HIGHLIGHT ON THE DIFFERENCES BETWEEN 2004 AND 2014 PENSION REFORM ACT IN NIGERIA

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ABSTRACT

The objective of this study is to highlight the differences between 2004 and 2014 Pension Reform Act in Nigeria. The Pension Reforms Act, 2004 which introduced the Defined Contribution Pension Scheme with its regulatory and agency bodies such as the National Pension Commission (PenCom), Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) was a welcome development by all Nigerians and a bold step by the Federal Government took a bold step in 2004 to relieve the hardship experienced by retirees and address the fears of the working class in the pension administration sector. This study employed secondary data and reviewed some related literatures. The study reveals that the contribution pension scheme reform of 2004 was well accepted by the masses. However, the massive frauds -though associated with the Defined Benefit Scheme -uncovered by the National Assembly in 2012 caused worker’s confidence in the new Pension Scheme to be in doubt. These among other factors forced stakeholders in the sector back to the drawing board to address certain issues and loopholes in the 2004 Act. The 2014 pension reform Act expanded the scope of participation of the contributory pension scheme and among others, upward review of penalties and sanctions to pension defaulters and employers which implies that the new Act is an improvement of the former and offers more assurance and safety to workers and retirees The research therefore concludes that this revised contribution pension scheme provided by the Pension Reform Act 2014 is a sure winner for all workers in both the private and public sectors in Nigeria as it has brought with punishment and sanction for law breakers. This study therefore recommend among other thing that the National Pension Commission (PENCOM) should be given free hand to operate and executive their powers on criminal proceedings against employers or other agencies who fail to comply with the law without political and religious interferences.

KEY WORDS: Pension Reforms Act, Repeal, Contributory, Scheme, Benefits.
INTRODUCTION

Pension scheme administration is one of the major problems facing Nigeria public service. The problems of retired workers appeared to have had its root during the colonial era, when people were paid such ridiculous amounts ranging from two shillings and six pence to ten shillings monthly as pension benefit. The situation appeared to have improved slightly with the attainment of independence. A systematic pattern that appeared to have evolved over the years showed that the various increases in workers’ pensions and gratuity since 1971 were as a result of the combined efforts by the various governments of the country and the workers themselves (Eya, 1990).

Given the staggering magnitude of fraud and embezzlement that fraught the traditional Defined Benefit Pension Scheme operated in Nigeria, the Federal Government took a ground-breaking step in 2004 to ameliorate the hardship experienced by retirees and allay the fears of the working class in the pension administration sector by passing into law the Pension Reform Act, 2004. The Pension Reforms Act, 2004 which introduced the Defined Contribution Pension Scheme and also established bodies such as the National Pension Commission (PenCom), Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) was a welcome development by all Nigerians. This acceptance was illustrated by the million workers that had enrolled in the Scheme both in public and private sectors. However, the massive mismanagement of fund and frauds—though associated with the Defined Benefit Scheme was alarming and outrageous that caused worker’s confidence in the new Pension Scheme to be in doubt. These among other factors forced stakeholders in the sector back to the drawing board to address certain issues and loopholes in the 2004 Act. These efforts reached a climax on 1st July, 2014 when President Goodluck Jonathan signed into law the ‘Pension Reform Act, 2014’, which repealed the Pension Reform Act, 2004. The new Act is an improvement of the former and offers more assurance and safety to workers and retirees.

HISTORICAL DEVELOPMENT OF PENSION IN NIGERIA

Pension scheme was introduced into Nigeria during the Colonial era to provide old age income and security to British citizens working in the country upon retirement. Nigeria’s first ever legislative instrument on Pension matters was the Pension Ordinance of 1951, which had retrospective effect from 1st January, 1946. The National Provident Fund (NPF) Scheme established in 1961 was the first legislation enacted to address pension matters of Private Organisations. In 1972, following the Udoji Commission Report, Public Pension Scheme was established; the National Providence Fund was consequently subsumed under the Presidency as a parastatal – The Nigeria Pension Board (NPB). However, in its operations, NPB was inefficient in many aspects. For instance:
(i) The workers lacked the needed enlightenment and awareness about the pension system and the workers’ rights;
(ii) Amount for contribution was fixed at four naira (N4.00) irrespective of one’s pay level;
(iii) Only employers contributed, thus, the weight of pension responsibility was on the employer;
(iv) The pension system (management and administration) was remote to the expected beneficiaries (the retirees and expected retirees);
(v) Pension funds were misappropriated, and the Board was poorly managed.

