] Furthermore, a successful investment of pension funds in infrastructure will likely bring higher returns on investment, over a long-time period.[305] Thus, with high degree of transparency and legal frameworks by the federal government, both local and foreign investors would be encouraged to commit stake in Nigeria's infrastructure bonds. Pension assets could provide one of the cheapest sources of capital funding to diversify Nigeria's economy. The astronomical growth of pension funds to about N6trillion may cushion the shocks and imbalances resulting from a slump in oil receipts and its attendant stagflation. This will facilitate infrastructural development though Public Private Partnership (PPP). Nigeria could avoid foreign exchange and country risk associated with utilizing external loans for infrastructural developments, by leveraging pension assets for economic growth. Pension fund's investment in infrastructure may permanently address Nigeria's annual budget deficits, especially

[303] Ibid.
[304]Inderst, G. (2013), *Pension Fund Investment in Infrastructure*, OECD Working Papers on Insurance and Private Pension No 32. Paris, France,p.15.
[305] Ibid.

capital expenditures' estimate. Consequently, resources could be channeled to other competing needs and sectors.[306]

Though, while the above CBN Initiatives are commendable, their sustainability can only be guaranteed by putting in place an effective legal and regulatory framework to guide the entire process. At the moment, the availability of an effective framework to ensure the continuity of public projects financed by pension assets in Nigeria, remain doubtful. [307] Globally, countries use pension assets to finance infrastructural development through a well-structured arrangement. The proportion of pension funds used for economic growth in Canada, Australia, and the United States of America are 5 percent, 10 percent, and 3 percent respectively, according to industry analysts. For instance, Canada's biggest pension fund is worth over C$1.1trillion as at June, 2016.[308] Canadian Funds' managers have also shown keen interest in financing major infrastructural projects in the short to medium term, based on the condition that the federal government of Canada provides adequate guarantees on expected future returns and reasonable assurances on planned expenditures. The targeted sectors will include public transport, affordable housing, and renewable energy, among others. For instance, Caisse, Canada's second largest pension fund, invested about $10.3 billion in Australia's Trans Grid electricity network.[309] In the United States, the largest pension funds, the California Public Employees Retirement Scheme, invested $155million in London Gatwick Airport, representing a 12.7

[306]Nigerian Economic Summit Group, (2012), *Harnessing Pension Funds for Sustainable Development,* NESG Position Paper, February 2012, NESG, Lagos, Nigeria, p.6.
[307]Ijeoma, N.B., Nwufo, C.I. (2015), *Sustainability of the Contributory Pension Scheme in Nigeria*, Journal of Business & Management Studies, 1(1), p.21.
[308] Pension Investment Association of Canada, (2016), available@ http://www.piacweb.org/publications/index.html, accessed on 24th March, 2018, 4:51. P.M.
[309]Ibid.

percent stake.[310] Investment experts forecast showed that, global pension managers in the United States will invest more than $3.5trillion in infrastructure within the next decade.[311] Similarly, Australia retirement funds invest about 5 percent of its pension assets in infrastructure, accounting for over $80billion of its pension funds.[312]

4.2.2.2 Pension Fund Investment

An important step toward ensuring the sustainability of the CPS in Nigeria is the effective investment of pension funds and assets. A breakdown of pension industry portfolio shows that the pension fund assets in September, 2017 were mainly invested in Federal Government Securities, with actual assets allocation of 72 percent of total pension assets (FGN Bonds: 54 percent, Treasury Bills: 18 percent and Agency Bonds: less than 1 percent). This is shown in the table below:

Assets Class	**Total Pension Fund Assets as at 30th September, 2017** **N Billion**	**Weight (%)**
Domestic Shares	620.60	8.66
Foreign Ordinary Shares	98.81	1.38
FGN Securities:		
FGN Bonds	3,874.99	54.09

[310]Matsukwawa, T., and Habeck, O. (2016), *Recent Trends in Risk Mitigation Instruments for Infrastructure Finance*, Public Private Infrastructure Advisory Facility (PPIAF), World Bank. Washington D.C., USA, p.11.
[311]Foster, V., and Pushak, N. (2011), *Nigeria's Infrastructure –A continental Perspective*, World Bank Policy paper5686, World Bank, Washington D.C., USA, p.9.
[312] Della, C.R., Kaminker, C., and Stewart, F. (2011), *The Role of Pension Funds in Financing Green Growth Initiatives*, OECD Working Papers on Finance, Insurance and OECD Working Papers on Finance, Insurance and Private Pensions, No. 10, OECD Publishing, Paris, p.10.

