

6

An Assessment of Nigeria's Pension Reform Act 2004

Femi Aborisade

Introduction

Internationally, pension reform has been a common feature of public sector financial reforms since the 1990s. According to the Organisation for Economic Co-operation and Development (2007), in Europe, the reforms have led to increased retirement age but a reduction in terminal benefits. Similar reforms have been embarked upon in the developing countries, resulting in throwing poorer segments of the society into harsher economic conditions as responsibilities for old age care are transferred from the state to the individuals. Within the context of pension reforms on a global scale, this chapter examines Nigeria's Pension Reform Act of 2004. It identifies the weaknesses of the Act and draws attention to necessary improvements that should be made to the legislation. One thing that is clear from the provisions of this piece of legislation is that it is rooted in a neo-liberal paradigm shift.

On an international scale, social security pension system is undergoing reforms in varying degrees and dimensions. Akintola-Bello (2004) has broadly accounted for the reforms in Latin America, Eastern Europe and Central Asia, low income countries in Africa, North Africa, South Africa and the Middle East. He notes that pension reform started with the 1981 Chile experience, which was a pioneering role, not only in Latin America but in the entire world. Other countries in Latin America had followed about a decade later. Akintola-Bello also observes that the low income countries of North Africa, Southern Africa and the Middle East have not embarked on major reforms, given that many of them operate partially funded, defined benefit pay-as-you-go systems and that the reforms in

the rest of the low income countries of Africa have been minimal. Holzmann, Orenstein and Rutkowski (2003:1) assert that pension reform has received greater attention in Western, Central and Eastern Europe than any other topic on the economic reform agenda, even though the process in individual countries is uneven.

Though the contents of the reforms differ from country to country, there appears to be a similarity. In many cases, the reforms are characterised by a move away from single-pillar, pay-as-you-go defined benefit systems towards multi-pillar, fully funded defined contribution systems. A comprehensive pan-European pension reform (in the 15 European Union (EU) countries, the 10 European Union Accession (EUA) countries of Central and Eastern Europe, plus Croatia) is motivated by three main factors: high budgetary or expenditure pressure and the tendency of an aging population; socio-economic changes, which render current provisions inadequate; and European economic integration and common currency, which tend to prompt higher levels of internal and external migration that current retirement provisions could hardly support (Holzmann et al 2003:2).

The conference organised by the World Bank and International Institute of Applied Systems Analysis (IIASA) in 2001 also found that the reform changes in both the EU and EUA countries had been characterised by the inability to finance prior commitments and the need to make pension system more sustainable in terms of a move towards a greater role for a privately managed funded system and the conversion of the pay-as-you-go (PAYG) systems into defined contributory systems (Holzmann et al 2003:8), which are perceived to be 'more self-sustaining and transparent'.

As it applies to the reform process in Europe, pension reform in Nigeria, which is codified in the Pension Reform Act 2004, was also rationalised by arguments of rising pension liabilities and inability to finance prior commitments, as well as the need to make the pension system more sustainable in terms of a move towards a greater role for a privately managed funded system and the conversion of the pay-as-you-go (PAYG) systems into defined contributory systems.

Key Patterns of Pension Reform

Two reform styles have emerged in each of the two divides of EU/EUA. In other words, the two patterns of reforms can be found in both EU and EUA countries. The two reform styles have been conceptualised as the 'parametric' and 'paradigmatic' styles (Holzmann et al 2003:8-9). They further explain that:

A parametric reform is an attempt to rationalize the pension system by seeking more revenues and reducing expenditure while expanding voluntary private pension provisions. A PAYG pillar is downsized by raising the retirement age, reducing pension indexation, and curtailing sector privilege; and a development of voluntary pension fund beyond the mandatory social security system is promoted through tax advantages, organizational assistance, tripartite agreements, and other means of administrative and public information facilitation. These among other things are happening in Austria, the Czech Republic, France, Germany, Greece and Slovenia (Holzmann et al 2003:8).

There is also the paradigmatic reform which is often called a 'three-pillar reform'. A paradigmatic pension reform is an attempt to:

... move away from the monopoly of a PAYG pillar within the mandatory social security system. A paradigmatic reform is a deep change in the fundamentals of pension provision typically caused by the introduction of a mandatory funded pension pillar, along with a seriously reformed PAYG pillar and the expansion of opportunities for voluntary retirement savings. Among other measures, this is what three-pillar Bulgaria, Croatia, Denmark, Hungary, Latvia, the Netherlands, Poland, Sweden and the United Kingdom decided to do (Holzmann et al 2003:8-9).

Some of the claimed attractions of a paradigmatic reform include the possibility of increasing a nation's savings and investment, acceleration of the development of a nation's capital market institutions and therefore overall economic growth rate, which a funded pension system could afford. Holzmann et al (2003:10) suggest that these advantages are perhaps the reasons for the predominance of paradigmatic reform in the EUA countries than in the EU countries.

Paradigmatic pattern of reform predominantly characterises Nigeria's pension reform, even though the changes reflect an amalgam of elements of both parametric and paradigmatic changes. However, the Nigerian pension reform does not encourage increased pool of pension funds through tax advantages by encouraging voluntary pension contribution as indicated by the elements of parametric reform. Rather, the Pension Reform Act puts 'voluntary contribution' above the statutory rates of contribution to taxation at the point of withdrawal. Another element of parametric reform missing in the Nigerian pension reform is transparent or democratic administration of pensions through tripartite agreements. There is marginal representation of organisations of the trade unions in the administration and 'transitional' management structures.

From the foregoing, it can be deduced that social security pension systems can be categorised into two types, namely, the Defined Benefit (DB) and the Defined Contribution (DC) systems. The DB system refers

to the PAYG system where benefits are predetermined. These may be in the forms of lump sum benefits and benefits related to previous earnings. The extent to which the benefits are actually funded varies from country to country and over time, even though the partially funded DB system tends to be most common (Akintola-Bello 2004). In the case of Nigeria, the benefits side was characterised by two components of payments – lump sum benefit in the form of gratuity, based on the number of years of service and the terminal compensation package, and monthly pension payments guaranteed for life, the rate of payment being dependent on the length of years of service (Ozo-Eson 2004).

The DC system, on the other hand, refers to a fully funded ‘actuarially fair’ system: meaning that the assets match liability at any given time. Akintola-Bello (2004:47-48) explains that the term ‘actuarial’ refers to the long-run financial stability (viability) of the system. A stable system is said to be in ‘actuarial balance’ when there is a relationship between contributions and benefits at the individual level. In reality, there are different degrees of actuarial fairness. Also, both the unfunded PAYG and the funded DC systems can be either completely non-actuarial or actuarially fair.

The Political Economy of Pension Reform

Various scholars have attempted to theoretically explain the likely triggers of pension reforms. They include: the character of political leadership, pension system and debt crises, the balance of power between reform advocates and opponents, weak structures of governance, the combined roles of domestic and external economic and political influences, the influence of neo-liberal ideas, relationship between international demonstration effects and domestic policy choices, and the role of international organisations in cross-regional diffusion of ideas and models. These factors and how they apply to the particular Nigerian experience are examined below.