It was followed 18 years later by the Pension Act No.102 of 1979, as well as the Armed Forces Pension Act No. 103 of the same year. The Police and other Government Agencies’ Pension Scheme were enacted under Pension Act No. 75 of 1987, followed by the Local Government Pension Edict which culminated into the establishment of the Local Government Staff Pension Board of 1987. In 1993 the National Social Insurance Trust Fund (NSITF) Scheme was established by Decree No. 73 of 1993 to replace the defunct NPF Scheme with effect from 1st July, 1994 to cater for employees in the private sector of the economy against loss of the employment income. As identified earlier by Orewa and Adewumi (1983), Local government system also established pension schemes for their staff, with a separate board known as the Local Government Pension
Board. It was established to take care of the local government staff that would have retired from the system. The new Pension Reform Act 2004 up to year 2004 when the Pension Act was passed by the National Assembly the government operated an unfunded defined Benefits Scheme and the payment of retirement benefits was budgeted annually under the Pay-As-You-Go Benefit Scheme against the backdrop of an estimated N2 trillion deficit, arbitrary increase in salaries and pensions as well as poor administration. The Obasanjo administration initiated a Pension Reform in order to address and eliminate problems associated with the Pension Scheme (Federal Ministry of Information and Communication, 2004). The problems associated with the unfunded defined benefit pension are as follows:

First, by 2004, the occupational pension industry in Nigeria found herself in desperate financial straits. Secondly, the coverage ratio of Nigerian workers (workers covered by a formal pension) was a dismal 1.3% which pales in comparison to Cameroon and Mauritius with coverage ratio of 30% and 60% respectively (Legacy, 2005). Thirdly, the covered federal and state civil service workers were owed by an estimated N2 trillion or 25% of the GDP of Nigeria as indicated by the publications of the Federal Ministry of Information and Communication (2004) and Legacy (2005). The reason that was advanced for this heavy debt was that the Federal Government operated an unfunded Defined Benefit Pension Scheme, on a “Pay-As-You-Go” basis.

The regulation of the various pension schemes was fragmented between separate, government agencies. This led to weak and ineffective administration Pension administration in Nigeria. The effect of the above scenarios was to create long line of pensioners waiting to collect their entitlements and bankrupt scheme that did not address the contributor needs.

TRANSITIONAL PROVISIONS OF THE PENSION REFORM ACT
The new Pension Reform Act of 2004 established the National Pension Commission (PENCOM) as the overall supervisory body for Pension in Nigeria. The Commission (PENCOM) has the responsibility to license, regulate and monitor the operations of all Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs). By the 2004 Act, all other existing pension acts have been repealed; these included:

a) The Pension Act, 1990
b) The Police and other Agencies Pension Offices (establishments, etc.) Act, 1993.

All boards of Trustees of various pension departments in the Federal, State and Paramilitary Services have consequently been transferred to the commission (PENCOM) as provided for in section 30, subsections (1) – (4). Similarly, the Armed Forces Pension Act of 1990 has been amended in line with the 2004 Pension Reform Act. The transition of existing Pension Scheme in the Private Sector is provided for in sections 39 and 40 of the new Pension Act.