Treasury Bills	1,270.40	17.73
Agency Bonds (NMRC & FMBN)	5.85	0.08
State Govt. Securities	155.70	2.17
Corporate Debt Securities	264.71	3.69
Supra-National Bonds	11.74	0.16
Local Money Market Securities	545.00	7.61
Foreign Money Market Securities	26.69	0.37
Mutual Funds:		
Open/Close-End Funds	11.98	0.17
REITs	12.79	0.18
Real Estate Properties	208.71	2.91
Private Equity Fund	24.06	0.34
Infrastructure Fund	5.24	0.07
Cash & Other Assets	27.34	0.38
Net Assets Value	**7,164.60**	**100%**

Source: PenCom Third Quarter Report, September, 2017.

The abovetable shows that the value of investments in domestic quoted ordinaryshares was N620.60 billion (9 percent of industry portfolio value) as at 30 September2017, indicating an increase of N37.07 billion (6.35 percent) compared to the value ofN583.53 billion as at 30 June, 2017.[313] The increase in the value of investments indomestic quoted equities was primarily due to the appreciation in stock market pricesin the third quarter of 2017 as the Nigerian Stock Exchange All Share Index (NSE-ASI) andMarket Capitalization appreciated by 7.01 percent and 6.72

[313]PenCom Third Quarter Report, September, 2017.

percent from 33,117.48basis points and N11.45 trillion, as at 30 June 2017, to 35,439.98 basis points andN12.22 trillion, as at 30 September 2017, respectively.[314]The value of investments in FGN Bonds and Treasury Bills increased by N42.69 billion(1.11 percent) and N156.25 billion (14.02 percent); while investments in FGN Agencybonds further reduced by N32.19 billion (84.62 percent) due to the maturity of theFGN Local Contractors' Bond.[315]

4.2.2.3 Portfolio Performance

The Net Assets Value of RSA 'Retiree' Funds increased by N23.82 billion in third quarter, 2017 increasing from N532.60 billion on 30 June, 2017, to N556.42 billion as at 30 September, 2017. Though, the Weighted (percentage) Average Rate of Return (WARR) on the RSA 'Active' Funds in third quarter, 2017 was 16.11 percent (annualized), which was a decline in performance when compared with the annualized return of 22.40 percent recorded in second quarter, 2017. The performance in third quarter, 2017 was largely driven by pension fund investments in quoted equities, as reflected by the performance of the NSE ASI, which recorded a return of 7.01 percent in the 3rd compared to the return of 29.79 percent recorded in 2nd quarter of the year.[316]

Decline in portfolio performance seems to be most crucial challenge that is likely to confront the PFAs goingforward. PFAs appear to be facing the problem of how to substantially invest huge pension fund assets to yield the highest possiblereturns while keeping same secure within legal, regulatory, and risk management frameworks.Perhaps, it is in view of this, that every PFA is mandated to

[314]Uzor, B.C., and Anekwe, S.C., (2018), *The Contributory Pension Scheme and the Fate of Retired and Retiring Nigerian Workers,* Academic Research in Business and Social Science, 8 (3), p.527.
[315]PenCom Third Quarter Report, September, op.cit.
[316]Ibid.

conduct extensive research anddue diligence prior to investment as well as utilize the risk rating reports that have been undertaken byany risk rating company registered under ISA, on investment instruments and securities.[317] In essence, this would ensure that PFAs remain well guided by relevant financial and legal experienced advisers. With this, the operations of the PFAs would no doubt be inconformity with the law, global best practices in investment risk management and corporategovernance. In sum, the essence of the statutory mandate imposed on PFAs to conduct due diligence, is to ensure that negligent, reckless, unbridled and unethical risk-taking in the investment of pension funds and assets must be effectively replaced by a well governed, cultured and professional regime.

4.2.3 Pension fund custodians

The scheme also provides for Pension Fund Custodians (PFCs) responsible for the warehousing of the pension fund assets.[318] Pension funds and assets are to be held solely in custody for the Pension Fund Administrators (PFAs) by an independent Pension Fund custodian (PFC).[319] The PFC has the following responsibilities; receiving the total contributions remitted by the employer within 24 hours and notifies the PFA of same and holds the pension assets in safe custody on trust for the employee and beneficiaries of the RSA. This is in addition to settling of transactions and undertaking activities relating to the administration of pension fund investments including the collection of dividends and Executing relevant proxy in favour of the PFAs for the purpose of voting in relation to the investments.[320]

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[317] S. 90 (2), Pension Reform Act, op.cit.

[318] Tolu-Kusimo, O. (2014), *A new dawn for pensioners?*The Nation, available @http://thenationonlineng.net/a-new-dawn-for-pensioners/, accessed on 26th March, 2018. 5:23.P.M.

