



# UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Published by the Faculty of Law  
University of Uyo, Nigeria



## UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Print ISSN: 1119-3573

Published by the Faculty of Law  
University of Uyo, Nigeria  
facultyoflaw@uniuyo.edu.ng

Citation:

(2022) 10 University of Uyo Law Journal

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## **EDITORIAL COMMENTS**

I am pleased to present Volume 10 of the *University of Uyo Law Journal*. The Editorial Team has worked tirelessly to bring you this issue, comprising ten scholarly papers of nine articles and a statute review. This edition of the journal offers a range of topical and insightful ideas on themes in the fields of international investment arbitration, access to information law, trade dispute and industrial jurisprudence, insurance law, testamentary disposition, pension administration law, taxation law, international criminal law, and legal/constitutional theory. This is in accord with the aim of the *University of Uyo Law Journal* to provide a forum for the widest discussion of subjects on the law and contemporary issues of sub-national, national and global concern.

This edition opens with a paper by Osawe Omosede Andre, which examines the nexus between access to information law and corruption. It argues that corruption impact on access to public information as it works to promote secrecy. As such, any advancement towards opening governments to public scrutiny must foster anti-corruption efforts, which must of necessity validate the demand for openness in government actions and inactions as a right. Thus, the paper notes that a virile public information system will engender transparency that is necessary to expose corrupt acts, as access laws promote public right as well as serve as deterrent to corruption.

The joint paper by Francis Ohiwere Oleghe and Olusesan Oliyide examines the relationship between human rights and international investment arbitration using Weiler's concept of lost siblings. It argues that international investment arbitration (IIA) has elicited so much attention in recent times. So much so that the United Nations Commission on International Trade Law and the International Centre for the Settlement of Investment Disputes have engaged in programmes aimed at reforming the investor-state dispute settlement (ISDS) system, of which IIA is a subset. It makes the point that while the ISDS system has evolved with protection for investors, the experience of host states remains that of misgivings about the system's usefulness, which have resulted in agitations for its reform to give adequate consideration to human rights norms in ISDS cases. The aim of which is to strike a balance between investors' bilateral investment treaty (BIT) rights and their human rights obligations.

The papers by Ogancha Ogbole and John Inaku offer exposés on trade dispute jurisprudence. On the one hand, the former paper examines the constructions of ‘trade disputes’ and ‘state trade disputes’ under Nigerian labour laws and regulations. It argues that the recognition of the concept of state trade disputes under Nigerian labour law contributes in expanding the frontiers of trade disputes in the workplace, which poses recondite challenges for the current constitutional arrangement for labour jurisprudence in Nigeria. It therefore recommends the unbundling of labour, as an item under the Exclusive Legislative List, to pave the way for the involvement of state legislative assemblies if the notion of state trade dispute as conceived by Nigerian labour law is to be properly harnessed. On the other hand, the latter paper examines the impact of the finality of the decision of the Court of Appeal on labour and industrial disputes and how it impacts on the development of labour and industrial jurisprudence in Nigeria, in view of the level of expertise available to the Court of Appeal. It therefore proposes packing the Court of Appeal with judges from the National Industrial Court or, in the alternative, for the establishment of a National Labour Appeal Court, constituted of labour and industrial law experts, to hear appeals from the National Industrial Court of Nigeria.

Kehinde Anifalaje’s paper considers the regulation of compulsory liability insurance in Nigeria as a means of public protection from the risk of death, bodily injury or loss of property. The paper examines the laws regulating compulsory liability insurance in Nigeria and the enforcement of the rights of third parties within the context of the common law rule of privity of contract. It argues that the current tort-based system of compensation coupled with some regulatory challenges patently constitute a hindrance to a timely enforcement of the right of third parties under the contract of insurance, and suggests, among other things, the institutionalisation of a no-fault system of compensation that would guarantee quick and effective compensation of persons, who suffer losses by means of death, bodily injury or loss of property.

Also advancing the need for improved public protection, Lilian Nwabueze’s paper examines public protection through a change in approach towards better Wills by means of legislative amendment to Wills law to include the use of technological devices in communicating Wills; while and the paper by the duo of Onikosi Adedeji and Ahmed Muhammed-Mikaaeel examines the legal regime for pension administration in Nigeria, which it argues possess inherent lapses, including lack of direct prosecutorial power on the part of relevant agencies, unjust and insensitive

exclusion of the state and local government workers from coverage under the extant pension scheme and non-compliance of the pension scheme to Shari'ah.

The focus then moves to taxation law, in which Uche Jack-Osimiri, Anthony Ekpoudo, Rowland Ipoule and Amara Ijeomah comprehensively examine jurisdictional issues that emanate in the administration and practice of tax laws, arising from the jurisdiction of the National Assembly and State Houses of Assembly to exercise legislative power to promulgate tax legislation within the limits conferred by the Constitution. It proposes certain measures to bring about reforms for the smooth administration and practice of tax laws in Nigeria. Glory Okebugwu's paper thereafter examines the investigative and prosecutorial approaches in combating transnational crimes under international law. It argues for a neutral body that will ensure balance of conflicting interests in the investigation and prosecution of transnational crimes, as transnational crimes universally present certain challenges to national criminal justice systems. The paper, therefore, recommends the collective involvement of the international community, as well as the adoption of more proactive investigative approaches with long term control guarantees with human rights considerations.