The Nigeria Social Insurance Trust Fund (NSITF) established by Pension Act of 1993, which before the Pension Reform Act of 2004 was the apex pension body has also been repealed. The reform act has licensed NSITF to establish a Pension Fund Administrator (PFA) in accordance with section 42; subsections (1) – (7). This is to take care of contributors to the Social Insurance Scheme of NSITF. Following this development, NSITF contributors have the option of still maintaining their choice. In the event of choosing the later, the contribution of the beneficiaries would be transferred to the new PFAs of their choice. Section 50, subsections (2) and (3) mandate PENCOM to re-align the contributions of employees to the new scheme while ensuring that nothing is lost in the process of transition.

AN OVERVIEW OF THE NEW PENSION ACT
The New Pension Act of 2004 established a supervisory commission known as National Pensions Commission (PENCOM). This commission is responsible for Licensing, regulating and monitoring both Pension Fund Administrators (PFAs) and Pension Funds Custodians (PFCs). Presently (as at September, 2013), twenty four (24) Pension Fund Administrators (PFAs) and four (4) Pension Fund Custodians (PFCs) have been licensed by PENCOM, and are in operations.

Ibrahim (2005) gave stakeholders (PFAs, PFCs, employers and employees) an insight about the policy trust of the reform Act, and emphasized that the pension reform is based on providence, transparency and voluntary
compliance. Ibrahim added that both PFAs and PFCs are mandated by law to render monthly report to the Pension Commission (PENCOM), while the commission on its part has the responsibility of carrying out routine checks on the accounts, books of records and the financial status of contributors. Ahmed (2005) highlighted some of the benefits of the reform scheme, and assured all the stakeholders in the pension system that their interest is adequately guaranteed in the new act. He stated that the employee who is the main subject matter in any pension scheme, such as this, stands to benefit enormously because his retirement savings account (RSA) is safely invested and managed by an independent pension manager under whom the risk of losing entitlements is minimized. Secondly, that his annual contribution is to be invested continually in interest yielding ventures such as bonds and shares on his behalf. For the employers Ahmed (2005) argued that by remitting this contribution in piece meals (monthly), the financial weight or burden of transferring very huge sums of money to a pension body at any one time is alleviated. On the other hand, business is created for many financial organizations that are licensed as PFAs and PFCs, which in turn create employment opportunities for many unemployed while they too make their own profits from managing the RSAs.

The new scheme provides that both the employer and employee have to contribute specific percentage of the employee’s emolument to a special fund reserved towards the final disengagement of the employee. Section 9, subsection 1 of the 2004 Pension Act defines the “rate of contribution to the scheme” and specifies as follows:

(a) **In the case of the Public Service of the Federation and the Federal capital Territory:** -
   (i) A minimum of seven and half percent(7.5 %) by the employer:
   (ii) A minimum of seven and half percent(7.5%) by the employee: or

(b) **In the case of Military:** -
   (i) A minimum of twelve and half percent(12.5%) by the employer:
   (ii) A minimum of two and half percent(2.5%) by the employee: or

(c) **In other cases:** -
   (i) A minimum of seven and half percent(7.5%) by the employer: and
   (ii) A minimum of seven and half percent(7.5%) by the employee:

Despite these developments, it is interesting to note that some foreign private companies operating in Nigeria were already practicing this type of pension scheme long before it was officially adopted by the Federal Government. Such companies included Asea Brown Boveri (ABB), PZ Industries, PLC (Ibo, 2006).

**THE FUNDAMENTAL CHANGES BROUGHT ABOUT BY THE PENSION REFORM OF 2004**

The pattern of reform predominantly characterizes Nigeria’s pension reform is that of pragmatic, even though the changes reflect an amalgam of elements of both parametric and systematic 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: The act will cover all Federal, and civil service workers in Nigeria, all private sector employees employing more than 5 people are also mandated to register their employees under the scheme.

- The interest of contributors and other defined benefits of the schemes that existed before the 2004 reform are not over looked. Section 12 provides for the transfer of all holders” entitlements to the new scheme without losses.

- Individual Retirement Savings Account: This established private Retirement Saving Account (“RSA”) in the names of individual contributor not the employer, these are principle’s accounts where pension contribution will be made.

