RE-INVENTING PENSION RIGHTS IN NIGERIA: A REVIEW OF THE PENSION REFORM ACT 2004

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1. Introduction

Pension has been a vexed issue in Nigeria. It has been so not because the right is not recognized,[1] but rather, its recognition has been bogged down by the absence of the financial wherewithal to actualize the right. Pension is the accrued right of the employee on retiring from the services of his employer and satisfying the conditions for payment of the said pension.[2] Indeed, the 1999 Constitution enjoins the State to provide pension for all citizens. Thus, section 16(1)(d) of the 1999 Constitution provides that:

> The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and *pensions,* and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

The governments at different levels have abysmally failed to meet this constitutional objective. It is therefore not uncommon for workers after retirement, to be denied pension and gratuity simply because the government lacked the financial resources to meet its obligation. Before now, and save for workers in the public service, there was no automatic right to pension. Though, the constitutional provision quoted above is not justiciable, and so, cannot be a basis of a claim in a court of law, more profound provisions can be found in sections 173 and 210 of the 1999 Constitution which make the right to pension contingent on the enactment of a law to regulate pension.[3] It is perhaps from these provisions that the Pensions Act[4] and the old Pensions Act of 1951[5] derive their constitutional legality. The Nigerian Social Insurance Trust Fund, set up in 1993 to cater for the private sector has been bogged down by operational difficulties and gross inefficiency in the discharge of its duties. Further, there was generally the absence of a social welfare scheme to take care of the elderly and ensure regular income for those who had long passed working age, or provide unemployment benefits for the unemployed. Viewed against this backdrop, the recent legislation by the Federal Government is a welcome development as the law seeks to address some of the inadequacies of the existing regime on pensions; though, it still falls short of a comprehensive social welfare legislation. Tagged the *Pension Reform Act 2004,*[6] the Act is a 103-section legislation divided into 14 parts. It is wholly a participatory scheme involving the employer and the employee, with each making a prescribed contribution to the scheme. We shall attempt a part-by-part dissertation of the Act.

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[1] On whether there is in fact a right to pension, see Chianu, Emeka: *Employment Law,* Akure: Bemicov, 2004, 546-568; Emiola, Akintunde: *Public Servant and the Law,* Ogbomosho: Emiola Publishers 2001, 192-229.
[2] See the case of *Momodu v. Nigerian Union of Local Government Employees & Ors.* [1994] 8 NWLR [Part 362] 336 at 350. See also *Blacks Law Dictionary*, (7th ed. Minn. West Group 1999).
[3] See sections 173 and 219 of the 1999 Constitution of Nigeria.
[4] Cap. 346, *Laws of the Federation of Nigeria 1990*, which has now been repealed by the current Pension Reform Act 2004.
[5] The 1951 Act, which was then a national legislation, was adopted by some states as their local legislation on pension. The 1951 Act was later repealed by cap. 346 without a corresponding repeal by the states that adopted the 1951 Act. Thus, the 1951 Act continued to apply to those states. The current Pension Reform Act has not changed the situation as it applies to those states. See for instance, section 2(1) of the Pensions Law, cap. 115, Laws of *Bendel State of Nigeria* as applicable in Edo and Delta States. See also *Public Servant and the Law loc. Cit.*
[6] Called Act. No. 2 of 2004.

