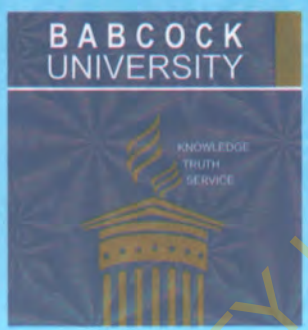


# BABCOCK UNIVERSITY SOCIO-LEGAL JOURNAL

VOLUME 10 OCTOBER, 2019

Published by

Babcock University,
School of Law and Security Studies
Ilishan-Remo, Ogun State, Nigeria.

October, 2019



**ISSN: 2346-7010**

**Published by:**
Babcock University, School of Law and Security Studies
Ilishan-Remo, Ogun State, Nigeria.

**Printed by:**
The CIBN Press Ltd. A.A. Plaza, 4 Araromi Street,
Shomolu, Lagos, Nigeria. Tel: 09093624958

# Contents

# 9

# SUCCESSIVE DEVELOPMENT OF SOCIAL SECURITY LAWS IN NIGERIA

**Kehinde Anifalaje***

**Abstract**

*The paper examines the legislative strides of the Nigerian policy makers in the provision of social security for the citizenry from the colonial era up to the present time. In fashioning out the existing social security schemes in Nigeria, it has become necessary for some laws to either be amended or repealed. The paper discusses the progressive development of these laws and highlights the extent of their compliance with prescribed minimum international standards. The paper argues that, though much legislative intervention towards fulfilling the fundamental objective of section 14(2)(b) of the 1999 Nigerian Constitution has been made, there are still some basic issues that need to be addressed in order to further expand the scope of social security provisioning. The paper concludes by proffering suggestions on how to consolidate on the extant laws in order to secure the much needed social safety net to the generality of the Nigerian citizenry.*

* Kehinde Anifalaje, PhD, Lecturer, Department of Commercial and Industrial Law, Faculty of Law, University of Ibadan, Oyo State, Nigeria. kennyanif@gmail.com

## 1.0 Introduction

The trajectory of social security laws in Nigeria has been a chequered one. As a former British colony, the first legislative intervention, which marked the beginning of formal organised welfare, started in a modest form with the Colonial Development and Welfare Act 1940, when the citizens did not even know of it nor could appreciate its relevance and value to them and its impact was nodding. Prior to this time, the strong spirit of mutual social responsibility within the extended family group was the best guarantee for the welfare of each individual. The family always assumed some degree of responsibility for the relief of poverty of its members, mostly through the provision of social and economic support, as well as psychological stability and moral upliftment at appropriate times of need.[1] It was essentially a social structure based upon the bonds of kinship. In addition, the vagaries of nature and the need to eke out subsistence from a hostile environment necessitated the fashioning out of various communal devices to share out losses for the people, the only qualification for entitlement being that the person was a member of the given community.[2] Thus, in appropriate cases, the community as a whole provided the social net, especially for the aged without a family. In this wise, communalism and collective efforts were dominant in the organisation of pre-colonial societies as the needs of the individual, in terms of 'welfare', were always satisfied as a normal function of the society as a whole.[3] However, the entry of the colonial government brought about a social dislocation in these traditional social protections largely because of the opportunity of wage labour and

1 K Kumado & AF Gockel, 'A Study on Social Security in Ghana' (2003) <http://ghana.fes-International.de/attach/socialsecurity.pdf> accessed 12 November 2018.

2 N Songumas, 'Precursor of the Beveridge Plan?: Social Security Among Traditional Societies in Africa' (1968) 5 East African Law Journal 13-18.

3 S McPherson & J Midgley, *Comparative Social Policy and the Third World* (Wheat Sheaf Books Ltd 1987) 9.

expanded working facilities outside the traditional sector.[4] This development occasioned the insidious growth of individualism in the privatisation of responsibilities such that individual support was gradually detached from the concerns of the family and the community.

In contemporary times, much reliance is being placed upon institutionalised social security schemes as a vehicle for providing social safety net to the citizenry through social insurance or the social assistance schemes or a combination of both. In Nigeria, the legal fulcrum for social security is contained in section 14(2)(b) of the Constitution of the Federal Republic of Nigeria 1999[5] which provides that 'the security and welfare of the people shall be the primary purpose of government'.[6] Nigeria is also a signatory to a number of international instruments that guarantees the right to social security to the citizenry. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966;[7] the Convention on the Rights of the Child (CRC) 1989[8] and the African Charter on Human and Peoples' Rights 1981 (African Charter).[9] The

4 M Meck, *Problem and Prospects of Social Services in Kenya* (Munchen Verlag Gmbh 1971) 61.

5 (As amended).

6 This provision was first included in section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1979.

7 Article 9(1) of the Covenant recognises the right of everyone to social security, including social insurance. Nigeria ratified the Convention on 29 July 1993 <https://treaties.un.org/pages/iviewDetails.aspe?src. . . -en> accessed 19 June 2016.

8 Article 26 recognises the right of the child 'to benefit from social security, including social insurance'. Nigeria ratified the Convention in 1991 and has since enacted the Child's Right Act in 1991. The Act does not provide explicitly for the right to social security but it contains provisions that have bearing on the welfare of the child. These include s 2 which requires that the child be given protection and care necessary for his well-being and s 13, which recognises the right of the child to health and health services.

9 Nigeria has domesticated this Charter by enacting *mutatis mutandis* the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004. Although the African Charter does not directly provide for the right to social security or to an

International Labour Organisation's (ILO) Social Security (Minimum Standards) Convention, 1952[10] provides for minimum standards in nine distinct branches of social security namely: medical care; sickness; maternity, unemployment; old age; employment injury, family; invalidity and survivorship.[11] The current laws on social security in Nigeria include the Nigeria Social Insurance Trust Fund Act, 1993,[12] Pension Reform Act, 2014, Labour Act, 1974,[13] National Health Insurance Scheme Act, 1999[14] and the Employees' Compensation Act, 2010. These laws make provision only for old age, invalidity, survivors', sickness, maternity, medical and work injury benefits.

This paper examines the legislative history of social security in Nigeria with a view to determining the extent to which the laws have been deployed by the Nigerian policy makers to provide social protection for the citizenry in the face of daunting social and economic challenges of the modern state. The reforms encapsulated in the progressive development of the laws, in the light of prescribed international standards would also be highlighted. The sequential development of these laws would now engage our attention starting with those enacted by the colonial administration.



adequate standard of living as contained in the ICESCR, some provisions thereof, including articles 16 and 18, have bearing on social security.

10 (No 102).

11 See articles 8, 14, 44 and 47, 20, 26, 32, 40, 54 and 66 respectively of the Social Security (Minimum Standards) Convention, 1952 (No 102).

12 Re-enacted as N88, Laws of the Federation of Nigeria (LFN) 2004.

13 Re-enacted as L1, LFN 2004.

14 Re-enacted as N42, LFN 2004.

## 2.0 The Colonial Era

### (a) The Period between 1940 and 1960

#### (i) Colonial Development and Welfare Act 1940

Social security, in its classical exposition, was completely unknown in Nigeria until the colonial administration enacted the Colonial Development and Welfare Act, 1940 in response to the serious rioting in the West Indies and the wave of social unrest across the colonies.[15] The objective of this Act was to make provision for promoting the development of the resources of colonies, protectorates, protected states and mandated territories and the welfare of their people, and for relieving colonial and other governments from liability in respect of certain loans. In particular, section 1 of the Act authorised the Secretary of State, with the concurrence of the Treasury, to make schemes for any purpose likely to promote the development of the resources of any colony or the welfare of its people and any sums required by the Secretary of State for the purpose of any such scheme was to be paid out of moneys provided by Parliament. In this regard, £5.5 million, including £500,000 for research or inquiry, was to be voted annually 'for promoting the development of

[15] McPherson & Midgley (n 3) 67. Actually, the first law that was passed by the colonial government was the Colonial Development and Welfare Act, 1929. But, this law had little or no impact on the welfare of the people as it was very restrictive in its provision in the sense that it merely established a Colonial Development Fund, which was not to exceed £1,000,000 in any one year to aid and develop agriculture and industries in the colonies and in so doing promote commerce with or industries in the United Kingdom. Prior to this time, the British government adhered strictly to the doctrine of '*laissez faire*' where development activity in the colonies was concerned. Thus, while colonial administrations were responsible for maintaining law and order, the colonies were expected to be 'self-supporting', meeting all the expenses of administration and social services, if any, from what revenue they could raise by local taxation, proceeds of sale of their export crops and whatever private international capital they could attract. Where they failed to do this entirely, the condition of 'grant aid' from the United Kingdom was extremely severe. See G Cassel, 'The Myopic Hand at Work; Colonial Development Policy in Montserrat' <http://www.cavehill.uwi.edu/bnccde/montserrat/conference/papers/cassellg.htm/> accessed 23 July 2018.

the resources of any colony and the welfare of its people'. The Act also widened the scope of development projects to include operating charges as well as capital expenditures and expenditures on education.[16] Furthermore, colonial administrations were encouraged to embark on long-range plans for necessary development since assistance would be provided for a maximum of ten years.

