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PENSION FUNDS AND RETIREMENT BENEFITS ADMINISTRATION: A COMPARATIVE ANALYSIS OF THE LEGAL, POLICY, AND INSTITUTIONAL FRAMEWORKS OF NIGERIA, AUSTRALIA, AND THE NETHERLANDS

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Abstract

This article conducts comparative analysis of the legal, policy, and institutional frameworks governing pension funds and retirement benefit administration in Nigeria, Australia, and the Netherlands. Pension systems play a crucial role in ensuring financial security for retirees and contributing to overall economic stability. This article examines the unique approaches of each country to managing pension systems, highlighting the strengths, weaknesses, and distinctive features of their frameworks. Nigeria's Contributory Pension Scheme (CPS) represents an evolving system within a developing economy, characterized by recent reforms to improve transparency and sustainability. Australia's Superannuation system, a blend of compulsory employer contributions and voluntary personal savings, is renowned for its robustness and efficiency. The Netherlands boasts of one of the most sophisticated pension systems globally, with a strong social security component and comprehensive occupational pension schemes. Drawing lessons from Australia's Superannuation and the Netherlands' Three Pillars, this article identifies several challenges and shortcomings in Nigeria's pension system and offers recommendations for improvement, which include constitutional reforms to allow state-level management of pension matters, reconsideration of exemptions and exclusions from the CPS, setting minimum investment thresholds for Pension Fund Administrators (PFAs), enhancing transparency and communication between PFAs and contributors, and introducing a government contribution element to the CPS. Through a detailed comparative analysis, this study aims to provide actionable insights for policymakers and stakeholders in Nigeria and other nations striving to enhance their retirement benefit systems. The goal is to optimize the legal, policy, and institutional arrangements to improve the effectiveness and sustainability of pension systems worldwide.

Keywords and Phrases: Pension, Retirement Benefit, Contributory Pension Scheme (CPS), Superannuation, Three Pillars System, Pension Fund Administrators (PFAs)

1.0.Introduction

Pension funds and retirement benefit systems play a critical role in ensuring financial security and stability for individuals in their post-employment years. As populations age and life expectancy increases, the sustainability and efficiency of these systems have garnered significant attention from policymakers. This article aims to provide a comprehensive comparative analysis of the legal, policy, and institutional frameworks governing pension funds and retirement benefit administration in Nigeria, Australia, and the Netherlands.

The importance of pension systems cannot be overstated. They not only provide a source of income for retirees but also contribute to the overall economic stability and growth of a country by the investment of pension funds into critical sectors and growth drivers of the economy. Effective pension fund management can lead to enhanced savings rates, increased investment, and reduced poverty among the elderly.[1] Conversely, poorly managed pension systems can result in financial insecurity, increased reliance on social welfare programs, and significant fiscal burdens on governments.[2]

Nigeria, Australia, and the Netherlands offer a diverse spectrum of pension fund and retirement benefit models, shaped by their unique economic conditions, demographic trends, and historical developments. Nigeria, as a developing country, faces challenges such as a relatively young population, limited financial literacy, and informal employment sectors.[3] In contrast, Australia and the Netherlands, with their advanced economies, have established comprehensive pension systems that provide valuable lessons in terms of regulatory frameworks, policy implementation, and institutional management.

Australia's superannuation system, a mix of compulsory employer contributions and voluntary personal savings, is renowned for its robustness and efficiency.[4] The Netherlands, on the other hand, boasts of one of the most sophisticated and generous pension systems globally, referred to as the three pillars, which is characterized by a strong social security component and occupational pension schemes.[5]It is little wonder that the Netherlands occupies the top spot in the global pension index and is followed closely by Australia.[6] Nigeria's pension system has

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[1] World Bank (1994): Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth. Oxford University Press.

[2] OECD (2019): Pensions at a Glance 2019: OECD and G20 Indicators. OECD Publishing.

[3]PenCom: *Annual Report 2019* (National Pension Commission of Nigeria 2019); Olugbenga Adeola and Olumuyiwa Evans, 'The Impact of Pension Reform on Economic Growth of Nigeria' (2017) 8(2) *Journal of Economics and Finance* 1.

[4]Australian Prudential Regulation Authority: *Annual Superannuation Bulletin* (APRA 2020); Hazel Bateman and John Piggott, 'Mandatory Retirement Saving: Australia and Malaysia Compared' (1999) 75(229). *The Economic Record* 163.

[5]OECD: *OECD Reviews of Pension Systems: The Netherlands* (OECD Publishing 2020); Lans Bovenberg and Lex Meijdam, 'The Dutch Pension System' in Martin Feldstein and Horst Siebert (eds), *Social Security Pension Reform in Europe* (University of Chicago Press 2001).

