OF PENSIONS, PENSION FUNDS AND PROPOSED GOVERNMENT REFORMS: PROTECTING NIGERIA'S RETIREES

BEING THE TEXT OF A LECTURE

BY

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To every thing there is a season, and a time for every purpose under the heaven.

The topic of this lecture is concerned with what happens when rest is needed from work after many years of meritorious service. I have been asked by the organizers of this event to speak on "Of Pensions, Pension Funds and Proposed Government Reforms: Protecting Nigeria's Retirees.

I must confess that I feel completely inadequate for this task. I do not know what credentials qualified me to stand before this distinguished audience. I am 110t an expert on Pensions law and practice. I am just a teacher of law who loves her job and this includes taking on new challenges such as this one. What am I saying? I am making a plea in mitigation. Have mercy on me if at the end of this lecture your expectations are not met.

If however I am able to say anything sensible, give glory to the most High God who alone deserves all honour, worship, adoration and thanksgiving. I am merely the work of His hand and the sheep of His pasture.

What is so special about pensions and pension funds? Why do we need to protect our retirees? How do Government reforms affect them? The search for the answers to these and other questions may assist us in having a clearer view of the issues at stake.

We shall divide the paper into parts. The first part will examine the general background to the relationship that creates an expectation for pension. The second part will examine the existing schemes. The third part will look at the problems of the present system. Part four will examine the current proposals for reforms while the last section will attempt a critique of the reforms as well as suggest a way out.

Of Employer and Employee

We are talking about pensions because of the existence of the relationship of employer and employee. This is a relationship created by contract. As a contract, the principle of freedom of contract applies which means that the parties are presumed to bargain on equal terms with respect to all aspects of their contractual relationship. In employment relations, this means that the terms and conditions or employment are products of bargaining between the parties. We know however that this is not so in practice. There is no equality of bargaining power.

The employer has the upper hand, whether in the public or private sector of the labour force. Indeed, the Common law principle of laissez -faire means that there is to be no interference from outside. Thus we talk of the employer's right to hire and lire for no reason and tor any reason.

We talk of the meaninglessness of such terms as "pensionable", or "permanent" or "life" employment. We talk of the employer's right to terminate the employment of an employer by giving notice in accordance with terms of the contract of employment. There is therefore nothing in the law that says that an employee must allow an employee to earn a pension. Rather, the assumption is that the employer will terminate the employment at the earliest opportunity and on terms least disadvantageous to him or her. Therefore, if it is possible, the employer will not allow the employee to stay long enough to earn a pension. What is pension by the way?

Pension

A pension has been defined as the right of an employee to derive some sort of' benefit upon retirement if certain conditions. such as minimum years of service or minimum age, have been met. This benefit may be a lump sum payment, called gratuity or periodic payments called pension.

The purpose or pensions is said to be for an employee to secure on retirement a standard of living reasonably consistent with that enjoyed during employment. Pensions are therefore a form of deferred payment or reward. It is not surprising that a worker or employee should look forward to his or her retirement knowing that by working he or she has some made preparations for days of retirement. Is the Nigerian worker in the category of those who look towards retirement with hope? Or does there mere thought of it bring sadness and fear of an uncertain future? Before we answer these questions we need to take a look at the historical background of the present scheme.

It has been said that the mark of a good researcher is not that he or she knows the stuff but rather that that person knows where to find the materials. I do not know on which side I fall, but I do know that when I was contemplating where to source for appropriate materials, I stumbled on two documents of critical importance, namely, the Report of the Steering Committee on Pension Reforms in Public Enterprises in Nigeria, and the Pensions Reform Bill 2003. I am going to base the rest of the lecture largely on the don tents of those documents.

Existing Pension Schemes

The origin of present pension schemes is traceable to our colonial background. The scheme was originally meant for the expatriate employee civil servants serving in Nigeria. They were later extended to indigenous officers at the discretion of the Governor- General. They were to be found in different legislations until the Pensions Act of 1979 brought most of them together under one umbrella

Originally, the minimum period of employment for qualification for a pension was 15 years and for gratuity 10 years. However the two periods were changed in 1992 to 10 years and 5 years respectively.

The minimum age for payment of payment of pensions is 45 years unless the retiree has reached the compulsory retirement age in which case, the right to pension vests immediately.

The benefits are:

Gratuity,

Pension,

Death and incapacity benefits, and

Survivor’s benefits.