**(ii) Workmen's Compensation Ordinance 1941**

Subsequent to the Colonial Development and Welfare Act, 1940, the colonial administration passed the Workmen's Compensation Ordinance in 1941, but which came into force in 1942. The Ordinance came into being following the Report of a sub-committee of the Colonial Office Labour Committee, constituted in 1936 and charged with the responsibility of preparing a model Workmen's Compensation Ordinance for East and West African Governments.[17] A draft Ordinance was sent to the Governors in 1937 and the Workmen's Compensation Ordinance for Nigeria was enacted in 1941.[18] Whilst some significant amendments to the Ordinance were made in 1950 and 1957, the Ordinance was subsequently re-enacted as Workmen's Compensation Ordinance, 1958.[19] 'Workman' under the Ordinance was defined, in section 2 thereof, to include any person who had entered into or was working under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract was expressed or implied, oral or written. Under section 4 of the Ordinance, coverage was extended to workmen, employed by or under the Crown, in

16 See the Schedule to the Colonial Development and Welfare Act, 1940.

17 See A Adeogun, 'Thirty Years of Workmen's Compensation Act in Nigeria' (1971) 5 Nigeria Law Journal 57.

18 ibid. Before this time, statutory regulation of compensation for injured workers was piecemeal, in very simple and short form and usually tucked away in a section of an Ordinance dealing with a wider subject matter. See eg s 58 of the Minerals Ordinance 1916.

19 Cap 222, LFN & Lagos, 1958.

the same way and to the same extent as if the employer were a private person. However, persons in the naval, military or air service of the Crown[20] (other than locally engaged civilian employees), and persons in the civil employment of Her Majesty otherwise than in Her government of the Federation or of any Region or of the Southern Cameroons who had been first engaged in a place outside Nigeria were excepted. Also excluded was any person employed otherwise than by way of manual labour, whose earnings exceeded 800 pounds a year;[21] or a person employed otherwise than for the purpose of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or an outworker; or a member of the employer's family dwelling in his house; or a person employed in agricultural or handicraft work by an employer who normally employed less than ten workmen; or any class of persons whom the Governor-General in Council may, by order, declare not to be workman for the purposes of the Ordinance. The Ordinance was also not applicable to a workman who was in, or had been selected for appointment to, the service of the Government of Nigeria or of the Lagos Town Council before the 1st day of April, 1942, where, in consequence of injury received by such workman in the discharge of his duties, a pension or gratuity, which would not be payable if such injury were received otherwise, was paid him or, in the case of his death, to any of his

20 Whether members of the police force were also excluded from the Act came up for determination in *Israel Membere v Inspector – General of Police* (1965) LLR 58, where it was held that they were not excluded but that where an injured member of the police force has received compensation under the Police Act, Cap 154, LFN 1958, the receipt of such compensation precluded him from claiming under the Workmen's Compensation Act in respect of the same injury.

21 The words 'eight hundred pounds' were substituted for the words 'four hundred pounds' by s 2(1) of Ordinance No 25 of 1957.

dependants as defined in the 1942 Ordinance, under any other Ordinance or rule providing for the grant of such pension or gratuity.[22]

Under section 5 of the Ordinance, an employer was liable to pay compensation to a workman who suffered personal injury by accident *arising out of and in the course of the employment*. Initially, the Ordinance did not cover injuries by diseases as well as injuries self-inflicted by design. However, in 1950, the Ordinance was amended to allow recovery in cases of occupational diseases as if they were injuries caused by accidents.[23] Thus, a workman who suffered incapacity or death, certified as caused by any disease specified in an order made by the Governor-General in Council, was also entitled to compensation from the employer.[24]

Compensation payable by the employer to an injured workman included compensation for permanent total incapacity under section 7; compensation for permanent partial incapacity under section 9; compensation for temporary incapacity, whether total or partial, under section 11 as well as compensation payable under section 6 to dependant of a deceased workman who was wholly dependent on his earnings. The employer was only absolved from liability where the injury did not incapacitate the workman for a period of, at least, five consecutive days from earning full wages at the work at which he was employed, or where it was proved that the injury to the workman was attributable to the

22 Workmen's Compensation (Employment) Order in Council as amended subsequently by No 23 of 1950 and No 25 of 1957.

23 s 11 of the Workmen's Compensation (Amendment) Ordinance, 1950 (No 23); Workmen's Compensation (Specified Diseases) Order 1966.

24 s 34 of the Ordinance.

serious and willful misconduct of the workman.[25] Nevertheless, where the injury resulted in death or serious and permanent incapacity of the workman, such injury was deemed to have arisen out of and in the course of employment and thus entitled the workman to compensation. This is so notwithstanding that the workman was at the time, when the accident happened, acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such was done by the workman for the purposes of and in connection with his employer's trade or business.[26] However, the injured workman was still not entitled to compensation where it was proved that the incapacity or death was caused by a deliberate self-injury or where the workman had at any time represented to the employer that he was not suffering or had not previously suffered from that or similar injury, knowing that the representation was false.[27]

Although the Ordinance provided some form of compensation to an injured workman or the dependants of a dead workman, it suffered some inherent limitations, especially in the undue restriction of its coverage to a workman whose earnings did not exceed 800 pounds a year.

**(iii) Pension Ordinance 1946**

Another major legislative intervention in social security at this time was the enactment of the Pension Ordinance in 1946, which marked the beginning of payment of pensions and gratuities to retired officers in respect of offices held by them in Her Majesty's service in Nigeria. By section 2(1), the Ordinance was applicable in all the former British West

25 Proviso to s 5 of the Ordinance.
26 s 5 (2) of the Ordinance.
27 s 5 (3)&(4) of the Workman's Compensation Ordinance, 1942.

African colonies stretching from Nigeria through the British Togo land, Gold-Coast (now Ghana), Sierra – Leone and the Gambia. The objective was to encourage and maintain high calibre officials and ensure discipline. Unlike the Workmen's Compensation Ordinance, members of the Armed Forces were included in the Ordinance.[28] Pensions and gratuities may be granted by the Governor-General, in accordance with the regulations contained in the First Schedule to the Ordinance.[29]

Under section 5(1) and (2) of the Ordinance, the pensions and gratuities were to be charged on and paid out of the revenue of the Federation or the Region, as the case may be. Generally, retirement pensions were payable to an officer who had been in the public service of the Federation in a civil capacity for ten years or more, while gratuity may be granted on retirement to every officer, otherwise qualified for a pension, who had not completed the minimum period of public service qualifying him for a pension.[30] No officer, however, had an absolute right to compensation for past services or to pension or gratuity as payment could be reduced or withheld especially, where an officer had been found guilty of negligence, irregularity or misconduct.[31]

In addition, section 17 of the Ordinance made provision for payment of pensions to the mother, widow and each child, under the age of 21 years, up to six children of an officer, who died as a result of injuries received in the actual discharge of his duty without his own default, and on account of circumstances specifically attributable to the nature of his duty while in the public service of the Federation. However, pension payable to the mother of a deceased officer who was a widow at the time of the grant

28 First Schedule, Part VII, reg 30 of the Pension Ordinance, Cap 147, LFN & Lagos, 1958.
29 s 3(1) of the Ordinance.
30 Regs 4 and 5 of the First Schedule to the Pension Ordinance, 1946.
31 s 6(1) of the Ordinance.

ceased where she remarried. Also, a pension granted to a female child ceased upon the marriage of such child under the age of 21 years. It is remarkable that, in making provision for payment of benefits to dependants of an injured worker or a dead worker, the Ordinance took cognizance of the social and cultural peculiarities of Nigeria when it included in the definition of the word 'child', not only a posthumous child or an adopted child, but also a step-child or an illegitimate child born before the date of the injuries, and who was wholly or mainly dependent upon the deceased officer for support.

The enactment of the Pension Ordinance was, no doubt, a significant step towards providing income security to pensionable officers, members of the armed forces, and their dependants in appropriate cases. Other Ordinances enacted by the colonial administration to provide social security for officers in the service of Her Majesty included the European Officer's Pensions (Amendment) Regulations, 1937, applicable to expatriate pensionable officers; and the Pensions (Increase) Ordinance of 16 May 1957.

## 3.0 Post-Independence Initiatives of Nigerian Policymakers

### (a) The Period Between 1961 and 1990

#### (i) National Provident Fund Act 1961

Shortly after Nigeria gained her independence in 1960, the new government, realising the need to create a scheme for private sector workers who were not covered under the Pension Ordinance, enacted the National Provident Fund (NPF) Act, 1961[32] to provide income security for such workers in the event of old-age or invalidity and for their dependants in case of death. To this end, a Fund, called the National Provident Fund,

[32] (No 20).

was established under section 3(1) of the Act, into which all contributions and other monies required or prescribed by the Act were paid and from which all benefits and other payments directed to be paid by the Act were made. The National Provident Fund (Management) Board Act, 1974, in section 1 thereof, established the National Provident Fund Management Board, as an organ of the Federal Government charged with the responsibility for administering the Fund established under the 1961 Act.[33]

'Worker', within the provisions of the Act, generally referred to any person, not being a child, employed in Nigeria under any contract, express or implied, of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise and howsoever paid.[34] This was also held to include not only registered workers, but also casual workers[35] and student on internship or on industrial training or an apprentice.[36]

Unlike the scheme under the Pension Ordinance, which was non-contributory since benefits were paid out of the consolidated revenue of the Federation or the Region, the NPF was a contributory scheme. Thus, workers were required to contribute six per cent of their salaries, subject to a maximum of ₦48.00 in a year.[37] It is noteworthy that the National Provident Fund was more in the nature of a compulsory saving scheme in the sense that, except an employer or a worker was exempted by the

33 *National Provident Fund Management Board* v *John Okwesa Ltd* (1984) FHCLR, 226.