2. Part 1

Part 1 deals with the establishment and objectives of the Act, which is a contributory pension scheme and is hereinafter referred to as the Scheme. It is sub-divided into 13 sections. Section 1(1) establishes the Scheme while sub-section (2) provides that subject to section 8, the scheme shall apply to all employees in the Public Service of the Federation, Federal Capital Territory and the Private Sector. The meaning of the phrase, "Public Service of the Federation" is as defined in section 318 of the Constitution 1999.[7] The meaning of the above phrase as defined in section 318 does not include "public service of a state". The phrase "public service of a state" is further defined in section 318 of the 1999 Constitution. The definitions of the two phrases above by the Constitution are mutually exclusive. Therefore, going by section 1(2), the Act excludes public servants of a state from its provisions since the Act made no reference to public service of a state. This is how it should be in view of the fact that the Nigerian Constitution is a Federal one.[8] The objectives of the Act are contained in section 2 which are to the effect that the affected workers receive their retirement benefits as at when due, compelling improvident individuals to save in order to cater for their livelihood during old age, and establish a uniform set of rules for the management of retirement benefits among the affected persons covered by section 1(2). Section 8 however exempts all those with three years or less to retire, or those covered by section 291 of the 1999 Constitution from the Scheme. Section 291 of the 1999 Constitution relates to the pension scheme of judicial officers. In both cases, the pension scheme that was in operation before the commencement of the Act shall continue to apply to the categories of persons mentioned under section 291 of the Constitution and under subsection 8 (1) above. Section 3(1) prescribes a minimum age of 50 years before a person can make any withdrawal from his retirement savings account opened under section 11 of the Act. However, any person who retires before attaining the age of 50 years either on medical grounds or in accordance with the terms and conditions of his employment shall be entitled to make withdrawals from his savings account under section 4 of the Act.[9] For the purpose of determining the retirement age of an employee, section 3(4) provides that the authentic age of an employee covered by the Act, as at the time of his employment shall be that submitted by him upon his employment. Under section 4(1), a holder of a retirement savings account upon retirement, or attaining the age of 50 years, which ever is later, shall utilize the balance standing to the credit of his retirement savings account for a programmed monthly or quarterly withdrawals calculated on the basis of an expected life span. It is not yet clear how the life expectancy of a holder of a retirement savings account will be determined for the purpose of spreading the periodic payments for the entire period of the life expectancy. The balance shall also be used to purchase an annuity for life from an insurance company licensed by the National Insurance Commission with monthly or quarterly payments. Again, it is not clear at what stage the annuity will be purchased. Is it after retirement which the section suggests or while the holder of the account is still in employment. It is submitted that if it is after retirement, then the holder may not live long enough to draw periodically from the annuity when it matures. The balance will also be used to make a lump sum payment provided that after the lump sum, there will be sufficient funds to purchase the annuity or make a programmed withdrawal that will give the holder of the account at least 50% of his annual remuneration as at the date of his retirement. Where an employee retires under section 3(2)(c), the employee may, on request, withdraw a lump sum of money not more

[7] See section 102 of the Act, which is the definition section.

[8] This is also in line with the canon of statutory construction of *expressio unius est exclusio alterius*. See generally, Badaiki, A.D: *Interpretation of Statutes* (Lagos: Tiken Publishers 1996).

[9] See subsection (2) of section 3.

than 25% of the amount standing to the credit of the retirement savings account; provided that such withdrawals shall only be made after six months of such retirement and the retired employee does not secure another employment. It is yet to be seen on how the government will monitor such an employee in order to determine whether he has secured another employment. Or what happens to an employee who secures another employment more than six months after his retirement and after he has collected the retirement benefits? After all, the employee cannot be said to have violated this section since his benefits were paid to him after six months and before he secured another employment. It is submitted that the proper construction to be given to section 3(2)(c) is that the employee will be permitted to withdraw 25% of the money provided he does not secure alternative employment within a six month period since losing his employment.

In the case of death, the entitlements of an employee under the life insurance policy maintained under section 9(3) shall be paid to his retirement savings account. The pension fund administrator[10] shall then apply the funds in the savings account to the beneficiary under a will, or to the spouse and children of the deceased or in the absence of a wife and child, to the recorded next-of-kin or any person designated by him during his life time or in the absence of such designation, to any person appointed by the probate registry as the administrator of the estate of the deceased. Such payment shall be in accordance with the provisions of section 4.[11] While in one breath the section provides that the payment shall be made to the "spouse" of the deceased, in another breath, the section states that in the absence of a "wife", the payment should be made to a next-of-kin. There is therefore some confusion as to the gender being referred to here. There is no doubt that a "spouse" in family law may be either of the male gender or the female gender. Given this position, either gender could benefit from the scheme. But the later use of the word "wife" creates the impression that the only spouse that can benefit is "wife". In other words, where it is the wife that predeceased the husband, the subsequent use of the word "wife" creates some doubt as to whether the husband can then take benefit from any entitlements due to the late wife or her next-of-kin under the scheme. There is then the need by the legislature to clarify this confusion through an amendment of the section.