[319] News Agency of Nigeria (2014), *Pension fund assets hit N4.6trn in Oct 2014*, Premium Times, available @http://www.premiumtimesng.com/business/172740-pension-fund-assets-hit-n4-6trn-oct-2014.html, accessed on 1st April, 2018. 12:23.P.M.

[320] Ibid.

The PFCs provides some control over the activities of the PFAs and provides a hedge against unauthorized access or trading.[321] The custodian is in no way empowered to utilize any pension fund assets in its custody to meet its own financial obligations or that of the third party.[322] Thus, by this arrangement, PFAs are not allowed to hold the pension funds' assets. The employer sends the contributions directly to the Custodian, who notifies the PFA of the receipt of the contribution and the PFA subsequently credits the retirement savings account of the employee. The Custodian will execute transactions and undertake activities relating to the administration of pension funds investments upon instructions by the PFA.[323] To qualify for license, the PFC is expected to fulfill the following requirements: Be a limited liability company incorporated under the Companies and Allied Matters Act whose object is to manage pension funds; and Have a minimum paid-up share capital of NI50,000,000 ($125, 000) or such sum as may be prescribed, from time to time, by PenCom.[324]

4.2.4 Closed Pension Fund Administrators

Closed Pension Fund Administrators (CPFAs) are specifically established by companies with strong financial standing to manage their pension funds.[325] There are about seven CPFAs owned mostly by multinational companies to enable them administer their pension funds under the guide and direction of Pen Com.[326] The value of pension fund assets held by the CPFA Funds recorded a net increase in value

[321]Odia, J. O., and Okoye, A. E. (2012), *Pension Reform in Nigeria: A Comparison between the Old and the New Scheme*, Afro-Asian Journal of Social Sciences, 3(3), p.10.
[322]Ogah, D. (2016), *Pension Palaver: Pencom pushes to enforce rule, The Guardian Newspaper,* 6th March, 2016, p. 45.
[323]Maji, A. (2014), *Managing post-retirement conditions in Nigeria*, Journal of Good Governance and Sustainable Development in Africa, 2(1), p. 110.
[324]S. 62, Pension Reform Act, op.cit.
[325]Adams, R.A. (2015), *Public sector accounting and finance*, Lagos. Corporate publisher ventures, p.23.
[326] Taiwo, O. (2014), *Pension reform: Matters arising,* available @http//www.pwc.com/exweb/pwcpublications.nsf/docid, accessed on 2nd April, 2018. 6:12. P.M.

of N40.13 billion (4.31percent), as it increased from N932.03 billion on 30 June, 2017, to N972.16 billion as at 30 September, 2017. The annualized rates of return recorded on the CPFA Funds ranged between 14.10 percent and 22.17 percent, which was reflective of the actual assets allocation of the individual Funds. The Funds with relatively high exposure to equity/equity funds recorded better performances, when compared to other Funds with more investments in fixed income assets.[327]

The Net Assets Value of the Approved Existing Schemes (AES) increased by N37.25Billion (4.91 percent), from N758.76 billion on 30 June, 2017, to N796.01 billion as at 30 September, of the same year. The net increase in the total portfolio value was mainly attributed to funds injected by Scheme Sponsors, interest/coupons from fixed income investments and unrealized gains from equity investments. The annualized rates of return recorded on the AES Funds ranged between 8.50 percent and 24.62 percent in third quarter, 2017 which was also reflective of the actual assets allocation of the individual Funds.[328]

4.3 Challenges in the Administration of Contributory Pension Funds in Nigeria

The contributory pension scheme has been adjudged to be robust, safe and poised to help retirees live well after their active life in service. This scheme to a large extent places in the hands of the workers and their employers the responsibility for the contributions that are available in the Retirement Savings Accounts on retirement. Nonetheless, there are a number of challenges bedeviling effective administration of the contributory pension funds and assets in Nigeria. Some of these are:

[327]PenCom Third Quarter Report, September, op.cit.
[328]Ibid.

4.3.1 Poor Compliance to the Contributory Pension Scheme by States

Though, State Governments continued to make progress in the level of implementation of theContributory Pension Scheme (CPS), however, not all states have fully complied with the scheme. For instance, as at 2017, the number ofStates that have enacted laws on the CPS stood at 27, while eight (8) States arecurrently at the bill stage of implementation. Yobe State was, however, yet tocommence the process of enacting a law on the CPS.Apart from enacting a law on the CPS, only twelve (12) out ofthe 36 states had commenced remittance of contributions into the RSAs of theiremployees. A breakdown of the level ofimplementation of the CPS is presented in table below:

S/N	State	Remittance of Contribution	Accrued Rights	Group Life Insurance
1	Jigawa	Assets transferred to 6 PFAs for management	Not funded	Not implemented
2	Lagos	Commenced	Funded	Implemented
3	Ogun	Commenced	Funded	Not implemented
4	Kaduna	Commenced	Funded	Not implemented
5	Niger	Commenced	Funded	Implemented
6	Delta	Commenced	Funded	Not implemented
7	Zamfara	Commenced	Not funded	Not implemented
8	Osun	Commenced	Funded	Implemented
9	Rivers	Commenced	Funded	Implemented

10	Kano	Assets yet to be transferred	N/A	N/A
11	Imo	Yet to commence remittance of pension contributions, but the Imo State University is currently implementing the CPS under the auspices of the PRA 2014	Not funded	Not implemented
12	Kebbi	Commenced	Not funded	Not implemented
13	Sokoto	Yet to commence	Not funded	Not implemented
14	Ekiti	Yet to commence	Not funded	Not implemented
15	Koji	Yet to commence	Not funded	Not implemented
16	Bayelsa	Yet to commence	Not funded	Not implemented
17	Nasarawa	Yet to commence	Not funded	Not implemented
18	Oyo	Yet to commence	Not funded	Not implemented
19	Katsina	Yet to commence	Not funded	Not implemented
20	AkwaIbom	Yet to commence	Not funded	Not implemented
21	Edo	Yet to commence	Not funded	Not implemented

22	Ondo	Yet to commence	Not funded	Not implemented
23	Benue	Yet to commence	Not funded	Not implemented
24	Kwara	Yet to commence	Not funded	Not implemented
25	Plateau	Yet to commence	Not funded	Not implemented
26	Cross River	Yet to commence	Not funded	Not implemented
27	Anambra	Yet to commence	Not funded	Not implemented
28	Enugu	Yet to commence	Not funded	Not implemented
29	Abia	Yet to commence	Not funded	Not implemented
30	Ebonyi	Yet to commence	Not funded	Not implemented
31	Taraba	Yet to commence	Not funded	Not implemented
32	Bauchi	Yet to commence	Not funded	Not implemented
33	Borno	Yet to commence	Not funded	Not implemented
34	Gombe	Yet to commence	Not funded	Not implemented
35	Yobe	Yet to commence	No funded	Not implemented
36	Adamawa	Yet to commence	Not funded	Not implemented

Source: PenCom, Third Quarter Report, September, 2017.

From the above table, one may be safe to say that, one of the major challenges militating against effective management and administration of pension funds in Nigeria is poor remittance of contribution, particularly by employers. A routine examination of Licensed Pension Fund Operators conducted by PenCom in 2017 reveals that, the major issues observed was un-credited pension contributions, delay in the payment of retirement benefits to the retirees and outstanding commitments

from previous routine examination.[329] There are growing numbers of cases where employers deduct pension contributions of employees but fail to remit them to the PFAs, The default in pension remittances by some employers is impacting negatively on the growth of the employees' RSA accounts.[330]

4.3.2 Inadequate Regulatory Framework

There is also the problem of weak legal framework. In Nigeria, due to this gap, employers have developed a trend of using touts and agents to process the Pension Clearance Certificate on their behalf.[331] Unfortunately, this has resulted in growing cases of touts posing to unsuspecting employers as 'consultants'. These touts solicit patronage from employers who are either not familiar with the easy and transparent process put in place to obtain Pension Clearance Certificates or are desperate to procure the Certificates. Many employers that engage the service of these touts end up being victims as the touts present fake and or forged documents, particularly bank deposit slips, to the Commission in their bid to obtain the Pension Clearance Certificate.[332]

Furthermore, one of the challenges to the investment of pension funds in infrastructure is lack of transparency in competitive bidding process of projects. Although the ICRC initiative of the CBN requires that an open bidding process should be carried out, however, in practice, project selection criteria in Nigeria are not

[329]Odewole, P. O., and Oladejo, T. M. (2017) *Implementation of Contributory Pension Scheme (CPS) and the Challenge of Appropriate Emplyees' Pension Deductions in Nigeria*: *The Financial Managers' Review*, Global Journal of Management and Business Research, 17 (7), p.316.

[330]Agabi, C. (2017), *What to Expect from Contributory Pension Scheme in 2017*,Daily Trust, 3rd, February, p.21. This also contravenes the provisions of Section 11 (3b) of the Pension Reform Act, op.cit., which states in section11 subsection 3(b) that 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 under paragraph (a) of this subsection and the employer's contribution to the PFC specified by the PFA of the employee

[331]Odewole, P.O., op.cit. p.102.