Studying four countries in both Latin America and Eastern Europe, namely Argentina, Bolivia, Hungary and Poland, Muller (2003:47-78) identifies five likely variables that could trigger reform – dynamic political leadership, the role of international financial institutions, pension system crisis, intelligent reform strategy design, and the respective power or powerlessness of reform advocates and opponents. Of all the five variables, Muller finds the role of political leadership to be critical in the four case studies. In particular, she finds that paradigmatic reform is often triggered by new actors being involved in the process. In addition, while severe financial crisis may strengthen the position of the finance ministry, high foreign debt may enhance the arguments of international financial

institutions pushing for reforms. She also reports that the state-labour movement relationship could also facilitate or hinder reforms.

Some of the factors identified by Muller are relevant in analysing the pension reform process in Nigeria. For example, many of the economic reforms, including pension reform, could not be carried out under military dictatorship. They could only be realised under a civilian political regime. In other words, it appears that an active combination of both actors and type of political system tends to influence the feasibility of changes in social policy. As Muller also found, pension system and debt crises play important roles in the pension reform process. The unpaid pension liability in the public sector alone has been estimated to be N2 trillion while huge foreign debt overhang (before the \$18bn debt relief by the Paris Club) strengthened the arguments of government and the pressures of the international financial institutions in the reform process. The powerlessness of the trade union movement was also clearly demonstrated in the process of legislative changes. Though all the three central labour organisations (the Nigeria Labour Congress [NLC], the Trade Union Congress [TUC] and the Conference of Free Trade Unions [CFTU] were opposed to the fundamentals of the pension reform, radical changes were made in the new legislation on pension without reflecting the inputs of labour. Similarly, the organised private sector resisted the lumping together of pension schemes in both the public and private sectors. However, the new law disregarded private sector's inputs to the new scheme, in spite of existing constitutional provisions, which support their position.

In spite of the inability of the unions to prevent the enactment of the Pension Reform Act, 2004, they seem to have delayed its full implementation. The private sector employers organised under the Nigeria Employers Consultative Association (NECA) have been forced to embark on a retreat in stopping payment of gratuity. They had planned to begin the implementation of the Pension Reform Act by the issuance of 'Guidelines for Migration into a new Dispensation of One Terminal Benefit Scheme'. The association considered having to pay pension and gratuity as 'burdensome'. NECA would rather want members to change to a 'monolithic' scheme. Given the spontaneous agitations of the Trade Union Congress (TUC) and other unions such as the Food Beverage and Tobacco Senior Staff Association (FOBTOB), NECA through its Director General, Olusegun Oshinowo, was compelled to temporarily surrender. It said, '...the intention is not to scrap gratuity now. We are simply setting in motion the planned reformation of terminal benefits in which we would be talking of only one terminal benefit, pension. Gratuity will be subsumed under a new pension dispensation' (*The Nation* 4 December 2006:33).

On a different but related aspect, Ney (2003:79-110) argues that, contrary to previous political economy literature which portrayed democratic structures and processes as obstacles to changes, pension policy changes had never been very democratic. Rather, they had been monopolised and manipulated by small policy networks which operated in backrooms.

The findings and perspective of Ney are confirmed perfectly in the recent Nigerian experience. With the termination of military dictatorship in May 1999 and the introduction of representative system of governance, it is assumed that the process of law-making or changes in policy-making should reflect democratic norms. However, as noted in the preceding paragraph, the inputs of labour and organised private sector were not taken into reckoning in the new legal framework governing pension administration in Nigeria. In other words, the existing democratic structures and procedures were not, in reality, relied upon in effecting pension reforms.

The work of Chlon-Dominczak and Mora (2003:131-156), among other findings, posits that the identity of the foreign pension reform agenda setter – whether the World Bank, the United States Agency for International Development (USAID) or the International Labour Organization (ILO) – does not matter. Instead, the role of domestic actors, depending on the depth of pre-existing pension system crisis, is more significant in the reform process. Chlon-Dominczak and Mora (2003) also find that there is no strong relationship between institutional arrangements and implementation of pension reforms, noting that reforms have occurred equally in authoritarian and democratic countries. Rather, they argue that the influence of ideas, particularly the influence of neo-liberal ideas, is more decisive as a causative factor to trigger pension reform.

The postulation of Chlon-Dominczak and Mora (2003) that the role of domestic actors is more vital than the influence of foreign pension reform agenda setter could be said to be half-truth. Rather than over-rating the influence of one over the other, it might be more useful to understand that endogenous and exogenous political influences complement each other in the reform processes. This is the conclusion that could be drawn from the deep reflections of Arundhati Roy (2004:4-5) who explains as follows:

The World Trade Organisation, the World Bank, the International Monetary Fund, and other financial institutions like the Asian Development Bank, virtually write economic policy and parliamentary legislation.... All this goes under the fluttering banner of 'reform.' ... Time and again we have seen the heroes of our times, giants in opposition, suddenly diminished. President Lula of Brazil was the hero of the

World Social Forum in January 2002. Now he's busy implementing IMF guidelines, reducing pension benefits and purging radicals from the Workers' Party. Lula has a worthy predecessor in the former President of South Africa, Nelson Mandela, who instituted a massive programme of privatisation and structural adjustment that has left thousands of people homeless, jobless, and without water and electricity. When Harry Oppenheimer died in August 2000, Mandela called him "one of the great South Africans of our time." Oppenheimer was the head of Anglo-American, one of South Africa's largest mining companies, which made its money exploiting cheap black labour made available by the repressive apartheid regime.

Why does this happen? It is neither true nor useful to dismiss Mandela or Lula as weak or treacherous people. It's important to understand the nature of the beast they were up against. The moment they crossed the floor from the opposition into government they became hostage to a spectrum of threats - most malevolent among them the threat of capital flight, which can destroy any government overnight. Radical change cannot and will not be negotiated by governments; it can only be enforced by people. By the public. A public who can link hands across national borders.

However, the findings by Chlon-Dominczak and Mora (2003) regarding the influence of neo-liberal ideas are relevant in explaining the evolution and development of pension system in Nigeria. The Pension Reform Act, 2004 appears to be a neo-liberal piece of legislation. The Group Managing Director and Chief Executive Officer of the United Bank for Africa, now an amalgam of the UBA and STB (Nigeria), described the reforms, including the pension reform, as a 'silent', 'quiet', 'steady', 'irreversible' or 'permanent revolution' aimed at 'creating a conducive investment climate' (Elumelu 2005:slide number 3).

However, what is considered a 'revolution' by proponents of the reform policy has been described by a section of the Nigerian labour movement, represented by the voice of the former President of the Academic Staff Union of Universities (ASUU), as 'counter-revolutionary' (Fashina 2003).

Evolution of the Pension System in Nigeria

To determine the direction of changes in pension reform, it is apposite to trace the development of pension system in Nigeria, particularly from the 1970s. In the Public Sector, including civil and public services, statutory bodies and government-owned companies; pensions were governed by the Pensions Act of 1979, later the Pensions Act 1990, amended by the Pensions Regulations of 1991. The Act provided for benefits in terms of gratuity and pension payments. Gratuity is a single, lump-sum payment while pension is a periodic payment, normally on monthly basis for life.

The scheme was a compulsory and non-contributory one, which created a right to monetary collection by public servants and an obligation on the part of government to make payment.

It should however be noted that before April 1974, gratuity and pension for public servants were not treated as rights but as privileges. The applicable law provided that 'no officer shall have an absolute right to ...pension or gratuity' (Section 6[1]). As from 1974, they became rights to which a public servant who qualified for them was entitled against the government. The pension scheme for civil servants was financed, from government general revenue as may be appropriated in annual budgets, on a pay-as-you-go basis. It was neither from payroll tax deductions from employee salaries nor from any fund specially set up for the purpose. In that context, pension benefits were regarded as deferred element of employment compensation package. Government parastatals however tended to operate separate funded schemes which required setting aside, on an annual basis, a percentage of the total basic salaries of their staff in a special Fund under the management of a Board of Trustees.