The paper by Olanrewaju Aladeitan and Adebayo Adamson focuses on the loss of proprietary interest by a private entity on the basis of overriding public purpose in the context of a liberalised and privatised regime, which raises critical legal issue regarding the extent to which the legal framework for the acquisition of land for energy infrastructure development impacts on the rights of a landowner and the correlation to the effective performance of the Nigerian Electricity Supply Industry (NESI). The paper proposes a legal regime that is fair and balanced for operators/investors in sector, as well as for other stakeholders. The final paper, a statute review by Ekokoi Solomon, evaluates the Akwa Ibom State Map Establishment Law 2023. It argues that the AKS map law appears to be inconsistent and out of step with the constitutional provisions on boundary adjustment. This, the paper argues, is in view of the nature of the extant constitutional order, which requires the exercise of legislative power to promote the integrity of the legal/constitutional order.

There is evidently a wealth of good reading, thoughtful analyses and helpful materials in this volume of the journal. In effect, the authors have worked diligently to provide innovative perspectives on the issues covered by their papers, which have sub-national, national and international

concerns. We therefore welcome constructive feedback and suggestions on the issues covered in this edition. If there are any questions, comments or concerns, please do well to contact us at [facultyoflaw@uniuyo.edu.ng](mailto:facultyoflaw@uniuyo.edu.ng)

With gratitude to members of the Editorial Team and our external reviewers, who volunteered their time and intellect to enhance the quality of the papers selected, I welcome readers to turn the pages of this volume of the journal and embrace the wealth of information and knowledge contained in them.

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# An Analysis of the Legal Regime for Pension Administration in Nigeria

*Onikosi Ahmeed Adedeji\* and Ahmed Muhammed-Mikaaeel\*\**

## ABSTRACT

This paper analyses the legal regime for pension administration in Nigeria. Based on the various reports implicating various criticisms against the current legal regime on the pension scheme in the country, this paper provides content analysis with the aid of the doctrinal method. It examines the legal regime for pension in Nigeria from 2004 to 2014. The paper x-rays the inherent shortcomings in the 2004 pension scheme giving rise to the 2014 pension scheme. The laudable benefits of the 2014 pension scheme are orchestrated. However, the paper finds that there are inherent lapses, which include lack of direct prosecutorial power on the part of the relevant agencies, unjust and insensitive exclusion of the state and local government workers from the coverage of the current pension scheme and non-Shari'ah compliant approach of the pension scheme. It therefore recommends amendment of the current pension regime to get rid of the inherent shortcomings.

**Keywords:** Legal regime, pension scheme, systematic review, Nigeria

## I. INTRODUCTION

All around the world, governments are taking active steps to ensure the well-being of the workforce not only during their active years in public service but beyond the period in time when they are no longer strong enough to cater for themselves in age old. This reality is the *casus belli*<sup>1</sup> responsible for the creation of pension scheme and also underscores the several initiatives taken by the government for the purpose of engendering a seamless pension system in their respective countries. Pension schemes are not novel to contemporary societies. The system is said to have dated

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<sup>1</sup> It is a Latin word which means first do no harm.

back to the Hammurabi codes<sup>2</sup> which have been adopted and re-branded by governmental systems across the world, with each jurisdiction adopting and reforming its pension scheme based on the peculiarities of their respective jurisdictions.<sup>3</sup>

Although, in a creation of colonial administration, the merits of the pension scheme is perceived as a welcome development in several quarters particularly in view of the sophistication that corporate establishments have assumed in doing business in the polity. Most traditional societies across Africa and Asia fall under the contact social group system whereby the traditional family is closely knitted and family life is defined by communality beyond the nuclear family system.<sup>4</sup> Therefore, every family unit does cater for the well-being of their aged members without having recourse to the government for support. Against the foregoing backdrop, this paper thus analyzes comprehensively the old and the new pension schemes of 2004 and 2014 respectively with a view to highlighting their strength and weaknesses for improved practice of the scheme.

## II. CONCEPTUAL ANALYSIS

Pension is an idea that seeks to make life better for the employees after they exit active services. It is a platform that prepares them for contending with life after active service and envisages good financial plan. It is perceived as a retirement based income enjoyed by a former employee in retirement stage as a result of the previous active service.<sup>5</sup> It is also viewed as periodic allowance enjoyments accruing from the former meritorious services.<sup>6</sup>

A number of theoretical grounds have been premised for the existence of the idea of pension scheme. Prominent of them are the theoretical view of efficiency wage theory and human capital theory. In the realm of the proponents of the efficiency wage theory, pension scheme is perceived as a catalyst for bringing out the best in any employee when such employee has

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<sup>2</sup> The Hammurabi code of laws is a collection of 282 rules, established standards for commercial interactions and set fines and punishments to meet the requirements of justice. Hammurabi's Code was carved onto a massive, finger-shaped black stone stele (pillar) that was looted by invaders and finally rediscovered in 1901.

<sup>3</sup> SJ Smith, 'Democracy, from King Hammurabi's Time to Tomorrow' (2016) 16(1) *New Politics* 135-137.

<sup>4</sup> *ibid.*

<sup>5</sup> CO Odo and others, 'Contributory Pension Scheme and the Premium Base of Nigerian Insurance Industry' (2021) 10 *Journal of Financial Risk Management* 101-116.

<sup>6</sup> VU Ekhoehuehi and F Ekhoehuehi, 'Viability of the Contributory Pension Scheme in Nigeria: An Elastic Theoretical Approach' <<https://www.researchgate/publication/347444215>> accessed 6 September 2023.

guaranty that he gets good financial plan after his retirement arising from his meritorious services.<sup>7</sup> This thus leads to efficient service delivery on the part of the employee while still in active service.