[6] Mercer CFA Institute Global Pension Index 2023

undergone significant reforms in recent years, transitioning from a defined benefit scheme to a contributory pension scheme aimed at improving transparency and sustainability.[7]

This article seeks to dissect these varying approaches by examining the legal, policy, and institutional elements that underpin each country's pension system. By highlighting the strengths and weaknesses of each framework, the analysis will identify best practices and potential areas for improvement, offering valuable insights for policymakers and stakeholders in Nigeria and other nations striving to enhance their retirement benefit systems. The questions this research seeks to answer are: what are the legal, institutional, and policy frameworks on pension and retirement benefit administrations in Nigeria, Australia, and the Netherlands? How do they compare against one another? And what lessons can Nigeria learn from the two countries towards attaining an improved pension fund administration?

Adopting a comparative approach, this study will explore the regulatory environment and legal frameworks, policy objectives and outcomes, and the role of institutions in administering pension funds. The objective of this research is to understand how the different legal, policy, and institutional arrangements in Nigeria, Australia, and the Netherlands impact the effectiveness and sustainability of pension systems and to provide actionable recommendations for optimizing retirement benefit administration in Nigeria by drawing lessons from Australia and the Netherlands.

The comparative analysis of Nigeria, Australia, and the Netherlands will contribute to the broader discourse on pension fund management and retirement benefit administration, offering valuable insights and practical implications. As the global population continues to age, the need for effective and sustainable pension systems becomes ever more pressing, making this study both timely and relevant.

2.0.Background and Overview of Pension Administration in Nigeria

The history of pension in Nigeria dates back to the colonial era, and Nigeria being a former British colony, it is argued that it received its pension tradition modelled after the British structure. Several pension arrangements existed prior to the advent of the Contributory Pension Scheme (CPS), the first of which was the Pension Ordinance of 1951, which took retroactive

[7] *Ibid* (PenCom)

effect January 1st, 1946.[8] The ordinance initially applied only to United Kingdom officials posted to Nigeria but was subsequently extended to Nigerian Public Servants.[9]

In 1954 the first Private sector pension scheme in Nigeria was introduced for employees of the Nigerian Breweries.[10] In 1961 the National Provident Fund established the first formal social protection scheme for private employees and was subsequently replaced by the Nigeria Social Insurance Trust Fund (NSITF) with enhanced pension scheme to private sector employees.[11] In 1979 a Pension Decree 102 with retroactive effect from 1974 established the Civil service Pension Scheme which brought about the unfunded and non-contributory pension scheme where benefits were paid from the governments consolidated revenue fund.[12]

The non-contributory and unfunded pension arrangement entailed that the payment of unfunded defined benefits and retirement benefits were budgeted for annually. This proved unsustainable due to revenue constraints, and even when the revenue was available and budgeted for, there was inadequate and untimely release of the funds which resulted in delays and accumulated backlogs of pension liabilities.[13] The private sector faced more dire experiences as many employees were not covered by the scheme put in place by their employers and even those covered were not funded.[14] Further plagued by corruption, political interference, inadequate data of pensioners, lack of contribution by State Governors rendered the pension administration weak, inefficient, opaque, cumbersome and thus untenable.[15]

These malaises seemed intractable and the state of affairs begged the need for a new approach to pension administration in Nigeria. Accordingly, a pension reform was initiated by the Olusegun Obasanjo-led administration to look into, address and eliminate the problems associated with pension administration in the country. This initiative birthed the Pension Reform Act of 2004 (PRA 2004) in June 2004. The PRA 2004 introduced the Contributory Pension Scheme and promised amongst others, a stable, predictable and better funded and administered pension administration scheme for each worker in the country with coverage of both the public and

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[8] PenCom: History of Pension Schemes in Nigeria; June 6, 2022 https://www.pensionnigeria.com/pension-news/history-of-pension-schemes-in-Nigeria/
[9] Ibid
[10] Ibid
[11] Ibid
[12] Business Day: Historical Development of Pension Schemes in Nigeria: February 5, 2014 https://businessday.ng/insurance/article/historical-development-of-pension-scheme-in-Nigeria
[13] Ibid
[14] Ibid
[15] Ibid

private sectors.[16] The Act made several far reaching reforms and marked a watershed in the annals of pension administration and retirement benefits in Nigeria. Such reforms included the establishment of National Pension Commission (PenCom) as the sole regulator and supervisor of all pension matters in the Country thereby unifying the pension regime in the whole country.[17] This replaced the previous dual scheme existing for public and private sector employees by mandating the inclusion of all Federal and Civil Services employees and private sector employers employing five (5) people or more. Contributors to the old Defined Benefits of the Scheme prior to the enactment of the PRA 2004 were also transferred to the Contributory Pension Scheme.[18]