Gratuity as stated earlier is a lump sum payment paid to an employee on retirement from service. It is payable to those who have spent between 5 years and thirty years of service in the public service.

It starts from 100% of the worker's emolument. However, a worker who has spent the maximum 35 years in service is entitled to up to 300% of the terminal salary. Normally it is paid almost immediately on disengagement. Things have not been normal for some time, so, gratuities are no longer paid as and when due.

Pensions on the other hand, are paid periodically. The actual amount ranges from 30% to 100% of the retiree's terminal remuneration. Some categories of public servants such university professors, judges, Armed Forces Generals and top civil servants are entitled to 100% of their earnings.

There are also provisions for death and incapacity benefits as well as survivor benefits, provided the death occurred before retirement.

The foregoing is applicable to the public sector alone. The private sector operates its own scheme as we shall see shortly. In the mean time, we need to know how the public sector scheme is financed or funded.

Funding

The pension scheme in the public sector is non contributory. It operates on pay as you go (PAYG) basis. Funding is provided by the Federal Government out of the Consolidated Revenue Fund. As at 2002, the total government spending on pensions stood at 4.8% of the total National Budget and 1.15% of the Gross Domestic Product.

It is not capable of self expansion and so not subject to variations in accordance with economic fluctuations. One consequence of this is that of inadequate provisions. Another is irregularity in payments.

The problem permeates all tiers of government, federal, state and local government and even government parastatals.

As the Committee on Pension Reform pointed out, before the promulgation of the Pensions Act no 102 of 1979, various Government' Corporations and Agencies had various types of pension schemes After the Act, the benefits structures and general provisions for pensions in these institutions were harmonized with those in the mainstream civil service. Today, many of these parastatals are facing serious problems in relation to their pension schemes. The notorious ones are, the Nigeria Railway Corporation, Nigeria Airways, and the Nigerian National Shipping Lines among so many others.

The main reason given for the collapse of the Pension Scheme in the public sector is that of failure of government to release enough funds. It is an allegation which the Government denies from time to time. The figures below curled by the Steering Committee from the report of yet another committee, show the amount of funds released by government over a period of five and half years

Year	N
1995	621,775,000
1996	998,776,000
1997	1,900,994,000
1998	2,012,865,000
1999	7,005,345,000
to 2000	4,696,4 79 ,000

(Source: Ogunsola Report 2000)

The overall effect of the sorry state of pension sd1eme in the public sector is said to be one in which the affected pensions have been reduced to near destitution. Is the private sector better?

Private Sector Pension Schemes

Private pension schemes in Nigeria are perhaps of three types, namely, the scheme under the Nigeria Social insurance Trust Fund Act (NSITF) 1993, schemes by individual employer for their staff, managed by pensions managers and individual arrangements usually through life insurance policies. Before 1994, when the NSITF, came into, the scheme in place was that under the National Provident Fund.

The NSITF is a contributory scheme covering private employers of 5 or more employees. The ratio of contribution is 3.5% by employees and 6.5% by employers. Benefits available under the scheme are:

Invalidity grant, Invalidity pension, Retirement grant, Survivor's grant, Funeral grant, Survivor's pension and Unemployment benefit.

It can be said that the only difference between the public scheme and the NSITF scheme lies in the contributory nature of the latter. Otherwise the same criticism that trails the public scheme also affects the NSITF scheme. E O. Chiejina in his paper titled, "Repositioning The NSITF as an Effective Social Security Organ- The Way Forward said:

"The value of benefits payable under the fund is terribly miserable that no retiree can ever live or survive on NSITF benefits"

Another writer who wrote on the experiences of the staff of his company said, "Employers were under continuous pressure from ex-employees as entitlements were not paid at all to many. The few who got paid went through hell before they got paid. Discrepancies between the deductions/remittances in the employers records and what NSITF had in its records. Employers having to submit the same record several times even after earlier submissions were acknowledged as received. Failure to make available to individual contributors their position with the fund."

These observations were made in 2000 as clear indications of the internal weaknesses of the fund. In their 2003 submission, they opined that the Fund has taken steps to rectify some of the glaring lapses such as payments to contributors and overall professionalism. Nevertheless, they still found lapses in the areas of up-to-date individual account and accurate record keeping. Chiejina agreed that there has been an improvement in the sped with which claims are settled, two weeks after documentation.

There seems to be a consensus that the new management team is capable of turning the tide for the better for contributors. Below is a summary of NSITF Benefits paid between 1 996-June 2003.