- Contributory: The act provide for contribution by the employee and a matching contribution by his/her employer to ensure a minimum contribution of 15% into the Retirement Saving Account (RSA).
Fully Funded: The act mandates that the employer must take good his portions of the employees’ contributions every month into the RSA. Hence pension contribution cannot be carried forward but must be settled in the month they all due. The funding element increases their security of the Pension on behalf of the contributors.

Privately Managed: The act stipulates that only professional fund managers, licensed and approved by the National Pension Commission (“PENCOM”) are allowed to manage pension funds as Pension Fund Administration (“PFA”). The Act stipulates strict conditions and guidelines to be complied with to become PFAs.

Separation of Custody of Assets: The Act separates the functions of physical custody of pension assets from that of management of the RSA. The assets of the Pension Scheme are held in custody, in trust, for the benefit of the individual contributors by Pension Fund Custodians (“PEC”). The Act stipulates strict conditions and guidelines to be complied with to become PFCs.

Strictly supervised and regulated: The Act stipulate uniform rules guidelines for the supervision and regulation of the pension sector in Nigeria through one single regulator, backed up by an Act. Hence all previous laws in Nigeria have been rescinded. Where there are conflicts in the interpretation of pension laws in Nigeria the pension Reform Act 2004 will take precedence.

The PRA 2004 stipulates investment guidelines for the management of pension fund assets and requires that PFAs adhere strictly to these guidelines which generally specify the broad asset categories that are permissible and include maximum exposure limits for each asset category. The guidelines stipulate that assets be invested in investment grade securities issued by institutions with a track record and quality ratings.

These guidelines ensure that contributors’ funds are securely invested and will yield sufficient returns to meet the retirement needs of the workers as pension assets are invested in a manner to ensure reasonable diversification to reduce the risk of long-term investment.

MAJOR HIGHLIGHT OF THE PENSION REFORM BILL OF 2014

On 1 July 2014, President Good luck Ebele Jonathan signed into law the “Act”, which repeals the Pension Reform Act 2004. The new Act serves as the enabling legislation for the administration of the contributory pension scheme. Act has some major amendments which everyone, employers and employees should find quite exciting and benefit from the major changes which were made in this new act to alleviate the sufferings of the Nigerian Employee from the shackles of pension problems which the former Act did not address. The highlight of the new pension law indicates that, the sanction provided under the pension reform Act 2004 were no longer sufficient deterrent against infractions of the law.

The new Pension Reform Bill 2014 which repeals the previously enacted Pension Reform Act 2004 consolidates amendments made to the 2004 Act and also includes significant reviews such as the exemption of military personnel and Department of State Security personnel from the current contributory pension scheme.

The 2014 Act also incorporates subsequent reviews to the 2004 Act such as the Universities (Miscellaneous) Provisions Act 2012 (which revised the retirement age and benefits of university professors) and the Third Alteration Act (which places responsibility for pension matters with the National Industrial Courts).

The following are the major highlights of the Pension Reform Act 2014

1. PARTICIPATION AND CONTRIBUTION

Upward Review of Rate of Pension Contribution
There is also an increase in the rate of contributions. Under the Act, employers are to contribute 12% of the monthly emolument which was previously 7.5%, and the employees on the other hand are to contribute 8% which was previously 7.5%. For an employer that bears the total pension contributions of its employees they will be expected to make 20% contribution. These contributions are applicable on monthly emoluments only.

The scope of participation of the contributory pension scheme for employers in the private sector has been decreased from minimum of five employees to three employees, which enables wider participation for the informal private sector, this is a wonderful development for employees in small scale employment, and they are not left out of the contributory benefit to secure their future.

Access to Benefits in Event of Loss of Job

The Pension Reform Act 2014 has reduced the waiting period for accessing benefits in the event of loss of job by employees from six (6) months to four (4) months. This is done in order to identify with the yearning of contributors and labour.