34 s 2 of the NPF Act.

35 *Phoenix Motors Ltd* v *National Provident Fund Management Board* (1993) 1 NWLR (Part 272) 718; *Intercontractors Nigeria Limited* v *National Provident Fund Management Board* (1990) FHCLR 76.

36 *National Provident Fund* v *Johnson & Joe's Chemist Ltd* (1992) 2 FHCLR 299.

37 Third Schedule to the NPF Act 1961.

provisions of the Act[38] from contributing to the Fund, any employer who had in his employment not less than ten workers[39] and who failed to register himself and the workers with the Fund were liable to prosecution for such failure to register or deliver the appropriate contributions.[40]

Benefits payable under the NPF Act included main benefits in respect of age, survivorship and invalidity; subsidiary benefits in respect of sickness; and withdrawal benefits in respect of emigration and withdrawal from the Fund.[41] In the case of main benefits, the amount payable as benefit was the balance of the member's account in the Fund at the date of payment, with accrued interest, after taking into account any sickness benefit drawn; and in the case of a survivor's benefit, estate duty, if any, was deductable before payment.[42] For sickness benefit, the amount payable to a member for the period of his sickness (Sundays excepted) was not to exceed the rate of 36 kobo a day,[43] while withdrawal benefit was limited to the balance of the member's account in the Fund at the date of payment, with accrued interest, after taking into account any sickness benefit drawn.[44] A claimant was, however, barred from withdrawing his entitlement unless he could satisfy the Director that he had not been employed as a worker for, at least, one year immediately preceding the application and that he had attained the age of fifty-five years.[45] By section 21 (3) of the NPF Act,

38 Second Schedule to the NPF Act 1961.
39 s 3, National Provident Fund (Appointed Day) Order, LN 115 of 1961.
40 *National Provident Fund* v *Anambra Cooperative Wholesale Association Ltd* (1986) FHCLR 108.
41 s 21(1) of the Act.
42 s 22, 23, and 24, NPF Act and Fourth Schedule thereto.
43 s 25, NPF Act and the Fourth Schedule thereto.
44 s 27 and 28, NPF Act and the Fourth Schedule thereto.
45 s 28 of the Act.

any benefit may be paid in one amount or, with the approval of the Director, converted and paid as an annuity.

It is regrettable, however, that the Act, despite some of its laudable provisions, was too narrow in its scope and seriously limited in its area of operation.[46] The NPF Act suffered great limitation of scope because it was limited to a small segment of the private sector in the exclusive domain of service of employment and ancillary labour laws without touching any aspect of the more pervasive private sector. The Act was also seriously limited in its focus because it was limited to old age, survivors' and physical invalidity benefits and subsidiary benefits in respect of sickness and withdrawal from the Fund. Moreover, the NPF was not really a social protection scheme and, certainly, not an income security or income maintenance scheme because the benefits were so small as to bear absolutely no relation whatever to the worker's income; Moreover, the lump–sum cash benefit was not a good substitute for lost wages as it did not necessarily guarantee long-term security. Lump sum payment is very susceptible to inflation and is often spent within a few months or years thereby leaving the worker unprotected against destitution afterwards. The main essence of any social security scheme is to provide a means of sustenance for those entitled when they retire or are, for one reason or the other, prevented from working either by reason of illness or disability. Thus, the Nigerian National Provident Fund was not a social security scheme according to minimum international standards which require periodical payment of entitlements of the worker.[47]



46 See also A Emiola, *Nigerian Labour Law* (University Press 1979) 224.

47 Social Security (Minimum Standards) Convention, 1952 (No 102), especially arts 28 and 62 thereof.

### (ii) Labour Act 1974

The Labour Act 1974[48] makes provision for the contingencies of sickness, maternity and redundancy. The protection provided for these contingencies is based on the employer-liability system. Thus, under section 16 of the Act a worker is entitled to wages, up to twelve working days, as sickness benefit from his/her employer in any one calendar year during absence from work caused by temporary illness certified by a registered medical practitioner. Section 54 of the Act, on the other hand, provides for the maternity protection of a woman employed in any public or private, industrial, commercial or agricultural undertaking, or any branch thereof. The section guarantees to a woman employed in such undertaking, the right to leave her work for six weeks before and after child-birth, provided she had been continuously employed by her then employer for a period of six months or more, immediately prior to her absence. Such a woman is also entitled to not less than 50 per cent of the wages she would have earned if she had not been absent. Cash maternity benefit thus covers every woman, irrespective of status or undertaking wherein she is employed.

The provision for sickness benefit, under section 16 of the Labour Act, accord with prescribed minimum international standards in terms of coverage[49] and rate of payment, which is full wages.[50] However, the period for which the benefit is to be paid falls short of, at least, 52 weeks

48 Cap L1, LFN 2004.

49 Articles 19 and 20 of the Medical Care and Sickness Benefits Convention, 1969 (No 130) require that all employees, including apprentice; or prescribed classes of the economically-active population, constituting not less than 75 per cent of the whole economically-active population; or where a declaration is made, prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings be covered. It seems that the manual and clerical grades are large enough in number to make up the 50 per cent required employees. See also art 15 of the Social Security (Minimum Standards) Convention, 1952 (No 102).

50 Art 22 of the Medical Care and Sickness Benefits Convention, 1969 (No 130) prescribes, at least, 60 per cent of the total of the previous earnings of the beneficiary.

prescribed as minimum international standards or the 26 weeks granted as a temporary concession to countries whose economy is insufficiently developed.[51] In respect of maternity benefit, the 12 weeks duration for maternity leave falls short of not less than 14 weeks prescribed by minimum international standards.[52] Similarly, the amount of benefit, which is half pay, falls short of not less than two-thirds of the woman's previous earnings or, of such of those earnings as are taken into account for the purpose of computing benefits, prescribed under minimum international standards.[53] In this respect, it is important to commend the laudable initiative of the Lagos State Government, which has approved the extension of maternity leave, with full pay, for female civil servants to six months, in case of the first two deliveries, whilst subsequent deliveries are to attract only 12 weeks maternity leave. Similarly, in case of male officers, to whom a new baby (or babies in case of multiple births) is born, a 10-day paternity leave has been approved for the first two deliveries, while subsequent deliveries attract no leave.[54]

A variant of unemployment benefit, redundancy payment, is required to be paid by an employer, under section 20 of the Labour Act, to a worker on the termination of the latter's employment on ground of redundancy. Under section 20(1)(c) of the Labour Act, an employer is required to, 'use his best endeavours to negotiate redundancy payments to any discharged worker'. Redundancy, in this section, is defined as 'an involuntary and permanent loss of employment caused by an excess of manpower'.[55] The payment, being a single lump-sum payment, cannot, *stricto sensu,* qualify

51 Art 26 ibid.
52 Art 4(1) of the Maternity Protection Convention, 2000 (No 183).
53 Art 6(3) ibid.
54 S Olufowobi, 'Lagos Okays Six-Month Maternity, 10-Day Paternity Leave' *The Punch* (Nigeria 18 July 2014) 6.
55 s 20(3) of the Labour Act.

as unemployment benefit which is required, *inter alia,* to be a periodical benefit payment of, at least, 50 per cent of the worker's previous wages.[56]

**(iii) Pensions Act 1979**

Another social security legislation passed during this period was the Pensions Act, 1979 with the commencement date of 1 April 1974.[57] The Act repealed the Pensions Ordinance,[58] the Pensions (Increase) Ordinance,[59] and Pensions (Retired and Transferred Officers Employed by Statutory Corporations) Ordinance.[60]

Like its predecessor, the Pensions Act, 1979, was enacted to provide protection in form of special cash benefits as pensions and gratuities against loss of income in the event of old age, death or invalidity. Coverage under the Act extended, not only to civil servants, but also to employees of scheduled statutory bodies and government–owned companies and employees of such other organisations as the Minister of Labour and Productivity may, from time to time, by order determine to be public service for the purpose of the scheme.[61] In contrast to the

56 Art 15 of the Employment Promotion and Protection against Unemployment Convention, 1988 (No 168).

57 Re-enacted as Cap P4 LFN, 2004. See Third Schedule to the Pensions Act, 1979.

58 Cap 147, LFN & Lagos 1958.

59 Cap 147B, LFN & Lagos, 1958.

60 Cap 148, LFN & Lagos, 1958. The right of a person in the public service of the Federation to receive pension and gratuity was also recognised in the 1979 Constitution under s 159 thereof which also provided that such benefits should not be withheld or altered to the disadvantage of such person except to the extent as was permissible under any law. Similar provision was contained under s 190 of the 1979 Constitution in respect of a person who served in the public service of a State. These Constitutional provisions have been re-enacted *mutatis mutandis* in s 173 and 210 respectively of the 1999 Constitution (as amended). Moreover, one of the economic objectives of the State as stated in s 16(2)(d) of the 1979 and 1999 Constitutions respectively is the provision of old age care and pensions to all citizens.