The theoretical view of human capital theory theorises that pension scheme evolves as a result of a salient contract between the employer and employee giving guaranty to the employee that he would be taken care of after retirement with the condition of meritorious service rendered in return in favour of the employer.<sup>8</sup> Thus, there exists solid theoretical framework as the basis for pension scheme in Nigeria as it is obtainable in the world over.

### III. REGULATION OF PENSION SCHEME IN NIGERIA

In keeping with international best practices with regard to privatisation of pension schemes, the power to regulate and to supervise is vested in the government, while other obligations and functions such as custody, investment and general management of the pension funds derived from the scheme are usually vested in private companies who are licensed to operate as players in the pension industry. Therefore, under the Nigerian pension scheme and law, the regulatory and supervisory authority of the scheme consist of the National Pension Commission (PenCom) which is an agency of the Federal Government of Nigeria,<sup>9</sup> while institutions with managerial roles include the Pension Fund Administrators (PFAs) and the Pension Fund Custodians (PFCs).<sup>10</sup>

The legal framework for pension administration in Nigeria has undergone several transformations since its introduction in 1951.<sup>11</sup> The current extant law on Pension in Nigeria is Pension Reforms Act 2014. This section highlights the salient various enactments that are relevant to provisions of the pension in Nigeria.

#### A. The Constitution

Pension administration in Nigeria is deeply rooted in, and enjoys legal backing under the Constitution of the Federal Republic of Nigeria 1999 (as altered). Section 16(2) (d) of the Constitution, states in effect, that the government shall direct its policy towards ensuring that suitable and

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<sup>7</sup> Odo (n 5).

<sup>8</sup> *ibid*; see also J Karl and I Moore, 'Wily Welfare Capitalist: Werner Von Siemens and the Pension Plan' (2009) 4 *Clometrica* 321-348.

<sup>9</sup> Pension Reform Act 2014 pt VI, ss 23-25.

<sup>10</sup> *ibid*, pt XI.

<sup>11</sup> JM Dostal, 'Nigerian Pension Reform 2004-2010: Great Leap or Inappropriate Policy Design?' (2010) 25(2) *The Korean Journal of Policy Studies* 13-37.

adequate shelter, suitable and adequate food, reasonable national minimum living wage, *old age care and pensions*, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.<sup>12</sup> The foregoing provision underscores one of the essential obligations of the Nigerian government to the citizenry.

Unfortunately, the provision of section 16(2) (d) of the Constitution is non-justifiable; which means that if the government fails in its duty to make pension available to the aged people, no legal action can succeed to compel the government to effect this laudable constitutional objective by citizens or civil society organisations. This is in view of certain provisions of the Constitution of the Federal Republic of Nigeria 1999,<sup>13</sup> which make chapter two of the Constitution under which pension is made non-justifiable.<sup>14</sup>

## **B. The Pension Reforms Act 2004**

The revised Pension Reform Act of 2004 although a commendable piece of legislation, the Act was also inherently incapacitated to address or resolve the lingering issues of pension administration in Nigeria. Nevertheless, it introduced certain useful innovations and worthy of commendation. Some of the salient features of the 2004 Act as observed by critics<sup>15</sup> include the following:

- i. An important feature of the Act is the establishment of a Contributory Pension Scheme; under section 1 for the payment of retirement benefits to employees to whom the scheme applied. The scheme covered any employment in Nigeria especially workers in the Public Service of the Federation, Federal Capital Territory and any organisation within the Private Sector with at least five or more workers under its employ.
- ii. The Act put in place a harmonised set of rules, regulations and model for the administration and payments of retirement benefits for both the Public and Private Sector.<sup>16</sup>

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<sup>12</sup> The import of this section of the Constitution aptly distils the legitimacy of payment of pension in Nigeria. Other pension laws derive their validity from the Constitution.

<sup>13</sup> CFRN 1999, Cap C23 Law of the Federation of Nigeria (LFN) s 6(6)(c).

<sup>14</sup> *ibid*, s 16(2)(d).

<sup>15</sup> E Oscar, 'An Assessment of the Effectiveness of the Nigerian 2004 Pension Reform Policy.' (2012) 17(4) *Pensions: An International Journal* 289-304.

<sup>16</sup> K Anifalaye, 'Privatization of Pension Scheme in Nigeria: Analysis and Appraisal of the Pension Reforms Act, 2004' (2014) 41(1) *Journal Undang-Undang: Journal of Malaysian and Comparative Law* 17-40.

- iii. The scheme also covered Justices of the Supreme Court and Court of Appeal under section 291 of the CFRN 1999 and existing pensioners.
- iv. Section 8 of the Act however, creates some measure of exemption for employees under the scheme who are entitled to retirement benefits to under any pension scheme in force before the advent of the Act but has three or less years left to retire from active service in tandem with the terms of employment.
- v. The Act made a declaration to the effect that it guaranteed entitlement benefits to be paid promptly during the stipulated time to any employee who has successfully worked in either the public service of the Federation, Federal Capital Territory or the private sector.

