ANALYZING PENSION REFORMS IN NIGERIA: 14 YEARS AFTER THE CHILEAN MODEL

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ABSTRACT

Pensions are regarded as a form of social security in any economy because of the attendant benefits which an employee is entitled to upon retirement and as a form of life savings. Over the past three decades, reforms of pension schemes and the pension industry by the Nigerian government has been fraught with criticisms, particularly with regards to poor implementation of pension schemes and lacklustre legislation. The current 2014 Pension Reform Act contains specific innovations which attempt to address the problems inherent in previous legislations, particularly with regards to sanctions and compliance measures. This paper analyzes pension schemes in Chile, highlighting the innovations of its pension system. It discusses the pension systems in Nigeria since 1990, which led to Nigeria's adoption of the Chilean pension model. It examines the intricacies of the Chilean pension system

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against the backdrop of the Nigerian one, and analyzes compliance mechanisms under the 2014 Act. The paper concludes with proposals to strengthen the pension industry in Nigeria.

I. INTRODUCTION

The question of how to use social policies to link successful economic development with effective poverty reduction is at the core of contemporary political (and legal) debate.[1] Pensions as a form of social security against old-age poverty and other uncertainties have attracted great interest virtually everywhere in the world, both in developed and developing countries in recent times.[2] The concept of pensions developed as a result of the desire of the employer to induce an employee or worker to accept employment in his establishment; arouse a feeling in the employee that his own interest is to some extent coterminous with that of his employer, thereby inducing a sense of loyalty and commitment to the cause of the employer; and to engender confidence in the body of workers by practical demonstration of what each of them might expect from long faithful service.[3]

Since the 1960s, two alternative approaches for financing and organizing pensions for older people have emerged across developing regions. These are (1) contributory schemes, taking the form of capitalized individual accounts, usually managed by private firms; or (2) government funded non-contributory "social pensions" provided on either a means-tested or universal basis.[4] The intricacies of these alternative approaches to pensions and related issues have characterized public discourse, and have been the focus of attention of policy makers, economists and the general public[5] in the past three decades. Hence, the idea of pension reform (or any reform) is to correct the imbalances and distortion that may characterize a previously adopted pension system, and to further improve the pension system and the welfare conditions of the beneficiaries.[6]

1 Jorg Michael Dostal, *Nigerian Pension Reform 2004-2010: Great Leap or Inappropriate Policy Design?*, 25 THE KOR. J. OF POL'Y STUD. 13, 14 (2010).

2 Kareem O. Idowu & Kareem F. Olanike, *Pensions and pension reform in Nigeria*, 15 Pensions: AN INT'L J. 11 (2010).

3 Olufemi Abifarin & J O Olatoke, *Can a State House of Assembly Enact Pension Law in Nigeria?* 8 Nnamdi Azikiwe J. OF INT'L L. AND JURIS. 112,113 (2017).

4 PETER LLOYD-SHERLOC & KEPA ARTARAZ, PENSION REFORM IN BOLIVIA: TWO MODELS OF INCOME SECURITY IN OLD AGE 251 K Hujo (ed) *Reforming Pensions in Developing and Transition Countries* (Palgrave Macmillan, London, 2014).

5 Idowu & Olanike, *supra* note 2, at 13.

6 *Id*. at 14.

Pension reform has been described as "the most complex of all structural reforms because it upsets existing political-economy equilibria, affects public finances, intervenes severely in the functioning of labour and capital markets, distributes income both across and within generations, and changes an economy's saving, investment, and growth paths from the short to the very long term."[7]

The reform of Nigeria's pension system was inspired by the failure of its 1990 Pension Reform Act. The Act regulated the payment of pensions to public servants in Nigeria, but failed to prescribe the maximum period for payment of pension after retirement. This inadequacy led to unnecessary delays in settling pension claims, coupled with perceived fraudulent activities of top officials of the pension scheme and erratic budgetary allocations at the State and Federal levels.[8] Pensioners continuously protested to the authorities against their poor conditions and welfare, and called for a reform in the pension scheme.[9] Hence, Nigeria's pension reforms were inspired by these events and also by the experience of Chile – an economically more advanced country whose 1981 pension reform was lauded by Nigerian policy makers as one which would make it possible to address economic development and social security objectives at the same time.[10]

Consequently, this paper analyzes the peculiarities of the Chilean pension reforms from 1981 to present day 2018. These peculiarities are discussed to portray the extent to which the Nigerian pension reform legislation mirrors that of the Chilean system. The paper also focuses on compliance standards for private organisations and public institutions under the current 2014 pension reform legislation in Nigeria, and the role of the judiciary in enforcing these standards. Furthermore, the paper discusses current and future challenges which plague the Nigerian pension industry as a result of the effectiveness or otherwise of these compliance standards and sets out practical recommendations to ensure effective remittance of employee benefits for present and future generations.

II. THE CONCEPT OF PENSION SCHEMES

Adams defines pensions as, "The amount paid by the government or a company to an employee after working for a specified period of time,

7 Klaus Schmidt-Hebbel, *Does Pension Reform Really Spur Productivity, Saving and Growth?*, available at: http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.196.1827&rep=rep1&type=pdf, p. 2 (last visited Sept. 19, 2017).

8 Idowu & Olanike, *supra* note 2, at 18.

9 *Id*.

10 Dostal, *supra* note 1, at 14.

[a person] who is considered too old or ill to work or having reached the statutory age of retirement."[11] It can also be described as a periodic income or annuity payment made at or after retirement to employees who have become eligible through age, earnings and service.[12] Pensions are essential to ensuring rights, dignity and income security for older persons. The right to income security in old age, as grounded in human rights instruments and international labour standards, includes the right to an adequate pension.[13]

A pension scheme is a transfer program that serves as a channel for redistributing income to the elderly or retirees after a stipulated number of service years.[14] It is the totality of plans, procedures and legal processes of securing and setting aside funds to meet the social obligation of care which employers owe their employees on retirement or in case of death and disability.[15] Such a pension scheme could be private and/or public.

A public pension scheme is a social welfare security payment made to the retired, elderly and those that have changed jobs in the public sector of the economy.[16] The aim of a public pension program is not to raise the savings rate, but rather to provide income security, or at least a minimum income for the elderly.[17] A private pension scheme is a social security scheme managed and administered by the private sector in order to provide succor and relief to elderly and retired employees at a time when they are not economically active.[18] Therefore, a pension reform legislation can be regarded as "a public policy" which Jerkins defines as, "A set of interrelated decisions by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should in principle be within the power of those actors to achieve."[19] Hence, in a broad sense, policy is widely conceived to be either in the nation's laws or in a public statement by a competent functionary of government which involves decisions that

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11 R.A. ADAMS, PUBLIC SECTOR ACCOUNTING AND FINANCE (Corporate Publisher Ventures: Lagos, 2015).