Section 6 creates the presumption of death by providing that where an employee is missing for upwards of one year, and a board of inquiry set up by the Commission concludes that it is reasonable to presume that he has died, the provisions of section 5 shall then apply.[12]

Under section 7(1), the retirement benefits paid under the Act are non-taxable. But where a worker's contribution is in excess of the rate prescribed under section 9(5), the excess being regarded as voluntary, the excess shall be subject to tax at the point of withdrawal, where the withdrawal is made before the end of 5 years from the date the voluntary contribution was made.[13] Under section 9, a worker in the public service of the Federation and the Federal Capital Territory shall make a minimum contribution of 7½% of his monthly emoluments while his employer shall also make a minimum contribution of 7½%. In the case of the military, the minimum contribution of the employer is 12½% while the employee's contribution is 2½%. In other cases, the minimum equal contribution of 7 ½ % is applicable. Subsection (2) of this section permits the employer to bear all the contributions alone in which case it shall not be less than 15% of the

[10] The Pension Fund Administrators are created under section 44 of the Act with their functions spelt out under section 45.
[11] See section 5 of the Act.
[12] Compare this provision with the presumption of death created under section 144(1) of the Evidence Act, cap. 112 Laws of the Federation of Nigeria 1990.
[13] See subsection (2) of section 7.

monthly emoluments of the employee. Subsection (3) also requires the employer to maintain a life insurance policy in favour of the employee for a minimum of three times the annual total emolument of the employee. Under subsection (4), and subject to any regulations that may be made by the Commission established under Part 2 of the Act, any person not ordinarily covered by the Scheme is entitled to make voluntary contribution under the Scheme. Further, an employee to whom the Act applies may make voluntary contribution to the Scheme in addition to the total contributions being made by him and the employer.[14] The rates of contribution specified above may be revised upwards by agreement from time to time by both parties and in that case, the Commission shall be notified.[15]

The expression, "monthly emoluments" is defined as the total sum of basic salary, housing allowance and transport allowance.[16] It is submitted that the inclusion of transport and housing allowances as part of the definition of "monthly emoluments" may impose undue financial hardship on workers. These allowances are paid for specific purposes, that is, for the payment of accommodation and transport to and from work. Making these allowances components of monthly emoluments upon which the calculation of 7½% is based, obviously restricts the capacity of the employee to meet these two basic human needs. It is therefore suggested that the calculation of 7½% should have been based on the basic salary and other allowances of the employee save for housing, transport and health. Further, while subsection (6) permits expressly, an upward review by agreement, of the rates payable, it does appear from the wording of the Act, that it does not permit a downward review. For instance, where by agreement both parties agree to increase the rate to 10% of monthly emoluments for a particular year, it would appear that a downward review to 9% might not be permissible. Though the subsection does not say so, that appears to be a possible construction to be given to the subsection. Yet from the example given above, the downward review is still above the minimum of 7½% prescribed by the Act. It is submitted that the most acceptable construction to be given to the subsection is to permit the downward review, provided that the latter review does not fall below the prescribed minimum. It appears that the commission only has a passive role to play in this respect, since all that is required by the subsection is that the Commission be notified of such review.

Section 10 of the Act provides that the contributions by an employee to the scheme shall form part of tax-deductible expenses in the computation of tax payable by an employer or employee under the relevant income tax law. There appears to be a conflict between this section and section 7(2) earlier discussed above. Any employee, who makes a voluntary contribution above the 7½%, will pay tax at the point of withdrawal if the withdrawal is made within five years under section 7(2). Conversely, under section 10, the excess contribution made by the employee would originally have formed part of the tax computation of the employee for that year. To further tax this excess contribution if there is a withdrawal under section 7(2) amounts to double taxation. This may not have been the intendment of the legislature. The National Assembly may want to revisit these two provisions for possible amendments.