[332]Ibid.

truly transparent.[333] Besides, paucity of data available to PFAs in appraisal of ICRC approved projects, there may be hindrance of effective monitoring of key projects. In addition, lack of adequate due diligence and risk analysis on infrastructure transactions may increase the investment apathy of PFAs and PenCom towards infrastructural financing.[334] ICRC does not provide for payment of compensation to the concessionaires in the event of cancellation or suspension of infrastructure projects. And with high rate of abandoned projects in Nigeria, there is an urgent need to fix this loophole to encourage investors, especially PFAs and other institutional investors.[335]

4.3.4 Problem of Corruption

Another serious challenge of contributory pension scheme in Nigeria is mismanagement and misappropriation of funds earmarked for employees' pensions, especially in the public sector. Pension funds in Nigeria have been consistently stolen by people who have been entrusted with the responsibility of managing the funds. There have been revelations of multi-billion Naira pension fund scandals at the Pensions Unit of the Office of the Head of Service of the Federation and the Nigeria Police pensions.[336] There is also what has been regarded as "Mainagate" which is a scandal of monumental proportion associated with the Chairman of the Presidential Pension Reform Task Force Team (PRTT) MrAbdulrasheedMaina. Maina allegedly used his position to defraud Nigerian pensioners and corruptly enriched himself.[337]

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[333]Ahmed, I. K., et'al, (2016), *Effects of contributory pension scheme on employees' productivity: Evidence from Lagos state government,* African Journal of Business Management, Vol.10 (16), p.386.
[334]Onwuka, I. O., (2018), *Tackling Infrastructural Gap in Nigeria: The Pension Fund Option,* Applied Economics and Finance Vol. 5, No. 2, p.84.
[335]Uzor, B.C., and Anekwe, S.C., (2018), *The Contributory Pension Scheme and the Fate of Retired and Retiring Nigerian Workers,* Academic Research in Business and Social Science, 8 (3), p.527.
[336]Agabi, C. (2017), *Contributory Pension Scheme under Threat*, Daily Trust Newspaper, 25th September, p. 32.
[337]Ibid.

The "Mainagate" is just one of the instances of how people who find themselves in positions of authority shortchange retired Nigerian workers, making it extremely difficult for them to access their pension funds. In April 2018, another report emerged that the Chairperson of National Social Insurance Trust Fund (NSITF) Dr. NgoziOlojeme, has allegedly obtained $2.8 million and N240 million from a businessman, and paid it into an account with no Bank Verification Number (BVN). Further investigation reveals that she was operating 50 accounts with different names in different banks linked with five companies. In a similar vein, the EFCC has also arraigned the Former Managing Director of NSITF, Umar MunirAbubakar and four others for allegedly diverting N18 billion.[338] This is just an instance of the level of exploitation that the working-class people suffer in the hands of the ruling elite in Nigeria.

4.3.5 Inadequate Investment Return

Pensioners in some states may not be able to take adequate care of their families in spite of the CPS values, and also cater for their dependents. This is sequel to the fact that the pension scheme may yield only marginal returns to investment in sluggish and poorly regulated system in many States in Nigeria. It is the return on investment (ROI) that PFAs distribute to their contributors in CPS.[339] There are cases where contributors who view their assets with the PFAs, only find that the investment returns are too meager for comfort or that the asset did not make any return at all, that is, zero profit.[340] Yet the PFAs have the statutory guidelines or template, on how to take their commission from all contributors' assets. Some contributors have found

[338] Available @http://thenationonlineng.net/ex-nsitf-boss-in-2-8m-poll-row-with-eze, accessed on 18th April, 2018. 4:45. P.M.
[339] Smart, T. (2015), *Application of the Contributory Pension Scheme*, A paper Presented at the AdeniranOgunsanya College of Education, Otto/ Ijanikin, Lagos State, 14th March, 2015, p.5.
[340]Fapohunda, T.M. (2014), *Pension System and Retirement Planning in Nigeria*, Mediter. J. Soc. Sci. 4(2), p.8.

that while their assets did not make any profit, PFAs deducted their commission from the contributors' assets, not from the returns on investments. The implication of this mode of operation is that the commission for the PFAs is constant or guaranteed, while the return on investment for the contributors or pensioner is left to the vagaries of market forces.[341]

The problem of inadequate investment return may not be unconnected with the challenge of limited investment opportunities. Under the Contributory Pension Scheme, individual accounts were expected to supply new investment capital that would spur the development of domestic capital markets. However, one of the biggest obstacles the new scheme faces is limited array of potential investments in local capital markets. Pension fund investments are generally limited to investment-grade instruments which are in short supply in emerging capital markets in Nigeria.[342]Closely related to the above, is the problem of delayed pension payment made to retirees in the CPS unlike the automatic pension that retirees enjoyed in virtually all public sector during the operation of the DBPS.[343] The delay in the CPS is now occasioned by the fact that the retiree has to undertake his clearance and obtain a certificate to that effect before he can receive his pension and gratuity benefits together.[344] This procedure is informed by the fact that the employer in the CPS, through the clearance system, ensures that the retiree is not indebted to the employer before he is given a clearance which enables him to proceed to his PFA for