12 *See generally* O Ayegba, I Uche & I B Uche, *An Evaluation of Pension Administration in Nigeria*, II 15 BRITISH J. OF ARTS AND SOC. SCI., 97 – 108 (2013).

13 ILO, *Social protection for older persons: Key policy trends and statistics*, SOC. PROTECTION POL'Y PAPERS (2014).

14 Idowu & Olanike, *supra* note 2, at 11.

15 Nicon Insurance 'Outline of the Proposed Contributory Pension Scheme in Pension Administration' (2005) in Isah Maikidi Yusuf, *The Nigerian, Swedish and Chilean Pension Systems: A Comparative Analysis of Schemes and Reforms*, 23 (1) ETH. J. OF ECON. 31, 34 (2014).

16 Idowu & Olanike, *supra* note 2, at 13.

17 IMF, *Rethinking Public Pension Reform Initiatives*, IMF WORKING PAPER 98/61 (Apr. 1998).

18 Idowu & Olanike, *supra* note 2, at 13.

19 William I. Jenkins, POLICY ANALYSIS: A POLITICAL AND ORGANIZATIONAL PERSPECTIVE (Martin Robertson, 1978).

are routine.[20] Consequently, the International Labour Organisation (ILO) states that pension reforms must be guided by the 'values society places on the provision of income security in old age and the resources it is prepared to allocate for the purpose.'[21]

Pension schemes can be classified by the benefits they promise and how the promised benefits are managed and financed.[22] The choice is often between two types of pension plans: Defined-Benefit (DB) and Defined Contribution (DC).[23] Whilst the DB Pension Plan (also known as the Pay-As-You-Go [PAYG]) system provides a defined benefit or pre-specified annuity in absolute currency or as a fraction of a measure of past earnings and years of employment, DC pension plans envisions participants, sponsors or both making partially or totally voluntary pre-specified contributions either in absolute currency or as a fraction of a measure of salary.[24] Thus, in the quest for a suitable and appropriate pension scheme for its employees, countries move from one regime of classification of pension systems to another. This adjustment or change from one pension system to another in order to satisfy weak, aged, and economically inactive employees is known as pension reform.[25]

III. PENSION REFORM IN CHILE

In 1924, Chile became the first Latin American country to establish a national social insurance system, with the goal of insuring against elderly poverty, disability and death.[26] It was a state-run, pay-as-you-go system with defined benefits, primarily financed by payroll contributions from employees and employers. While the program grew in size and complexity between 1924 and 1980, its basic structure remained relatively unchanged.[27]

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20 Bassey Antigha Okon, Fidelis Ngaji Akwaji & Lazarus Bassey, *Poverty and Pension Reform: An Application of Theories and Paradigms in Social Engineering of Nigerian Society*, 3 (2) J. OF SOC. WELFARE AND HUM. RTS. 23, 29 (2015).

21 Colin Gillion, *The Development and Reform of Social Security Pensions: The Approach of the International Labour Office*, 53 INT'L SOC. SEC. REV. 35 (2000).

22 Yusuf, *supra* note 15, at 37; *see generally* Albert Ando & Franco Modigliani, *The ''Life Cycle'' Hypothesis of Saving: Aggregate Implications and Tests*, 53 (1) AMERICAN ECONOMIC REVIEW 55 -84 (1963).

23 Yusuf, *supra* note 15, at 37; *see generally* Marek Gora & Edward, *Palmer Shifting Perspectives in Pensions*, IZA Discussion Paper No. 1369 (2004).

24 The main distinction between a DB and DC plan is summarized thus: "The essential characteristic of a DB plan is that the terminal outcome is defined (a target replacement rate to be paid to participants is articulated by a sponsor), whereas in a DC plan, the terminal outcome is variable." Yusuf, *supra* note 15, at 37.

25 Idowu & Olanike, *supra* note 2, at 13.

26 Christopher Tamborini, *Social Security: The Chilean Approach to Retirement*, CONGRESSIONAL RESEARCH SERVICE (May 2007), http://digitalcommons.ilr.cornell.edu/crs/44/.

27 *Id*.

Although by 1979 there were 32 pension funds ("Cajas") in operation, three of them were dominant in terms of both affiliates and contributions. A common feature of these funds was that they all operated under the pay-as-you-go system. Under this scheme, active contributors financed retirement payments to pensioners. It was expected that increasing obligations would be met both by drawing on the stock of accumulated savings as well as their accumulated net income. The system was linked to public finances through portfolio management. In order to avoid fraud and give a public guarantee to mandatory contributions, the surplus of the funds (contributions minus benefits) were transferred to the government for investment.[28]

Several major problems associated with Chile's PAYG retirement system set the stage for pension reforms in 1981. It was highly fragmented, with more than three dozen different retirement schemes, each with different eligibility requirements and contribution rates.[29]

In May 1981, Chile replaced its government run PAYG retirement scheme with a private system where workers fund their own retirements through compulsory savings.[30] This system had a number of goals, including to restore the long-term financial balance of the system; to provide efficiency gains in the system; to reduce inequities of the old system and cover more workers; to give workers 'ownership' over their retirement resources; to increase national savings; and to stimulate the national economy.[31] To reduce political opposition at the time of the reforms and to increase interest in the new system, contributions rates were set at a level low enough to increase net 'take-home' pay. This was financed by the above-mentioned increase in the minimum retirement age.[32] On average, workers that opted for the new regime obtained an 11% effective increase in net wages. In addition, and in order to recognize workers past contributions to the old system, the government issued special bonds - known as "recognition bonds" - and deposited them in the transferring workers individual capital accounts.[33] The bonds are paid in full upon retirement. These bonds provided the link between the contributions to the old system and the new retirement funds. The new system allows the workers to choose the AFP they want to affiliate with, to transfer their funds among them, and to have voluntary savings accounts. It emphasizes uniformity of contributions and its structure of benefits covers old age, disability and survivors' pensions. There is no

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28 OECD, *The Chilean Pension System* at 4, WORKING PAPER AWP 5.6 (1998), available at: http://www.oecd.org/els/public-pensions/2429310.pdf.

29 For example, government employees qualified for a full pension after 30 years of service, bank employees, 24 years and legislators 15 years; *see* Tamborini, *supra* note 26, at 7.