Under the Pensions Act of 1979, both gratuity and pension for the public sector worker were salary-rate related and were financed wholly by the government without contribution by the workers. The National Provident Fund Act initially provided for private sector pension schemes. It was however essentially a savings scheme. Originally, the National Provident Fund (NPF), a contributory scheme which was established in 1961, also covered public servants. It was wound up for public servants after it had lost N17bn to corruption (Fashina 2003). The weaknesses in the National Provident Fund (NPF) led to the establishment of the Nigerian Social Insurance Trust Fund (NSITF) through Decree No 73 of 1993.

The NSITF, a contributory scheme involving contributions by both the employees and employers, aims at creating limited social security, covering aspects such as pension, invalidity, death, accident and disability benefits. In addition to the NSITF, there are also several in-house arrangements in the private sector (Ozo-Eson 2004:85-86). Unlike the public sector, most in-house pension schemes in the Nigerian private sector had always been based on contributory system by which both the employers and employees funded the schemes. The employees contributed a percentage of their monthly salaries, subject to a maximum while the employers equally contributed a percentage of employees' salary to the scheme. Considering the paltry benefit resulting from the statutory scheme, individual companies tended to operate company administered contributory gratuity schemes to supplement the statutory retirement

gratuity scheme. The previous pension scheme in the private sector also provided for a lump-sum cash payment upon retirement, among other benefits.

However, unlike the trend in the private sector, employees in the public sector enjoyed a more guaranteed security of tenure, with guaranteed entitlement to pension and gratuity – the major advantage of the public sector over the private sector. Once confirmed after the probationary period, the employee's job was secured until retirement age unless employment was determined by either party by following the established due procedure. This is derived from the doctrine of 'employment with statutory flavour'. Contrary to the practice in the public sector, the tendency in the private sector is that the employer has the right to hire and fire at will, with or without any reasons.

The nature of the pension reform and why the Academic Staff Union of Universities (ASUU) perceives it as a retrogressive piece of legislation from employees' point of view may also be comprehended by the nature of the concerns of the government expressed in an undated document called 'Blue Print on the Contributory Scheme'. The document is a summary of proceedings at the National Workshop on Pension Reforms, which held on 11 – 13 September 2001. From the Federal Government's point of view, the previous pension system had to be reviewed because 'increasingly, the number of officers on pension payroll may in the next few years outnumber those in active service. At the moment, the federal and state governments are bearing the cost of pension hundred per cent under the 'Pay-As-You-Go' system'(FGN 2001). For a regime whose economic policies tend to be more job-taking than job-creating, it is understandable if measures are taken to reduce the pension-induced financial 'burden'. The former president of the Federal Republic of Nigeria, Olusegun Obasanjo, made this point in his address to the said National Workshop on Pension Reforms, which held on 11 – 13 September 2001 – that 'there should be a new pension scheme that can endure economic depression'. The then president also expressed concern for a situation in which 'in some of our sectors, the pension bills are as high as the bills for wages and salaries. This is neither feasible nor sustainable ... The pension bill has continued to grow phenomenally' (and) given the growing demand from other economic sectors, the government will need to share the burden'(FGN 2001). Interestingly, it is this same line of reasoning that the Obasanjo government used in abdicating virtually all its responsibilities to the citizenry.

From the foregoing, the findings of Chlon-Dominczak and Mora (2003), with regard to neo-liberalism as a factor triggering pension reform, is applicable to explaining the Nigerian pension reform process, which has

brought with it the following – abolition of gratuity, abolition of the PAYG system, abolition of payment of pension for life and introduction of contributory system, privatisation of pension management, etc – measures which are critically analysed later on in this chapter.

Adesina (2007: Personal Communications) also shares the concern that the reform of social policies in Africa should be seen as a neoliberal agenda, which goal is to ‘roll back the state’. To this extent, the reforms, which include pension reform, should not just be seen as ‘World Bank’. For Jimi Adesina, ‘it is more analytically and politically more worthwhile seeing this as part of a wider class project within which to understand the ascendance of market-transactional logic among the local petty-bourgeois and bourgeois class elements; hence the internal/endogenous economic and political forces that are driving the neo-liberal project’. Adesina’s conclusion is irresistible when the findings of Akintola-Bello (2004) are borne in mind with respect to the uses to which governments, in varying degrees, had deployed accumulated pension funds in the 1960s through the early 1980s.

Akintola-Bello (2004:54-56) shows elaborately how, in the past, in almost all countries, pension reserves had been used to achieve social, economic and development objectives. These could be in the form of policy directives for pension reserves to be given as special loans to government as in Korea; a percentage of pension funds being invested in areas with a social dimension as in Mauritius; all monies being compulsorily invested in non-marketable government bonds as in the United States; the bulk of pension funds to be invested in government bonds or government-guaranteed debt while a small portion is to be invested in the private corporate bonds as in India; and investment of pension funds to develop the productive base and projects that have developmental dimensions as in Jordan. Investing in projects that have ‘developmental dimensions’ had permitted the use of pension reserves to fund personal loans for housing that met the needs of low and medium income groups, education, health, subsidies to mortgage markets and investment in social and infrastructures as in Turkey, Jordan, Venezuela, Tunisia, Malaysia, Japan, Korea, Sweden, Algeria, Iran and Morocco. Similarly, a recent study of Anglophone African countries (ISSA 1997, cited in Akintola-Bello) shows the same trend of how pension funds were used to finance housing development in Gambia, Ghana, Kenya, Mauritania, Swaziland, Tanzania, Uganda, Zambia and Nigeria.

However, the age of the neo-liberal policy of privatisation dictates that there must be a fundamental reform of pension policy such that the predictable and cheap source of credit, which pension funds represent,

can benefit capital market development as investible funds rather than being available to meet social, economic and development needs of the public.

The works of Boeri (2003:157-170) and Orenstein (2003:171-194) examine the relationship between international demonstration effects and domestic policy choices. The insights they provide help in an understanding of the impacts of global politics on reforms in developing countries, not only on pension reforms but also on the broader social policy models in transition and/or developing societies.

Boeri (2003) argues that the choice of social policy models in transition countries is influenced by geographical proximity to the EU countries. His work shows that countries with a greater chance of EU accession adopted social policy models that were more in tune with those of EU member states. Orenstein (2003) also analyses the global spread of paradigmatic pension reform. Drawing on the literature concerning diffusion of innovation, he posits that pension reform should not be seen simply as a result of domestic political processes but also as a product of global patterns of ideational innovation and diffusion. Countries tend to follow the model of innovative leaders in their regions. Hence, the larger, richer and more industrial countries tend to innovate first while smaller and poorer countries tend to lag behind.

Orenstein (2003) also shows that international organisations have played a major role, particularly in cross-regional diffusion of ideas and models. Orenstein explains, for example, that the International Labour Organization (ILO) gave a major boost to pension system creation in the years after the Second World War while the World Bank has played a leading role in diffusing paradigmatic reform at the present time. He also points out certain notable differences in the processes of creating pension and the diffusion of its reform. While Germany was the leader in the first phase of pension creation, the leader in the spread of paradigmatic reform was Chile, a middle-income country with semi-peripheral status in the world economy. In the current phase, thanks to the influence of globalisation, pension system reform is diffusing more quickly at approximately two times the rate of its establishment.