[341]Achimugu, A., et'al, (2015), *Evaluation of the Contribution of Portfolios of New Contributory Pension Scheme on Nigerian Economy,* European Centre for Research Training and Development United Kingdom, p.21.
[342]Aremu, K. (2016), *Leveraging Pension Assets to Bridge Infrastructural Gap*, Zenith Economic Quarterly, 12(4), p.37.
[343]Nwanne, T. F. I. (2015), Impact of Contributory Pension Scheme on Economic Growth in Nigeria, Global Advanced Journal of management and Business Studies, 4(8), p.335.
[344]Ibid.

his pension benefits.[345] Furthermore, there is also the challenge of the scanty or inadequate information that some contributors/retirees receive from their PFAs which made the new CPS strange as field officers are required for proper and adequate dissemination of what CPS entails for all employees in the state.[346]

In conclusion, this chapteranalysedthe institutional framework for the administration of contributory pension funds in Nigeria. The chapter began with a brief introduction and thereafter provides a trajectory of institutional framework of contributory pension scheme in Nigeria. The chapter explained that there are four major operators or institutions responsible for administration of pension funds in Nigeria. These are: National Pension Commission, (PenCom) Pension Fund Administrator (PFA), Closed Pension Fund Administrator (CPFA), and the Pension Fund Custodians (PFC). PenCom is a Federal Government agency whose functions include the regulation of administration of pension matters in Nigeria; approval of licensing and establishment of standards, rules and issuance of guidelines for the management and investment of pension funds. PFAs on the other hand, are required to Open Retirement Saving Account (RSA); and invest and manage pension funds and assets. The PFCs are responsible for the warehousing of the pension fund assets. The chapter identified some areas PFAs are required to strictly invest pension funds in. these include: Bonds, Sukuk, Treasury Bills and other securities (including bonds denominated in foreign currencies) issued by the Federal Government and the CBN or their agencies as well as special purpose vehicles and companies created or owned by the Federal Government of Nigeria among others. by virtue of these investments, the Net Assets Value of RSA 'Retiree' Funds increased by N23.82 billion in third quarter of 2017 increasing from N532.60 billion on 30 June, 2017, to N556.42 billion as at 30 September, 2017. Though, the Weighted (percentage) Average Rate of Return (WARR) on the RSA 'Active' Funds in third quarter, 2017 was 16.11 percent (annualized), which was a decline in performance when compared with the annualized return of 22.40

[345]Uzor, B.C., and Anekwe, S.C., op.cit. p.528.
[346] Ibid., p.529.

percent recorded in second quarter, 2017. The chapter concluded by identifying some challenges bedeviling effective administration of the contributory pension funds and assets in Nigeria. Some of these are:Poor compliance to the Scheme by States. It showed that not all states have fully complied with the scheme. For instance, as at 2017, the number ofStates that have enacted laws on the CPS stood at 27, while eight (8) States arecurrently at the bill stage of implementation. Yobe State was, however, yet tocommence the process of enacting a law on the CPS.Apart from enacting a law on the CPS, only twelve (12) out ofthe 36 states had commenced remittance of contributions into the RSAs of theiremployees.

Another serious challenge the chapter identified is mismanagement and misappropriation of funds earmarked for employees' pensions, especially in the public sector. Furthermore, it also argued that pensioners in some states may not be able to take adequate care of their families in spite of the CPS values, and also cater for their dependents because the scheme only yield marginal returns on investment. It contended further thatthe problem of inadequate investment return may not be unconnected with the problem of limited investment opportunities. There is limited array of potential investments in local capital markets

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This Dissertation is titled "Critical Appraisal of the Legal Regime for Contributory Pension Scheme in Nigeria". The dissertation generally comprises of Five Chapters. Chapter one provided a general introduction to the work. The chapter outlines the statements of the problem, the objectives of the research, the scope, methodology, as well as justification of the study, literature review and organizational layout. It explained that Pension is benefit paid to employees on retirement as a reward for service to make them financially independent at old age. The chapter has shown that pension is so important that International Labour Organization (ILO) and the United Nations (UN) affirmed that every retired worker should enjoy it as a right. The chapter further highlights the statement of the research problem which includes inability of the contributory pension scheme under 2014 Pension Reform Act to guarantee effective retirement plan due to poor remittance of benefits to the Retirement SavingsAccount (RSA) by firms, employers and employees and lack of effective measures for implementation of penaltiesin the Act for non-compliance; among others. The chapter concluded by highlighting the scope, methodology, significance of the study, literature review and organizational layout.