30 Yusuf, *supra* note 15, at 43.

31 Tamborini, *supra* note 26, at 14.

32 OECD, *supra* note 28, at 6.

33 *Id*.

collective affiliation or any restrictions on mobility between competing funds. Moreover, AFPs cannot discriminate rates or commissions among different contributors, either as a class or individually.[34]

Additionally, this new system transformed a system based on a Defined Benefit (DB) scheme into a Defined-Contributory (DC) one. Financial management of the newly-created pension accounts was given to the private sector, the Pension Fund Administrators (Administradora de Fondos de Pensiones or "AFP") which in turn were supervised and regulated by a public agency, Superintendency of Pension Fund Administrators (Superintendencia de Administradoras de Fondos de Pensiones or "SAFP").[35] The reform was implemented in a context of harsh restrictions of civil and political rights in which political parties and unions were dissolved and their political power and the capacity to oppose the pension reform were severely undermined.[36]

The reforms in the pension system had three effects on the Chilean fiscal budget: (1) the Government paid pensions to those who remained in the old system, as well as those who were already retired; (2) the government had to finance recognition bonds for those who had made contributions to the old system and moved into the new one; and (3) the government had to guarantee minimum pensions for those in the new system.[37]

The Chilean 1981 pension reform became an example that other countries have emulated, with the World Bank propagating it as a 'model.' Scholars have also commented that advocating pension reforms involving the introduction of Chilean-like systems into the advanced industrialized economies amounted to encouraging 'technology transfer in reverse.' [38]

A. Post 1981 Pension Reforms in Chile

After 27 years, fragmentation, lack of solidarity, low coverage, and high costs of administering the private system led President Bachelet to

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34 *Id.*

35 Katja Hujo & Mariana Rulli, *The Political Economy of Pension Re-Reform in Chile and Argentina: Toward More Inclusive Protection*, UNRISD Research Paper 2014-1, 4 (2014).

36 *Id.* at 4-5; Carmelo Mesa-Lago and Katharina Müller, *La Política de la Reforma de Pensiones en América Latina*, in Katia Hujo, Carmelo Mesa-Lago & Manfred Nitsch (eds) *Públicos o Privados? Los Sistemas de Pensiones en América Latina después de Dos Décadas de Reformas* (Caracas: Nueva Sociedad, 2004).

37 OECD, *supra* note 28, at 10.

38 Bernard H. Casey & Jorg M. Dostal, *Pension Reform in Nigeria: How not to 'Learn from Others'*, 8 (2) Global Social Policy 239 (2008); Bernard H. Casey, *Reforming Pensions: The OMC and Mutual Learning in an Enlarged Europe*, in E. Palola and A. Savio (eds) *Redefining the Social Dimension in an Enlarged EU* (Helsinki: STAKES and The Ministry of Social Affairs and Health, 2005).

form a pensions expert commission that delivered a reform proposal in 2006. New comprehensive legislation addressing many of the critical points was passed in Congress in 2008.[39] The latter reform was a step forward in several ways: a social protection floor guarantee was established, the non-contributory and the contributory components were combined in an integrated system, and a significant increase in benefits coverage was reached. The commodities super cycle (copper price in the case of Chile) was crucial to generate enough fiscal space which allowed increasing simultaneously benefits and the extension of coverage; i.e. the vertical and horizontal dimensions of social protection coverage. This reform, however, was insufficient: the system continues paying relatively low benefits, coverage gaps have not been eliminated, and significant benefit inequities remain.[40]

The key drivers of the 2008 reform were: to increase the level of coverage through the poverty-prevention tier; to increase the level and quality of coverage through the mandatory contribution tier; to improve the quality of the coverage through the mandatory contributory tier; to bring gender fairness; to increase competition and efficiency in the AFP industry; to improve the quality of the benefits by solving issues of unfairness in the granting of old-age, disability, and survivorship benefits; to improve population's level of participation, information, and education with regards to pensions; and to improve the pension system's institutional structure.[41]

The 2008 reform achieved this and more, including, eliminating the Superintendency of AFPs, creating a User Committee for the AFP system,[42] and creating a Fund for Pension Education to share and disseminate information and educate the public, financed from state transfers and a Pension Advisor Board which offers independent advice to the government.[43] President Michelle Bachelet also implemented a state-funded minimum pension amount of $140 for those who were unable to save for retirement during their working lives, and additional payments for retirees whose pensions did not reach that amount.[44] Close

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39 Fabio Betranou, *Pension Benefits in Chile: Is it Possible to Improve Adequacy and Solidarity?*, (ILO, Working Paper, 2016), *http://*www.ilo.org/wcmsp5/groups/public/—-dgreports/—-inst/.../wcms_461932.pdf.

40 *Id*.

41 Betranou, *supra* note 39, at 6.

42 This Committee is composed of representatives of workers, pensioners and administrators AFPS and is responsible for evaluation, monitoring and proposing investments; Carmelo Mesa-Lago, *Re-reform of Latin American Private Pension Systems: Argentinian and Chilean Models and Lessons,* 34 THE GENEVA PAPERS, 602–617 (2009); Rafael Rofman, Eduardo Fajhzylber and German Herrera, *Reforming the Pension Reforms: The Recent Initiatives and Actions on Pensions in Argentina and Chile*, SP DISCUSSION PAPER NO. 0831. (2008); Hujo & Rulli, *supra* note 35, at 21.

43 Betranou, *supra* note 39, at 7.

44 Pascale Bonnefoy, *With Pensions Like This ($315 a Month), Chileans Wonder How They*

to 1.3 million Chileans, two-thirds of them women, receive this benefit today.[45]

Despite these numerous changes and impacts, several weaknesses in the 2008 reform persisted; relatively low benefits, coverages gaps and significant benefit inequities. Thus, in 2014, six years after this pension re-reform, the second government of Chilean Bachelet convened a new advisory commission of national and international experts to recommend further changes to the system. The Commission recommended the following, among others: readjusting the legal retirement age of 65 years for men and 60 for women to face the ageing trend of Chilean demography; and increase in employer contributions to the retirement program.[46]

In April 2017, the Chilean President announced that a pension reform bill would be presented to Congress addressing some of the recommendations made by the Commission.[47] The bill proposed the two recommendations above, together with greater participation of the affiliates in the decision making of the AFPs. It remains to be seen if these proposals become law.