61 Second Schedule to the Pensions Act 1979.

provisions of section 6 of the repealed Pension Ordinance, however, wherein payment of pension and gratuity was considered a privilege, payment of such benefits to an officer on retirement from the public service under the 1979 Act was a right.[62] Officer in this Act meant a person employed in the established grades of public service but did not include officers on temporary or contract appointment.[63] In *Momodu v NULGE,*[64] it was held that pension under the Act was an accrued right of an employee who satisfied the conditions for payment of pension on retirement from service and that the right could not be unilaterally taken away by an employer on a dispute.

The pension scheme like the one under the Pension Ordinance was non–contributory.[65] The statutory retirement age to qualify for benefits under the Act was 60 years.[66] The Minister, however, had the power, under section 4(2) of the Act, to retire any officer from service at any time after he had attained the age of 45 years, subject to three months' notice in writing of such retirement. In this circumstance, such officer was entitled to pension even though he had not reached the statutory age of retirement. In *Joseph Achimugu* v *Hon. Minister of Federal Capital Territory & Anor,*[67] the Court of Appeal considered the provisions of sections 3 (2) (a) and (b), 4 (2) and 24 of the Pensions Act and held that for a public servant to qualify for pension, he must have been in the service for 15 years and aged 45 years at the time of his retirement. In the instant case, where the appellant was 42 years when his employment was terminated by the 1st

62 s 3(1) ibid.
63 s 24 ibid.
64 (1994) 8 NWLR (Part 362) 336 CA.
65 s 2 of the Pensions Act 1979.
66 s 4 (1) ibid.
67 (1998) II NWLR (Part 574) 467.

respondent, he could not be awarded pension. The Court further held that it was entirely erroneous to hold that a person was qualified for pension merely because a court had awarded damages for a period covering the time he would have remained in service had his services not been terminated.

Also, an officer was qualified for pension and gratuity in any of the circumstances listed under section 3 of the Act. These include voluntary retirement after qualifying service of 15 years; or compulsory retirement for the purpose of facilitating improvements in the organisation of the officer's department or ministry so that greater efficiency or economy may be effected. An officer was also entitled to payment where retirement was effected on the advice of a properly constituted medical board certifying that the officer was no longer mentally or physically capable of carrying out the functions of his office; or where an officer was totally or permanent disabled while in the service. Also, an officer was entitled to payment on the abolition of his office; or where he was required by the Federal Civil Service Commission to retire on the ground that his retirement was in the public interest; or where the officer took up appointment in a local government or as a member or head thereof with the prior consent of the Minister, if the Minister was satisfied that such retirement was in the public interest.

The entitlement of the widow(s) and child (ren), to payment of gratuity and pension for life, was assured under section 6 of the Act in respect of an officer, who died in the course of his official duty and without his own fault, and was qualified for pension by length of service. The widow was entitled to pension for life, while unmarried and of good character, at a rate not exceeding one-third of the deceased's accrued pension at the date of his death. Also, a pension, not exceeding one-ninth of the deceased's

last pay, was payable to each surviving child until he or she was 18, up to a maximum of six children or one-sixth of the deceased's accrued pension for each child from the date of the widow's death. A pension granted to a female child ceased upon her marriage under the age of 18years. However, where the deceased was not qualified for pension by length of service, his dependants were entitled to *pro rata* pension calculated at the rate of two per cent per annum of pensionable service based on the deceased's final salary.

Incapacity pension was payable to an officer incapacitated in the course of his official duties and who had not completed the minimum qualifying service and was not, on the termination of his service, eligible for a pension under the Act.[68] Incapacity pension was, however, not payable where the officer, by reason of the injury, was entitled to compensation under the Workmen's Compensation Act.

Death benefit under the Act was in two forms. The first was payable in the event of the death of an officer who was already qualified for gratuity or pension. In this case, the death would be treated as if though it were retirement. The estate of the deceased or designated survivors were thus entitled to gratuity or pension at the appropriate rate but the pension payment was limited to a period of five years from the time of death and may be made either periodically or in one lump sum. On the other hand, where an officer died before the completion of the minimum qualifying period of ten years' service, a death gratuity of one years' salary was payable to his estate or designated survivors.[69]

Apart from the pension scheme established under the Pensions Act 1979, similar schemes were instituted for members of the Armed Forces under

68 s 8 of the Pensions Act.
69 s 5 ibid.

the Armed Forces Pensions Act 1979 and for Judges under the Pensions' Rights of Judges Act 1985.[70]

It is noteworthy that the provisions of the Pension Act 1979 accorded with minimum international standards as regards the qualifying conditions and the form of payment, which was periodical for life. Also, the applicable rates far exceeded the prescribed 40 per cent of previous earnings, at least, for those who satisfied the 35 years of qualifying service.[71] Nevertheless, the Pensions Act 1979 was not sufficiently encompassing to bring Nigeria into the fold of countries providing minimum protection in cases of old-age, death and invalidity. Being a scheme for public servants only, which group constituted just about 10 per cent of the Nigerian population, it fell far short of the minimum coverage required for the purpose, namely, 50 per cent of all employees in the country or prescribed classes of the economically active population constituting not less than 20 per cent of all residents.[72] A lower coverage, constituting not less than 50 per cent of all employees in industrial work places employing 20 or more persons, is only allowed by way of a temporary exception for countries whose economy is insufficiently developed.[73]

**(iv) Workmen's Compensation Act 1987**

Another important legislation that was enacted during this period was the Workmen's Compensation Act, (WCA) 1987.[74] The Act repealed the Workmen's Compensation Ordinance 1958 and re-enacted, substantially,

70 Re-enacted as Cap P5, LFN, 2004.

71 See also First Sch, Table B of the 1979 Pensions Act; arts 28, 29, 65, and 66 of the Social Security (Minimum Standards) Convention, 1952 (No 102).

72 Arts 27, 55, 61, and 67 the Social Security (Minimum Standards) Convention, 1952 (No 102).

73 Arts 3, 27 (d), 55 (d), and 61 (d) of the Social Security (Minimum Standards) Convention, 1952 (No 102).

74 Re-enacted as Cap W6, LFN, 2004.

that Ordinance with significant improvements thereon. For instance, although 'Workman' in section 1 of the Act was defined in like manner as in the 1958 Ordinance, the restriction on coverage to workers whose earnings were below 800 pounds, was removed. Thus, compensation was available to workers in all sectors of the economy, both public and private, whether engaged in manual or clerical work or otherwise. Also, the rate and the method of calculating the periodical payments for temporary incapacity in section 9 of the 1987 Act were much higher and less cumbersome to apply than what was prescribed under section 11 of the 1958 Ordinance.

Under section 3(1) of the Act, a *strict liability* was placed on an employer to pay compensation to a workman who suffered personal injury by, 'accident arising out of and in the course of his employment'.[75] Although no minimum period of employment was required to qualify for compensation in accordance with prescribed international standards,[76] the employer may still be exculpated from liability to pay compensation to an injured workman where the injury was not attributable to an accident. Compensation was also not payable under section 3(2) (a) of the Act, where the injury did not incapacitate the workman for a period of, at least, three consecutive days from earning full wages at the work at which he was employed. The reduction of the waiting period to three days, from the five days requirement of section 5(1) of the 1958 Act, was consistent with the prescribed minimum international standard.[77] Moreover, where the injury to the workman was attributable to the serious and wilful

75 See eg *Smith* v *Elder Dempster Lines Ltd* (1944) 17 NLR 145; *Hannah Ngangkam* v *Strabag (Nig) Ltd* (Unreported) Suit No FSC /130/ 1960 of 17/11/60; *Scandinavian Shipping Agencies Apapa* v *Garuba Ejide* (1965) LLR 247.

76 Art 9(2) of the Employment Injury Benefits Convention, 1964 (No 121).

77 Art 38 of the Social Security (Minimum Standards) Convention, 1952, (No 102) and art 9(3) of the Employment Injury Benefits Convention, 1964 (No 121).

misconduct of that workman or self-inflicted or where the accident did not arise out of and in the course of employment, the employer was absolved from liability.[78] However, where an employer relied on the workman's serious and wilful misconduct as a defence, he must establish that the misconduct was serious and wilful and that the injury was attributable to the alleged serious and wilful misconduct.[79]

The right to compensation by a workman was not limited to 'accidents' as the Act also empowered the Minister of Labour and Productivity, in section 32 thereof, to extend the provisions of the Act to incapacity or death caused by any disease specified in an order made by the Minister.[80] In this circumstance, compensation was payable to the workman as if any disease so specified was a personal injury by accident arising out of and in the course of employment. The 1987 Act provided for four types of compensation and applicable rates. The first was payable to the dependants of a deceased workman whose death resulted from the injury sustained out of and in the course of duty.[81] It is noteworthy that the right of the dependant to payment in this circumstance was derived directly from the statute and not through the workman.