The insights offered in the works of Boeri (2003:157-170) and Orenstein (2003:171-194) are confirmed in the Nigerian experience. The trade unions have had to constantly rely on the provisions of conventions and recommendations adopted by the International Labour Organization (ILO) in their strivings to maintain the universal minimum standards in working and living conditions that have been set by the ILO and the trend in Nigerian judicial intervention is to hold that, where there is variation between international law and domestic law, the international law or treaty prevails.

From the foregoing, it is clear that though there are certain differences in the contents and speed of reform, there are also indisputable similarities in the reform processes in Europe and the developing countries, particularly in respect of the rationale for reform, the typology of reform changes and the political economy of pension reform. In particular, the literature review has shown that pension reform is a globalised idea, which is influenced by neo-liberal ideology. The relevance and potency of the conclusions drawn from the literature review are further reflected in the analysis of certain key sections of the Act undertaken below.

A Critical Analysis of the Pension Reform Act 2004

As stated earlier, paradigmatic pattern of reform predominantly characterises Nigeria's pension reform, even though the changes reflect an amalgam of elements of both parametric and paradigmatic changes. The fundamental changes brought about by the Pension Reform of 2004 include: introduction of a unified economy-wide pension scheme to replace the dual pension schemes previously existing for the public and private sectors; replacement of the pay-as-you-go/defined benefit (PAYG-DB) system previously operating in the public sector by a mandatory Fully-Funded-Defined Contribution (FF-DC) for both the public and private sectors; privatisation of the pension system through decentralised institutionalisation of managing individual retirement accounts by privately-owned Pension Fund Administrators (PFAs); individual contributing-employees bearing the risks of managing retirement accounts to the extent of having the right to choose and place accounts with preferred PFAs; abolition of payment of gratuity and guaranteed pension for life, delay in accessing contributions, an opportunity for early retirement and significant down-sizing of the PAYG system by limiting those entitled to it to judicial officers and those who have three or less number of years to retire, as from the coming into force of the Pension Reform Act.

Though this chapter is essentially Nigeria-specific, there is a sense in which the fundamentals are applicable to the processes of pension reform internationally. The theoretical underpinning for this contention is rooted in Mkandawire's (2007:7) monocropping and monotasking, which characterise the World Bank/IMF policy framework recommended for African states. Monocropping has to do with the perception that there is only one optimum toward which all countries must move and only one policy is good enough to attain that end. In this regard, the idea of privatising pension schemes as a policy is central to much of the pension reforms internationally. Monotasking is concerned with assignment of only one task to institutions. In this aspect, virtually everything has to be

harnessed to the task of safeguarding and promoting private property. Even the judiciary is assigned the task of protecting private property. According to a World Bank lawyer, judicial reform is part of a larger effort to make the legal systems in developing countries and transition economies more market friendly (Messick 1999:118, cited in Mkandawire 2007:9). The Pension Reform Act 2004 should be located within this declared goal.

A detailed analysis of the Pension Reform Act 2004 is presented below.

The Contributory Nature of the Pension Scheme

Section 1 sub-section (1) of the Act provides for 'a Contributory Pension Scheme' for payment of retirement benefits of employees to whom the Scheme applies. The Scheme is 'contributory' because Section 9 sub-section (1) provides that employers and employees in both the public service and private sector (in enterprises employing five or more employees) shall contribute 'a minimum of seven and half per cent' of the employee's salary to the scheme. In the case of the military, the government shall contribute 'a minimum of twelve and a half per cent...' while the employee shall contribute 'a minimum of two and a half per cent'. However, the stipulated rates could be revised upwards upon agreement between the employer and the employee [S. 9(6)]. Similarly, an employer may 'elect to bear the full burden of the Scheme', meaning accepting to pay 15 per cent of the employee's salary to the Scheme. Also, an employee covered by the Act may make voluntary contribution to his/her 'retirement savings account' in addition to the statutory rates or rates fixed out of agreement, as the case may be [S.9(5)].

The Act, however, provides for taxation of additional contribution (called 'voluntary contribution' in the Act) to pension funds, which is in excess of the statutory rates of contribution. Section 10 of the Act provides that the statutory rates of contributions 'shall form part of tax deductible expenses in the computation of tax payable by an employer or employee under the relevant income tax law [S.10]. However, any 'voluntary contribution' made under sub-section (5) of Section 9 of the Act shall be subject to tax at the point of withdrawal where the withdrawal is made before the end of five years from the date the voluntary contributions were made [S.7(2)]. The taxation of 'voluntary contribution' constitutes additional tax burden, which is unjustifiable.

The crucial point being stressed under this sub section of the chapter is that in conditions where the current salary rates at both the federal level (N7,500.00 minimum basic wage) and state level (N5,500 minimum basic wage) are considered inadequate, establishing a 'contributory' pension

scheme represents an indirect cut and punitive taxation on the income of the worker. For workers whose poverty wages may cut short their life span, they do not stand a chance of benefiting from their savings. Where there are no guarantees of subsidised basic social services, such as education and health, an average worker finds it absolutely difficult to make voluntary savings. The 'contributory' pension scheme is therefore nothing but imposed or forced taxation, which does not enjoy the consent of the worker. For 'contributory' pension scheme to make sense, government and the private sector employers should be made to pay enhanced living wages and salaries, which will make it convenient for the workers to pay their share of the contributions to the Scheme. For example, the NLC, TUC and CFTU (2004) cited the practice in Chile, where at the inception of a similar scheme, the workers' salaries were increased by the same degree as their rate of contribution.

Abolition of Rights to Gratuity and Pension for Life

A study of the Pension Reform Act, 2004 reveals that the right to gratuity has been abolished. Gratuity is a single, lump-sum payment. Pension is a periodic payment, normally on monthly basis for life, until the changes made in the Pension Reform Act, 2004. As provided for in the Act the only groups of workers who have unequivocal entitlement to gratuity are the groups exempted from the Act (S.8[3]). The said workers are 'any employee who at the commencement of this Act is entitled to retirement benefits under any pension scheme existing before the commencement of this Act but has three or less years to retire shall be exempted from the Scheme' (S.8[1]) and 'the categories of person mentioned in Section 291 of the Constitution of the Federal Republic of Nigeria, 1999' (S.8[2]). The categories of workers exempted by Section 291 of the Constitution of the Federal Republic of Nigeria, 1999 are judicial officers, as defined by Section 292 of the constitution. A judicial officer at the level of the Supreme Court or Court of Appeal may retire voluntarily at the age of 65 and compulsorily at the age of 70 (S.291[1]). A judicial officer at any other level may voluntarily retire at the age of 60 years but compulsorily at the age of 65 (S.291[2]).

Section 291(3) of the 1999 Constitution provides that any of the listed judicial officers shall 'be entitled to pension for life at a rate equivalent to his last annual salary and all his allowances in addition to any other retirement benefits to which he may be entitled', provided he has been in that position 'for a period not less than fifteen years' (S.291[3a]). Those who have held their position in the same categories for less than 15 years shall be entitled to the same rate of pension stated above but 'pro rata the number of years he served as a judicial officer in relation to the period of 15 years'.

