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A GLANCE AT THE POSITION OF GRASSROOTS AUTHORITIES IN NIGERIAN PENSION REFORMS OF 2004: A DEVIATION FROM THE PREVIOUS?

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ABSTRACT

Pension practices are universal although with some variation from one nation to another. The variation sometimes has to do with nature of contribution (contributory or otherwise) generally facilitate by enabling legislations as appropriate. This paper is a review and hopes to amplify the role played by the local governments in the process of implementing the Act. The paper concludes that The Local Government Pension Board operated by most states of the federation may turn out to be the only standing option unless constitutional amendments are put in place for purposes too significant to be ignored. The paper recommends absolute autonomy should be granted to local governments with a view to establishing independent unit to be known as Social Security Desk/Unit to be entrusted with corresponding tasks pertaining to pension and health insurance

KEYWORDS: Social Security, Pension Reforms, Grassroots Authority, Contributory Pension, and Retirement Savings Account.

INTRODUCTION

The character of social security practices of a country tells much about the country noting how the future stands secured or otherwise as well as how same aids in enhancement of participation in the process of production and/or improving purchasing power parity. The issue of pension has received attention in many countries over the past decades (World Bank, 1994). Historically, the advent of Britain and colonization has affected the political and socio-economic life of her former colonies typical of Nigeria (Stride and Tfeke, 1971). Historically, Nigeria being a former colony has been bequeathed a pension system that has been modeled after the British system (Oluoma, 1986). The Nigerian civil service is also another brain child of colonization (Uzoma, 1993).

Ogunsola, (1984) quoted by Oluoma, (1986) , the commencement of Pension scheme for the Native Administration servants/staff (as public servants were then called) dates back to 1946. The appropriate legal enactment that brought the scheme into being was the Pension Ordinance of 1951 but which took retroactive effect from 1946. Prior to the enactment of the Pension Reform Act 2004, pension schemes in Nigeria had been bedeviled by many problems. The Public Service operated an unfunded Defined Benefits Scheme and the payment of retirement benefits were budgeted annually. The annual budgetary allocation for pension was often one of the most vulnerable items in budget implementation in the light of resource constraints. In many cases, even where budgetary provisions were made, inadequate and untimely release of funds resulted in delays and accumulation of arrears of payment of pension rights. It was obvious therefore that the Defined Benefits Scheme could not be sustained.

The main objectives and features of the Pension Reform Act 2004 are:

- To ensure that every person who worked in either the Public Service of the Federation, Federal Capital Territory or Private Sector receives his retirement benefits as and when due;
- To assist individuals by ensuring that they save to cater for their livelihood during old age and thereby reducing old age poverty;
- To ensure that pensioners are not subjected to untold suffering due to inefficient and cumbersome process of pension payment;
- To establish a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the Public Service of the Federation, Federal Capital Territory and the Private Sector; and
- To stem the growth of outstanding pension liabilities.

The pension reform programme is governed by the key principles of sustainability, safety and security of benefits, transparency, accountability, equity, flexibility, inclusivity, uniformity and practicability.

The pension scheme in the public sector has undergone various developmental stages after the first Pension Ordinance. For example, • the civil service pension scheme was established by the Basic Pension Decree 102 of 1979.

This paper intends to review the pension arrangement in Nigeria pre-2004 along with the salient provisions of the newly enacted Pension Reform Act 2004. This has been written to illuminate the current pension situation and show how the Act has attempted to bring an improvement upon the numerous retirees both in the public and

the private sector. It also attempts to examine the constitutional issues that make local government less sensitive in the process of pension administration in Nigeria.

Pension Administration in Nigeria: Legal and Institutional Manifestations

The Local Government Pension Scheme was established by Military Fiat in 1977; and the Armed Forces Pension Scheme created through Decree 103 of 1979 with retroactive effect from April 1974. There was also the Pensions Rights of Judges Decree NO.5 of 1985 as amended by Amendment Decrees Nos. 51 of 1988, 29 and 62 of 1991. The Police and other Agencies Pension Scheme Decree No: 75 of 1993 which took retroactive effect from 1990 represented another landmark development in the history of the Nigerian pension system. Governmental Parastatals and agencies directly funded by the Treasury had a unified pension scheme that was virtually managed by insurance companies and many were unable to honor their pension obligations. However, the pension schemes of the self funded agencies were better managed. The first private sector pension scheme in Nigeria was set up for the employees of the Nigerian Breweries in 1954, which was followed by United African Company (UAC) in 1957. National Provident Fund (NPF) was the first formal pension scheme in Nigeria established in 1961 for the non-pensionable private sector employees. It was largely a savings scheme, where both employee and employer would contribute a sum of Four Naira (N4) each on monthly basis. The scheme provided for only one-off lump sum benefits. The Nigeria Social Insurance Trust Fund (NSITF) was established by Decree No. 73 of 1993 to take over the NPF Scheme and provide enhanced pension scheme to private sector employees.