The PRA 2004 enthroned a fully funded and privately managed Contributory Pension Scheme based on individual accounts for both the public and private sector employees in Nigeria through the Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs). It also generated a pool of long term investible funds that could have the impact of growing various critical sectors of the Nation's economy.[19] The Act also mandated the funds to be privately managed by PFAs and PFCs as two separate entities, the former to manage the pension funds and the latter to manage the assets from the Retirement Savings Accounts (RSA) within the strict supervisory conditions and guidelines stipulated by PenCom to ensure the security of the contributors' funds and a return on the investments of the workers to meet their retirement needs.[20]

Despite the far reaching reforms introduced by the PRA 2004, the scheme was observed to be fraught with massive mismanagement of funds and fraud as a result of which workers' confidence in the Pension Scheme became in doubt.[21] This necessitated the review of the statute with the view to addressing the concerns raised by stakeholders. This review climaxed on the 1st day of July 2014 when the then President Goodluck Ebele Jonathan signed the Pension Reform Act 2014 into law after its passage on the 27th day of May, 2014 and 3rd day of June 2014 by Nigerian House of Representatives and Senate respectively.[22] This repealed the Pension Reform Act of 2004 and enacted the Pension Reform Act, 2014 in its place.[23]

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16 Ibid (PenCom)
17 Ibid
18 Ibid
19 Ibid(Business Day)
20 Ibid
21 Chike A. Ezenwa; Obinna Victor Obiagwu: Pension Reform Act 2014 and Challenges of Pension Administration in Nigeria; Global Journal of Art, Humanities and Social Sciences Vol. 8, No. 8, Pp 18-29 21st December, 2022.
22 Ibid
23 Ibid

The notable innovations of the PRA 2014 included the exemption of the Military Personnel and Personnel from the Department of State Services from the scheme.[24] It also took cognizance of the Universities (Miscellaneous Provisions) Act which revised the retirement age and benefits of University Professors and the Third Alteration Act of the 1999 Constitution which placed pension matters under the jurisdiction of the National Industrial Court of Nigeria (NICN).[25]

Other reforms introduced by the PRA 2014 include increasing the rate of contributions from 7.5% each for both employers and employees to 10% for the employers and 8% for the employees thereby increasing the pension remittances to 18% as against the 15% provided for by the repealed PRA 2004.[26] PRA 2014 also increased participation of the Private Sector employers by reducing the employee threshold from five (5) provided for by the repealed PRA 2004 to three (3) employees.[27] This was done to ensure that the informal sectors were not left out of the scheme. To identify with the yearnings of contributors, the waiting period before the retirement benefits could be accessed was reduced from the six (6) months provided for by the repealed PRA 2004 to four (4) months.[28]

The PRA 2014 also compels employers to open Temporary Retirement Savings Accounts on behalf of employees that fail to open one within three (3) months of assumption of duty.[29] It also put in place stricter penalties and sanctions to serve as deterrence against mismanagement or diversion of pension funds of up to ten (10) years or fines of an amount equal to thrice the amount misappropriated or diverted or both fine and imprisonment.[30] Finally, the Act empowers PenCom to institute Criminal Proceedings against employees subject to the Fiat of the Attorney General of the Federation.[31]

Despite the laudable reforms in the PRA 2014, concerns have been raised on a myriad of issues which include the total lack of transparency in the investment of the funds by the PFAs and the secrecy surrounding the return on investment made with the contributed funds invested.[32]

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[24] Aisha Dahir-Umar: Fighting for the Future; Nigeria's Pension Reform Journey (2023) Pp 36, 168

[25] Ibid

[26] Ibid

[27] Ibid

[28] Ibid (PenCom)

[29] Ibid

[30] Ibid (Aisha Dahir-Umar)

[31] Sunday C. Nwite, Ehiogu Chizoba Perpetua: Highlights on the Differences between 2004 and 2014 Pension Reform Acts in Nigeria; Vol.1, Issue VIII, August 2014, ISSN 2347-9378 (Pp 22)

[32] Ibid (Aisha Dahir-Umar)

Another issue of concern raised is the exclusion of the contributors from investment decisions made by the PFAs despite its direct implications on them and their funds.[33]

The limited scope of coverage was another issue of concern to stakeholders as State Civil Servants are still under the unfunded pension regime whereas the PRA 2014 was intended to encompass and manage the pension industry in Nigeria, but so far, only Federal Civil Servants and employees in the Private Sector have keyed into the scheme, consequently, only 11% of the labour force in Nigeria are enrolled into the CPS with an overwhelming 70% of the population yet to be captured.[34] Another challenge of attaining a robust pension industry is the several exemptions granted to various categories and class of workers in Nigeria from the Contributory Pension Scheme. These exemptions are not only discriminatory but clearly violate the spirit and letters of the PRA 2014 and also leaves a window open for several categories and class of workers to capitalize on. Another challenge is the capacity of PenCom to adequately discharge its functions, duties and obligations if and when all Nigerian workers are captured under the CPS.[35]