With specific reference to the issue of gratuity, Section 8(3) of the Pension Reform Act provides that: 'any person who falls within the provisions of Subsections (1) and (2) of this section (i.e. those who have 3 or less number of years to retire and judicial officers – emphasis mine) shall continue to derive retirement benefits under such existing pension scheme as provided for in the First Schedule to this Act' (S.8[3]).

The First Schedule to the Pension Reform Act 2004 contains the formula for calculating pension and gratuity in respect of retirement.

The application of Section 8(3) of the Act has put a category of the Academic Staff Union of Universities (ASUU) in a precarious position. The act not only nullifies the Collective Agreement between ASUU and the Federal Government signed in 1992, it has also repealed a more favourable legislation – the Universities (Miscellaneous Provisions) Decree No 11 of 1993. In the Collective Agreement, it was agreed that 'the compulsory retirement age for academic staff shall be 65 years. Contract appointment may be given to a retired academic staff'. On voluntary retirement, it was agreed that 'academic staff could retire voluntarily after ten (10) years' service while on pension and gratuity, it was agreed that 'each academic staff shall be entitled to gratuity after five (5) years of continuous service'.

The Universities (Miscellaneous Provisions) Decree No 11 of 1993 had also incorporated aspects of the above-mentioned Agreement and, in fact, strengthened it. It provides, for instance, that 'a person who retires as a professor having served a minimum period of 15 years' in that position until retirement age, 'shall be entitled to pension at a rate equivalent to the last annual salary and such allowances, as the Council may, from time to time, determine as qualifying for pension and gratuity, in addition to any other retirement benefits to which he may be entitled' Section 9(a)(b)]. The Decree (now Act), further provides that 'notwithstanding anything to the contrary in the Pensions Act, the compulsory retiring age of an academic staff of a university shall be sixty-five years (S.8[1]), and 'A law or rule requiring a person to retire from the public service after serving for thirty-five years shall not apply to an academic staff of a university' (S. 8[2]).

Though Section 99(1) of the Pension Reform Act does not specifically mention the above legislation that has given legal backing to the ASUU-FGN Agreement as one of the legislations repealed, it falls under 'other laws' repealed or amended by Section 101. The said section 101 of the Pension Reform Act provides that 'if any other enactment or law relating to pensions is inconsistent with this Act, this Act shall prevail'.

Implication of Exempting Certain Categories of Employees and Public Officers from the Scheme Created by the Pension Reform Act 2004

As analysed above, Section 8(1) of the Act exempts two main categories of employees from the scheme, viz:

- (i) Employees who have three or less number of years to retire and who, at the commencement of the new Act, are entitled to existing scheme; and
- (ii) Judicial officers, particularly the Chief Justice of the Supreme Court and all Justices of the Supreme Court and the Court of Appeal as provided under S.291 of the Nigerian Constitution.

The question then is: if indeed the new Pension Scheme is more favourable to the employees than the previous Act, why exclude certain categories of public sector workers? The exemption clause just shows that the new Pension Act offers less favourable benefits, if any, to employees.

Though there is no express provision excluding employees at state and local government levels, the employees at those levels are impliedly excluded from the scheme by virtue of S.1(2) of the Act which states that the Act covers all employees in the public service of the Federation, Federal Capital Territory and the private sector/establishment where there are 5 or more employees. Considering that labour, pensions and gratuities are on the exclusive legislative list, precisely items 34 and 44, conflict of laws situation is likely to develop in this respect.

Inadequacy of the Level of Contribution

Although the Public Service pension scheme under the Pensions Act No 102 of 1979 and that of 1990 was non-contributory, it had a defined benefit scale – the quantum of retirement benefits receivable by a retiree could be determined based on total number of years computed on the officer's total annual emolument.

For the purpose of the Pension Reform, the Federal Government commissioned studies to determine the level of contribution that could meet anticipated gratuity and pension benefits. The actuarial reports indicated that, for adequate funding of the public service scheme, 25 per cent of gross emolument of all government employees needed to be set aside annually to meet existing and maturing gratuity and pension liabilities (Summary of Proceedings of the National Workshop on Pension Reform, 2001). However, the Pension Reform Act stipulated a minimum of 15

per cent of total emolument shared on the basis of a maximum of 7.5 per cent by the employee and a minimum of 7.5 per cent by the employer. This points to the fact that the level of contribution is inadequate, *ab initio*.

Ambiguity about Minimum Retirement Age

In the public sector, the statutory retirement age is either 60 years or 35 years of service, whichever comes first. In the private sector, the effective key criterion varies between 55 and 60 years. The factor of 35 years of service does not apply strictly to the private sector. After retirement, professionals with special skills may be employed on contract basis.

Section 4(1) of the Pensions Act (CAP 436, Laws of the Federation of Nigeria) 1990 had clear provisions on the minimum retirement age. But the Pension Reform Act 2004 contains no specific provision on same. It, however, stipulates that no person shall be entitled to make any withdrawal from his retirement savings account before attaining the age of 50 years (Section 3[1]). The pertinent question, therefore, is whether the new Pension Act has reduced the minimum retirement age from 60 to 50. There is a need for clarity on the minimum and compulsory retirement ages.

Uncertainty about Retirement Age that Qualifies a Retiree to Withdraw from Retirement Savings Account

While Section 3(1) provides that no person shall be entitled to make any withdrawals from his retirement savings account before attaining the age of 50 years, Section 3(2c) states a contradictory provision permitting withdrawal from the retirement savings account by an employee who retires before the age of 50 years. Section 3(2c) provides as follows:

... Any employee who retires before the age of 50 years in accordance with the terms and conditions of his employment shall be entitled to make withdrawals in accordance with Section 4 of this Act.

What appears to justify withdrawal from the retirement savings account by a retiree who has not attained the age of 50 (under Section 3(2c) is retirement 'in accordance with the terms and conditions of his employment'. But that differentiating clause between Section 3(1) and Section 3(2c) has merely compounded the confusion about the minimum retirement age. If the Act concedes, as it appears, that employees could retire before attaining the age of 50, in accordance with the terms and conditions of employment, it means the Act appears to accept that there is no uniform national law on the minimum retirement age (even in the public sector) and that the issue has been 'deregulated' such that some

extenuating circumstances, such as negotiated terms and conditions of employment, may allow an individual to access his/her retirement savings account.

What is obvious from the quoted provisions above is that there is no clear provision on the minimum and compulsory retirement ages in the Act which replaces the one that had unequivocal provisions on the matter.

Legalised Delay in Payment of Retirement Benefits

Whereas one of the problems, anomalies and hardships which the Pension Reform Act 2004 declares it seeks to remove is non-payment of retirement benefit as and when due (S.2[a]), the Act goes ahead in Section 4(2) to legalise delay in the payment of retirement benefits. This Section provides that when an employee retires before the age of 50 years in accordance with the terms and conditions of his employment (S.3[2C]), the employee may, on request, withdraw a lump sum of money not more than 25 per cent of the amount standing to the credit of the retirement savings account provided that such withdrawal shall only be made after six months of such retirement and the retired employee does not secure another employment (S.4(2)).

It does not seem to matter to the lawmakers if the retired employee and members of his/her family die before the expiration of six months when he/she will become entitled to make collections from personal savings. How does that person sustain self within the six months period? This provision is worrisome, given that there is no longer provision for gratuity upon disengagement from service.

Who are the Real Beneficiaries of Funds in Retirement Savings Account: Contributors or Investors?