In keeping with international best practices, the scheme was intended to be privatized and designed as an individual, fully-funded retirement accounts administered and managed by private sector organisations. This contributory pension scheme or availability of funds for the scheme through joint financing arrangement between the employee and the employer under the Act every worker is required to contribute a minimum of seven and half per cent of the employee's monthly emoluments to the scheme, payable into a designated account.<sup>17</sup>

The Act also mandates a 15 percent contribution for the military.<sup>18</sup> To this end, every employer is required to contribute a minimum of twelve and one-half percent while the employee will contribute two and half percent.<sup>19</sup> Furthermore, section 9 of the Act was designed by the legislature as a mechanism to ensure simplicity and transparency in the processes involved. Section 11 imposes a duty on every employee to maintain a Retirement Savings Account (RSA) in his/her official name, with any Pensions Fund Administrator (PFA) of his/her choice with a Personal Identification Number (PIN) unique to each worker.<sup>20</sup>

The employee is required to remit the entire chunk of the sum of contributions payable under the Act to the Pension Fund Custodian (PFC) as directed by the PFA of the employee<sup>21</sup>. This is done after the employer must have made the necessary statutory deductions as required under a clear section of the Act. As a proactive measure to ensure prompt remittance of contributions without delay, further section makes it an

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<sup>17</sup> Pension Reforms Act 2004 s 9.

<sup>18</sup> *ibid*, s 9 (b) (i) (ii).

<sup>19</sup> *ibid*.

<sup>20</sup> *ibid*, s 11.

<sup>21</sup> *ibid*, s 11(5).

offence for failure to remit such fund within seven working days from the day the worker's salary is paid<sup>22</sup>. Similarly, the employer is liable, as a sanction to pay not less than two percent of the total contribution left unpaid for each month or a part of each month that the default lingers. The actual sum of the penalty is deemed recoverable as a debt owed to the employee's RSA. The Act further Section provides that all profits made from investment of pension funds are required to be paid to the credit of individual RSA holder, with the exception of charges, fees, expenses and costs of transactions made by the PFAs.<sup>23</sup>

The government contributes to the scheme by way of a charge on the Consolidated Revenue Fund of the Federation under the Act.<sup>24</sup> Furthermore, the Director-General is mandated to request the Accountant-General of the Federation to remit any fund due as contribution by the government.<sup>25</sup> This is to be done immediately before carrying out other expenditure. The intent of this provision is to guard against the usual situation where huge pension liabilities were accumulated from irregular budgetary allocations for purposes of pension.<sup>26</sup> It is to be noted, however that by of the Act, an employer who elects to shoulder the full burden of contributing the required minimum of fifteen percent is allowed to so do<sup>27</sup>. Also, an employer may also elect to make voluntary payments to his RSA in addition to the stipulated contributions required of the employee and his employer under the Act.<sup>28</sup>

The benefit structure of the pension scheme is tied directly to the contributions made over a person's working career as well as the investment income on accumulated balances. Generally, an employee is not eligible to make withdrawal from his/her RSA before clocking the official age of fifty (50) years or before retirement.<sup>29</sup> The rationale behind this is to curtail unnecessary withdrawals that are capable of truncating the objective of securing a reasonable standard of living for the employee upon retirement. Regardless of the foregoing, the Act allows the holder of RSA to make withdrawals from the balance standing to the credit of his RSA upon attaining the official age of fifty or until retirement, as the case may be. Such withdrawal could either be in form of a programmed monthly or

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<sup>22</sup> *ibid*, s 11(7).

<sup>23</sup> *ibid*, s 70(1).

<sup>24</sup> *ibid*, s 11(8).

<sup>25</sup> *ibid*, s 11(9).

<sup>26</sup> Anifalaye (n 16).

<sup>27</sup> Pension Reforms Act 2004 s 9(2).

<sup>28</sup> *ibid*.

<sup>29</sup> *ibid*, s 3(1).

quarterly withdrawals calculated on the basis of an anticipated life span or a lump sum withdrawal.<sup>30</sup> However, if the option settled for is the lump sum, the amount left in the account after the withdrawal must be sufficient to secure an annuity or fund programmed withdrawals capable of generating an amount not less than fifty percent of his annual remuneration upon the date of retirement.

In the same vein, the account holder may choose to procure annuity for life from a life insurance company licensed by the National Insurance Commission, based on monthly or quarterly payments. There are also the exceptional cases whereby employee to whom it applies may, subject to meeting the condition-precedent, be allowed to make withdrawals from his RSA.<sup>31</sup> Where an employee retires before the age of fifty years in accordance with the terms and conditions of his employment, he will be eligible to withdraw a lump sum of money not more than twenty-five percent of the credit standing in his RSA, provided the employee is unable to secure another job six months after the previous one.<sup>32</sup> The Act also makes it possible for survivors of the deceased workers to inherit the from the total sums in the RSA of the holder at the point of death as well as from the life insurance policy maintained by the deceased employee.<sup>33</sup> Therefore, upon the demise of the employee, the provision of the Act may be activated with a view to remitting the deceased's entitlement under the life insurance policy to his/her RSA. As such, the relevant PFA is compelled by law to effect payments in favour of the successor/beneficiary under a will or a letter of administration of estate, or the spouse and children of the deceased or other successor's-in-title.<sup>34</sup>

The revised Pension Act addressed the issue of accrued retirement benefits and transitional arrangements of any worker (gratuity and pension) under an existing pension scheme insofar as the employee has over three (3) years to retire prior to the commencement of the new scheme, has been addressed by the new pension law<sup>35</sup> by the establishment of what is called a 'vested pension' based on the employment relationships in existence prior to the commencement of the Personal Retirement Account (PRA). Essentially, the pension right and gratuity accrued from the

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<sup>30</sup> *ibid*, s 4.