Nigeria operated Defined Benefit Scheme (DBS) between January 1, 1946 and June 2004. •The Pension Reform Act was enacted on 25th June and came into effect on 1st July 2004. The Reform established a Defined Contributory Scheme (DCS) as against the erstwhile DBS so as to solve pension crisis before DCS

Provisions of Pension Reform Act 2004

The Act is applicable to all employees in the Federal Public Service, Federal Capital Territory, state and local government workers and any private organization with 5 or more employees. The Act required that pension fund be managed only by licensed Pension Fund Administrator (PFA) while the pension fund asset can only be held by licensed Pension Fund Custodian (PFC). The Act also established the

National Pension Commission (PenCom) to regulate, supervise and ensure the effective administration of pension affairs in Nigeria. This contributory pension scheme is mandatory to all employees to which it applies. The rate is a minimum contribution of: a) 7.5% deducted from the employee's monthly emolument; and b) corresponding 7.5% paid by the employer. c) This amounts to a total monthly contribution of 15%

Stakeholders

The Pension Act made provision for the following bodies for easy administration of the scheme. Wider scope to cover both the formal and informal sector thus:

- a. Streamline the administrative process in the management and payment of benefits to retirees' supervisory framework.
- b. Open and administer Retirement Savings Account (RSA) for every employee in liaison with PenCom

The Centrality of Local Government: Mirage or Reality?

It would appear that the provisions of the Act have general applicability to the entire federation, that is, it has country wide application at federal, state, and local government levels. This application raises a constitutional concern (Okpugie,2011).

It is instructive to note that "pensions, gratuities and other like benefits payable out of the Consolidated Revenue Fund or any other public funds of the Federation" (emphasis added) are placed under paragraph 44, Part I of Second Schedule to the Constitution, that is, within the Exclusive Legislative List. The Act provides that the scheme established under it shall apply to all employees in the Public Service of the Federation, Federal Capital Territory and the private sector. In the case of the public sector, to those who are in employment, but in the case of the private sector, to those who are in organizations in which there are five or more employees (Okafor,2000). Again, does the Act apply to public workers in the States and the Local Governments? This doubt is created by the limiting effect of section 1(2) of the Act. Once it is considered inapplicable to workers in the employ of the States government, ipso facto, it would not apply to workers under the Local Governments. This position is reinforced by the provisions of section 7 of the Constitution. It guarantees the existence of a system of local government, as the third tier of government, within the federal system of government, in Nigeria. Furthermore, each State Government is

charged with the responsibility of bringing the local governments into existence by an applicable Law. If the Pension Reform Act does not apply to the public service of the States and the Local Governments in Nigeria, what law then is applicable? Are the States to promulgate Pension Reform Laws, possibly within the tenor of the Act, if they consider its provisions desirable? Under what auspices, seeing that pension matters are neither within the Concurrent Legislative List, nor are they to be regarded as residual matters?

The fallout from the foregoing is that the scope and applicability of the Act has presented issues of constitutionality which go to the root of the validity of any law, be it federal or state. In our opinion, there is an immediate need to make a constitutional amendment to bring the Act into conformity. In the alternative, the Act itself must be amended to conform to the provisions of the Constitution as it stands (Orifowomo, 2006).

DISCUSSION AND CONCLUSION

It is clear that local governments can only play an implementing role in the process of pension administration. It is worth noting that going by the third tier categorization of local government in the intergovernmental structure of Nigeria, the extent to which they can play any significant role in the said direction is essentially limited. The constitutionality of their role is left to be decided by the nature of powers held by other levels of government notably states and federal government. The Local Government Pension Board operated by most states of the federation may turn out to be the only standing option unless constitutional amendments are put in place for purposes too significant to be ignored. Just as the private sector is addressed, the local government must not only play inadequate role in the process of administration of pension but be explicitly stipulated in the interest of effective allocation of such constitutional responsibilities.

RECOMMENDATIONS

From the foregoing, the paper recommends for granting absolute autonomy to local governments with a view to establishing independent unit to be known as Social Security Desk/Unit to be entrusted with corresponding tasks pertaining to pension and health insurance.

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