Section 11(1) requires every employee to maintain a "retirement savings account" with any pension fund administrator of his choice. Under subsection (2), an employee is permitted to change his pension fund administrator only once in a year. Otherwise, he has to adduce reasons for any subsequent transfer in the same year. It would appear by this provision that where such reasons are not valid, or tenable, the transfer may not be permitted. It also appears that no reason may be adduced for the

[14] See subsection (5).
[15] See subsection (6) of section 9.
[16] See section 102 of the Act.

first transfer in any particular year. Where the account mentioned in subsection (1) has been opened, the employee has to notify his employer of the choice and the identity of the savings account.[17] It is only through the fund administrator that the employee may have any dealing with respect to his retirement savings account.[18] The employer, after he has been notified, shall then deduct at source, the monthly contribution of the employee and not later than seven working days, remit the said contribution and that of the employer to a custodian nominated by the pension fund administrator of the employee to the exclusive order of the administrator.[19] The custodian shall then notify the administrator upon receipt of the contributions, who shall then credit the savings account of the employee in favour of whom the employer has made the payment.[20] Failure by the employer to remit the contribution in accordance with the provisions of subsection (5)(b) attracts a penalty of at least 2% of the total contribution that remains unpaid for each month or such higher percentage as may be prescribed by the Commission. The amount is recoverable as a debt owed to the employee's savings account.[21] In the case where the government is the employer, the contribution of government shall be a charge on the Consolidated Revenue Fund of the Federation.[22] Subsection (9) authorizes the Accountant-General of the Federation to deduct the government's share of the contribution at the request of the Commission. Where the employee transfers his service to another employer, he shall continue to maintain the same retirement savings account.[23]

3. Parts II-V

These parts deal with the establishment and composition of the National Pension Commission and ancillary matters. The Commission is established under section 14(1), and as a body corporate with perpetual succession and a common seal and has power to sue or be sued in its corporate name.[24] It also has power to hold land. The principal object of the Commission is to regulate, supervise and ensure the effective administration of pension matters in Nigeria.[25] The Commission shall consist of a Chairman who must hold a university degree with not less than 20 years experience. There shall also be a chief executive who shall be the Director-General of the Commission and shall be responsible for the day-to-day administration of the Commission. He is expected to have professional skill with at least twenty years experience in Insurance, Actuarial science or other cognate experience. There shall be four other full time commissioners who shall possess cognate experience in Finance and Investment or accounting or pension management or Actuarial science or Business Administration or other related field. The four commissioners must also be fit and proper persons. Other members of the Commission are appointed on part-time basis, to represent various interests specified by the Act.[26] The President appoints the Chairman, the Director-General and the four other full time commissioners, with each member representing one of the six geo-political zones of the country and subject to Senate confirmation. The members appointed by the President shall have a four-year term, which is renewable for another four years.[27] In the event of a vacancy, the President shall appoint another member from the appropriate zone to complete the tenure of his

[17] Subsection (3) of section 11.
[18] Subsection (4)
[19] Subsection (5) (a) & (b).
[20] Subsection (6).
[21] Subsection (7).
[22] Subsection (8).
[23] See section 13.
[24] Subsection (2).
[25] Section 15.
[26] See section 16 of the Act.
[27] Section 17(1).

successor.[28] The word "successor", appearing in subsection (2) of section 17 should actually read "predecessor" since a person cannot complete the tenure of another coming after him. It is an obvious error that may be attributable to the printer's devil. A member of the Commission will be disqualified from holding office in under any of the circumstances prescribed by section 18. Such circumstances include bankruptcy, unsoundness of mind, conviction or ill health. The functions and powers of the Commission are specified in sections 20 and 21 of the Act. Sections 22 to 23 deal with the staff of the Commission, while sections 23 to 28 relate to the finances of the Commission.