3.0.The Three Pillars System of Pension Administration in the Netherlands

The Netherlands is widely regarded as having one of the best pension systems in the world, ranking first in the Mercer Global Pension Index which is chiefly based on three sub-indices of accuracy, sustainability and integrity.[36] In addition to the aforementioned indices, the Dutch pension system is renowned for providing high level of income security and sustainability for retirees.[37] The system is also reputed for its high level of integrity and the transparency with which it operates. More importantly, the Dutch system is considered one of the best in the world because it successfully combines a first pillar flat rate pension for all residents, a labour-related second pillar and a voluntary saving account otherwise referred to as individual or private pension as the third pillar with each pillar having its own peculiarities, distinct features, eligibility criteria and contribution rates.[38]

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[33] Ibid
[34] Ibid
[35] Ibid
[36] Mercer CFA Institute Global Pension Index 2023, October 17, 2023
[37] Carl Heinz Paulsen: How the Dutch Pension System Works https://www.linkedin.com/pulse/how-dutch-pension-system-works-maximize-your-benefits-paulsen
[38] Ibid

The First Pillar referred to as *Algemene Ouderdomswet* (AOW) consists of a flat rate public pension with retirement age of 65 years. This Pillar is not means-related, it is rather a basic state pension provided by the Dutch government to the people who have lived for at least 50 years before reaching the AOW Pension age. This Pillar is funded from Social Security Contributions and Taxes and is administered by the *Social Verzekeringshank (SBV)* – The Dutch Social Insurance Bank. The amount received depends on some factors which include the beneficiary's marital status, partner's income and whether he or she has lived abroad for some periods in life. The financing is on a *pay-as-you-go* basis and the benefits keep pace with the legal minimum wage.[39]

The Second Pillar consists of work-related or labour-related occupational pensions. It is a supplementary pension that is accrued by most employees during their work lives.[40] In this pillar, employers and employees contribute to a pension fund that invests same and pays out the benefits to the beneficiaries upon retirement.[41] There are three categories under this second pillar; the first is the industry-wide fund.[42] This is organized for specific sectors or industries such as health sector, construction or transport.[43] Participation in the Industry-wide Pension Fund is mandatory for all firms operating in the sector and the amount in this pillar is regulated by collective labour agreements and pension regulations.[44] The work-related pension received by beneficiaries depends on salary, years of service, contribution rate and the performance of the investment of the beneficiaries' pension fund.[45] Most work-related pensions are defined benefits plans which entail that the beneficiary receiving a fixed percentage of the average or final salary as a pension which some others are defined contribution plans which means that the beneficiary receives a variable amount based on the value of individual accounts at retirement.[46] The second category comprises of corporation who elect to opt out of the industry-wide pension fund on the condition that they establish corporate pension fund that offers a better plan to its employee than the stipulated industry wide fund. Participation in either the industry-wide or corporate pension

[39] Ibid
[40] OECD: Private Pensions Series, Private Pensions Systems Administration Costs and Reforms: OECD 2001, (Vol. 2); Pensions in the Netherlands; Wouter Vinken; Pp 255-260
[41] Ibid
[42] Angelien A.G.Z Kemna, PhD, Eduard H.M. Ponds, PhD, Onno W. Steenbeek, PhD: Pension Funds in the Netherlands; Journal of Investment Consulting Vol. 12, No. 1, Pp 28-34, 2011
[43] Ibid
[44] Ibid
[45] Ibid
[46] Ibid

fund is mandatory.[47] The third category of the second pillar is the professional group pension fund which as the name implies is organized for a specific group of professionals such as lawyers, physicians and nurses to mention a few.[48]

The third Pillar in the Dutch Pension system comprises of individual life insurance also referred to as Individual pension. This offers a voluntary option for individuals to supplement their state and workplace pensions.[49] Under this pillar various private pension products and arrangements are made available some of which include; annuities, life insurance policies, bank savings accounts and investment funds.[50] The amount received by the beneficiary from the private or individual pension depends on the extent of savings or investments, the type of product or arrangement opted for, the applicable fees or charges or potential returns or risks involved.[51] Simply put, most private pensions operate defined contribution plans; therefore, payouts are based on the value of the individual accounts at the time of retirement.[52]

4.0.The Superannuation System of Pension/Retirement Benefit Administration in Australia

The Superannuation system of pension administration in Australia is regarded as one of the best in the world; this is majorly due to the strong legal and administrative frameworks that govern it, its wide range of coverage and participation and its reliability. It can be regarded as a government-sponsored, private sector managed system of long term savings for retirement income support.[53]

