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ADDIS ABABA UNIVERSITY
THE SCHOOL OF GRADUATE STUDIES
FACULTY OF LAW AND GOVERNANCE

***Private Organization employees' Pension Fund Administration in
Ethiopia: Current Challenges and Possible Reforms in Light of the Private
Pension Proclamation, No 715/2011***

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Advisor: Fikadu Petros (Assistant Professor)

May 2020
ADDIS ABABA
ETHIOPIA

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**A Thesis submitted to Addis Ababa University, the school of Graduate Studies,
Faculty of Law and Governance in Partial fulfillment of the Requirements for
the Degree of Master of Laws (LL.M) in Business Law**

May 2020
ADDIS ABABA
ETHIOPIA

Declaration

I, the undersigned, declare that this thesis is my original work, and has not been presented for a degree in any other University, and that all sources of materials used for the thesis have been fully acknowledged.

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Approval Sheet by the Board of Examiners

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Submitted, to Faculty of Law and Governance Addis Ababa University, in
partial fulfillment of the requirements of LLM Degree (Business Law)

By: Zengezgier Abza

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Abstract

Societies at all levels recognize the importance of establishing systems which will ensure loss of income in a situation when unforeseen circumstances happen such as incapacity, old age, unemployment and the death of an employed person. In order to tackle such challenges, new comprehensive and workable social security system is necessary. So countries of the globe have developed different types of social security system according to their factual situations but pension is the main one. Formerly the administration and regulation of pension is controlled by governments alone. However, currently countries are reforming their monopolistic management of the pension fund and shifting the responsibility to the private sector by retaining only the regulatory role. The reasons of the reform are due to inefficiency, non political neutrality, less national saving, less quality service and the likes in the state management.

Ethiopia also established its own social security system in 1961 in the public servant sector, since 2011 it established the private organization employees' social security pension system. Currently both the public and the private sector pension funds are administered by the government. However, there are challenges with the administration of the pension fund in private organization employees' social security Agency, and complains are arising from stakeholders to this regard.

Thus this research is aimed to show the challenges in relation to the administration of the pension fund in the private organization employees' social security Agency. The study used doctrinal and empirical methods and employed secondary data from books, reports, journals, articles and internet sources as well as primary data from interviews. Interviews were conducted in government institutions. Different Ethiopian legislations which have direct relation with the matter were assessed.

In the process, issues like challenges in relation to, the investment of the fund, amount of retirement, decision on the benefit of the pensioners, in collection of the fund and in the legal provisions are discussed. Finally possible reforms are indicated that privatizing the pension fund management is crucial to attain the objectives of the pension. In so doing the structural organization of the private companies which participate on the sector, investment diversification, instruments for the regulation of the privatization pension fund investment are indicated.

Chapter one

1. Introduction

1.1 Background of the Study

Societies at all levels recognize the importance of establishing systems which will ensure loss of income in a situation when unforeseen circumstances happen such as incapacity, old age, unemployment and the death of an employed person. Loss of strength to work and earn income resulting from old age is also a natural phenomenon. It is also a fact that a person may lose his means of income when he is unable to work for other reasons than old age. During this time the person and including his/her dependents face harsh living conditions because their means of survival has come to an end. So in order to tackle such challenges, new comprehensive and workable system is necessary. This is also emphasized by the International Labor (Organization's) Conference, on its 100th Session; saying that, there is now a clear need for the adoption of new complementary approaches to face such challenges mentioned above for the future policy choices.¹ In the conference also stated that, these possible new approaches will promote continuity, coherence and sustainability, and as further developing social security based on the unwavering principles of social justice, fairness and solidarity.² In other discussion of ILO it is mentioned that, a large majority of the global population (around 80 percent) lives in conditions of social insecurity, i.e. they have no access to formal social security beyond the limited possibilities of relying on families, kinship groups or communities to secure their standard of living. Among these 80 per cent, 20 percent live in abject poverty – the cruelest form of insecurity. While the global poverty headcount might slowly improve, poverty and social insecurity remain rampant and stagnant in many parts of the world, most notably in Africa.³ As a solution it is suggested that, it is time for a renewed campaign by the ILO to reform and extend social security coverage to all those in need of such protection in order to overcome a fundamental social injustice affecting hundreds of millions.⁴