Opening of Temporary RSA for Employees that Failed to do so:

Enhanced Coverage of the CPS and Informal Sector Participation

The Pension Reform Act 2014 makes provision that would compel an employer to open a Temporary Retirement Savings Account (TRSA) on behalf of an employee that failed to open an RSA within three (3) months of assumption of duty. This was not required under 2004 Act.

It is important to note that the scope of the monthly emolument has been given a wider definition than before i.e. Monthly emoluments under the Act is defined as the total emolument as may be defined in the employees contract of employment but shall not be less than a total of basic salary, housing allowance and transport allowance.

2. SANCTIONS AND PUNISHMENTS

Corrective Actions on Failing Licensed Operators

The Pension Reform Act 2004 only allowed PenCom to revoke the license of erring pension operators but does not provide for other interim remedial measures that may be taken by PenCom to resolve identified challenges in licensed operators. Accordingly, the Pension Reform Act 2014 now empowers PenCom to take proactive corrective measures on licensed operators whose situations, actions or inactions jeopardize the safety of pension assets. This provision further fortifies the pension assets against mismanagement and/or systemic risks.

The new pension law prescribes among others, upward review of penalties and sanctions to pension defaulters and employers which fail to remit deducted monies of their employees.

Power to Institute Criminal Proceedings against Employers for Persistent Refusal to Remit Pension Contributions

The Act now empowers the National pension commission to institute criminal proceedings against employers for persistent refusal to remit pension contributions subject to the fiat of the Attorney General of the Federation, which will be to the delight of employees right now. The pension reform Act of 2004 only allowed PENCOM to revoke the licensed of erring pension operators but does not provide for other interim remedial measures that may be taken by PENCOM to resolve indentified challenges in licensed operators.
Upward Review of the Penalties and Sanctions

- The sanctions provided under the Pension Reform Act 2004 were no longer sufficient deterrents against infractions of the law. Furthermore, there are currently more sophisticated mode of diversion of pension assets, such as diversion and/or non-disclosure of interests and commissions accruable to pension fund assets, which were not addressed by the PRA 2004. Consequently, the Pension Reform Act 2014 has created new offences and provided for stiffer penalties that will serve as deterrence against mismanagement or diversion of pension funds assets under any guise. Thus, operators who mismanage pension fund will be liable on conviction to not less than 10 years imprisonment or fine of an amount equal to three-times the amount so misappropriated or diverted or both imprisonment and fine.

- As it is clear that the benefit of pension is on the high side, some adamant employees still refuse to join this scheme, the pension act 2014 takes good care of these category of staff by compelling an employer to open a Temporary Retirement Savings Account (TRSA) on behalf of an employee that failed to open an RSA within three (3) months of assumption of duty.

Recovery of Pension

- The employees who have been involved actively in the contributory pension scheme often complain about recovery of pension after loss of job, the worry centers around the stipulated waiting period after a job loss, the new act has now given us a reason to smile as the act has reduced the waiting period for accessing benefits in the event of loss of job by employees from six (6) months (2004 pension reform) to four (4) months (2014 Act). So in a sad case were you lose your job, you can quickly smile to the bank to access your benefits after 4 months.

- Finally It is clear that the new pension Act 2014 is quite advantageous to the employees as some keys issues have been addressed such as upward review of the penalties and sanctions, enhanced coverage of the contributory pension scheme and informal sector participation, upward review of rate of pension contribution, opening of temporary retirement savings account for adamant employees and access to benefits in the event of loss of job.

3. INVESTMENT

Utilization of Pension Funds for National Development

- The pension reform Act 2014 also makes provision that will enable the creation of additional permissible investment instruments to accommodate initiatives for national development, such as investment in the real sector, including infrastructure and real estate development. This is provided without comprising the paramount principles of ensuring the safety of pension fund assets.