Prior to 1980, there was no social security contribution as obtainable in some other countries, instead it was an employment benefit for public servants and white collar works, whereby it was common place for a minimum period of service to be required to qualify for employer contribution.[54] However, in the later part of 1980, Australia migrated to an employer funded Superannuation Guarantee system which enthroned a more comprehensive and accessible system. This system was established under the Superannuation Guarantee (Administration) Act

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[47] Ibid
[48] Ibid
[49] Op Cit. (OECD)
[50] Ibid
[51] Ibid
[52] Ibid
[53] OECD: Private Pensions Series, Private Pensions Systems Administration Costs and Reforms: OECD 2001, (Vol. 2); Pensions in the Australia; Jane Barret & Keith Chapman; Pp 185-199
[54] Ibid

of 1992 which took effect on the 1st day of July, 1992.[55] The Act provided for a guaranteed level of contributions by employers which could rise to 9% of each employee's wage. It covered all employees during any period of employment but excluded the self-employed, non-employed and very low paid workers.[56]

Presently, the retirement income system in Australia consists of three pillars; a means-tested, tax payer funded Old Age Pension often referred to as the safety net, a compulsory tax-supported superannuation for employees through occupational superannuation referred to as the Superannuation Guarantee (SG) and voluntary tax-supported contributions often referred to as top-up Superannuation.[57]

The first pillar is the Age pension which is sponsored and administered by Government and there are no contributions for this system as it is funded from the Australian Government revenue on a pay-as-you-go basis. Rate of payment is subject to a comprehensive means test comprising of both income and assets test and is available to men from age 65 and women from age 61.[58] The second pillar is the compulsory superannuation and under this pillar, a minimum level of employer contributions to the Superannuation is mandatory for all workers in gainful employment but excludes self-employed or very low paid workers.[59] Specifically, the SG system requires all employers to provide Superannuation support for employees earning above AUD 450 per month failing which the employer faces the penalty of paying a higher amount to the Australian Tax Office.[60] The third pillar is the voluntary superannuation which consists firstly of employer support beyond what is required under the superannuation guarantee. This additional support is often subject to conditions such as length of service and human resources management considerations.[61] Secondly, the third pillar also consists of negotiated additional contributions by the employee with their employers out of their pre-tax salary; this is commonly referred to as salary sacrifice.[62]

Superannuation is intended to be saved over a person's working life to fund income support on their retirement after age 55 which would rise to 60 years for the younger generations. It is not intended to be accessed earlier for alternative purposes other than the ancillary purpose of death

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[55] Ibid
[56] Ibid
[57] Ibid
[58] Ibid
[59] Ibid
[60] Ibid
[61] Ibid
[62] Ibid

and disability benefits. Thus, accesses to the Superannuation Funds are restricted until retirement, death or disability.[63]

Most Superannuation funds in Australia are structured to provide lump sum payments at retirement, however, retirees can use some or all of the Superannuation benefits to purchase the following types of Superannuation products:

i. Allocated Pension: This is the form of managed fund with rules setting out the minimum and maximum withdrawals each year.
ii. Term Certain Annuities: This comprises of term certain deposits payable for a specified number of years; and
iii. Life annuities. This is paid regularly throughout the beneficiaries' life time.[64]

Superannuation in Australia is regulated by the Australian Prudential Regulation Authority (APRA) for the safety, soundness and compliance with the retirement income standards. Next is the Australian Investment & Securities Commission (AISC) for the conduct and disclosure matters including sales, practices and complaints resolution. Another regulatory agency is the Australian Tax Office (ATO) for the Superannuation Guarantee, Tax compliance and regulation of small, self-managed superannuation funds. Lastly is the Department of Family and Community Service (DFACS) for welfare support including interactions with the Age pension.[65]

5.0. Comparative Analysis of Key Features in Pension Administration in Nigeria, Australia and the Netherlands

This section undertakes a comparison of some key features of the Contributory Pension Scheme in Nigeria with Superannuation in Australia and the Three-Pillar System in the Netherlands. It takes cognizance that each system reflects its country's unique socio-economic context, regulatory framework and values.

i. Coverage and Participation

The superannuation has high participation in Australia due to mandatory employee contributions and this is manifested in its over 90% coverage of the Australian workforce. In the Netherlands, there is also near-universal coverage attributable to the three pillars system; this is also reported

[63] Ibid
[64] Ibid
[65] Ibid

to cover over 90% of the Dutch workforce. However, in Nigeria, the contributory pension scheme which aims for broad coverage, faces compliance issues and challenges, thus, the number of persons reported to have enrolled into the Nigerian Contributory Pension Scheme is 11% of the Nigerian workforce suggesting that only about 9 million of the 80 million Nigerian workforce in Nigeria is covered by the Contributory Pension Scheme.[66] This is a far cry compared to the 90% coverage and participation in Australia and the Netherlands.