Section 2(b) of the new Pension Act states that one of the objectives of the Pension Scheme established by the Act is to assist individuals by ensuring that 'they save in order to cater for their livelihood during old age'. However, the provisions of S.4 of the same Act suggest that the real goal of the Pension Scheme under the Act is to ensure a pool of funds for investors, rather than the concern for livelihood and survival of employees at old age. For example, S.4(1a) provides that:

A holder of a retirement savings account upon retirement or attaining the age of 50 years, whichever is later, shall utilize the balance standing to the credit of his retirement savings account for the following benefits: programmed monthly or quarterly withdrawals calculated on the basis of an expected life span.

Certain questions arise from the provision of S.4(1a) above. How is the so-called 'expected lifespan' of the individual to be determined? Do employees at top management level and lower management level who belong to different income brackets tend to have the same average life-span? What will be the criteria for calculating the 'expected life-span' of individuals at lower and top levels of management? What happens when the actual life-span is shorter than the calculated 'expected life-span' – who enjoys the surplus balance? What happens if the actual lifespan of the retiree is longer than the estimated 'expected life-span' – who supplies the shortfall to maintain the retiree for the rest of his/her life? These are critical issues not addressed by the Act.

Section 4(1b) also contains another 'benefit' (read purpose) to which the holder of a retirement savings account 'shall utilize the balance standing to the credit' of the account – 'Annuity for life purchased from a life insurance company licensed by the National Insurance Commission with monthly or quarterly payments'.

While individuals should be free to buy any form or type of insurance policy at any time in his/her lifetime, it is curious why the Act should obligate a retired person to compulsorily acquire a particular insurance policy by employing the word 'shall' rather than 'may' as in the text above. The third 'benefit' for which a retired person 'shall utilize the balance standing to the credit' of the retirement savings account is provided in Section 4(1c) – collection of 'a lump sum from the balance standing to the credit of his retirement savings account, provided that the amount left after that lump sum withdrawal shall be sufficient to procure an annuity or fund programmed withdrawals that will produce an amount not less than 50 per cent of his annual remuneration as at the date of his retirement'.

In the situation of lack of government welfare programme to provide social services for vulnerable groups, e.g. children and the aged, in the absence of any form of social security as of right, the tendency of retired persons in Nigeria is to use the lump-sum benefit received as gratuity to invest in some form of business activity which could yield them income to supplement their pensions to maintain themselves and their families. We have shown earlier that the Pension Reform Act has effectively eliminated the right to gratuity. Section 4(1c) of the Act is simply reiterating that a retired person can collect a lump sum from the retirement savings account only if the sum left after the lump sum will be sufficient to buy an insurance policy – an annuity – or fund periodic pension payment which will not be less than half the remuneration the person was receiving when in employment.

When the combined effects of the provisions of S. 4(1a, b and c) are considered, it would not be difficult to come to the conclusion that the Pension Reform Act 2004 does not seem to be concerned with the care of retired persons at old age; rather, the concern seems to be to create a pool of cheap funds for investors. The Act seems set to stimulate savings for the development of the domestic capital market in line with the concern of the economic blueprint of the Federal Government, the National Economic Empowerment and Development Strategy (NEEDS). The NEEDS document states that a minimum investment rate of about 30 per cent of GDP is required to unleash a poverty-reducing growth rate of at least 7 – 8 per cent per annum; yet, the savings-investment equilibrium had stagnated at about 20 per cent. In order to mobilise investible resources from the capital market development, the NEEDS document identifies a policy thrust to be pursued – ‘encourage the deepening of the capital market by encouraging investment in insurance...’ (Cited in Ozo-Eson, 2004:86).

It is within this context that S.73(1) and S.74 can be properly understood. The two sections make provisions for investment of pension funds within and without the country. S.73(1) itemises how the pension funds and assets ‘shall’ be invested as follows:

- (1) Subject to guidelines issued by the Commission from time to time, pension funds and assets shall be invested in any of the following:
 - (a) bonds, bills and other security issued or guaranteed by the Federal Government and the Central Bank of Nigeria.
 - (b) Bonds, debentures, redeemable preference shares and other debit instruments issued by corporate entities and listed on a Stock Exchange registered under Investment and Security Act 1999.
 - (c) Ordinary shares of public limited companies listed on a Stock Exchange registered under the Investments and Security Act of 1999 with good track records having declared and paid dividends in the preceding five years, and so on.

To corroborate the bias for creating a pool of investible funds rather than caring for employees at old age, Section 9(3) of the Pension Reform Act also strengthens the bias for the insurance sector of the economy. It provides that: employers shall maintain life insurance policy in favour of the employees for a minimum of three times the annual total emolument of the employee’.

Without doubt, the insurance industry hardly enjoys the confidence of ordinary Nigerians. The question can therefore be reiterated: Is the pension scheme, as currently conceived, to take care of employees at old age or to make available a pool of cheap investible funds? Without much doubt, the latter appears to be the case.

Encouragement of Non-Remittance of Deducted Contributions

The Pension Reform Act encourages corruption in terms of weak penalty for failure, on the part of the employer, to remit contributions (by employees and employers) to the Pension Fund Custodian within seven (7) working days from the day the employee is paid his/her salary (S. 11[5b]). The employer is empowered to deduct at source, the monthly contribution of the employee in his employment (S.11[5a]). The penalty for non-remittance within seven days as stated above is payment of not less than 2 per cent of the total contributions that remains unpaid in addition to making the remittance already due (S.11[7]). With the weak penalty for non-remittance, the tendency will likely be a harvest of predominant non-remittance by employers of labour, including government. Given the high cost of funds in the banks, employers are likely to prefer not to remit pension contributions and pay the cost of non-remittance, if at all they would be penalised.

Minimum Pension Guarantee

Section 71(1) of the Pension Reform Act provides that 'All retirement savings account holders who have contributed for a number of years to a licensed Pension Fund Administrator shall be entitled to a guaranteed minimum pension as may be specified from time to time by the Commission'. The following observations about this provision are pertinent. Firstly, how the 'guaranteed minimum pension' will be determined is not explained. Pensioners are likely to be at the mercy, whims and caprices of the Commission that may arbitrarily fix rates that may have no bearing with the salary structure, including the national minimum wage obtaining in the country.

Secondly, in view of the provision of S.4(1a) which states that the monthly or quarterly withdrawals by a contributor will be calculated on the basis of an expected life span, how would a 'minimum pension guarantee' be met? If the rate of withdrawals based on an expected life span is below the 'minimum pension guarantee', how would the difference be made up?

Thirdly one of the qualifying criteria for being entitled to a 'minimum pension guarantee' is having contributed for a number of years to a licensed Pension Fund Administrator (S.71(1)). Surprisingly, the number of years is not specified. The only conclusion that could be drawn is that pension administration will be left to the arbitrary regulations of the National Pension Commission.

Lack of Categorical Provision on Disbursement of Returns on Investment of Pension Funds and Assets

Although Sections 73 and 74 of the Pension Reform Act stipulate how Pension Funds are to be invested, there does not seem to be any categorical provision on how employee contributors to the scheme are to benefit from accruals of the returns on investment of pension funds and assets. There is hardly any specific provision on the percentage of the returns that should be paid into the employee's retirement savings account. How and why should a set of people be compelled to make contributions which will be invested, and without any consideration for a share of the returns on investment?

Section 47(f) provides that the pension fund custodian shall:

...undertake statistical analysis on the investments and returns on investments with respect to pension funds in its custody and provide data and information to the pension fund administrator and the Commission.