Chapter Two is titled historical development of pension scheme in Nigeria. The chapter examined the historical development of pensions in Nigeria from Pre-2004, it highlights the problems that necessitated the 2004 and 2014 Pension Reforms

in the country. The Chapter explained that, prior to the introduction of the Contributory Pension Scheme in Nigeria, the major pension system operating in the country was defined benefit (DB). Defined benefit (DB) schemes are publicly managed payroll-tax financed pay-as-you-go schemes. However, the Schemes became unsustainable due to high pension liabilities of the government. The scheme accumulated a huge unsustainable pension deficit. This is coupled with endemic fraud and corruption which also inflicted avoidable pains and misery on retirees. Consequently, the Federal Government of Nigeria enacted the Contributory Pension Reform Act 2004. The 2004 Pension Reform Act in Nigeria is a total deviation from the DB. It is contributory in nature. It is fully funded, privately managed, and based on individual account for both the public and private sector employees in Nigeria. Some of the Pitfalls of Pension Reform Act include none coverage of some categories of workers such as State government and Local Government employees. In addition, the Act has not been able to completely resolve the problem of delay in Payment of Retirement Benefits as sometimes retired workers take more than six months after retirement before accessing their benefits from their Pension Administrators. The chapter further explained that Pension Fund Administrators have not been proactive enough in the investment of pension contribution held by them. For instance, in 2010, a total of N2, 029.77billion was contributed. However, only 65% of this amount was invested in government securities, money market instruments and equities. The implication is that pension funds contributions ifnot well invested will reduce the income accruing to pensioners. The chapter concluded by showing that, following public outcry on the need for amendments to the Pension Reform Act, the Federal Government of Nigeria in April, 2013 forwarded an executive bill to the National

Assembly to review some aspects of the Pension Reform Act, 2004. A new Pension Reform Act was enacted in 2014 which repealed the Pension Reform 2004 Act.

Chapter Three analyzed the Legal Regime for Contributory Pension in Nigeria. The chapter analyzed both the relevant provisions of the international and domestic legal framework for contributory pension so as to determine whether Nigeria's Contributory Pension Law is in consonant with the relevant treaties and obligations. The chapter analyzed the provisions relating to old age or retirement found under Article 25 Universal Declaration of Human Rights (UDHR) and International Labour Organization (ILO) which in sum, oblige States to provide social security enough as to guarantee standard of living in the event of unemployment or old age. On the domestic legal framework, the chapter analyzed mainly the relevant provisions of the 2014 Pension Reform Act. The chapter concluded by identifying some gaps in the Act. Some of these include: limiting the scheme to organizations in which there are 15 or more employees, has reduced the number of employers and employees that are likely to benefit from the scheme. In addition, the Act allows private organizations with less than 3 employees to participate in the Scheme. However, it is silent on the applicability of the Scheme to private organizations with more than 3 but less than 15 employees.

Chapter Four examined the institutional framework for the administration of contributory pension funds in Nigeria. The chapter began with a brief introduction and thereafter provides a trajectory of institutional framework of contributory pension scheme in Nigeria. The chapter explained that there are four major operators or institutions responsible for administration of pension funds in Nigeria. These are: National Pension Commission, (PenCom) Pension Fund Administrator (PFA), Closed

Pension Fund Administrator (CPFA), and the Pension Fund Custodians (PFC). PenCom is a Federal Government agency whose functions include the regulation of administration of pension matters in Nigeria; approval of licensing and establishment of standards, rules and issuance of guidelines for the management and investment of pension funds. PFAs on the other hand, are required to Open Retirement Saving Account (RSA); and invest and manage pension funds and assets. The PFCs are responsible for the warehousing of the pension fund assets. The chapter identified some areas PFAs are required to strictly invest pension funds in. these include: Bonds, Sukuk, Treasury Bills and other securities (including bonds denominated in foreign currencies) issued by the Federal Government and the CBN or their agencies as well as special purpose vehicles and companies created or owned by the Federal Government of Nigeria among others. by virtue of these investments, the Net Assets Value of RSA 'Retiree' Funds increased by N23.82 billion in third quarter of 2017 increasing from N532.60 billion on 30 June, 2017, to N556.42 billion as at 30 September, 2017. Though, the Weighted (percentage) Average Rate of Return (WARR) on the RSA 'Active' Funds in third quarter, 2017 was 16.11 percent (annualized), which was a decline in performance when compared with the annualized return of 22.40 percent recorded in second quarter, 2017. The chapter concluded by identifying some challenges bedeviling effective administration of the contributory pension funds and assets in Nigeria. Some of these are:Poor compliance to the Scheme by States. It showed that not all states have fully complied with the scheme. For instance, as at 2017, the number ofStates that have enacted laws on the CPS stood at 27, while eight (8) States arecurrently at the bill stage of implementation. Yobe State was, however, yet tocommence the process of enacting a

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Chapter five summarized the work, highlighted some major findings and makes recommendations accordingly.