<sup>31</sup> *ibid*, s 3(2).

<sup>32</sup> The position of the percentage under the extant law on pension law in Nigeria is 75 percent .The case of 75 percent lump sum is just been approved by the Senate of Nigeria. <<https://businessday.ng/editorial/article/the-case-for-75-of-lump-sum-benefit-to-pensioners/>> accessed 3 October 2019.

<sup>33</sup> Pension Reforms Act 2004 s 5.

<sup>34</sup> *ibid*.

<sup>35</sup> *ibid*.

employment contract to the commencement of the Act, would be estimated as though the employment contract had ended at the time in line with the existing contract of service. Therefore, in respect of employees in the Public Service of the Federation in which the scheme is not based on contribution by the employee and the employer as in the current scheme, the retirement benefits, whether accrued or past service earned, is required under this Act.<sup>36</sup> Such is to be compiled by the Government in line with the terms of contract of service in place before the commencement of the Act.

Subsequently, the employee is issued with a Federal Government Retirement Bond, recoverable only when the employee retires from active service, being the equivalent to the retirement benefits due to him/her at the commencement of the Act. Based on this, the proceeds of the duly recovered bond shall be transferred to the credit of the RSA of the employee in question as applied in line with the provisions of this Act.<sup>37</sup> It is commendable that the system of issuing Federal Government Retirement Bonds solves to a reasonable extent, the problem of transition cost, which is widely regarded as a major setback to pension reforms in Nigeria.

#### IV. LAPSES IN THE 2004 PENSION REFORMS ACT

The 2004 Pension Reforms Act may be lauded in several respects; however, it has its own unique challenges. The most damning, defect of the PRA 2004 is its limited coverage. In fact, by the provision of the Act section,<sup>38</sup> limited its applicability to all employees in the Public Service of the Federation, Federal Capital Territory and workers in the organised private sector organisations with not less than five (5) employees. The Act<sup>39</sup> defined “Public Service of the Federation” as the “service of the Federation in any capacity in respect of the government of the Federation, while “Public Service of a State is said to be the “service of the State in any capacity in respect of the government of the state.” The foregoing definitions are *impari-materia* with the definition of the subject matter under the Constitution of the Federal Republic of Nigeria 1999 (as altered).<sup>40</sup>

Going by the foregoing definitions, the Act excludes employees in the Public Service of a State or a local government from its coverage. The benefits and arrangements therein applied only to employees in the public service of the Federation. As a result, state governments are not obligated by Act to comply with the provisions of the Act because, there is no express

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<sup>36</sup> *ibid*, s 12.

<sup>37</sup> *ibid*, s 4.

<sup>38</sup> *ibid*, s 1(2).

<sup>39</sup> *ibid*, s 102.

<sup>40</sup> CFRN 1999 s 318.

provisions warranting such in the Act. The consequence of this exclusion is that, the well-being of their employees of state and local government which, according to statistical findings, constitute seventy percent of the entire workforce in Nigeria.<sup>41</sup> The reason adduced for omission or exclusion of employees in state and local government public service may be understandable, however, by limiting its scope to cover the private sector organisations with five or more employees is, contestable.

The implication of this is that a great number of employments in Nigeria have been excluded. Studies have shown that a higher percentage of the Nigerian population is in self-employment under the informal sector.<sup>42</sup> The so-called safeguards put in place by the legislature under the Act on voluntary participation has been dubbed as an act of bad faith by criticism view of the socio-economic challenges the poorer population are being confronted with on a daily basis.<sup>43</sup> As such, it is practically impossible for the lower class to meet up with the requirements for qualification for pension under the pension scheme in the Act, even on voluntary basis. Besides, Nigeria still ranks a record low in terms of human capital index<sup>44</sup> and has recently earned the infamous title as the ‘poverty capital’<sup>45</sup> of the world in spite of the nation’s seeming improvement on the ease of doing business ranking in the world.

Also, the contributory system, wherein the sum payable is hinged on the monthly emoluments of the employee, is inherently inequitable, especially when looked at from the definition of ‘monthly emoluments’ provided under the Act as ‘a total sum of basic salary, housing allowance and transport allowance.’<sup>46</sup> Such allowances are meant to serve as incentives to workers in order to enhance the employee’s productivity and also aimed at meeting the specific needs of housing and transport. Furthermore, under the Act,<sup>47</sup> it is permissible, subject to an agreement between an employer and an employee, to review contributions on an

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<sup>41</sup> National Bureau of Statistic <<http://www.nigerianstat.gov.ng>> accessed 3 October 2019.

<sup>42</sup> DA Roberto and A Omobola, ‘The Size of the Informal Economy in Nigeria: A Structural Equation Approach.’ (2020) 47(8) *International Journal of Social Economics* 1063-1078.

<sup>43</sup> Pension Reforms Act 2004 s 9 (4).

<sup>44</sup> Nigeria has been ranked 152 out of 157 countries in the first-ever Human Capital Index released by the World Bank Group <<https://www.vanguardngr.com/2018/10/human-devt-index-w-bank-ranks-nigeria-152nd-out-of-157-countries/>> accessed 21 October 2019.

<sup>45</sup> ‘The Poverty Capital of the World: Nigeria’ *Borgen Magazine* (Seattle, Washington, 28 August 2020S — Nigeria, a third world country in Africa, is known as *the* poverty capital of the world. The nation just exceeded India. <<https://www.borgenmagazine.com>> accessed 29 October 2019

<sup>46</sup> Pension Reforms Act 2004 s 102.