4 Part VI - Transitional Arrangements for the Public Sector

This part provides for the transitional arrangements for the public sector. Under section 29 of this part, the Federal Government, through the Central Bank of Nigeria is required to establish, invest and manage funds called the Retirement Benefit Redemption Funds (called "the Redemption Funds") in respect of the federal public service and the Federal Capital Territory. The purpose of the Fund is to cater for the funds under already existing pension schemes and taken over by the Federal Government by virtue of section 12 of this Act. The Fund will be managed by the Central Bank, which shall issue retirement benefit bonds to the employees under the pre-existing pension scheme. The bonds are redeemable at the retirement of the employee. However, under subsection (2) of section 29, the Federal Government shall pay 5% of the total monthly wage bill payable to employees in the federal public service to the Fund. The amount in the Fund shall be used by the Central Bank to redeem any retirement benefit bonds issued under section 12(1) of the Act.[29] The Part also established a new department within the federal public service called the Pension Transitional Arrangement Department (called "the Department"). The Department shall take over the responsibility of other pension departments in the civil service pensions department, military pensions department, the police pension department, the customs, immigration and prisons pensions departments and the security agencies pension department, all of which now form part of the new department.[30] However, the Department shall operate within the rules and the directives of the Commission.[31] 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 the Act.[32]

5 Part VII - Transitional Arrangements for the Private Sector

This part relates to transitional provisions for pre-existing pensions schemes in the private sector. Under this part, all existing pension schemes may continue to exist provided that the employer applies to the Commission to be licensed as a "Closed Pension Fund Administrator", provided the fund managed by the employer is not less than ₦500, 000.00 which must also be kept in the hands of a custodian. Where the pension fund is less than ₦500, 000.00, a pension fund administrator must then manage the scheme. Under section 42 of the Act, the Nigeria Social Insurance Trust Fund is required to establish a company to undertake the function of a Pension Fund Administrator subject to the supervision of the Commission. Further, the Act requires the Nigeria Social Insurance Trust Fund to provide every contributing citizen a social

[28] Section 17(2).
[29] See subsection (3) of section 29 of the Act.
[30] See section 30(2)(a)
[31] Subsection (3).
[32] See section 38.

security insurance service other than the pension in accordance with the Nigeria Social Insurance Trust Funds Act 1993.[33]

6. Part VIII - Pension Fund Administrators and Custodians.

This part contains the guidelines for the establishment, licensing and regulation of pension fund administrators and custodians. The level of success recorded by the Act is largely dependent on the administrators and custodians licensed under this Act; the two critical elements in the Scheme because, it is their responsibility to manage and invest the funds contributed by the participants the Scheme. They also have the responsibility of paying a retired staff his retirement benefits under the scheme. The pension fund administrator has the responsibility, *inter alia,* of opening a retirement savings account for an employee, invest the funds, cause to be paid retirement benefits to employees, calculate the benefits and other functions assigned to it by the Commission.[34] However, a pension fund custodian who must be licensed by the Commission shall hold the funds.[35] The functions of the custodian include *inter alia,* receiving the total contributions remitted by the employer, notify the pension fund administrator of the receipt of the money, hold the pension funds and assets in safe custody in trust for the employee, settle transactions on behalf of the pension fund administrator. Section 48 is the penal section for doing business as a pension fund administrator or a custodian without the requisite license. In the case of an individual, such a person is liable to a fine of ₦5, 000,000.00 or imprisonment for a term not exceeding 5 years or to both such fine and imprisonment. In the case of a body corporate, such body is liable to a fine of ₦10, 000,000.00 and in addition, the directors or officers shall each be liable for a fine of not less than ₦2, 000,000.00 each or a term of imprisonment of not less than 5 years or to both such fine and imprisonment. Sections 49 and 50 relate to the conditions that must be met before an applicant is licensed as a fund administrator while sections 51 and 52 relate to the conditions that must be met before an applicant is licensed as a custodian. The grant of a license in either case is not automatic upon an application. Such application will be refused where, for instance, the information contained in the application is false.[36] While one of the conditions for the issuance of a licence as a fund administrator is that the applicant must be incorporated as a limited liability company, having as one of its objects, the power to manage pension funds[37], a pension funds custodian need not have such an objects clause. It is however important that the funds custodian must be a financial institution registered as a limited liability company.[38] Conversely, the pension fund administrator need not be a financial institution. The pension fund administrator must have a minimum share capital of ₦150,000,000.00[39] or such sum as may be prescribed from time to time, by the Commission while the custodian must have a net worth of ₦5,000,000.00[40] unimpaired by losses plus a total balance sheet of ₦125,000,000.00.[41]