5.2 Findings

In view of the forgoing, the dissertation makes the following specific findings:

1. Despite the relative success of CPS, there are still problems relating to coverage of the scheme. A notable example is lack of provision on the applicability of the Scheme to private organizations with more than 3 employees but less than 15 employees. The same applies to workers in the informal sector which constitute over 59 million workers growing at a rate of 3% per annum which makes up approximately 70% of Nigeria's total labour force. Though, the National Pension Commission is in the process of setting up an appropriate Micro Pension structure, there will however be some challengesin implementing a Micro Pension Scheme which will range mostly from creating awareness and engendering trust to operational difficulties. Part

of the problem is lack of strong institutional structures that can support micro pension to facilitate fund administration through the use of technological platforms including mobile money to increase coverage, remit pension contributions and pay retirement benefits.

2. It is also found that another problem of CPS in Nigeria is institutional weakness. Saving or contribution under CPS remains exposed to the risk of decline at critical times before or after retirement. That explains why Section 82 (1) of the Pension Reform Act requires the Federal Government to pay 1% of the total monthly wage bill payable to employees in the Public Services into the Pension Protection Fund for the payment of compensation to eligible pensioners for losses arising from such investment risk.However,PenCom has failed to mount pressure on the government to implement this provision.
3. Going by Section 2 of the Act, CPS in Nigeria covers all employees in public sector and private sector employers with more 15 employees. However, since the law is not binding on states, today, there are states which are yet to register.There are also organizations employing fifteen staff and above that are yet to register. This further raises question as to the effectiveness of the mechanism for monitoring compliance with the relevant provisions of the pension law in Nigeria.
4. In addition, the retirement savings of the lower class which constitutes about 75% of the working population in formal sector, with salary range between N18, 000-N50, 000, may not be sufficient to provide them a meaningful income on retirement. Such employees need to save more than 8% of their salary if they intend to enjoy a better social security after retirement.

Unfortunately, this also means that there would be sharp depreciation in their standard of living.

5.3 Recommendations

In view of the above findings, this work makes the following recommendations:

1. PenCom needs to issue regulations and guidelines to provide clarifications regarding contributions by employers with 3 to 15 employees. This is necessary because delay or failure to provide such guidelines, could affect old age retirement plans of workers in private organizations with more than 3 but less than 15 employees.With respect to workers in the informal sector, Nigeria should learn from the success stories of other developing countries such as Kenya, Indonesia, Vietnam and Jamaica which have put in place strong institutional structures for Micro Pension to facilitate fund administration and made use of technological platforms including mobile money to increase coverage, remit pension contributions and pay retirement benefits. Most implementation challenges can be overcome through sustained communication and education campaigns as well as the development and implementation of an appropriate Micro Pension framework. Mass sensitization, advocacy and awareness can be achieved through innovative and cost effective platforms such as social media whileutilizing a robust technologicalplatform (mobile apps) that wouldeffectively support the provision ofcustomer services to the targetpopulation.
2. In order to compelFederal Government to fully implement Section 82 (1) of the Pension Reform Act, the law should empower the Federal Account Allocation Committee (FAAC)after sharing every monthly subvention, to

deduct the 1% of the total monthly wage bill payable to employees in the Public Services and pay it into the Pension Protection Fund. With this mechanism, compliance on the part of the Federal Government would be automatic. This in turn would ensure that there is adequate money in the Fund to pay compensation to eligible pensioners in case of any short fall or losses arising from investment risk.

3. Pension Reform Act should be elevated to become the applicable public sector pension law in every state. The Constitution needs to be amended to move pensions from the Current Legislative List to Exclusive Legislative List in order to achieve this. This is important because, it is not only proving difficult for PenCom to persuade all States to join the Scheme, but even if this were to be possible, the differences among states may lead to regulatory arbitrage, regulatory and supervisory inefficiencies, and lack of a harmonized pension policy in the country.
4. It is also recommended that in order to enhance the adequacy of pension funds to enable retirees to spend their pensions on themselves, the government should build up reliable essential services and basic infrastructure. A social assistance programme should be created to provide for the poorest elderly retiree on a non-contributory basis. Furthermore, prioritizing provision of free education at least up to secondary level and a student loan scheme for university as well as free primary healthcare for retiree by government will enable retirees to spend their pensions on themselves.

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