<sup>47</sup> *ibid*, s 9 (5).

upward basis over the official threshold of fifteen (15) percent, there is no provision in the Act which allows for a downward review as long as it does not fall below the recommended minimum percentage. The author submit, also that the utility of annuities under the Act may occasion inequitable redistribution of wealth which may be perverse by way of sanctioning low-income employees.<sup>48</sup>

Annuities, as it were, ought to take cognizance of the shorter life expectancy of poorer people. Some research findings<sup>49</sup> have demonstrated that life expectancy in Nigeria is fifty-four years which is below the recommended age for retirement under the Act. Thus, deferring the procurement of annuities until retirement in line with the provisions of the Act may deprive employees of the opportunity to derive reasonable interest from such annuity at the stage of maturation during the lifetime of the employee. It is noteworthy that, the inclusion of life span as one of the indices for calculating the programmed monthly or quarterly withdrawals under the Act, remains uncertain as no guideline or criteria for calculating life expectancy has been provided.<sup>50</sup>

Another shortcoming of the 2004 Act is the time frame of one-year recognised as the period after which an employee may be presumed dead or missing. The one year stipulated is not only too short but is also in conflict with the provision of the Evidence Act which sets a period.<sup>51</sup> The challenges associated with the remittances of pension contributions to the respective Federal Ministries, Department and Agencies (MDAs) includes non-availability of reliable and updated Nominal Roll of the MDAs in addition to human factors such as reluctance on the part of pension officials to update records through online registration windows, differences in bio-data between the Nominal Roll and Registration Data Base and non-registration of some employees with the Pension Fund Administrators,<sup>52</sup> and other regulatory authorities.<sup>53</sup>

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<sup>48</sup> *ibid*, s 4(1)(b).

<sup>49</sup> CD Mathers and other, 'Global Patterns of Healthy Life Expectancy in the Year 2002' (2004) 4(1) *BMC Public Health* 1-12.

<sup>50</sup> Pension Reforms Act 2004 s 4(1)(a).

<sup>51</sup> Evidence Act 2011 s 144(1).

<sup>52</sup> PO Odewole, 'The Controversy on the Implementation of the Contributory Pension Scheme (CPS) in Nigeria: The Accounting Perspective' (2017) 5(2) *International Journal of Economics, Finance and Management Sciences* 102-112.

<sup>53</sup> Corporate Affairs Commission (CAC), Federal Inland Revenue Service (FIRS), State Internal Revenue Service (IRS), Pension Commission (PENCOM), Industrial Training Fund (ITF), National Housing Fund (NHF), National Social Insurance Trust Fund (NSITF).

Several other problems plagued the Pension Act 2014 and scheme. Among these include the issue of demography, payment of outstanding pensions and gratuities, administrative and managerial bottlenecks, so also bureaucracies, corrupt practices, economic recession, inefficient civil service, among other endemic problems. In fact, diversion of pension funds was the order of the day under the previous pension schemes before the current Pension Reforms Act, 2014. It has been that unpaid pensions and gratuity was about N2.56 Trillion Naira in December 2005, due largely to the inability of MDAs to pay pensions and gratuities to affected pensioners.<sup>54</sup>

## V. THE PENSION REFORM ACT 2014 AND ITS BENEFITS

Undoubtedly, the Pension Reform Act of 2014 heralds benefits to the pension industry as well as positive impact on the Gross Domestic Product of the Country (GDP).<sup>55</sup> Its main objectives are to ensure contributors receive their benefits as and when due and to assist improvident individuals to save in order to cater for their livelihood during old age.<sup>56</sup> This section aims to highlight and discuss some of the benefits as observed from the new pension Act.

### A. Pension Scheme before the Pension Reform Act 2004

Before the enactment of the Pension Reforms Act 2004, the entire pension system in Nigeria was beset by challenges ranging from poor funding to 'vulnerable budgetary allocation',<sup>57</sup> of which the Defined Benefit Contributory Pension Scheme was put in place to resolve the aforesaid issues. Consequently, employees were required by law to contribute a certain amount of their basic earnings, including transport and housing allowances.

On the other hand, employers would equally contribute an agreed sum on behalf of their employees. As such, the pension contribution will rise from fifteen percent to eighteen percent based on a monthly emolument, with employees contributing eight percent and employers, ten percent, projected as additional benefits to workers' retirement savings accounts.

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<sup>54</sup> OA Raphael and AI Reuben, 'Comparative Analysis Of The Benefits Of The Nigerian Pension Act No.102 of 1979 and the Pension Reforms Act of 2004' (2014) 2(3) *International Journal of Scientific Research and Management (IJSRM)* 579-598

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> OI Eme, 'Pension Reform Act 2014 and the Future of Pension Administration in Nigeria' (2014) 4(2) *Arabian Journal of Business and Management Review (OMAN Chapter)* 5-10.

Under this arrangement, monthly pension benefits of workers at retirement were expected to be enhanced.<sup>58</sup>

### **B. The New Contributory Pension Scheme**

The Pension Reform Act of 2014 was enacted to repeal the 2004 Act and to remedy its attendant inadequacies and challenges and to broaden the powers of the Commission whose statutory function is to regulate, supervise and effectively administer pension matters in Nigeria.<sup>59</sup> The new Contributory Pension Scheme model was adopted under the Pension Reform Act to correct the various inadequacies under the old pension scheme of 2004 as identified in previous paragraphs.