Restructuring the System of Administration of Pensions under the Defined Benefits Scheme (PTAD)

- The Pension Reform Act 2014 makes provisions for the repositioning of the Pension Transition Arrangement Directorate (PTAD) to ensure greater efficiency and accountability in the administration of the Defined Benefits Scheme in the federal public service such that payment of pensions would be made directly into pensioners’ bank accounts in line with the current policy of the Federal Government.
IMPLICATIONS OF THE HIGHLIGHTS

The highlight of the new pension law indicates that, the sanction provided under the pension reform Act 2004 were no longer sufficient deterrent against infractions of the law. The Pension Reform Act 2014 has consolidated earlier amendments to the 2004 Act, which were passed by the National Assembly. These include the Pension Reform (Amendment) Act 2011 which exempts the personnel of the Military and the Security Agencies from the CPS as well as the Universities (Miscellaneous) Provisions Act 2012, which reviewed the retirement age and benefits of University Professors. Furthermore, the 2014 Act has incorporated the Third Alteration Act, which amended the 1999 Constitution by vesting jurisdiction on pension matters in the National Industrial Court

RESEARCH FINDINGS

i. Under the repealed Act, the contribution base for an employee and employer were 7.5% of the employee’s monthly emolument respectively. However, the new Act provides for an improved contribution base of 8% and 10% for the employee and employer respectively. Where the employer opts to bear the full responsibility of both contributions, he would pay a minimum of 20% of the employee’s monthly emolument. It should be noted that these deductions are made before taxation of the employee’s monthly emolument.

ii. The Act applies to employees in both the private and public sectors. There greater participation of Private organizations

iii. The Act places an attempt to commit a pension offence on the same pedestal with actual commission of the offence. It stipulates the same penalty for an attempt to commit an offence and the actual commission of the said offence. The Act stipulates increased and stringent penalties for misappropriation. Upon conviction, a pension fraudster will be liable to a minimum of 10 years imprisonment, a fine of three (3) times the amount misappropriated and forfeiture of assets and funds in his/her control to the Federal Government.

iv. The Act now incorporate fine upon conviction, where a PFC fails to hold funds to the exclusive preserve of the PFAs and PenCom.

v. Furthermore, the courts vested with jurisdiction can lift the veil of incorporation when necessary to punish directors of corporate bodies involved in any of these offences.

vi. Under the new Act, aggrieved employees and parties can approach the Commission, the Federal and State High Courts as well as the National Industrial Court to seek redress. This is an improvement on the former Act which provided arbitral tribunals and the Investment and Securities Tribunal (IST) as the mediums of dispute resolution.

vii. An employee who has lost his job and is under the age of retirement can now access the funds if after 4 months from disengagement he/she is still unemployed. The waiting period under the old Act was 6 months.
CONCLUSION
The upward review of penalties and sanctions is expected to serve as a deterrent to pension crimes. The increased contribution base, the creation of the Pension Protection Fund and the access to three superior courts of record in the case of a dispute among other improvements make this revised contribution pension scheme provided by the Pension Reform Act, 2014 a sure winner for all workers in both the private and public sectors in Nigeria. To ensure that Nigerian workers take full advantage of this scheme more enlightenment campaigns, workshops and media sensitization must be facilitated by stakeholders and government so as to help alleviate the sufferings and poverty that are today synonymous with retirement.

RECOMMENDATIONS
It is well known facts that pension reforms aims at bring harmony to the existing pension scheme. The 2014 has come to strengthen the institution by instilling confidence in among the players of the industry. The new and current reform Act of 2014 is an improvement of the former and offers more assurance and safety to workers and retirees. Having said that, the researcher would recommend the following:

1. The chairman of the pension should be a man of integrity, God fearing and should not be a man that dances at the gallery.

2. The Act should be fully implemented to that later.

3. The National pension commission (PENCOM) should be given free hand to operate and executive their powers on criminal proceedings against employers or other agencies who fail to comply with the law without political and religious interferences.

4. A more and vibrant judiciary devoid of manipulations and weak in administering justices discharging their legal obligations.

5. Those find guilty of fraud or misconduct of any form should be persecuted or fined accordingly without sleeping the case under the carpet.

REFERENCES