Surprisingly, the Act does not make any provisions with regard to the responsibility of the Pension Fund Custodians to render account on investments to the employee-contributors to the Fund.

Management of the Pension Fund

To manage the Pension Scheme, the Act has created a complex management structure. At the apex is the National Pension Commission (NPC) which is to regulate, supervise, issue licenses and ensure the 'effective administration' of pension matters in Nigeria. Section 4 of the Act establishes the NPC which is dominated by nominees of government, government officials and selected (not elected) representatives of the Nigeria Labour Congress and the Nigeria Union of Pensioners. Other unions in the various industries and other central labour organisations are left out.

Section 44 of the Act establishes the Pension Fund Administrators (PFAs) which are empowered to manage pension funds by opening retirement savings account for all employees with a Personal Identity Number (PIN) and investing and managing pension funds and assets, among other responsibilities to employees, among other functions.

Next to the PFAs, are the Pension Fund Custodians (PFCs) established by Section 46 of the Act. Only a licensed financial institution could be registered as a Pension Fund Custodian. The functions of the PFCs include receiving contributions remitted by the employer under Section 11 of the Act on behalf of the Pension Fund Administrators. However, Section

11(4) provides that: the employee shall not have access to his retirement savings nor have any dealing with the custodian with respect to the retirement savings account except through the pension fund administrator.

From the above provisions, it could be observed that the PFC is nothing but an unnecessary duplication of the roles of the PFA. How could the PFA manage funds being kept by another body? Why should the employee not have access to a body (PFC) that is said to be holding fund in trust for him/her? The provision that says the employee cannot have any access to the PFC means that the PFC does nothing but insulate the PFA against the pressure of the employees.

By virtue of Section 11(3), the employee selects a PFA and notifies his employer. To be registered, the PFA is expected to have among other things, a minimum paid up share capital of N150m (N150, 000,000.00). But the PFC is expected to be a financial institution, which in the case of banks, were recently required to have a minimum recapitalisation base of N25bn. Why the duplication of roles and bodies? Why the waste of funds and returns on investments realised from the pension funds? Considering the recent reports of corruption and failure of one of the recapitalised banks, the Spring Bank, due to high level corruption in the Central Bank of Nigeria (CBN), what is the guarantee for security of contributors' funds held by the PFAs/PFCs? For example, in a newspaper advertisement, the Chairman of Spring Bank PLC, Segun Agbetuyi (2007) accused the Governor of the CBN of collusion in the corruption perpetrated by some Directors of Spring Bank and posed a pertinent question: 'How many more of the Spring Bank odyssey do we currently have in the belly of the Consolidation programme' in the Nigerian banking system? (see *The Punch* Wednesday 13 June 2007:44–45).

Transitional Bureaucratic Structures

The Act makes provisions for transitional bureaucratic structures to co-exist with and be supervised by the NPC. For the public sector, Section 30 of the Act establishes a Pension Department made up of the existing pension boards or offices in the Public Service of the Federation and the Federal Capital Territory. In the case of the Public Service of the Federation, it comprises the Civil Service Pension Department, the Military Pension Department, the Police Pension Department, the Customs, Immigration and Prisons Pension Department and the Securities Pension Department.

Sections 32 and 33 of the Act spell out the functions of the Department, which include receiving budgetary allocations from Government and paying

pension and gratuity of existing pensioners and the exempted category of employees under the previous pay-as-you-go pension scheme. Section 38 of the Act provides that 'the Department shall cease to exist after the death of the last pensioner or category of employee entitled to retire with pension before the commencement of this Act'. The establishment of the Department is another duplication of the activities of the NPC and it amounts to a waste of resources, particularly bearing in mind that the Department shall only be dissolved 'after the death of the last pensioner or category of employee entitled to retire with pension before the commencement of this Act'. If the last pensioner remains alive for the next century, would public resources continue to be wasted on retaining the Department for the purpose of paying the pension of that single person?

Sections 39 to 41 of the Act make provisions for transitional arrangement for the private sector. Section 39 provides that 'any pension scheme in the private sector existing before the commencement of this Act may continue to exist'. However, among other things, the pension funds and assets are to be fully segregated from the funds and assets of the company and held by a Custodian. Every employee is given the option of continuing under the previous scheme or joining the Scheme established by the new Pension Act. Any employer who opts to manage its pension fund shall apply to be registered as a 'Closed Pension Fund administrator.' And be subject to the supervision of the NPC.

As in the case of the NPC, PFAs and PFCs, there is no consideration for accommodation of the democratic voice of the trade unions representing the employees in the transitional structures. Section 42 (1), (2) and (3) of the Act also provides that the NSITF shall establish a company to undertake the business of a Pension Fund Administrator. The funds that had been contributed by any person before the coming into force of the Pension Reform Act 2004, together with any attributable income, are to be credited into the retirement savings account to be opened by the NSITF for individual contributors. However, contributors under the NSITF Act cannot access their account until five years after the commencement of the Pension Reform Act when the individual contributor shall be free to select the Pension Fund Administrator of his choice for the management of the funds standing to his credit. Section 42 is essentially a provision in the interest of investors, not contributors. The section merely seeks to create an accumulation of investible funds.

As far as the management and transitional management structures are concerned, there tends to be an implicit assumption in the Pension Act that the implementing transitional institutions such as the National Pension Commission, Pension Fund Custodian and Pension Fund Administrators,

among others will play by the rules. Nothing can be further from the truth. Evidence abound that in Nigeria, corruption appears to be the norm, rather than the exception. This has the tendency of jeopardising privately managed pension funds. The collapse of the Finance Houses of the 1990s in Nigeria sent many retirees and potential retirees who lost their life savings in the process to early graves. Besides, by its nature, the market system experiences endemic and cyclical crisis. The PFCs/PFAs are nothing more than economic institutions expected to invest the accumulated pension funds through different forms of portfolio management. The crucial question remains: What happens to the funds of the pensioners in situations where any of these privately owned institutions collapses, either through administrative or systemic failure?

Denial of Access to Court

The Act also denies access to court, contrary to the provisions of Section 6 subsection (6) of the 1999 Constitution, which guarantees access to court 'in all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person'. Section 92(1) of the Act provides that any employee or beneficiary of a retirement savings account who is dissatisfied with the decision of a PFA or PFC may apply to the NPC to review the matter. Section 92(2) guarantees speedy resolution of matters by the NPC. Hence, NPC shall dispose of any matter within three months from the date the matter was referred to it! Where any party is dissatisfied with the decision of the Commission, the party may refer the matter to arbitration or the Investments and Securities Tribunal established under the Arbitration and Conciliation Act and the Investment and Securities Act 1999, respectively (S. 93[1] and [2]). The awards got under S. 93(1) and (2) 'shall be binding on the parties and shall be enforceable in the Federal High Court (S.94).

However, it is not an individual party that can approach the Federal High Court! 'An offence under the Act shall be instituted before the Court in the name of the Federal Republic of Nigeria by the Attorney General (AG) of the Federation or such officer, State Attorney General or his agent or any other legal practitioner in Nigeria that the AG may authorise (S. 91). So, if the Attorney General of the Federation or the Attorney General of the State is not positively disposed to initiating the necessary legal processes or is too preoccupied with other state matters, the aggrieved contributor suffers.