Chile's private pension system can certainly be improved, but the reality is that it has been extremely successful. Over the course of 35 years, private accounts have produced an average real return of 8 percent annually, and old-age pensions no longer represent a burden on the treasury. Pension savings have reached $168 billion, about 70 percent of GDP, which has stimulated high growth and domestic investment, and has put Chile on the verge of becoming a developed country - a remarkable achievement.[48]

The above discourse on the Chilean pension system provides a clear basis for its adoption by other developed and developed countries which used the pension model as a blueprint for action. It is evident that the Chilean reform process was built upon a system of continued social dialogue and citizen participation in public discourse relating to the system. Extensive research, including feasibility studies by experts and a

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will ever retire, NEW YORK TIMES (Sept. 10, 2016), https://www.nytimes.com/2016/09/11/world/americas/with-pensions-like-this-315-a-month-chileans-wonder-how-theyll-ever-retire.html.

45 Peyton Jacobsen, *The Borgen Project 'Potential Reform for the Chilean Pension System'*, BORGEN PROJECT https://borgenproject.org/chilean-pension-system/ (last visited (Mar. 10, 2018),.

46 Silvia Borzutzky & Mark Hyde, *Chiles Private Pension System at 35: Impact and Lessons*, 32 JOURNAL OF INT'L & COMP, SOCIAL POLICY 1, 69 (2016), https://pearl.plymouth.ac.uk/bitstream/handle/10026.1/4593/Chile%20s%20private%20pension%20system%20at%2035%20impact%20and%20lessons.pdf?sequence=1.

47 Sofia B. Vasquez, *The Chilean Pension Reform: Results 36 Years Later*, http://diposit.ub.edu/dspace/bitstream/2445/115354/1/TFG-ECO%28EUS%29-Sierra-Sofia-juliol17.pdf (last visited Mar. 12, 2018).

48 Ian Vasquez, *The Attack on Chile's Private Pension System*, (Aug. 16, 2016), https://www.cato.org/blog/attack-chiles-private-pension-system, (last visited Mar. 10, 2018).

transparency in the whole pension reform processes, also led to the development of the Chilean pension reform system to where it currently is. Hence, the most laudable aspect of the Chilean pension system is the government's concern with how to integrate the informal sector into its pension system, i.e. state funded minimum pension amount, which is indicative of how government of any jurisdiction should approach pension related issues – with transparency, focus, and for the benefit of its citizens, particularly for the aged.

The ensuing part of this paper addresses the extent to which Nigerian pension reforms have mirrored the Chilean system, with recommendations for Nigeria based on the steps taken by the Chilean government presently.

IV. Pension Reform in Nigeria

The basis for the development of a pension scheme in Nigeria is found in the 1999 Constitution of the Federal Republic of Nigeria ("1999 Constitution") which provides that, "The right of a person to receive pension or gratuity shall be regulated by law."[49] The Constitution goes further to provide that, "The right of a person in the *public service*[50] of the State to receive pensions or gratuity shall be regulated by law."[51] Consequently, Nigeria practiced the Defined-Benefit (DB) system for public sector employees under the 1990 Pension Reform Act, while the private sector was covered by a pay-as-you-go pension scheme under the Nigerian Social Insurance and Trust Fund (NSITF).[52] Three main explanations account for the decision to enact the 2004 Pension Reform Act. Firstly, unfunded pension promises under the pre-reform defined-benefit system for civil servants resulted in quickly growing pension entitlements that the government was unable or unwilling to fund. Secondly, the example of Chile suggested that pension reform might significantly improve the functioning of Nigerian financial markets. Thirdly, the government hoped that pension reform would add to the credibility of the general economic reform effort, since funding pensions would help to put the Nigerian federal budget on a fiscally sustainable footing.[53] Accordingly, the ensuing part of this paper examines the 2004 Pension Reform Act, particularly with regards to compliance and monitoring mechanisms, and the extent to which these mechanisms have

[49] §173 (1), 1999 Const.
[50] Emphasis added.
[51] §210 (1), 1999 Const.
[52] Dostal, *supra* note 1, at 14.
[53] International Monetary Fund ("IMF"), *Nigeria: 2004 Semi-Annual Report under Intensified Surveillance* (2005) Country Report 05/37; Washington, DC: Dostal, *supra* note 1, at 18 (International Monetary Fund).

been applied effectively. It also analyzes the innovations of the 2014 Act with regards to sanctions and compliance in Nigeria.

A. Juxtaposing the 2004 and 2014 Pension Reform Acts

Nigeria's pension reform was inspired by the experience of Chile, an economically more advanced country, whose 1981 pension reform Nigerian policy-makers attempted to replicate.[54] Nigerian policy-makers believed that the reform undertaken in Chile - the shift from a public defined-benefit (DB) system to a private system of individual funded accounts along the lines of defined contributions (DC) would make it possible to address economic development and social security objectives at the same time.[55]

Thus, in June 2004, the federal government of Nigeria introduced a pension system which was considered sustainable, with the ultimate goal being to provide a stable, predictable, and adequate source of retirement income for each worker in the country.[56] The Act established the Pension Fund Administrator (PFA) and Pension Asset Custodian (PAC).[57] The Pension Fund Administrator opens Retirement Saving Accounts (RSAs)[58] for all employees with personal funds and assets in accordance with the provisions of the Act. Further, it maintains a book of accounts on all transactions relating to pension funds managed by it.[59] The custodian receives the total contributions remitted by the employer on behalf of the pension fund administrator within 24 hours of receipt of the contribution from the employer, and notifies the pension fund administrator of the receipt of the contributions from employer. The custodian holds pension funds and assets in trust for the employee and beneficiaries of the RSAs, on behalf of the administrators. Further, they settle transactions and undertake activities relating to the administration of pension fund investments, including the collection of dividends and related activities. The Act also established the National Pension

54 O. A. Orifowomo, *A Critical Appraisal of Pension System Reforms in Nigeria*, 10 Gonz. J. Int'l. L. 164 (2006); Casey & Dostal, *supra note 38,* at 238-66; Dostal, *supra note 1,* at 14.

55 Dostal, *supra* note 1, at 14.

56 A. A. Adeniji, David M Akinnusi & Folakemi Olunakin, *Administration of Retirement in Nigeria: Periscoping the Effect on Retirees*, at 10, http://eprints.covenantuniversity.edu.ng/8926/1/RETIREMENT%20ARTICLE.doc (last visited Sept. 21, 2017)

57 §45 & 47, 2004 Act.

58 The Act requires every employee to open and maintain an account in his/her name with any PFA of his/her choice. This account belongs to the employee for life and is the account that receives the monthly contribution from the employee and his/her employer. *See* § 8(1) of 2004 Act; Cosmas Ogobuchi Odo, Chukwuemeka Victor Igbeka and Uche Wilson Ani, *Public Sector Pension Reform in Nigeria: A Historical Perspective*, 9 JORIND 306, 310 (2011).