### **C. Significance of the 2014 Pension Reform Act**

The 2014 pension law has provided a more robust, adequate and affordable arrangements that will alleviate the sufferings of the teeming retiring Nigerians. For instance, under the erstwhile Act, employee contribution to the scheme was 7.5 percent which constituted workers' basic housing and transport allowance, while the government also contributed the same 7.5 percent which brings the figure up to the threshold of 15 percent of salary components to be remitted into the employee's Retirement Savings Account.<sup>60</sup>

On the contrary, the 2014 Act Defined Benefits Contribution Pension Scheme intervened by adjusting the rate to 18 percent total monthly emoluments of which 8 percent would be contributed by the employee from his basic salary, housing and transport allowances, while 10 percent of same shall be contributed by the government into the employee's Retirement Savings Account.<sup>61</sup> This new provision in the 2014 Act brings significant benefit to the retiring public servants.

### **D. Expanded Scope of the Pension Act 2014**

There is no gain saying that the new Pension Act 2014 is well expanded than the old Pension Act of 2004 in various degrees and pedigrees. This section will highlight some of the expanded scope contained in the New Pension Act 2014:

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<sup>58</sup> JO Odia and AE Okoye, 'Pensions Reforms in Nigeria: A Comparison between the Old and New Scheme' (2012) 3(3.1) *Afro-Asian Journal of Social Sciences* 1.

<sup>59</sup> MK Ahmad, 'The Contributory Pension Scheme: Institutional and Legal Frameworks' (2006) 30(2) *CBN Bullion* 1-18.

<sup>60</sup> Pension Reform Act 2004 s 9(1).

<sup>61</sup> *ibid*, s 4.

- i. The new Pension Act of 2014 has its expanded scope of the Defined Contributory Pension Scheme.<sup>62</sup>
- ii. Covering private sector companies with three employees and above, in tandem with the concerted effort at ensuring all-inclusive participation in the Pension Scheme.
- iii. The Pension Act 2014 increases contribution rate to 12 percent of the monthly emolument which was previously 7.5 percent, and the employees are also to contribute 8 percent, which formerly was 7.5 percent.
- iv. The waiting period for accessing benefits in the event of loss of job by employees from six (6) months to four (4) months under the Pension Reform Act 2014 was reduced.
- v. The Pension Reform Act 2014 empowers an employer to open a Temporary Retirement Savings Account (TRSA) on behalf of an employee that failed or refused to open an RSA within three (3) months of assumption of duty.<sup>63</sup>

#### **E. Safeguards in the Pension Reform Act in 2014**

Some of the distinctive features of the Pension Reform Act 2014 are the stiff sanctions and deterrent designs in guarding against mismanagement or diversion of pension funds' assets under any pretext. Specifically, the 2014 Pension Reforms Act holds operators of pension schemes liable for mismanagement of pension funds and upon conviction, will be sentenced to a term of years' imprisonment of not less than ten (10) years or five of an amount equal to three times, or both imprisonment and fine.<sup>64</sup> The strengthened The National Pension Commission (PenCom) in order to ensure improved protection of pension fund assets.<sup>65</sup> This goal has been one of the cardinal objectives of the Commission since its establishment under the Pension Reform Act (PRA) of 2004.

The new Act appears to be more proactive in addressing the high of sophistication in corrupt practices bedevilling the scheme through "diversion of pension assets and non-disclosure of interests and commission accruable to pension fund assets." As such, the pension Reforms Act of 2014 has vested power in the Pension Commission subject to a fiat by the Attorney-General of the Federation, to commence criminal proceedings against employers who repeatedly fall short of the extant rules regulating

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<sup>62</sup> Odewole (n 52).

<sup>63</sup> All these highlighted expansions were obviously absent in the previous or old Pension Acts before the enactment of the extant Pension Act of 2014.

<sup>64</sup> Pension Reforms Act 2014 s 100.

<sup>65</sup> *ibid*, ss 23(d) and 24(i).

the process of regular deductions and remittances of employees' pension contributions within the stipulated time.<sup>66</sup>

It suffices to state that such measure was obviously absent in the old pension law of 2004. Consequently, with the innovations of the new law, it has provided ample time to the Commission to improve on its duties and also to employers who are lagging behind in the remittance of their employees' pension deductions. Such defaulting employers are sanctioned and the amount owed their employees are duly paid. It has been reported that the Commission, before the introduction of the new pension law, had recovered the sum of N13.33 billion from employers in accordance with the new contributory pension scheme, including interests calculated along with the principal sum.<sup>67</sup>

## VI. SHORTCOMINGS OF THE LEGAL REGIME

One of the obvious shortcomings of the current legal regime is its apparent incompetence to directly commence criminal proceedings against corrupt stakeholders in the pension industry.<sup>68</sup> The Commission, from all intents and purposes, appears not have actual prosecutorial power to bring defaulters to book.<sup>69</sup> Unlike other government agencies like the Nigeria Police, the Independent Corrupt Practices Commission,<sup>70</sup> the Economic and Financial Crimes Commission,<sup>71</sup> the National Drug Law Enforcement Agency<sup>72</sup> inter alia, the National Pension Commission does not have a specialized department within its organisational structure in charge of such special function to commence criminal proceedings against defaulting operators. Rather, such expertise is being outsourced from sister agencies and consultants whose briefs are very expensive. This is not different from the recent demand by the Attorney-General of the Federation to the National Assembly who has created a special Recovery of Looted Funds Unit and sought approval for a certain percentage of the recovered funds to be remitted to his office.