The second was for permanent total incapacity, such as loss of two limbs, loss of both hands or of all fingers and thumbs, loss of both feet, total loss of sight among others.[82] The third was for permanent partial incapacity.[83] A workman suffered from partial incapacity for work where the percentage of the loss of earning capacity was not up to 100 per cent or

78 See, generally, s 3 of the Act.
79 *Johnson* v *Marshall* (1906) AC 409 at 411.
80 See also art 8 of the Employment Injury Benefits Convention, 1964 (No 121).
81 s 4 of the Act.
82 s 5 and Second Schedule to the Act.
83 s 7 of the Act.

more, as specified in the Second Schedule to the Act, and when the injury he had sustained made his labour saleable for less than it would otherwise fetch.[84] In this instance, the injured workman was entitled to a sum equal to 54 months earning according to the degree of incapacitation in relation to total incapacity. An additional sum, amounting to one-quarter of that amount, was payable where the incapacity was of such a nature necessitating the constant help of another person.[85] Generally, for an injured workman to recover compensation for permanent incapacity, whether total or partial, he must establish that he had suffered a permanent injury and that the permanent injury had impaired his earning capacity.[86]

The fourth type of compensation was in respect of temporary incapacity under section 9 of the Act. Temporary incapacity was incapacity which reduced the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity. Apart from the afore-mentioned pecuniary benefits, provision was made for medical services, including any special treatment to the injured workman, at the expense of the employer.[87] The employer was also under obligation to defray any reasonable expenses incurred by a workman within Nigeria or, with the approval of the Federal or State Chief Medical Officer outside Nigeria, in consequence of the accident in respect of medical, surgical and hospital treatment, skilled nursing services and

---

84 By s 41 of the Act, a workman suffered permanent partial incapacity where the incapacity was of such a nature that it reduced the workman's earning capacity in every employment which he was capable of undertaking at that time. See also per Earl Loreburn LC in *Ball* v *William Hunt & Sons Ltd* (1912) AC 496 at 499.

85 s 6 of the Act.

86 *Arnotts Snack products Pty Ltd* v *Yacob* (1985) 155 CLR 171 at 177; *Ball* v *William Hunt & Sons Ltd* (1912) AC 496 at 499; *Birch Bros Ltd* v *Brown* (1931) AC 605 at 626-627; *Wicks* v *Union Steamship Co of New Zealand Ltd* (1933) 50 CLR 328 at 338.

87 s 15 of the Act.

supply of medicines and surgical dressings; the supply, maintenance, repair and renewal of non-articulated artificial limbs and apparatus; and travelling expenses incurred in the course of receiving medical treatment.[88]

All compensation payable under the Act was reviewable by the court, which may, on the application of either party and subject to the provisions of the Act, maintain, increase, diminish or terminate such.[89]

For an injury in respect of which damages were recoverable under the common law and under statute, section 25 gave the injured workman the right to sue for damages accordingly and also to claim compensation under the Act. The statutory scheme for workmen's compensation was not a substitute for the common law right such that the previous remedies remained available for the cases which they covered. However, a judgement in such proceedings, whether for or against the employer, was a bar to proceedings under the Act and a judgement in proceedings under the Act was a bar to proceedings independently of the Act in respect of the same injury. Also, if in an action for damages, the employer was found to be liable, not for damages, but for compensation under the Act, the court was empowered to assess the compensation in accordance with the provisions of the Act in order not to defeat the just expectation of the injured workman.

**(b) Post-1990 Development Strides**

**(i) Nigeria Social Insurance Trust Fund Act 1993**

Generally, the moves for the evolution of social security scheme in Nigeria, in the true sense of the concept, are traceable to the Nigeria

88 s 29 of the Act.
89 s 18 of the Act.

Labour Congress's Charter of demand submitted to the government of former President, Alhaji Shehu Shagari in the early 1980s. A Consultant appointed by the government recommended a scheme that was seen as an 'improvement' on the then existing National Provident Fund. The preparations for the scheme, however, suffered a setback, following the military coup in 1983. However, in 1987, a tripartite committee, headed by the former Nigeria Labour Congress's Deputy General Secretary Bernard Obua, recommended a comprehensive social security scheme to be operated as a special Federal Government parastatal.[90] The outcome of the recommendation was the enactment of the Nigeria Social Insurance Trust Fund (NSITF) Act 1993,[91] which repealed both the National Provident Fund Act, 1961 and the National Provident Fund (Management) Board Act, 1974.[92] The NSITF (General) Regulations was also made in 1994 to give effect to the provisions of the Act.[93]

Coverage under section 10 of the NSITF Act extends to employers and employees of incorporated companies under the Companies and Allied Matters Act and those of partnerships, irrespective of the number of persons employed by them as well as any employment where the number of employees is not less than five. This is further amplified under regulation 1(1) of the NSITF (General) Regulations wherein every employee, who, on or after the commencement of the Regulations, is employed by an employer who has a place of business in Nigeria and is working inside Nigeria; is a citizen of or ordinarily resident in Nigeria; has attained the age of 18 years; and has not attained the age of 65 years on the appointed date, is required to register with the Fund and make

90 K Komolafe, 'Social Security Scheme for Workers May Emerge Soon' *The Guardian.* (Nigeria 9 May 1989) 16; K Komolafe, 'New Social Security Scheme for Workers' *The Guardian* (Nigeria 9 November 1987) 1.

91 Re-enacted as Cap N88, LFN 2004.

92 s 42 of the NSITF Act.

93 The Regulation was made by the Board of the NSITF, after consultation with the Minister of Labour and Productivity pursuant to the powers conferred on it under s 40(1) of the NSITF Act.

prescribed contributions thereto. Regulation 1(2) makes a similar provision covering every employer who has a place of business in Nigeria on or after the commencement of the Regulations.

As a means of ensuring full integration of registered employers and employees of the repealed NPF Act into the new Fund, an employer who, before or on the commencement of the Regulations, was registered as an employer or self-employed person under the repealed NPF Act, was deemed to have been registered under the Regulations.[94] Regulation 13(1), however, empowers the Minister to allow other categories of persons, such as persons who were registered under the Regulations but who are no longer in employment covered by the Regulations, or any other person, to be voluntary contributors to the Fund. Section 11 exempts some categories of persons from registration with the Fund. These include a person employed in the public service of the Federation or a State or Local Government who is entitled to the benefit of any scheme or pension on terms substantially similar to those prescribed by the Pension Act; a person who is entitled to diplomatic or equivalent status under the Diplomatic Privileges and Immunities Act; a person, not being a citizen of Nigeria, who is employed in Nigeria for a period less than six years at a time, if the employee is liable to contribute to or is prospectively entitled to benefits from the social security scheme of any country other than Nigeria or any benefit scheme by virtue of his employment, which would provide such employee with benefits substantially not less favourable than the like benefits to which he would have been entitled to under the Act; and a minister of religion who is engaged in the propagation of their faith. Unlike what is obtainable under the NPF Act, regulation 90 excludes workers in casual employment, employment where an employee earns

94 Reg 2(3) of the NSITF Regulations.

less than the stipulated national minimum wage and employment as a domestic employee in a private household

As the NSITF is operated as a social insurance scheme, employees and employers covered by the Act contributed 3.5 per cent and 6.5 per cent respectively of the employee's basic salaries and wages, subject to a maximum salary of ₦528,000.00 per annum, for the benefit of the employee.[95] Contributions payable under the Act are used to secure benefits against the contingencies of invalidity, old age and death.[96] To be entitled to invalidity pension, regulation 31 requires the employee to have been permanently incapable of working by reason of some specific disease or bodily mental disablement in any occupation, which could reasonably be assigned to a person in view of his strength and ability as much as one-third of what a fit person of similar training and previous occupation; and must have been so certified as such to the satisfaction of the Board and any medical practitioner. Any claimant for invalidity pension must also have, at least, 36 months paid monthly contributions, including 12 months within the preceding 36 months. The invalidity pension is payable for life or until the invalidity ceases.[97]

To qualify for retirement pension, a contributor must have attained the age of 60 years or more and must have retired from employment, or shown to the satisfaction of the Board that he is no longer employed in any work for which remuneration is equal to or exceeds the national minimum wage, and must have not less than 120 months of contributions. The pension is payable, from the date of retirement until the death of the

95 Reg 27 of the NSITF Regulations as amended by the Rates of Contributions (Revision) Order, 2000.

96 s 16 of the NSITF Act; reg 30 of the NSITF Regulations.

97 Reg 31(3) ibid.

beneficiary.[98] A retirement grant, which is a lump sum amount equivalent to final monthly contributions, multiplied by number of months of contributions, may also be paid to a retiree.[99] An employee, who is entitled to retirement benefit may, however, be disqualified from receiving the benefit, for such period as the Board may determine, where he does any work for remuneration which is equal to or exceeds the national minimum wage or fails, without good cause, to answer any reasonable inquiry required by the Board.[100]

Survivor pension is payable to the widow or widower (surviving spouse) or any other dependant of a deceased employee, such as a child under the age of 18 years, where a deceased employee, at the time of his death, was in receipt of invalidity pension or retirement pension.[101] A flat rate lump sum payment of ₦2,000.00 is payable as funeral grant in respect of a deceased employee who, at the time of his death, was in receipt of invalidity pension or retirement pension and in respect of whom contributions have been paid or credited for not less than 60 months of insurable employment.[102] Emigrants, who meet the qualifying conditions for retirement pension before emigration, are entitled to lump sum payments on emigration while those not qualified are entitled to a lump sum, calculated according to the rules for retirement grant to persons who do not qualify for retirement pension.[103]

In general, the NSITF Act, 1993 establishes a modest social security scheme in Nigeria when measured against international standards, norms

98 Reg 35 ibid.
99 Reg 37 ibid.
100 Reg 39 ibid.
101 Reg 41 ibid.
102 Reg 40 ibid.
103 Reg 45 ibid.

and criteria for assessing a modern social security scheme. It is also a significant positive modification of its precursor, the NPF Act, in two major respects. In the first instance, the lump sum benefits of the NPF Act were converted under the scheme, established by the NSITF Act, into periodic monthly pensions to be made to recipients until their death.[104] Secondly, unlike its antecedent scheme, the scheme established under the 1993 Act was based on the social insurance principle by which there is an element of social solidarity with pooling of resources to meet certain contingencies.