59 Bassey, *supra* note 20, at 28.

Commission (PENCOM),[60] which mirrors the Chilean regulatory body (the Superintendency),[61] to regulate the activities of all individuals and institutions involved in the management and processing of pension.[62] PENCOM was also established to ensure safety of funds by issuing guidelines for licensing, approving, regulating and keeping tabs on the investment behaviors of PFAs.[63]

The main implication of the 2004 Act is that it merged both public and private sector pension management. The 1979 and 1990 Pension Acts only covered government employees, but ignored employees of the private sector. However, this new Act covers private organizations with five or more employees. Another major implication is that it affects government budgetary expenditure, which pension was part of. Today, pensions are fully funded by both employees' and employers' contributions. Fluctuation in government revenue or organization profit cannot affect pension funding. Notably, the process is personalized as individual employees determined their investment profile through choice of pension fund administrator which can be changed at least annually.[64]

B. *Effectiveness of the Pension Reform Act 2004*

The 2004 Act provides for the minimum contribution for employers and employees in the public and private sectors to be 7.5 percent each. In the military, employers are required to contribute a minimum of 12.5 percent, and employees a minimum of 2 percent. The adoption of the Act resulted in registration by many workers in Nigeria with different PFAs. Over 900,000 workers registered with the scheme by the second quarter of 2006, and approximately 3 million workers registered by 2007. 2008 recorded even more success, with over 3.4 million registered participants. In the first quarter of 2009, over 3.5 million workers registered.[65]

Nevertheless, issues relating to compliance with regard to government (or its agency) deduction and remittance of same to the Pension Asset Custodian, and the issue of compliance with rules guiding the operation of PFAs, arose. The law requires that the deductions for both employee and employer be affected simultaneously at the time an employee's salary is being paid on a monthly basis.[66] Employers were unwilling to comply with the provisions of the Act because it is regarded

60 §14 (1), of 2004 Act.
61 Dostal, *supra* note 1, at 19.
62 Bassey, *supra* note 20, at 28.
63 Odo, *supra* note 58, at 310.
64 Bassey, *supra* note 20, at 28.
65 Idowu & Olanike, *supra* note 2, at 19.
66 Odo, *supra* note 5, at 312.

as an additional cost to their organizations.[67] However, compliance with respect to sanctions for defaulters was not being effectively implemented.

Additionally, whilst the contributory pension scheme under the 2004 Act provides an all-encompassing system involving the public and private sectors, over 75 percent of the country's population had not yet subscribed to the scheme by 2009.[68] In fact, the first quarter of 2010 revealed 4.1 million subscribers to the 2004 system of RSA, partly due to the reluctance of private-sector employers to join the new scheme.[69] The informal sector in Nigeria is not covered in the 2004 scheme. This is because the informal sector in Nigeria lacks a coherent structure and unwieldy composition, making its integration into the new scheme a herculean task.[70] It may also be impossible to determine the number of employees an employer in the informal sector may have as there may be a tendency to declare less employees (rather than the required 5) to avoid participating in the scheme.

More importantly, the scheme was criticized because of failure of authorities at all levels of the Nigerian State to deal with existing pension arrears deriving from the earlier pension systems which reached record highs in 2009.[71] These problems relating to compliance of PFAs, PFCs and government; ineffective sanctions; management of the informal sector; and existing arrears led to the consideration and adoption of the 2014 Pension Reform Act to replace and repeal the 2004 Act.

C. The 2014 Pension Reform Act

The 2014 Act repeals the 2004 Act and is geared towards the smooth operations of the Contributory Pension Scheme. It ensures that every person who works in either the public service or the private sector receives their retirement benefits when due.[72] This subjection discusses the key features of the new Act.

The rate of contribution for any employee in both the private and

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67 Timiebi A Koripamo-Agary, *Discussion of the Analytical Review of the Pension System in Nigeria' Paper presented at the National Conference for the Review of the Implementation of the Pension Reform* (2009), p 4, http://www.pencom.gov.ng/download/seminars/Analytical_Review_Pension_System_in_Nigeria_discussion.doc (last visited Sept. 20, 2017).

68 *Statutory Measures to Safeguard Pension Funds* BUSINESSDAY, (July 20, 2009); *See also,* Dowu & Olanike, *supra* note 2, at 19.

69 Pencom, *Quarterly RSA registrations* (2010) http://pencom.gov.ng/download/update_on_registration_of_contributors.pdf (last visited Sept. 8, 2017); Dostal, *supra* note 1, at 17.

70 Koparimo-Agary, *supra* note 67, at 4.

71 O Nzeshi, *O 'House summons AFG over pension arrears*, THIS DAY (March 24, 2009); *See also,* Dostal, *supra* note 1, at 19.

72 Pension Reform Act, 2014, §1(b)-(c).

public sectors are a minimum of ten percent by the employer; and a minimum of eight percent by the employee.[73]

Withdrawal from RSA may now be done by a holder who has retired or attained the age of 50 years. An employer who disengages or is disengaged from employment before the age of 50 years, and is unable to secure employment within 4 months of such disengagement, may make withdrawal from his RSA.[74]

Employers must deduct, not later than 7 working days from the day the employee is paid his salary, an amount equaling the employee's and employer's contribution to the PFC, as specified by the PFA of the employee. The PFA must then credit the RSA of the employee for whom the employer has made the payment.[75]

Pension funds and assets may be invested in bonds, bills, or securities issued by the federal government, Central Bank of Nigeria, or state and local governments. It may be invested in bank deposits and bank securities, real estate development investments, specialist investment funds, or other financial instruments approved periodically by PENCOM.[76] Such investments may be made outside of Nigeria, subject to existing CBN foreign exchange rules.[77]

Compliance officers must be appointed by every PFA and PFC, who will be responsible for ensuring compliance with the provisions of the Act. They must report to the CEO of the PFA or PFC on non-compliance by such PFA or PFCs, and liaise with PENCOM regarding any matter which will enhance the compliance of PFCs and PFAs with the provisions of the Act.[78]

PENCOM penalizes any PFA or PFC 1 million naira, per violation, for every failure to notify them of any fraud, forgery, or theft by a staff appointment, and for any dismissal, termination, retirement, or resignation of a staff appointment.[79]

The penalty for contravention of the provisions of the Act is a 250,00 naira fine and/or a term not less than one-year imprisonment.[80] Misappropriation of funds by a PFA or PFC exposes them to liability of a fine equal to three times the amount misappropriated or diverted, and/or

73 Pension Reform Act, 2014, Part II §4(1) (a)-(b) (however, an employee may also make voluntary contributions to his RSA in addition to the total contributions made by him and his employer).