Another issue affecting coverage and participation is the several exceptions granted to classes and categories of the Nigerian workforce. Particularly, one of the reforms of the PRA 2014 is the exemption granted to the personnel of the Nigerian Military – Army, Navy and Airforce, and those of the Department of State Services (DSS) and staff of the National Assembly Service Commission. This has opened the window for several categories of employees in Nigeria to opt out of the CPS thereby limiting the already limited coverage and participation and by extension depleting the funds contributable into the Nigerian pension industry.

Another challenge to the wide coverage and popular participation in Nigeria is the placement of Pension, Gratuities and other allied matters in the Exclusive List of items in the Nigerian Constitution.[67] The purport of this is that control over Pension and allied matters are within the exclusive purview of the Federal Government to the exclusion of the States and Local Government.

ii. Funding and Contributions

The Dutch Three-Pillar pension system draws mixed funding from the State, Employers and the Employees; this ensures a liquid and robust pension fund for beneficiaries at the point of retirement. The Australian Superannuation system is primarily employer-funded with additional voluntary contributions; this guarantees a mandatory contribution by all employers of 11% which could rise to 12%. This ensures the availability of funds in the pension system. The Australian system also boasts of a variety of investment options for the beneficiaries which ensures that the funds continue to grow pending retirement. Also, the Superannuation allows the employees self-manage their funds thereby availing them more control over investments. In Nigeria, the Contributory Pension Scheme also draws funds from employers at the rate of 10% of the employees' salary and 8% from the employee without a state-backed funding component unlike the Dutch system. This poses a liquidity challenge as beneficiaries do not earn much after

[66] Op. Cit. (Chike A. Ezenwa; Obinna Victor Obiagwu)

[67] Item 44, Second Schedule, Part I (Exclusive Legislative List), 1999 Constitution of the Federal Republic of Nigeria (As amended)

retirement. In addition to the foregoing, Nairametrics in 2020 reports that 73% of Pension Funds are invested in Federal Government of Nigeria (FGN) Securities while 2.7% and 7% are invested in Real Estate and Bank Securities respectively. This suggests that there is very little investment in sectors considered to be growth drivers and critical sectors of the Nigerian economy. This therefore, creates a scenario where the Pension system in Nigeria is underfunded, and even the funds contributed are underutilized and underinvested by the Pension Funds Administrators which invariably means a meagre return on investments for the employees at retirement and very little impact in terms of stimulating and growing the economy.

iii. Regulatory Framework

Due to the multifaceted nature of the Three Pillar System in the Netherlands, Pension Administration in the Country is governed by multiple regulatory bodies. The Dutch Central Bank supervises the pension funds to ensure that they are financially healthy and capable of meeting the obligations to pensioners. Its main focus is on solvency, governance and risk management. Secondly, the Netherlands Authority for Financial Markets (AFM) oversees the conduct of the Pension Funds ensuring that their communication with participants are clear, accurate and that fair practice is maintained in all dealings with the pension funds. The Pension Act (*Pensionwet*) outlines the legal framework for occupational pension covering aspects like funding, communication and governance of the pension funds and the Dutch pension scheme as a whole.

In Australia, the Superannuation is regulated by several authorities and laws. Firstly, the Australian Prudential Regulation Authority (APRA) oversees the prudential regulation of superannuation funds ensuring that they meet specific laid down standards of financial soundness and governance. Secondly, the Australian Securities Commission (ASIC) regulates the conduct of Superannuation funds focusing mainly on protecting consumers and maintaining fair and efficient markets. Thirdly, the Superannuation Industry (Supervision) Act (SIS Act) provides the legislative framework for the regulation of superannuation funds covering aspects like funds management, investments and member benefits. Next is the Australian Taxation Office (ATO) which administers the tax aspect of superannuation including fund earnings and member benefits. Lastly, the Superannuation Regulation and Standards which are the various regulations and standards that superannuation funds must comply with including Superannuation Guarantee (SG) which mandates the minimum contributions from employers.

In Nigeria, the Contributory Pension Scheme (CPS) is regulated by the National Pension Commission (PenCom) which is established under the Pension Reform Act (PRA) with the main objective of regulating the Pension System in Nigeria. It ensures compliance and supervises the Pension Fund Administrators (PFAs) and Pension Funds Custodians (PFCs) in the discharge of their obligations to the contributors. To achieve this and in exercise of its powers under the PRA, PenCom issues guidelines and regulations from time to time to ensure the proper administration of pension funds including investment guidelines, corporate governance codes and operational standards for the PFAs and PFCs.