7 Part IX - Investment of Pension Fund

The Act requires the pension fund administrators to invest the pension fund with the objectives of safety and maintenance of fair returns on the amount invested.[42]

[33] See section 71(2) of the Act.
[34] Section 45 of the Act.
[35] See section 46
[36] See section 53(1) of the Act.
[37] See section 50(1)(a).
[38] See section 52(1)(a).
[39] See section 50(1)(b).
[40] See section 52(1)(b).
[41] See section 52(1)(c).
[42] Section 72.

Accordingly, such funds shall be invested in bonds, bills and other securities guaranteed by the Federal Government and the Central Bank of Nigeria; bonds, debentures, redeemable preference shares and other debt instruments issued by corporate bodies listed on a Stock Exchange registered under the Investments and Securities Act 1999 (ISA); ordinary shares of public limited companies listed on a Stock Exchange registered under the ISA and with good track records having declared and paid dividends in the preceding five years; bank deposits and bank securities; real estate investment, bonds and other debt securities issued by listed companies and such other instruments as the Commission may, from time to time prescribe.[43] The enumeration of the investments that can be embarked upon by the fund administrators and custodians restricts the ability to invest in other areas not specified in this section. Therefore, any investment outside the scope specified by the section is illegal. The problem with this kind of provision is that the fund administrators and custodians cannot exercise their independent judgment in determining in which area of the economy to invest. Again, section 77 further empowers the Commission to impose additional restrictions on the type of investment that can be embarked upon where such restrictions will protect the interest of the beneficiaries of the retirement savings account. By way of additional protection, every pension fund administrator shall have due regard to the risk rating of instruments that has been undertaken by a risk rating company registered under the ISA.

Failure to comply with the provisions of this Act by any pension fund administrator attracts a penalty of ₦500,000.00 per day that the non-compliance continues and the administrator shall forfeit the profit from that investment to the beneficiaries of the retirement savings account and if the investment has led to a loss, the pension fund administrator shall be made to make up for the loss.[44]

8 Part X - Supervision

This part generally deals with the supervision and examination of pension fund administrators.

9 Part XI - General Penalties

This part deals with the various penalties that may be imposed for violating the provisions of the Act. Any person, who violates the provisions of the Act, where no punishment is prescribed, is liable on conviction to a fine of ₦250,000.00 or to imprisonment for a term not exceeding one year or to both fine and imprisonment.[45] Any pension fund administrator or custodian who misappropriates pension funds is punishable with an amount equal to three times the amount so misappropriated or imprisonment for not less than 10 years or to both.[46] Failure to report cases of fraud to the Commission under section 61, attracts a punishment of ₦10,000,000.00 and each director or officer shall be liable to a fine not less than ₦5,000,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.[47] It is also an offence to refuse to give information to the Commission, or give information with intent to defraud.[48]

The jurisdiction to try offences created under this Act is vested in the Federal High Court. Prosecution is done in the name of the Federal Republic of Nigeria by the

[43] See section 73 of the Act which lists out the nature of the investment that can be embarked upon by the fund administrators
[44] See section 78 of the Act.
[45] See section 85.
[46] See section 86.
[47] See section 87.
[48] See section 90.

Attorney General of the Federation or under his authority, by the Attorney General of a State or upon the request of the Commission, by a legal practitioner.[49]

10 Part XII - Alternative Dispute Resolution

This part creates an alternative dispute resolution mechanism. Under section 92, an employee or beneficiary of a retirement savings account who is aggrieved with a decision of a fund administrator or custodian may write to the Commission requesting for a review of the decision.[50] Any person or body corporate, who is not satisfied with the decision of the Commission may refer the matter for arbitration under the Arbitration and Conciliation Act or to the Investment and Securities Tribunal set up under ISA.[51] An arbitral award made under section 93 of the Act is binding and enforceable in the Federal High Court.