74 Pension Reform Act, 2014, Part VII §2-3 and Part 16 §5.

75 Pension Reform Act, 2014 Part IV §11(2) – (4).

76 Pension Reform Act, 2014 Part XII §86.

77 Pension Reform Act, 2014 Part XII §87(1)- (2).

78 Pension Reform Act, 2014 Part XI §80.

79 Pension Reform Act 2014, Part XI S73-5.

80 Pension Reform Act 2014, Part XIV §99(1) (Where the offence is committed by a corporate body, the fine is not less than fifty million naira, with each director and officer of the offending corporation liable to a fine of 5 million naira and/or to a term of 10 years imprisonment.).

to a term of not less than 10 years imprisonment.[81] Such person or body so convicted must also refund the amount misappropriated or diverted.[82]

Any employer or beneficiary of an RSA dissatisfied with the decision of the PFA or employer regarding pension matters may request in writing for a review of such decision by PENCOM. Where either party is dissatisfied with the proceedings or decision of PENCOM, such party may refer the matter to arbitration under the Arbitration and Conciliation Act or to the National Industrial Court.[83]

There is no Statute of Limitation to actions for the recovery of pension contributions, penalties and other benefits under the 2014 Pension Reform Act.[84]

In comparison to the 2004 Act, the 2014 Act appears to be more realistic than the 2004 legislation, particularly with regards to investment of pension funds in other financial instruments, appointment of a compliance officer and ability of a contributor to withdraw funds before the attainment of 50 years of age or if disengaged from employment. As at the end of September 2015, the total pension contributions in the custody of PFCs and under management of PFAs, including Closed Pension Fund Administrators, was in excess of N4.8 trillion (about 26 billion US dollars),[85] and a contributor base of over 6.9 million workers which represent 8.1 percent of the Nigerian working population.[86]

While the statistics above demonstrate that coverage under the 2004 and 2014 pension schemes have been impressive, several private sector employers continue to contravene the provisions of the PRA, some going as far as deducting employees' contributions and not remitting same to PFAs.[87] It is evident that the provisions of the 2014 Act, which imposes a penalty of 2 percent of the total contribution remaining unpaid by an employer for each month or part of each month the default continues,[88] remains inadequate and unclear and will continue to be contravened by private sector employers. The solution for this is for

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81 *See* §100 (1).

82 *See* §100 (2) (it should be noted that offences under the Act may be tried in a court of competent jurisdiction in Nigeria).; *See also* §105(1).

83 *See* §106, §107; Such an arbitral award shall be binding on the parties and enforceable by a court of competent jurisdiction. *See also* §107 (3).

84 *New Pension Reform Act 2014 – Compliance Highlights*, PROSHARE (Aug. 28, 2014), https://www.proshareng.com/news/PENSIONS/New-Pension-Reform-Act-2014—-Compliance-Highlights/24240. (last accessed September 1, 2017).

85 *Investing Pension Fund Assets Securely & Profitably* at 1, BANWO & IGHODALO, (Oct. 22, 2015), http://www.banwo-ighodalo.com/grey-matter/investing-pension-fund-assets-securely-and-profitably. (last accessed September 8, 2017).

86 *The Nigerian Pension Industry – Overcoming Post-Reform Challenges* at 2, PRICEWATERHOUSECOOPERS (2016), https://www.pwc.com/ng/en/assets/pdf/the-nigerian-pension-industry-overcoming-post-reform-challenges.pdf. (last accessed September 16, 2017).

87 *Id*. at 4.

88 *See* §11 (6)(7).

PENCOM to clearly stipulate the penalty applicable to such employers to ensure compliance.

Aside from liberally extending the scope of authorized pension fund investments, the 2014 Act has significantly filled the lacuna in pension trust laws which previously rendered it inadequate for the protection and enhancement of the interests of modern pension scheme members.[89] The introduction of modern financial investment vehicles to invest pension funds is a testament to the progress of pension schemes in Nigeria over the past 20 years.

Similar to the 2004 Act, the 2014 Act fails to cover the informal sector, which employs about 59.7 million people, that is approximately 70 percent of the working population in Nigeria. If there is to be an achievement of PENCOM's corporate objective of extending CPS coverage to at least 20 million Nigerians by 2018, this coverage must be extended to the informal sector.[90]

Flowing from the above discourse on the pension system in Nigeria, the most outstanding difference between the Nigerian and the Chilean system is the treatment of disability and of survivors. The Chilean system keeps disability benefits outside the old age pension system. Disability insurance is mandatory, but an additional contribution - some 1.5 percent of insurable wages - is required.[91]

D. The Role of the Judiciary with regards to Pension Claims in Nigeria

Issues related to pensions have been handled by the Nigerian judiciary with aplomb and decisiveness. While the majority of existing pension cases were brought under the 1979 Pension Act and sought interpretations as to entitlement of unpaid pension and gratuities,[92] other cases reflect the resolute attitude of the judges to ensure that pensioners are granted their unpaid entitlements. For example, in *Martins and Others v. Kolawole*[93], Ikwegh JCA noted, "Pension is a serious matter. It is designed to cushion the retiree from the hardship of life in retirement and to, also serve as a reward for the retiree's past meritorious service to the employer. Therefore, pension benefit should have a human and a humane

89 Larry O. C. Chukwu, *Pension Trust Investment in Nigeria – Celebrating the Sea Change Wrought by the Pension Reform Act*, 21 ANN. SURV. INT'L COMP. L. 119, 146 (2016).

90 *See* Nigerian Pension, *supra* note 86, at 4.

91 *See* Casey & Dostal, *supra* note 38, at 250.

92 *See generally, Momodu v. National Union of Local Government Employees* (1994) 8 NWLR (Pt 3621) 336 (Nigeria); *Achimugu v. Hon. Minister, FCT & Anor* (1998) LPELR-5773 (CA) (Nigeria); *The Trustees of the Nigeria Railway Pension Fund v. Isaiah Okunade Aina* (1970) LPELR-3232 (SC) (Nigeria).

93 *Martins and Others v. Kolawole* (2011) LPELR-4475 (CA).

face."[94]

A similar stance was taken by Onnoghen, JSC in *Central Bank of Nigeria v. Amao and Others,*[95] "It is important for every organization in this country, including the appellant, to wear a human face in its treatment of the people, particularly the senior citizens, because it will be anybody's turn tomorrow to be a senior citizen. We must re-examine our attitude towards the senior citizens of this country so as not to make them regret their sacrifice for the nation in whatever capacity. . ."