**(ii) National Health Insurance Scheme Act 1999**

The provision of medical benefits to the citizenry, within the context of social security, was given legislative backing in 1999, when the National Health Insurance Scheme Act was enacted. Consideration for the introduction of a national health insurance scheme actually started in the 1960s during the First Republic by the Halevi Committee, which passed the proposal through the Lagos Health Bill, but which was unfortunately truncated. The call for the introduction of a national health insurance, however, became more vigorous in the 1980s for several reasons amongst which were (i) the global slum in oil prices which greatly affected Nigeria's major source of income, such that government could no longer afford to provide free healthcare services for the citizens; (ii) the Structural Adjustment Programme that was introduced in 1986 which adversely affected the Federal Government's budgetary allocation to the health sector; and (iii) the excessive dependence and pressure on government health facilities and the general poor state of the nation's health care services.[105] Also worthy of note were the activities of some pressure groups, especially, the Nigerian Medical Association which, in

[104] Regs 32, 35, 41 ibid.

[105] Anon, 'Celebrating the NHIS at 10' *The Guardian* (Nigeria 5 October 2009) 76.

pursuance of adequate health services for the masses, advocated for a health insurance scheme, which it thought had become necessary as a result of dwindling government resources.[106] The national health insurance scheme was also seen as a new and radically different approach to obtaining adequate funds for health care delivery in the country and as a means of effectively integrating private health facilities in the nation's healthcare delivery system.[107]

Consequently, a special committee, headed by Professor Diejomoah, which was set up by the Federal Government in 1984, recommended the setting up of the national health insurance scheme. This was followed in 1985 by the Report of the Committee on National Health Review, headed by Mr. L. Lijadu, which declared that health insurance was viable in Nigeria option. The 1988 report of another committee known as Harmonisation Committee, headed by Dr. E. Umez-Eronin, set out the modality for the operation of the scheme, while a technical co-operation project agreement on the subject was entered into by Nigeria with the International Labour Organisation and the United Nations Development Programme in 1991 for purposes of planning and implementing the scheme.[108] A National Health Summit held in 1995 thereafter, endorsed the need to set up the national health insurance scheme for the country. The Scheme was finally launched in October 1997 and its enabling law, the National Health Insurance Scheme (NHIS) Decree 1999, No. 35, was promulgated in July 1999. The Decree (now Act) was, however, put in



106 B Irabor, 'Health Insurance Scheme: Save Today for Tomorrow's Treatment' *National Concord* (Nigeria 23 July 1984) 5; Anon, 'Set Up Health Insurance Plan – Don' *Daily Times* (Nigeria 28 June 1982) 2; Anon, 'Health Insurance Scheme Advocated', *Daily Sketch* (Nigeria 2 April 1984) 16.

107 Anon, 'Funding Teaching Hospitals: Don Backs Insurance Scheme' *Daily Sketch* (Nigeria 20 June 1984) 17.

108 F Adeyemi, *Collaboration of Insurers in Nigeria* (Nigerian Insurers Association 1996) 40.

abeyance until 6 June 2005, when the scheme was re-launched by the former President, Olusegun Obasanjo. The re-launch finally put into operation the enabling law starting with the employees in the Federal civil service and parastatals.

The Act, in section 1 thereof, establishes a contributory health insurance scheme to which every employer, who has a minimum of ten employees, together with every person in his employment, pays contributions for the purpose of providing health insurance, which shall entitle insured persons and their dependants to the benefits of prescribed good quality and cost effective health services.

The objectives of the scheme include ensuring that every Nigerian has access to good health care services; protecting families from the financial hardship of huge medical bills; limiting the rise in the cost of health care services; ensuring equitable distribution of health care costs among different income groups; maintaining high standard of health care delivery service within the scheme; ensuring efficiency in health care services; improving and harnessing private sector participation in the provision of health care services; ensuring adequate distribution of health facilities within the Federation; ensuring equitable patronage of all levels of health care and ensuring the availability of funds to the health sector for improved services.[109]

By section 16(1) of the NHIS Act, coverage is, in principle, restricted to any employment in which the employer has a minimum of ten employees in his employment. This basically implies that the Act covers employees in the services of the Federal, States and Local Governments as well as those in private sector organisations having, at least, a minimum of ten

[109] s 5 of the NHIS Act.

employees. Members of the Armed Forces, the Nigeria Police Force, Nigeria Customs Service and the Nigeria Immigration Service are also covered by the Act. The Act, in section 17(3) thereof, however, gives allowance for those not ordinarily covered by the scheme to register as voluntary contributors.

The scheme is based upon the social insurance principle. As such, under section 17 of the Act, an employer may, together with his employees, register under the scheme and pay wage-related contributions, at such rate and in such manner as may be determined, from time to time, by the Governing Council. Contributions are made through designated Health Maintenance Organisations (HMOs) into a Fund established under section 11 of the Act for that purpose. Thus, unlike the fixed contribution rates of the NSITF Act, contributions payable under the scheme may vary according to means for required healthcare service.[110] However, the contributions of every enrolee ordinarily cover healthcare benefits for such enrolee, a spouse and four biological children below the age of 18 years. More dependants of the enrolee or a child above 18 years are covered on the payment of additional contributions from the principal beneficiary.[111] In line with best global practices, contributions of security personnel afore-mentioned and such other Federal Uniformed Service, as the Minister may by Order in the Gazette specify, are to be paid by the Federal Government.[112]

Generally, in consonance with article 13 of the Medical Care and Sickness Benefits Convention, 1969, a basic package of healthcare benefits is defined under section 18 to include defined elements of

[110] s 16(2) and 48(2) of the NHIS Act.
[111] NHIS Operational Guidelines <www.NHIS.gov.ng> accessed 23 April 2017.
[112] s 44 of the NHIS Act.

curative care; prescribed drugs and diagnostic tests; maternity care for up to four live births for every insured person; preventive care, including immunisation, family planning, ante-natal and post-natal care; consultation with defined range of specialists; hospital care in a public or private hospital; eye examination and care excluding test and actual provision of spectacles and a range of prosthesis and dental care as defined. Enrolees are given the freedom to consult any Health Care Practitioner (HCP) of their choice to access the available healthcare services, provided such HCP is registered by the scheme under section 18 of the Act.

**(iii) Pension Reform Act 2004 and 2014**

In 2004, the Pension Reform Act (PRA) was enacted with the objectives of establishing a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the public service of the Federation, the Federal Capital Territory, and the private sector; making provision for the smooth operations of the contributory pension scheme; ensuring that every person who worked in any of the afore-mentioned public service or private sector receives his retirement benefits as and when due; and assisting improvident individuals by ensuring that they save in order to cater for their livelihood during old age.[113] The Act enthroned a new pension scheme called *'defined contribution scheme'* as opposed to the *'defined benefit scheme'* of the NSITF Act 1993.

The PRA 2004 was repealed in 2014[114] and a new PRA, which substantially re-enacted the provisions of the repealed Act with a few other provisions to address some of the gaps identified in the implementation of the PRA 2004, was enacted. For instance, the new Act

[113] s 2 ibid.
[114] s 117 of PRA 2014.

provides for the enhancement of the regulatory and enforcement capacity of the National Pension Commission and the protection of pension fund assets. Provision was also made for unlocking the opportunities for the deployment of pension assets for national development through proper investment in appropriate instruments, such as vital infrastructure and real estate development.[115] Furthermore, the new Act provides for the adoption of the scheme by States and Local Governments,[116] provides for an upward review of the minimum rate of pension contributions from 15 per cent to 18 per cent,[117] creates new offences and provides for stiffer penalties for any contravention of the provisions of the Act, especially for offences relating to mismanagement and diversion of pension funds.[118]

The enactment of the PRA in 2004 marked the beginning of a more progressive era in social security system in Nigeria as it brought in its wake fundamental reforms, especially in retirement benefit programmes. Like in several other countries where pre-funded retirement schemes have been introduced, the PRA was enacted in 2004 basically to address the fiscal challenges that were encountered with the earlier pension scheme as well as challenges associated with demography and the natural process of aging. The erstwhile public service pension scheme, under the repealed Pensions Act 1979, was largely unfunded and wholly dependent on highly unpredictable and unsteady budgetary allocations. The yearly budgetary allocation for pensions then was one of the most vulnerable items in

115 s 85 and 86 ibid. As at March 2014, the fortune of the Nigerian pension system had transited from a deficit of about N2 trillion ($ 12.9 billion) in 2004 to accumulated pension assets of over N4.2 trillion ($27.2 billion) with the projection that the pension assets would hit N16 trillion ($100bn) in 2034 – E Boyo, '2014 Pension Act: Not Yet *Uhuru* for Pensioners' *The Punch* (Nigeria 14 July 2014) 95; I Onuba, 'Pension Assets to Hit N16tn in 2034 – FG' *The Punch* (Nigeria 8 July 2014) 31.