Social security is important for developments like, social security measures by preventing and alleviating poverty and by making the benefits of economic development more equitable enhances

¹ Social security and the rule of law, “*International Labour Conference, 100th Session*”, Geneva, 2011, p. 1

² Ibid

³ *Social security for all, Investing in global social and economic development. A consultation. Issues in Social Protection; Discussion Paper 16* Geneva, International Labour Office, 2006 p.7 available at https://www.unicef.org/socialpolicy/files/Social_security_for_all.pdf

⁴ Ibid

peace, stability and social cohesion. Providing social security is one of the most effective policies that a state can implement to gain legitimacy and to provide stability.⁵

A social security is also a human right issue as stated by Article 22 of the Universal Declaration of Human Rights which states: “everyone, as a member of society, has the right to social security” and Article 25 formulates it in a more precise way as “...the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.⁶ Article 9 of the international convention on economic, social and cultural rights also states “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”⁷

Pension is one of the social security programs in the modern world. It can be defined as, a benefit paid to a person who is considered as retired from active service provision after serving for certain stipulated time duration, or after reaching a prescribe age at regular bases by a state.⁸ World Bank policy research report also describes pension scheme as old age, retirement, survivors, death, and invalidity-disability payments based on past contribution records plus noncontributory, flat universal, or means-tested programs specifically targeting the old.⁹

Juan Yermo, who is a writer on tax and pension also on his part described pension as a social security scheme used to facilitate to the plan members and beneficiaries with an income after retirement.¹⁰ He added also that, pension has an explicit retirement objective and it may offer additional benefits, such as disability, sickness, and survivors' benefits.¹¹ So from the definitions it is possible to infer that, pension is a social security that an employer or government provides benefit to its former employees during the time after their respective retirements or other contingencies.

The fund which is collected from pension is administered in different ways that is either publicly or privately. Currently countries are changing their old publicly managed pension system to privately managed one and in this regard different reforms are carried out. The prevailing direction of reforms is shifting the administration of pension funds from public to private in order to attain the objectives set to

⁵ *Can low-income countries afford basic social security? Social security policy briefings; Paper 3* International Labour Office, Social Security Department – Geneva: ILO, 2008, p. 2 available at, https://www.unicef.org/socialpolicy/files/Can_low_income_countries_afford_basic_social_protection.pdf

⁶ Universal Declaration of Human Right convention, 1948.

⁷ International Convention on Economic, Social and Cultural Right, 1966

⁸ Olivia S. Mitchell and Gary S. Fields, “*Designing Pension Systems for Developing Countries*”, 1996, Wharton School, University of Pennsylvania, p. 2

⁹ *Averting the Old Age Crisis*, A World Bank Policy Research Report, Published for the World Bank Oxford University Press, available at, <http://documents.worldbank.org/curated/en/973571468174557899/pdf/multi-page.pdf>

¹⁰ Juan Yermo, “*Revised taxonomy for pension plans, pension funds and pension entities*”, OECD, October 2002, p-2

¹¹ Ibid

the pension fund. These new pension reforms have revolutionized welfare state practices in a growing number of countries around the world. They overturn many of the core premises of traditional social security type pension systems that have dominated state social security policy.¹²

Ethiopia has its own pension system since 1961. However, the private and the public sector pension funds are still administered by the government. This pension system like other financial institutions, is one of the strategically important areas in the state policy, and therefore requires reform, as currently countries of the globe are doing it in a better administration and ongoing control through an authorized body to ensure its soundness and safeguard to hit its target. So, the focus of this study is to assess the administration of the private sector pension fund and its current challenges and finally to suggest possible reforms.