While the Nigerian CPS is regulated by well-defined and streamlined PenCom and PRA which are empowered to perform and discharge all functions and responsibilities as it relates to Pension Fund Administration in the Country, on the one hand, this streamlining of regulatory and institutional frameworks serves the purpose of doing away with duplicity of agencies and legal regimes thereby simplifying the system compared to the Dutch. On the other hand however, the legal, regulatory and institutional frameworks are limited in their coverage, capacity and efficacy which could be partly attributable for its inability to enroll over 80% of the Nigerian work force. Further, Pension and allied matters in Nigeria is on the Exclusive List of Item in the Nigerian Constitution. This entails that they fall exclusively under the purview of the Federal Government, so unless migrated to the Concurrent List of Items in the Nigeria Constitution and subsequently domesticated by the State Houses of Assembly, the PRA is not applicable to the Public Servants in the 36 States of Nigeria. This limitation in application and coverage has manifested in the fact that the provisions of the PRA as regards CPS only apply to Federal Civil Servants and the Private Sector while most States operate a Defined Benefit Pension Scheme without a legal or legislative backing. This no doubt partly accounts for the underwhelming percentage of enrolments and capturing of Nigerians on the CPS.

iv. Investments and Returns

In the Netherlands, collective investment schemes provide risk-sharing mechanisms thereby insulating the employer from risk and availing the pension fund administrators the free hand to venture into profit-making ventures with the view to generating interest for the contributors from funds which would have otherwise remained idle and stagnant. In Australia there are diverse investment choices albeit subject to market volatility. The Superannuation allows individuals manage their funds thereby availing them more control over investments made with their contributed funds. Nigeria on the other hand faces the challenge of under-investment of funds which invariably implies a meagre return on the meagre investments, the minimal investments made in terms of volume and diversification affects the individuals return on investments.

In addition, Pension Funds in Australia and the Netherlands are reinvested into the economy to stimulate and grow it while still meeting its primary objective of providing retirement benefits and funds for pensioners upon retirement. Nigeria's limited pension funds invested and limited investment options leaves a lot to be desired by way investments to stimulate and grow the economy.

Further, the Dutch and Australian Pension Systems are lauded for the transparency in the investment and overall administration of the pension funds. This evokes trust in both pension systems encourages enrolment. In Australia, contributors have a say and certain level of control over the investments made with their pension funds. In Nigeria, there is a lack of transparency in the investment of the Funds by the PFAs and a shroud of secrecy surrounds the return-on-investments realized and/or expected. Simply put, there is total exclusion of contributors from investment decisions made by the PFAs and outcomes thereto despite its direct implication on them and their funds.

The Australian Superannuation system reputed for its strong regulatory framework, high level of compliance, diverse investment options and for ensuring that the contributors are carried along and given a say on investments done with their pension funds. Despite these laudable features, the pension system in Australia is beleaguered by factors such as the complexity of administering such a pension system, market risks that affect investment performance and equity concerns especially for low income earners.

The Dutch Three Pillars System possesses as its key strengths the sharing of risks between employers, the employees and the pension funds. These are also a strong social consensus and trust in the system, its adequate volume of liquidity and its high level of participation demonstrated by its wide coverage. Despite these commendable areas of strength which has seen the Dutch system repeatedly rank first in the world in pension administration, the Dutch system faces challenges of being too complex as a result of its multiple schemes, an aging population which is causing increased pressure on the first pillar and economic and demographic risks affecting the second pillar.

In Nigerian, the CPS is reputed as one that encourages a savings culture, reduces pension burden on the government and provides an accountable and a somewhat transparent system compared to its predecessors. However, it is faces challenges of low compliance and enforcement issues, low enrolment, coverage and participation, limited funds and investment options due to economic factors, a regulatory and institutional framework that is limited in scope, meagre benefit for contributors upon retirement and lack of transparency in the investment of pension funds and return-on-investments. All of which have contributed to the underwhelming performance and impact of the pension industry in Nigeria especially when compared to its counterparts in the Netherlands and Australia.

6.0. Lessons from the Netherlands and Australia towards improving the Legal, Policy and Institutional Frameworks on Pension/Retirement Benefit Administration in Nigeria

Having identified several challenges and shortcomings inhibiting the enthronement of a robust pension/retirement benefit administration in Nigeria, by drawing lessons from the Australian Superannuation and the Three Pillars of the Netherlands, this research finds and recommends the following initiatives and reforms towards improving and repositioning the legal, policy and institutional frameworks governing pension/retirement benefit administration in Nigeria:

This research finds that placing Pension and other allied matters on the Exclusive List of the Nigerian Constitution places the subject matter outside the purview of the thirty-six (36) State of the Country. Since pension and retirement benefit remittances are salary-related, and the State Governors pay the salaries of the state government workers, it is only right that they superintend over the payment of pension in their States in accordance with pension legislation. It is therefore recommended that there is need for a Constitutional review to effect a migration of Pension and allied matters from the Exclusive List of the Nigerian Constitution which places it under the exclusive control of the Federal Government to the Concurrent list where both the Federal and State Governments can operate in the sector. This will go a long way in improving coverage and participation in the Nigerian Pension, obviate the looming pension and gratuity crises that State Governors are battling with and draw more funds into the Nigerian Pension Industry.