It is not only in respect of denial of access to court that the Pension Reform Act violates the Constitution. The idea of imposing a uniform regulation on both the private and public sector offends the provision of Section 173 of the Constitution, which limits the legislative capacity of the National Assembly to pensions in the Public Service. But the private sector employers might not have been able to effect fundamental changes such as abrogating gratuity right without state support. Hence, the need for government's arbitrary, unconstitutional and undemocratic action of disregarding collective agreements covering such issues in both the public and private sectors.

Conclusion

This chapter assesses pension reform processes in Nigeria and particularly the Pension Reform Act 2004. A critical issue raised by the review is the question of the role of the state in issues of citizens' welfare. The review has shown that the philosophical foundation upon which the Nigerian pension reform is hoisted is neo-liberalism, which has the goal of rolling back the state and, in the process, halting the trend of the state, using public resources to provide for the welfare of the citizenry. The Pension Act is perceived as a clever attempt to make government abdicate its social responsibility, particularly to the vulnerable classes – the ageing, retirees, unemployed, children, students, poor farmers, traders, and so on. With enduring institutions, commitment to transparency and democratic norms, the public sector should be sanitised and the state made to assume its rightful place as the institution that protects, defends, and provides welfare services for the weak segments in the society.

The extent of poverty in Africa, including Nigeria, would suggest that the level of living standards should dictate limits to the dimensions and depth of deregulation and flexibility in the labour market, which the Pension Reform Act aims to attain. Much of the political insecurity in Nigeria and Africa could be associated with socio-economic insecurity – poverty, absolute want, destitution, hunger, homelessness, disease and unemployment induced idleness – of the vast majority of the citizens in individual countries. A pension reform, which implies low pensions and denial of guaranteed pension for life, among other things, would further deepen the existing levels of pensioner poverty and misery, which would have implications for degrees of corruption, commitment to work, productivity and overall wealth creation.

As Sen (2004) puts it, public reasoning should be foundational to public policy. Public policy in turn means the deliberate collective public efforts, which affect and protect the social well-being of the people within a given

territory (Adesina 2007). Indeed, as Roy (2004) points out, in India, the word 'public' is now a Hindi word, meaning 'people'. It is posited that the idea of a tolerable minimum level of livelihood should define the limits beyond which no system of governance should fall. To maintain a minimum level of social well being in the context of the Nigerian situation in which an estimated 70 per cent of the population live in extreme poverty (living on income less than US\$1/day) demands the formulation and implementation of a comprehensive social insurance, which includes unemployment insurance, publicly or state guaranteed old-age pension for life, and so on. The forgoing underlines the need for the review of Nigeria's Pension Reform Act.

References

- Adesina, J.O., 2007, 'In Search of Inclusive Development: Introduction', in *Social Policies in Late-Industrializers: Sub-Sahara African and the Challenge of Social Policy* (forthcoming).
- Agbetuyi, S., 2007, 'Mr. CBN Governor Sir, Please Resign Now', in *The Punch* (Nigeria), 13 June, pp. 44-45.
- Akintola-Bello, O., 2004, 'The Role of Social Security in Economic Development', in Nigeria Social Insurance Trust Fund (NSITF), *The Quest for Social Security*. Abuja: NSITF.
- Boeri, T., 2003, 'Social Policy Models in Transition: Why Are They So Different From One Another?', in Holzmann, R., Orenstein, M. and M., Rutkowski, eds, *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank.
- Chlon-Dominczak, A. and Mora, M., 2003, 'Commitment and Consensus in Pension Reform', in Holzmann, R., Orenstein, M. and Rutkowski, M., eds, *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank, pp. 131 -156.
- Elumelu, T.O., 2005, 'Investment, Finance and Banking in Nigeria: Evolution and New Opportunities', PowerPoint Presentation at the US-Africa Summit of the Corporate Council on Africa, Baltimore, Maryland, USA, June.
- Fashina, O., 2003, 'The Position of the Academic Staff Union of Universities (ASUU) on the Proposed Act to Establish a Contributory Pension Scheme for Employees in the Public and Private Sectors in the Federal Republic of Nigeria for Matters Connected Therewith', March.
- Federal Government of Nigeria, 2001, 'Blue Print on the Contributory Scheme: Summary of Proceedings at the National Workshop on Pension Reforms', 11-13 September.
- Federal Government of Nigeria (2004), Pension Reform Act 2004, Abuja: Federal Government Press.
- Holzmann, R., Orenstein, M. and Rutkowski, M., eds, 2003, *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank.

- Korpi, W. and Palme, J., 1998, 'The Paradox of Redistribution and Strategies of Equality: Welfare State Institutions, Inequality, and Poverty in the Western Countries', in *American Sociological Review*, 63(5), 661–87, cited in Adesina, J. O., 2007, 'In Search of Inclusive Development: Introduction', in *Social Policies in Late-Industrializers: Sub-Sahara African and the Challenge of Social Policy* (forthcoming).
- Messick, R.E., 1999, 'Judicial Reform and Economic Development: A Survey of the Issues', in *The World Bank Research Observer*, Vol. 14, No.1, pp. 117-136.
- Mkandawire, T., 2007, 'Institutional Monocropping and Monotasking in Africa.' Paper presented at the Guy Mhone Conference on Public Sector Reforms in Africa organised by CODESRIA in Zomba, Malawi, 22 – 24 August.
- Muller, K., 2003, 'The Making of Pension Privatization in Latin America and Eastern Europe', In: Holzmann, R., M. Orenstein, and M. Rutkowski, eds, *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank, pp. 47 – 78.
- Ney, S., 2003, 'The Rediscovery of Politics: Democracy and Structural Pension Reform in Continental Europe', in R. Holzmann, M. Orenstein, and M. Rutkowski, eds *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank, pp. 79 – 110.
- Nigeria Labour Congress (NLC), Trade Union Congress (TUC) and Congress of Free Trade Unions (CFTU), 2004, 'Text of a Press Conference on the New Pension Act, 2004', July.
- Nwabueze, B.O., 1993, *Military Rule and Social Justice in Nigeria*, Spectrum Law Series, Ibadan: Spectrum Books.
- OECD, 2007, *Pensions at a Glance: Public Policies across OECD Countries*, OECD Publishing.
- Orenstein, M.A., 2003, 'Mapping the Diffusion of Pension Innovation', in R. Holzmann, M. Orenstein, and Rutkowski, M., eds *Pension Reform in Europe: Process and Progress*, Washington DC: The World Bank, pp. 171 – 194.
- Ozo-Eson, P., 2004, 'Pension Reforms and Economic Recovery', in *Nigeria Social Insurance Trust Fund (NSITF): The Quest for Social Security*. Abuja: NSITF.
- Popoola, A.O., ND, *Review of Existing Labour Laws in Nigeria: Social Security System in Focus*, Ile-Ife: Department of International Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife.
- Roy, A., 2004, 'Public Power in the Age of Empire'. Text of Public Address Delivered at American Sociological Association's 99th Annual Meeting, San Francisco, California, August.
- Sen, A., 2004, 'Graduation Address', Rhodes University, Grahamstown, 30 July, cited in Adesina, J.O., 2007, 'In Search of Inclusive Development: Introduction', in *Social Policies in Late-Industrializers: Sub-Sahara African and the Challenge of Social Policy* (forthcoming).
- The Nation*, 4 December 2006, Lagos: Vintage Press Limited.
- The Punch*, 13 June 2007, Ikeja: Punch (Nig) Limited.