One of the arguments the Attorney-General of the Federation canvassed was the need to retrain law officers in his department for the

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<sup>66</sup> CU Osuji, 'Teachers' Perceptions and Attitudes towards Retirement in Secondary Schools: An Analytical Study' (2014) 2(10) *International Journal of Education and Research* 23.

<sup>67</sup> EG Jonathan, 'Remarks at the Opening of the World Pension Summit' (2014) *Africa Special* 18.

<sup>68</sup> Pension Reforms Act 2014 s 21.

<sup>69</sup> *ibid.*

<sup>70</sup> Corrupt Practices and Other Related Offences Act 2000, s 61.

<sup>71</sup> Economic and Financial Crimes Commission (Establishment) Act 2004, s 7(2).

<sup>72</sup> National Drug Law Enforcement Agency Act, s 10.

purpose of prosecuting corrupt government officials and graft offenders in order to drastically reduce the huge cost of engaging the services of consultants. By implication, despite the inclusion of punitive measures against pension offenders in the new pension law, it is the considered position of this study that the prosecution of offenders thereof may reduce the level of efficiency in the process of attaining conviction against the aforesaid persons. Alternatively, there could be a synergy between the Commission, the EFCC and the Police for the purpose of encouraging inter-agency collaboration going forward.

Another shortcoming of the legal regime on pension administration in Nigeria<sup>73</sup> is discriminatory area of coverage. Under the enabling Act, only employees in the Public Service of the Federation, Federal Capital Territory and those in the organised private sector are covered by the Act, to the exclusion of workers in the employ of both state and local governments who, based on statistical findings, constitute about seventy percent of the working population in Nigeria. Such arrangement runs foul to the principles of equality and social justice which are part of the core principles this nation is built on. With the controversy surrounding the implementation of the new minimum wage wherein most states within the Federation have cried out of their inability to sustain the new minimum wage of thirty thousand naira (30,000:00) per month, it becomes even more difficult for state and local government workers, to be guaranteed payment of gratuity and pension by their employers after retirement.<sup>74</sup> Such discrepancy as it exists under the new pension law further exposes the affected workers to economic vulnerabilities.

Undoubtedly, the improvements in the new pension law are commendable and it is impracticable to adopt a one-size-fits-all approach with regard to ensuring uniformity of contributories across the spectrum. However, it has been by choice that pension matters under the Nigerian system are best handled by the Federal Government which ought to come under the Exclusive Legislative List in order to ensure equity, and fairness in distribution of the nation's wealth and effectiveness in administration of the pension scheme. It is only a pension scheme administered by the federal government of Nigeria that covers every worker(s) in the Federal, State, Local government. Thus, private establishment should also ensure

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<sup>73</sup> SY Ogunyemi and DO Olajide, 'Problems of Retirement Planning in Nigeria' (2014). <[https://www.researchgate.net/publication/331546502\\_PROBLEMS\\_OF\\_RETIREMENT\\_PLANNING\\_IN\\_NIGERIA](https://www.researchgate.net/publication/331546502_PROBLEMS_OF_RETIREMENT_PLANNING_IN_NIGERIA)> accessed 7 October 2019.

<sup>74</sup> PO Opono and OK Kelvin, 'Analysing the Politics of Nigeria's 2019 National Minimum Wage: Towards a Public Policy' (2021) 64(4) *The Indian Journal of Labour Economics* 1135-1149.

payment of gratuity and pension to any worker upon retirement from his or her employment in Nigeria regardless of socio and religious inclination of such retiree.

Another shortcoming of the Pension law is its inherent short-sightedness in making provisions to cater for the religious interests of employers whose faiths preclude them from deriving any benefits accruing from investments that run contrary to the tenets of their religions. Although the Shari'ah does not frown at any pension scheme or initiative, however, it expressly forbids adherents of Islam to derive any benefit from investments or ventures like alcoholic beverage and smoking that run contrary to its tenets.<sup>75</sup> The so-called voluntary pension scheme whereby employees are at liberty to choose their own pension fund administrator is believed to be inadequately in addressing the situation because not all Muslims would be mindful of the intricacies of the business dimension of the Pension by PFAs, among others.

Based on this, it has been suggested that the relevant provisions under the Act, which legitimise the participation pension fund administrators ought to include specific clauses that places a duty on PFAs inter alia, to take this concern into account in determining their preferred investment targets. This paper therefore recommends that the present Scheme issued by the Security and Exchange Commission (SEC) list of investments in which investors cannot be allowed to invest in the country, can be expanded to include such businesses accommodated by the Muslim faith.

## VII. CONCLUSION

The legal regime for pension administration in Nigeria has undergone several transformational processes right from the 1951 Ordinance up to the current Pension Reforms Act of 2014. No doubt, the 2014 Pension Reforms Act is perceived as the right step taken in the right direction by the Federal Government to address the problems associated with pension administration in Nigeria. It is contended that the entire system would improve in terms of viability, vibrancy, efficiency and good corporate governance if the scheme is further amended in line with the proposals highlighted in this paper. It is thus recommended that the Pension Reforms Act 2014 be amended to pave way for Shari'ah compliance; the prosecutorial power of the commission under the Act should be strengthened; and the area of coverage of the Act should be widened to

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<sup>75</sup> WI Wan Musyirah and others, 'Awareness on Prohibited Elements in Muamalat: Common Practice Life' (2020) *Journal of Contemporary Islamic Studies* 95-108.

cover not only federal public servants but also state and local government employees.



ISBN 1119-3573