116 s 2 of PRA, 2014.

117 s 4 ibid.

118 s 99-104 ibid.

budget implementation with the result that the pensions' liability of the government, as at year 2004 when the Act was enacted, was estimated at about two trillion Naira)[119] Affected pensioners cut across every sector of labour – from professors in the academia to railway workers.[120] The huge pension liabilities were attributable to failure of government over the years to fulfill its obligations to its pensioners because of non-availability of funds, the sheer magnitude of the debt burden and the lack of effective management system. The frustration experienced by claimants in pursuing their claims for many years led to the untimely death of many. On the challenge of demography, as at 2004, the pensioners, in some government agencies, had outnumbered active workers thereby putting excessive pressure on the then pension scheme. The implementation of the new pension scheme was phased, starting with the Federal ministries and related agencies in July 2004. The private sector was allowed to commence the implementation of the scheme in January 2005 to allow for adequate planning and further sensitisation.

In order to successfully implement the harmonisation objective of both the public and private retirement programmes, the Pension Act 1979 was repealed,[121] while the NSITF Act is deemed amended in all particulars to bring it in full compliance with the Act.[122] Consequently, section 42 of the repealed PRA 2004 mandated the NSITF to establish a company to

119 M Okwe, 'Government Scraps Gratuity Scheme, Owes Pensioners N2trillion' *The Guardian* (Nigeria 28 September 2004) 7. By 2006, the arrears owed pensioners by government had risen to ₦1 trillion – M Osunde, and H Oliomogbe, 'Government Owes Pensioners N1trillion' *The Guardian* (Nigeria 30 January 2006) 1.

120 See eg Editorial, 'Retired Professors' Unpaid Benefits' *The Guardian* (Nigeria 10 February 2006) 12; P Saduwa, 'Railway Pensioners Petition Obasanjo Over Arrears' *The Guardian* (Nigeria 15 August 2004) 5; Anon, 'Railways' Pensioners Protest Non-Payment Of Arrears' *The Guardian* (Nigeria 28 September 2004) 4.

121 s 99 of PRA 2004 (s 117 of PRA, 2014).

122 s 71(3) of PRA, 2004 (s 84(3) of PRA, 2014).

undertake the business of a Pension Fund Administrator (PFA), in accordance with the provisions of the Act, to compete with any other organisation in the private sector that is licensed as such. In line with the tenor of the PRA therefore, the NISTF was required to open a Retirement Savings Account (RSA) for each contributor or beneficiary of the contributions made under the NSITF Act, into which was computed and credited, the funds contributed to NSITF by such contributor, together with any attributable income thereof. All pension funds and assets held and managed by the NSITF were also expected to be transferred to a Pension Fund Custodian (PFC) under the direct supervision of the National Pension Commission (PENCOM).[123] Furthermore, a transitional period of five years was given to the contributor or beneficiary under the NSITF Act to select the pension fund administrator of his/her choice for the management of the pension fund standing to his credit.[124] Consequently, anybody who was then contributing to the NSITF pension scheme or having his account with the NSITF was expected to continue until 2009. The five-year transitional period was also given to enable NSITF stabilise, monetise and liquidate most of its assets in order to be able to pay off contributors who may wish to withdraw their funds.[125]

Under the current dispensation, retirement benefits to any person, who contributed any funds under the NSITF Act, and has retired before the commencement of the PRA, are payable in accordance with the provisions of section 7 of the PRA 2014,[126] which provides for a programmed withdrawal or lump sum payment, in accordance with the

123 By April 2007, the NSITF had transferred assets, in excess of N54 billion, to Trust Fund Pensions Plc established by the NSITF in accordance with the provisions of section 42 of the repealed Pension Reform Act, 2004 – D Fanimo, S Akhaine and I Abdusalami, 'Pensions ₦600billion Contribution Excites Minister, PENCOM' The *Guardian* (Nigeria 17 April 2007) 31.

124 s 42(3) of PRA 2004.

125 P Egede, 'The Place of NSITF in the New Pension Act, by Rufai' *The Guardian* (Nigeria 4 August 2004) 13.

126 s 4 of PRA 2004.

rules and regulations of PENCOM. Where it is a lump sum withdrawal, the balance in the account must be sufficient to procure a programmed fund withdrawals or annuity for life, in accordance with extant guidelines issued by PENCOM from time to time. Although the PRA 2004 (now PRA 2014) has significantly covered the benefit structure of the NSITF Act, there is still an organic linkage between the two laws in view of contributors exempted from the provisions of the PRA. 2014. These include existing pensioners, deferred pensioners and those with three years to retire as at 1 July 2004.[127]

Survivors' benefit under the NSITF Act is derivable from the life insurance policy, which every employer is expected to maintain in favour of the employee, while in employment, for a minimum of three times the annual total emolument of the employee.[128] The proceeds of the policy, together with the balance in the RSA of the deceased employee, constitute survivors' benefits payable to dependants.[129]

Invalidity pension or invalidity grant payable under the NSITF Act has also been modified by section 16 of the PRA 2014,[130] which provides that any employee, who is no longer mentally or physically capable of carrying out the functions of his office, may be retired with his full entitlements under the Act. Thus, unlike the NSITF Act requirement of a minimum period of 36 months' contribution, entitlement to invalidity benefit under the PRA is not so dependent since the RSA is personal to the employee.



127 s 8 of the repealed PRA 2004 (s 5 of PRA 2014).
128 s 9(3) of PRA, 2004 (s 4(5) of PRA 2014).
129 s 5 of PRA 2004 (s 8 of PRA 2014).
130 s 3 of the repealed PRA, 2004.

It is remarkable that, in addition to the statutory responsibility of operating a pension scheme for its contributors, section 84 of the PRA, 2014[131] has also authorised the NSITF to provide every contributing citizen social security insurance services in accordance with the provisions of the NSITF Act, 1993. The intended social security insurance services to be provided by the NSITF are, however, yet to be properly defined by relevant authorities. The rates of contribution payable under NSITF Act, 1993 have also been substantially modified by the PRA 2014 which now requires the employer and the employee to contribute ten per cent and eight per cent respectively of the monthly emoluments of the employee in favour of the employee.[132] Also, the PRA in section 4(3) thereof also gives an employee the freedom to make voluntary contributions to his RSA in addition to the total contributions being made by him and his employer. Also, unlike the NSITF Act which places a ceiling on the insurable earning of the employee on a maximum of ₦528, 000.00,[133] there is no such provision under the PRA. Furthermore, employers and employees can, by mutual agreement, contribute above the prescribed contributions.[134]

**(iv) Employees' Compensation Act 2010**

The enactment of the Employees' Compensation Act (ECA) in 2010 marks another milestone in the development of social security laws in Nigeria. The Act repealed the Workmen's Compensation Act (WCA) 1987.[135]

131 s 71(3) ibid.

132 s 4 of PRA 2014. Hitherto, s 9 of the repealed PRA 2004 required equal rate of contribution fixed at seven and one-half per cent for employees and employers respectively in favour of the employee.

133 NSITF Act, 1993, Insurable Earnings (Revision) Order 2000.

134 s 4(2) of PRA 2014.

135 s 72(1) of the ECA 2010.

The general objectives of the Act, as spelt out in section 1 thereof, are to, *inter alia,* provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment, provide rehabilitation to employees with work-related disabilities and establish and maintain a solvent compensation fund.

Pursuant to these objectives, the Employees' Compensation Fund (hereinafter referred to as 'the Fund'), into which all moneys, funds or contributions by employers are to be credited, is established under section 56 of the Act. The establishment of the Fund is very significant in the landscape of work injury compensation programme in Nigeria because it has converted the employer-liability system of the old law to a social insurance programme in line with global best practices.[136] Apart from the fact that the employer-liability scheme was not based on the principle of solidarity, there was the inherent risk of an employer becoming insolvent and not being able to pay compensation to an injured workman. With a social insurance programme therefore, this risk is significantly reduced. The injured worker is assured of being adequately and promptly compensated from the Fund, even where the employer becomes insolvent.

Coverage under the Act is more encompassing than what obtained under the repealed WCA as the Act covers all employers and employees in the public and private sectors including domestic servants, apprentices and

[136] About 29 countries in Africa including, Algeria, Benin, Burkina-Faso, Burundi, Cameroon, Cape Verde, Chad, Cote d'Ivoire, Ethiopia, Gabon, Guinea, Madagascar, Mali, Mauritania, Mauritius, Niger, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sudan, Togo and Tunisia, have since converted their erstwhile employer liability system of compensation to social insurance. See Social Security Administration and International Social Security Association, 'Social Security Programs Throughout the World: Africa' (Office of Research, Evaluation and Statistics, 2017) *passim.*

casual workers.[137] The only categories of workers excepted are members of the armed forces of the Federal Republic of Nigeria other than persons employed in a civilian capacity.[138] In line with the International Labour Organisation's Income Security Recommendation 1944, which requires that employers should be made to bear the entire cost of compensation for employment injury,[139] compensation under the ECA is basically financed by employers through the payment of prescribed assessments based upon estimates of the employer's payroll for the relevant year as well as the estimate of the risk factor of the class of industry in which the employer operates.[140]

Also, in line with Article 9(1) of the Employment Injury Benefits Convention 1964,[141] the ECA has made provision for two categories of benefits namely, monetary compensation for lost wages and health care services and disability support. Unlike what obtained under section 3(2)(a) of the WCA, wherein the injured workman must have been incapacitated for a minimum period of three days before he could be entitled to compensation, there is no such requirement under the ECA as compensation is payable under section 7(3) thereof from the first working day following the day of the injury. The monetary aspect of the compensation has five components. The first is the dependant's benefit payable to a person that is wholly dependent upon the deceased employee.