In 1996, 6,191 claimants were paid the total sum of8.81million naira. The average amount paid was I. 423.03. In 1997 the figures were 6,882, 11.09 million naira, 1,161.45 respectively. Between January and July 2003, 4,543 claimants were paid a total sum of 192, 23 million naira. The average paid was 42, 313.45 (Source: Dr. E. O.

Ebong Ag. AGM (Benefits) Paper presented at a NECA/NSITF forum September 2003). The verdict on NSITF appears to be that it has recorded significant improvements since 2000. It has earned an internal return on investment slightly in excess of the rate of inflation, during the period 1996-2002 (Dr. Ebong) Nevertheless, there areas of improvement. The records need to be computerized, and there needs to be a public enlightenment campaign to improve members' understanding of their role in Improving the system.

Problems of the Present System

The Steering Committee on Pension Reforms in the Public Enterprises in Nigeria, otherwise known as the Adeola Committee, in its Report identified the following problems:

"Under-Funding"

Retirement benefits for public officers in the Civil Service are paid directly on PAYG basis from the Consolidated Revenue Fund and are budgeted for annually. While budgetary provisions are made annually, inadequate and untimely release of funds result in delays and carry over of liabilities from year to the other.

Most public enterprises have funded schemes under the management of Board or Trustees, and are required to set aside 25% of the total emoluments of their staff into the pension funds from which entitlements are paid, Unfortunately, most public enterprises have failed to set aside the required 25% thus giving rise to high-unfunded liabilities Furthermore, almost all the enterprises operate on the wrong notion that that their scheme should be limited to 25%.

Similarly, while such contributions are designed to meet planned retirement of staff, unplanned retirements especially at high levels and the general high attrition amongst the workers of these public enterprises have caused serious dislocations to the pension funds of such enterprises. Recent Establishment Circulars increased existing pension rates by 150%, 142% and 30% This mismatch has resulted in a serious mismatch between available funds and the vastly increased benefits .... "

The Committee noted that between 1995 and 1999, the pension and gratuity cost increased almost ten-fold while the total personnel costs only five-fold. It is therefore not hard to see why retirees are having a harrowing time realizing their dream or a peaceful and quality life after retirement.

Another problem identified by the Committee is that related with the administration of the benefits. The problems here include;

Over-centralization,

Inadequate manual records of serving and retired staff

Absence of database on pensioners;

Difficulty in monitoring continued existence of pensioners; and

Payment of benefits from current accruable from investments.

Matters have been made worse by lopsided changes whereby pension rates of some categories of retirees receive more without matching provisions made for such increases.

It is a problem that retirement benefits of some public servants are routinely taxed as the Committee observed.

Restrictive investment policies and practices, poorly developed legal framework and socio-Economic factors have all been identified as part of the problems afflicting Pensions and Pension Fund administration in Nigeria. One sad effect of these lapses is the institutionalization of corruption in which employees use illegal means to prepare for their retirement. What a sad commentary on a system that is supposed to build confidence, faithfulness in service and honesty at all levels.

These and other problems led over the years to a call for reforms. Now following the Rep0l1 of the Adeola Committee a Pensions Reform Bill is now before the National Assembly. We now need to take a look at this Bill to see whether light has at last shown into the darkness of the world of retirees.

The Pension Reform Bill

The reform objectives identifies by the Committee seek "to provide a decent income for retirees and to ensure adequate funding and administrative resources such that retirement benefits will be paid in full and on time"

The long Title of the Bill describes it as "An Act to repeal the Pensions Act 1990 and, to establish contributory Pension Scheme for employees in the public and private sectors of the Federal Republic of Nigeria…"

The scheme proposed is to apply to all employees from the commencement of the Act, but excludes employees who at the commencement of the Act has less than three years to retirement. Categories of persons mentioned in section 291 of the Constitution of the Federal Republic of Nigeria 1999 are also exempted, These persons are still subject to the old scheme.

The scope of the Act extends to all employees in the public sector and to employees in the private sector employing five or more persons,

The phrase used to qualify the eligible employees is "permanent employment", Employees of a company with less than five employees in the employment may also participate in the scheme.

The objectives of the Scheme are to

Ensure that every person who worked in either the public or private sector receives his or her retirement benefits as and when due;

Assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age; and

Establish a uniform set or rules and regulation for the administration and payments of retirement benefits for both the public and private sectors.