11 Part XIII - Legal Proceedings

Sections 95 and 96 of this part deals with the procedure that must be complied with before legal proceedings can be commenced against the Commission. Section 95 requires that at least, a one-month notice should be given to the Commission before any legal proceedings can be instituted against it. The section also enumerates the content of the notice to be given.

12 Part XIV - Repeal

This is the miscellaneous provisions part and it is the last part of the Act. The part provides that no pension funds or assets shall be used to meet the claims of any of the custodian's creditors in the event of liquidation of the custodian.[52] The part repeals the Pensions Act 1990, the Police and Other Agencies Pensions Offices (Establishment, etc.) Act, 1993; and the Police Pension Rights of Inspector-General of Police Act 1993.[53] In the case of any inconsistency between the provisions of this Act and any other legislation relating to pension, the provisions of this Act shall prevail.[54] Section 102 is the interpretation section while the last section, section 103, is the citation section.

13 Conclusion

It is yet to be seen whether the Act will record any appreciable level of success, being a new legislation. However, it would appear that from inception, certain aspects of the objectives of the Act might not be realizable. For instance, one of the objectives of the Act is to assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age. It is difficult to comprehend how improvident individuals can save if the wages paid to such individuals are not living wages or where he earns no income from which a certain percentage can be deducted and paid into the scheme. Viewed from that perspective, the Act, as a social welfare scheme, in so far as it seeks to provide for improvident individuals fails *ab initio*.

Second, the Federal Government has, since July 2004, about a month after the Act came into effect, commenced the deduction of the 7½% from public sector worker's salaries as contributions to the Scheme. It is not clear which account these amounts are being paid to. From the provisions of the Act, the contributions are to be paid to a Funds Custodian nominated by a Funds Administrator both of which are licensed by the

[49] See section 91.
[50] See section 92.
[51] See section 93.
[52] See section 98.
[53] See section 99.
[54] See section 101.

Commission. The Funds Administrator shall then invest the said deductions.[55] Yet, the Commission vested with the power to administer the Scheme and license the Funds Administrator and the Funds Custodian has not been constituted. The implication of this is that the deductions made by government are not being invested, since the appropriate bodies are yet to be licensed by the Commission to effect the investment. This translates to a substantial financial loss to workers who are, thus, deprived of the returns that would have been earned if the contributions had been invested.

Finally, there is a lot of skepticism by public servants, on the sincerity of government to faithfully implement the Scheme in view of past failed promises by government[56]. As a result, there have been calls especially from non-governmental organizations and the private sector, to exempt private sector organizations with superior pension schemes from the provisions of the Act.[57]

There is no doubt that the *Pension Reform Act* represents a bold attempt by the government to address the perennial problems associated with payment of pensions both in the public and private sectors. Such problems include lack of funds to pay pension and gratuity, absence of such schemes in some sectors of the private sector and at times, outright embezzlement of pension funds. It is however suggested that the Scheme should be extended to cover the unemployed, within a larger concept of social welfare as a human right imperative, who are currently omitted from the provisions of the enabling Act. It is hoped that if the Act is amended along the lines suggested in this work, and it is faithfully implemented, the non-payment of pension and its attendant problems will be a thing of the past and the right to pension would have been re-invented in more certain terms

[55] See section 45(b) of the Act.

[56] One such failed promise is the deductions from the salaries of federal workers as contributions for the National Housing Fund. The said fund is to be accessed by contributors to enable them own their homes. The fund has substantially failed to realize this objective thus prompting the government to stop the deductions. Even then, the government made no refund of money to the workers affected by the deductions.

[57] See for instance, the back page of the *Punch*, a daily newspaper, of October 11, 2004 where a call was made for a refund of the sums deducted for the purpose of the National Housing Fund.