This research argues that there is the need to reconsider the several exemptions and exclusions from the CPS granted to the Military, personnel of the Department of State Services, Permanent Secretaries and other government workers. This further reduces the coverage and participation in the CPS and accordingly depletes the long term investible funds that would otherwise be accruable to the Country's Pension Industry. Therefore it is recommended all workers without exception should be enrolled and captured to become participants in the CPS. This would discourage other category of workers looking to exploit the opening by opting out of the CPS as

Aisha Dahiru-Umar[68] puts it, *the successful exit of one, will encourage the other to do same. We may soon be faced with an exodus if serious efforts are not made to put a stop to this trend*. Therefore, the Presidential Fiat on the basis of which the Head of Service and Permanent Secretaries are exempted should be revoked as it was an illegality in the first place as only the PenCom is empowered by law to establish a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the Public Service of the Federation. Also, the National Assembly Service Commission Pension Board Act which established a separate pension scheme for staff and workers of the National Assembly Service Commission thereby excluding them from the CPS should be repealed and all employees hitherto covered by the National Assembly Service Commission Pension Board Act should be migrated to the CPS as should be the case with all other Pension Schemes and Arrangements made outside the CPS Regulated by the PenCom under the subsisting Pension Reform Act.

Other than the primary purpose of making funds and income available to workers in the post-retirement days, the pension industry also serve the secondary purpose of stimulating and growing the economy. This is done by investing the funds which would otherwise have been dormant into diverse sectors of the economy. It has been observed that the pension funds are underinvested thereby failing to meet the primary purpose generating interest on the funds to be made available to pensioners and also failing to meet the secondary purpose of stimulating and growing the Nigerian economy. On this note, this research recommends that minimum percentage of investment thresholds into the Nigerian economy should be set for the PFAs. This would ensure that more funds by way of investments from pensioners' funds are injected into diverse sectors of the Nigerian economy thereby growing the pension funds accruable to pensioners on retirement and growing the Nigerian economy in the process.

This research observes that there is very little communication if any between the PFAs and the Contributors. Most contributors are not aware of the investments ventured into by the PFAs with their funds and neither are they aware of the (expected) returns-on-investments. This opaqueness and lack of transparency affects the trust and dependability of the employees in the Nigerian Pension System. In the light of the foregoing, it is recommended that the PenCom should mandate PFAs to regularly communicate and interface with the employees under the supervision of a Department with the PenCom, this to ensure that both the PenCom and the Contributors are

[68] Op Cit (Aisha Dahir-Umar)

aware of their dealings with their funds and the expected returns-on-investments. This will engender transparency and trust in the system.

Unlike the Australian Superannuation and the Dutch Three Pillars, in Nigeria there is no government element in the contributions into the pension schemes. This affects the amounts realized and expected by the pensioners. In order to improve on the fund realized, government should contribute to the employers funds thereby establishing a third element to the CPS in addition to the 18% of the employees' salaries. This would have the ripple effect of discouraging corruption in public service and the mismanagement and embezzlement of funds by government officials in an attempt to store for the rainy (retirement) days. This would also go a long way towards reducing poverty and crime in the Country.

Conclusion

Without doubt, the Nigerian Pension system has experienced documented improvements since the advent of the Pension Reform Act which introduced several reforms including the introduction of the Contributory Pension Scheme (CPS), establishment of the National Pension Commission (PenCom) as the lone regulatory body on all pension matters thereby streamlining the administration of the scheme in Nigeria. Despite the laudable successes of the CPS, this research identifies several challenges and shortcomings such as the poor coverage and low participation in the scheme, limited investment of pension funds, lack of transparency and communication between the Pension Fund Administrators (PFAs) and the Contributors and low yield and income for employees at the point of retirement. In the light of these shortcomings and challenges, this research made salient actionable recommendations for improvement which include Constitutional reform to allow state-level management of pension matters, reconsideration of exemptions and exclusions from the CPS, setting minimum investment thresholds of investable funds for PFAs, enhancing transparency and communication between PFA and contributors and introducing a government contribution element to the CPS to improve on the low yield and income accruable to the employees at retirement. These recommendations if implemented would reposition the Nigerian Pension Industry into a robust and transparent pension system with improved universal coverage and popular participation. It would also improve the investable funds with which to grow and improve critical sectors of the Nigerian economy.