Minimum Age for eligibility to make a clam is 50 years of age. But there provisions to cater fir an earlier retirement on grounds of ill health or disability of mind or body.

The recognized age for the purpose of ascertaining the minimum age is' that submitted by the employee on entering the service or employment.

Retirement Benefits

The proposed benefits cover lump sum payment as well as programmed monthly or quarterly payments and an annuity from an approved insurance company, There is also survivor's benefit. The benefits are to be exempted from taxation.

One the most controversial proposals is the abolition of all existing schemes prior to the commencement of the Act, except as preserved by the Act. The NSITF and other private schemes are among the schemes to go.

The rate of contribution is a minimum of 12.5% by the employer and 7.5% by the employee In addition, the employer is 10 maintain a life insurance policy in favour of the employee up to the equivalent for five times the annual salary of the employee. A covered employee can also make an additional contribution to boost his benefit.

A lot of responsibility rests on the employee. He or she has to open and maintain a retirement savings account with any pension fund administrator of his or her choice. There is also power to shuffle the fund from time to time from one administrator to another.

National Pension Commission

The Bill establishes a national pension commission as a body corporate with perpetual succession and a common seal, capable of being sued and suing in its name.

The principal object of the Commission is to regulate, supervise and ensure the effective administration of pension matters in Nigeria. The composition of the Commission includes a full time chairman, who is to be the chief executive officer. There are others namely, four commissioners chosen from the fields of Finance and Investment, Accounting, Pension management, Actuarial Science, Banking or Law, and a representative each from seven ministries. The appointments are made by the President of the Federal Republic.

Powers of the Commission are many. It is responsible for the formulation, direction and overseeing of the overall policy on pension matters in Nigeria. It is also responsible for the setting of guidelines and standards for the pension fund administrators and custodians.

One of the functions of the Commission is to establish and maintain a fund to be called Retirement Benefit Bond Redemption Fund. This is to be used to redeem the benefit bonds issued to those hitherto under the old system.

Transitional provisions include the establishment of pensions departments in the three tiers of government to be called Pensions Transitional Departments. Their functions will be to carry out the existing functions of the relevant pension boards or offices m the Federal, state, Federal capital Territory Abuja or Local governments.

Pension funds under the NSITF are to be transferred to the new scheme. The same goes for similar schemes. There are many other provisions that are intended to transform the system of retirement benefits. What we need to ask ourselves is whether it is now uhuru. This brings us to a short critique of the reform proposals, before we conclude.

The proposed Bill on Pension reforms has been trailed by a barrage of criticisms. No one is quarrelling with the idea of reform, it is long overdue. The problem is with the contents of the Bill. The general feeling is that it will not alleviate the current predicament of retirees.

Kolawole Olayiwola in his paper, posted on the internet (http://www.worldbank.org\Pensions\courses\February 2003, html version), posts a grim picture of the retiree's life. The first one, a school teacher who retired after 35 years of meritorious service had to visit for four years for her meager pension. But it came two weeks after she died at the age of 58. She was a victim of the inordinate delay in processing of benefits. Will the likes of this teacher fare better than the new scheme.

The second example he gave is that of a University lecturer who rejected an offer of a better job, because he did not want to forfeit his retirement benefits. He had put in 9 years as a public servant.

The third example is that of a bank worker who saved 40% of his earnings with a bank. He was happy to have saved 5 million Naira on his retirement. The bank became distressed a week before his retirement. He committed suicide

Will the new system take care of these problems? It is doubtful whether the system envisaged under the Bill will cure the defects of the present system. I am of the opinion that there are too many representatives from Government, therefore the much touted independence of the commission may not be realized. But the idea of a national pension Commission is a welcome one.

It is suicidal to jettison the NSITF at this stage and pull everything into one Pool for all employees, whether in the public sector or the private sector.

What is needed is a good legal framework that will bay down broad guidelines for pension funds administration in Nigeria. The idea of having individual voluntary savings account in the name of the employee is alright in principle, but it does not take care of the fundamental problem of unstable economic climate. It does not take care of the fluctuating fortunes of banks.

What then do we conclude?

Conclusion

The fate of retirees under the present system is a sad one. Pensioners plight make pitiful reading. Seeing them coming time and time again for payments that keep being delayed is even more heart-rending. One writer said that the state is not grateful to its workers.

It seems that government pays up serve to its people oriented social and economic policies. The present Bill if passed as it is will worsen rather than improve on the lot or retirees. There IS indeed the need to protect Nigerian retirees.

Thank you.

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