137 s 2(1) and 73 of the Act.

138 s 2(3) of the Act.

139 (No 67); para 26(5) of the Income Security Recommendation, 1944.

140 Part VI, especially, s 33 – 49 of the ECA 2010.

141 (No C121). The Article requires the provision of medical care and allied benefits in respect of a morbid condition and cash benefits in respect of incapacity for work resulting from a morbid condition and involving suspension of earnings as defined by national legislation; total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and the loss of support suffered as the result of the death of the breadwinner by prescribed categories of beneficiaries.

Unlike the repealed WCA,[142] section 17 of the ECA provides for a more comprehensive and explicit guidelines concerning the categories of dependants to whom compensation is payable and the scale of such compensation. The amount of benefits payable to dependants generally varies according to the age of the surviving spouse as well as whether the surviving spouse has a child or children to cater for. In general, however, the benefits, which are to be split among the eligible survivors, cannot exceed the amount which would have been payable to an employee if he had suffered permanent total disability, which is 90 per cent of the employee's remuneration. Also, the scale of compensation set out in Part IV of the Act to dependant(s) of a deceased employee, has remedied the lacunae in the repealed WCA and has generally conformed to prescribed international standards in terms of quantum of the compensation as well as the mode of payment. Compensation, which could be as high as 90 per cent of the employee's monthly remuneration, is in line with Article 67 of the Social Security (Minimum Standards) Convention 1952 which requires that, benefit payable to survivors of an employee who died as a result of occupational injury or disease should not be less than 40 per cent of the employee's earning to a standard beneficiary consisting of a widow with two children. Also, the mode of payment, which is now to be periodical, is consistent with Article 18 of the Employment Injury Benefits Convention, 1964 which requires that the cash benefit, in respect of the death of the breadwinner, should be a periodical payment to a widow as prescribed; a disabled and dependent widower; dependent children of the deceased; and other persons as may be prescribed.



142 s 4 of the WCA merely provided that the dependant of a deceased employee wholly dependent on his earning was entitled to a sum equal to 42 months' earnings while a dependant partly dependent was entitled to a sum not exceeding the amount payable to a dependant wholly dependent on such employee, as may be determined by the court to be reasonable and proportionate to the injury to the said dependant.

The second is payable in case of permanent total disability. Under section 21 of the ECA, an employee, who suffers permanent total disability from accident or disease arising out of and in the course of employment, is entitled to a monthly compensation that is equal to 90 per cent of his/her remuneration. Again, the periodical payment as well as the rate of compensation is in line with the prescribed international standards[143] and is also a reform of the WCA wherein such an employee was only entitled to compensation of a sum equal to 54 months' earnings and an additional sum amounting to one-quarter of that amount where the incapacity was of such a nature necessitating the constant help of another person.[144]

The third is the permanent partial disability or disfigurement benefit. By the combined provisions of section 22(1) and (2) of the ECA, where an employee suffers permanent partial disability from an injury, the NSITF Management Board[145] is required to estimate the impairment of earning capacity from the nature and degree of the injury and pay the employee compensation, to be determined and calculated in accordance with the Second Schedule, which directly correlates the nature of the impairment to the amount of compensation.[146] Again, in contrast to the lump sum

143 Arts 36 and 67 of the Social Security (Minimum Standards) Convention, 1952 (No 102). Art 67 actually recommends payment of 50 per cent of employee's earnings to a standard beneficiary of a man with wife and two children in case of incapacity for work arising from employment injury.

144 s 6 of the repealed Workmen's Compensation Act, 1987.

145 The NSITF Management Board, established under s 2 of the NSITF Act, Cap N88, LFN 2004 is vested, under s 2(2) of the ECA, with the power to implement the Act and the Fund established thereunder.

146 'Impairment' is a medical definition of the degree of loss of anatomy or function of a body part or system while 'disability' is a legal definition of the degree to which an employee's impairment limits his ability to perform work. See Gregory P Guyton, 'A Brief History of Workers' Compensation' (1999) 19 Iowa Orthopaedic Journal 106 – 110 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC188620> accessed 15 April 2015.

compensation of the repealed WCA,[147] compensation under the ECA, which is equal to 90 per cent of an estimate of the loss of remuneration resulting from the impairment is payable periodically. The rate and mode of payment of compensation meet with the prescribed international standards, which require that a periodical payment of, at least, 50 per cent of lost wages be made to a standard beneficiary consisting of one man with wife and two children.[148] It is noteworthy that under section 28 of the ECA, the receipt of the periodical payment for permanent total disability or permanent partial disability by an employee does not prejudice the right of such employee to receive any entitlement, such as retirement benefits, under the Pension Reform Act, 2014.

The fourth is the temporary total disability benefit payable under section 24 in any case that an employee suffers temporary total disability from an injury, and which disability does not last for a period of more than twelve months. In this instance, the NSITF Board is given the discretion to pay the employee compensation of a lump sum in accordance with the Second Schedule to the ECA or any regulation to be made by the Board pursuant to section 22(3) of the ECA.

The fifth is payable under section 25 in respect of temporary partial disability. Thus, if a temporary partial disability results from an employee's injury, and the disability does not last for more than twelve months, the Board is given the discretion to pay the employee compensation of a lump sum in accordance with the Second Schedule or any regulations made thereto. The maximum compensation payable in respect of any injury is 90 per cent of the employee's monthly

147 s 7 of the repealed WCA.

148 Art 36(2) and art 67 of the Social Security (Minimum Standards) Convention, 1952 (No 102) and art 14 of the Employment Injury Benefits Convention, 1964 (No 121).

remuneration. As such, all payments are dependent upon a calculation of an employee's monthly remuneration, which has been defined in section 73 to include basic wages, salaries or earnings, designated or calculated, capable of being expressed in terms of money and allowances, which include rental, transport, meals and utility or other allowances, as may be determined by the NSITF Board, from time to time. The wide definition given to an employee's monthly remuneration is, no doubt, geared towards ensuring that an injured employee or dependant of a deceased employee receives benefits which correlate with actual loss that would enable sustainability of previous standard of living.

Apart from these pecuniary benefits, section 26 has also made provision for health care and disability support that are related to the employment injury. Thus, the NSITF Board is empowered to provide for the injured employee, any medical, surgical, hospital, nursing and other care or treatment; transport, medicines, crutches and apparatus, including artificial members, that it may consider reasonably necessary at the time of the injury, and thereafter during the disability, to cure and relieve from the effects of the injury or to alleviate those effects.

A commendable reform in the Act is the provision for vocational rehabilitation aimed at regaining the capacity of the employee to earn a living under section 16 of the ECA. The purpose of rehabilitation is to generally promote the ability of persons with disabilities or diminished working capacity to cope with their work and to support their re-integration into gainful employment, social functions and independence. These provisions are in line with global best practices[149] as well as Article

[149] In Germany, Finland, and the United States of America for example, work injury benefit schemes include provision for vocational support and rehabilitation of the injured workman. See K Anifalaje,

26 of the Employment Injury Benefits Convention, 1964, which requires the provision of rehabilitation services designed to prepare a disabled person, wherever possible, for the resumption of his previous activity, or if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity.[150]

## 4.0 Conclusion

By and large, the Nigerian policymakers have continually striven to strengthen the social security laws in Nigeria by ensuring that their provisions are *in tandem* with prescribed minimum international standards and global best practices. Nevertheless, there is a need for further reform of some of these laws in order to make them more relevant and responsive to the needs of the society and for them to be more universally competitive in terms of financing, coverage and available benefits. A study of these laws has revealed that the laws, with the exception of the *Employees' Compensation* Act 2010, are mainly targeted at workers in the formal sector of the economy. The social insurance scheme embedded in these laws is of no advantage to the large majority of Nigerians, who are largely in the informal sector of the economy and cannot, therefore, make the required regular contributions to such schemes. More importantly, there is a clarion need to have more social assistance-based schemes, financed from the general revenue, to provide the much-needed social safety-net to the less-privileged and vulnerable members of the society. Limiting social security coverage to those in the formal sector of the economy is clearly a vestige of colonialism from which the independent Nigerian State must extricate herself in view of the constitutional provision which enjoins the State to make the security and

'Strides in Reforms of Workmen's Compensation Law in Nigeria' (2009) 1(1) Babcock University Socio-Legal Journal 123-124.

150 See also art 35 of the Social Security (Minimum Standards) Convention 1952 (No 102).

welfare of the citizenry the primary purpose of government.[151] Moreover, it is high time for Nigeria to avail herself of the window of opportunity provided under section 84(2) of the Pension Reform Act, 2014 to introduce and implement unemployment benefit, non-occupational disability benefit and family allowances, which are yet to be included in the social security laws of the nation.



[151] s 14(2)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).