Additionally, in the 2016 case of *Ajao v. Permanent Secretary, Ministry of Economic Planning Budget Civil Service Pensions Office & Anor*[96], the appellant resorted to judicial action to claim unpaid terminal benefits owed him for six years after retirement (2002-2008) from the respondent, Lagos State Government amounting to over 52 million naira with interest. The appellant was in service of the Lagos State Government for over 31 years and retired as a Permanent Secretary in 2002. The court held, per Abimbola Obaseki Adejumo, JCA delivering the lead judgement, "The right of the appellant to be paid the correct terminal benefit . . . is akin to the right of redemption which is an incident of a subsisting mortgage, and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished."[97]

The court held that terminal benefits, including pensions, are guaranteed under section 210 of the 1999 Constitution, and held that the appellant's claim was not statute-barred by virtue of the provisions of §210 (3).[98] The learned judge further concluded that, "…[P]ension is not merely a statutory right of the Appellant in the instant appeal. Ipso facto it is the fulfilment of a constitutional promise so that the relevant laws or rules made pursuant to Section 210 of the Constitution are enacted for effective execution of the constitutional mandate entrusted to the government. Thus, the payment of pension does not depend on the discretion of the government but is governed by the rules and anyone entitled to pension can claim it as a matter of right."[99]

In the 2013 case of *National Pension Commission v. First Guarantee Pension Limited & Anor*, First Guarantee Pension Limited sought an injunction against PENCOM to prevent it from interfering and dealing with the assets of First Guarantee Pensions Limited. They relied on section 95 of the 2004 Pension Reform Act, which purports to oust the

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94 *Id*. at 34.

95 *Central Bank of Nigeria v. Amao and Others* 2010 15 NWLR (Pt 1219) 271, at 307 (Nigeria).

96 *Ajao v. Permanent Secretary, Ministry of Economic Planning Budget Civil Service Pensions Office & Anor* (2016) LPELR-41407 (CA) (Nigeria).

97 *Id*. at 12.

98 *See* CONSTITUTION OF NIGERIA (1999), §210(3). The section provides that 'pensions shall be reviewed every 5 years or together with any State civil servant salary review whichever is earlier.'

99 *See Ajao* (2016) LPELR-41407 (CA) (Nigeria).

jurisdiction of a trial court to grant an injunction pending appeal. The Court of Appeals held, per Nweze JCA delivering the lead judgement, that the proviso does not oust the jurisdiction in this regard, but, "merely sets out a pre-condition to the activation of the court's jurisdiction against PENCOM."[100]

The significance of these cases, and the approach taken by the learned jurists, is indicative of the court's willingness to take an unbiased approach towards pension matter in Nigeria. While there are no decided cases with regards to the provisions and application of the 2014 Act, it is expected that the courts will apply the same unbiased approach to cases which require interpretation of the provisions of that legislation.

E. Compliance Issues under the Nigerian Pension Scheme

The sections of the Act with regards to compliance officers and penalty, with regards to non-compliance by employers, PFCs, and PFAs, remain the most innovative provision in the Act. However, compliance remains the most problematic issue with pension schemes in Nigeria. To ensure an effective pension compliance culture in Nigeria, the roles and responsibilities of a compliance officer have been set out by PENCOM in a guidance document for compliance officers, adopted in 2009.[101] The Regulations define compliance in the pension industry as, "Adherence to the provisions of the PRA 2004, regulations, circulars, codes and guidelines issued by PENCOM, with the ultimate goal being to provide easy access to retirement benefits by all retired workers as and when due."[102]

The role of a compliance officer appointed by the PFA or PFC includes a "primary responsibility towards the pension scheme as applied by his PFA and shall maintain good and close liaison with PENCOM."[103] The officer must ensure the development of a compliance policy which will empower employees to report violations of rules and regulations without fear of victimization.[104] Additionally, the officer must continuously monitor and ensure implementation of regulations, codes,

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100 *National Pension Commission v. First Guarantee Pension Limited & Anor* (2013) LPELR-20824, 58-39 p. D-A (CA) (Nigeria).

101 *Regulations for Compliance Officers* RR/P&R/09/03, http://www.pencom.gov.ng/guidelines.php (last visited Oct. 2, 2017) (PENCOM has also published a plethora of guidelines since 2004 till date to guide the smooth operation of pension schemes in Nigeria. These guidelines include Guidelines for the Administration of Gratuity Benefits; Guidelines for the Transfer of NSITF Contributions into Employees RSA; Guidelines for the Administration of Retirement Benefits of Professors and a Category of Political Appointees; etc.).

102 Section 1.2.3, Compliance Guidelines, *supra* note 101.

103 Section 2.2.14, Compliance Guidelines, *supra* note 101.

104 Section 2.2.14, Compliance Guidelines, *supra* note 101, at 10.

rules, and guidelines, as may be issued by PENCOM form time to time.[105] This includes ensuring that all investments and other operational transactions are in compliance with all relevant legislation, regulations, and policies through appropriate control systems, in order to minimize and mitigate risks.[106] Most importantly, the officer is responsible for preparing monthly and quarterly compliance reports to the Board and to PENCOM.[107]

As of August 30th 2016, the number of registered PFAs in Nigeria was 21, including AIICO Pension Managers Ltd, ARM Pension Managers Limited and Stanbic IBTC Pension Managers Limited.[108] With regards to PFAs, infractions include: non-compliance with investment limits by some PFAs; underfunding of workers' RSAs; delay in payment of retirement benefits; receipt of pension contributions without appropriate schedules; unresolved customer complaints; failure to fill vacant management positions; and non-implementation of disaster recovery plans.[109]

PENCOM stated in May 2014 that it would sanction PFAs for non-compliance with regulatory requirements on the management of the growing pension funds.[110] A report by PENCOM in January 2015 analyzed compliance reports forwarded by PFAs to PENCOM, and revealed cases of non-compliance. However, rather than sanctioning the PFAs, the Acting Director-General of PENCOM merely stated that PENCOM "forwarded letters to concerned operators over the identified issues as well as monitored the operators (PFAs) in their efforts at resolving them . . ." and that, "The affected operators were subsequently advised to strengthen their mitigating measures to aver their identified risks."[111] It appears that PENCOM is not ready to sanction these PFAs who are not in compliance with the 2014 Act.

It appears PENCOM would rather sanction errant employers than PFAs. In 2013, it sanctioned 1,105 organizations for failing to open RSAs for their employees. In a bid to ensure enforcement and compliance, PENCOM also created a department devoted to that cause, and employed

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105 Section 3.23, Compliance Guidelines, *supra* note 101, at 7.

106 Section 3.2.10, Compliance Guidelines, *supra* note 101.

107 Section 3.2.4, Compliance Guidelines, *supra* note 101.

108 Gmposts, *PENCOM National Pension Commission: List of Licensed Pension Fund Administrators and How to Enrol*, http://gmposts.com/pencom-national-pension-commission-list-licensed-pension-fund-administrators-enroll/ (last visited Oct. 7, 2017); PENCOM Pension Fund Administrators, http://www.pencom.gov.ng/pfas.php (last visited Oct. 6, 2017).

109 *Pencom goes tough on errant PFAs*, BUSINESSNEWS (Jan. 27, 2015), http://businessnews.com.ng/2015/01/27/pencom-goes-tough-errant-pfas/.

110 *PENCOM to PFAs: Comply with Ground Rules or be Sanctioned*, https://www.thecable.ng/pencom-to-pfas-comply-with-ground-rules-or-be-sanctioned?wpamp (last visited Oct. 11, 2017).

111 *Supra* note 109.

recovery agents to that effect.[112] As is typical of enforcement effort in Nigeria, the manpower and capacity of these officers may not be sufficient to compel effective enforcement of employers and PFAs. Nevertheless, these recovery agents have been able to recover N37.5 million to date, and PENCOM has also engaged the services of the Economic and Financial Crimes Commission (EFCC) in its bid to prosecute employers who contravene the provisions of the 2014 Act.[113]

In addition to the efforts of PENCOM to enforce the provisions of the Act, the inclusion of tougher penalties in the 2014 Act may serve as proper deterrence against misappropriation of funds by PFAs or diversion of pension funds by employers. In a bid to ensure compliance with International Financial Reporting Standards (IFRS), PENCOM has made it compulsory beginning in 2017 for all PFAs to prepare its financial statements in accordance with IFRS.[114]

While the "Police Pension Fund Scandal," which involved the complicity of several persons in the Nigeria Police Force diverting over 32.8 billion naira from the Nigeria Police Pension Funds,[115] is still fresh in the minds of Nigerians, the provisions of the 2014 Act can be described as a welcomed development to prevent a repeat of this incident in future.

V. CONCLUSION

This paper analyzed the pitfalls and promises of Nigeria's pension reform schemes within the last 24 years, in comparison to the Chilean system, in order to provide clarity regarding the factors mitigating against successful pension regimes in Nigeria. The paper reflects that the achievement of an effective pension scheme in Nigeria is an achievable one, but one which is bedeviled by the ineffective systems associated with sanctions, compliance, and enforcement, plus a lack of public participation and transparency. Consequently, the Nigerian Pension Reform Act 2014 is a reflection of an attempt by government to correct the anomalies within the repealed 1990 and 2004 legislation, and an attempt to align the policies with the format of social security legislation in other developed and developing countries. While the provisions with

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112 Ebere Nwoji, *Of Pencom and the Challenge of Compliance*, THISDAY (July 13, 2016), https://www.thisdaylive.com/index.php/2016/07/13/of-pencom-and-the-challenge-of-compliance/.

113 PwC, *supra* note 86, at 5.

114 Sundiatapost Admin, *Risk Benefits seen as N6.5tn Pension Funds Adopt IFRS*, http://finance.sundiatapost.com/2017/08/25/risk-benefits-seen-as-n6-5trn-pension-funds-adopt-ifrs/ (last visited Sept. 23, 2017).

115 Okey Ndiribe, *Police Pension Scandal: FCSC Suspends Five Civil Servants*, https://www.vanguardngr.com/2012/04/police-pensions-scandal-fcsc-suspends-five-civil-servants/ (last visited Oct. 2, 2017).

regards to sanctions and compliance are noteworthy, other issues must be addressed to prevent the Act from being a mere paper tiger.

First, PENCOM sanctions must be processed expediently, and prosecution of errant employers or PFAs must be carried out quickly to serve as a deterrent for future offenders.

Second, in a bid to draft a plan for the informal sector, which the 2014 Act does not currently cover, it may be proper to set up a micro-pension scheme. PENCOM is currently in the process of developing such a scheme. However, a careful understudy of the challenges faced by developing countries such as Kenya, Chile, and India may guide PENCOM effectively - particularly with regards to the kind of technology to be applied, and the mode of contribution to be set.

Third, while PENCOM, in September 2013, mandated all PFAs to ensure that all RSA client profiles are compliant with Automated Finger Identification System (AFIS) standards (to ensure RSA holders move their account from one PFA to another),[116] the implementation of this technology will reduce the issue of multiple RSAs by contributors and lead to improved customer service.

Fourth, the 2014 Pension Act provides for the setting up of Pension Protection Funds which will be used for guaranteed minimum pensions and the payment of compensation to eligible pensioners for financial losses arising from investment activities.[117] While calls for this Fund were made even before the adoption of the 2014 Act, it is yet to be established. This is an area in which PENCOM must act fast.

Fifth, the 2014 Act provides for the establishment of the federal government and state government Retirement Benefit Bond Redemption Fund, which will be used for the payment of pension liabilities arising from voluntary or mandatory retirements, as well as death of employees in service.[118] It is important that this Fund be established by the federal government, but most importantly, by the state government which can expeditiously grant succor to these retirees. This can be done by the state governments by establishing such a Fund with the CBN or a PFA, for the domiciliation and management of accrued rights funds.

Sixth, the 2014 Act requires the government to establish group life insurance policies for its employees.[119] This has not been implemented at the state level, as enactment of Pension Reform Laws since 2014 have remained low, with just 26 states including the FCT have done so.

Pension reform should be regarded as a necessary, key component

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116 *PENCOM orders PFAs on compliance with finger identification* BIZWATCHNIGERIA (Sept. 10, 2013), https://bizwatchnigeria.ng/pencom-orders-pfas-on-compliance-with-finger-identification/.

117 S. 82 (1), 2014 Act.

118 Section 39 (1), 2014 Act., *supra* note 117.

119 Section 4 (5), 2014 Act., *supra* note 117.

of an overall effort aimed at implementing, "A development strategy that allows . . . both the public and private sector to concentrate on fighting poverty and correcting externalities."[120] While the 2014 Act still leaves much to be desired, the untimely payment of pension benefits of retirees and the fear of misappropriation of funds by PFAs or private and public organizations, has been somewhat alleviated by the adoption of this legislation. It is expected that continuous and careful studies by PENCOM and the Nigerian government of the pension scheme and innovations in the Chilean system, which Nigeria originally imitated, will result in an improved scheme which will be even more beneficial and innovative for future generations.

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120 Schmidt-Hebbel, *supra* note 7, at 29.