1.2 Statement of the Problem;

The main reason for establishing the private sector pension system in Ethiopia as mentioned in the preamble of the Proclamation No. 715/2011 is, to provide permanent employees of private organizations with reliable and sustainable social security, promoting social justice, creating industrial peace, poverty reduction and to transforming the society to the better living standards.¹³

So, the Private Organizations' Employees' Social Security Agency has been given the responsibility for the attainment of the stated objectives in the preamble of the proclamation. This agency was established by Council of Ministers' Regulation No.202/2011. Article 5 of the regulation deals with these detail responsibilities.¹⁴ Under Art 11(11) of the proclamation the agency is given the power to delegate the collection of the pension contribution to any other government organ.¹⁵ The regulation also implies this delegation by stating that, "ensure that pension contributions are collected by the appropriate organ in time and in the correct amount."¹⁶ Based on this delegated power, the agency gave the collection of the pension contribution to the Ministry of Revenue. So the Ministry of Revenue (MoR) and Regional Revenue Bureaus have been given the mandate to collect pension contributions.

¹² Mitchella. Orenstein, "The New Pension Reform as Global Policy", Moynihan Institute of Global Affairs, Maxwell School of Syracuse University, USA, available at, https://www.academia.edu/2673390/The_new_pension_reform_as_global_policy

¹³ Private Organization Employees Pension Proclamation, 2011, proc. No 715, *Nega.Gaz.*, year 17, No. 79.

¹⁴ Private Organizations' employees Social Security Agency Establishment Regulation, 2011, Reg. No.202, *Nega Gaz* year 17, No. 26.

¹⁵ Art 11(11) Private Organization Employees Pension Proclamation, 2011, proc. No 715, *Nega.Gaz.*, year 17, No. 79.

¹⁶ Art 5(3) of Private Organizations' employees Social Security Agency Establishment Regulation, 2011, Reg. No.202, *Nega Gaz* year, 17, No. 26.

But there are challenges with this collection scheme and Complaints are arising from different stakeholders. Thus the objective of this research is to show the challenges in relation to the administration of the private sector pension fund and to suggest possible reform to alleviate challenges.

As far as the writer's knowledge goes, there are different questions in connection to the collection and administration of private sector pension contribution. For example, what was the reason that the Agency delegates the task to the Ministry of revenue? How the delegation is made? And how much the collection is efficient are some of the basic issues in question.

According to some opinions, there are visible challenges in the collection of the pension fund. For example, the Agency is empowered with the responsibility to collect and administer the pension fund. Delegating the power to the Ministry of Revenue is not a proper course of action. Because there is no complex issue this task. Otherwise the necessity of the agency is in question.

There is also another argument against the delegation of the power to the Ministry of Revenue in relation to the collection of the payment. Which is the Agency is facing a big problem due to the negligence of the Ministry in collecting the pension fund. The reason for the inappropriate collection of the pension contribution is because the Ministry is not considering the task as its basic duty since the collection is not its institutional mandate. Due to this reason the Ministry is not performing its obligation properly.

Therefore the challenge is the pension contribution will not be properly collected and deposited to the agency within the specified time as mentioned by the proclamation; because of this the agency will not use the money according to its plan. Article 11(4) of the proclamation states that, "Contributions of private organizations and employees of private organization shall be collected within the time specified by the bodies to be delegated by the Agency and paid to the Pension Fund within the first working days of the following month."¹⁷

However, there is an argument to support the delegation of the responsibility made by the Private Organizations' employees Social Security Agency to the Ministry of Revenue. The reason for the delegation to the Ministry is, Ministry of revenue has a well developed and established system has expertise and man power whereas, the Agency is not. Thus the delegation by the agency is for the better performance of the task.

Regarding the issue how the delegation is made, it is argued that, there is a formal contract which imposed rights and obligation between the two parties which is the Agency and the Ministry.

However, there is an argument against the contract that, though it is stated there is a formal contract between the two institutions, the contract is not enforceable one due to different reasons. Like both are

¹⁷ Private Organization Employees Pension Proclamation, 2011, proc. No 715, *Nega.Gaz.*, year 17, No. 79.

government institutions so one will not sue the other, and there is also gap on the contract document. So the agency will be effective if it cancels the agreement and work on it by itself. To support their argument the people against to the delegation contract argued that, in the regional states the agency is starting collect the pension contribution without any support by the regional Revenue offices.

On the other hand there is also an argument against the cancelation of the delegation contract. The reason is, still the agency didn't build the capacity to do that. Besides, there is a fear not to waste the pensioner's money if the agency starts the collection by itself.

Regarding the management of the fund, stock holders are raising questions like how the agency is managing this fund. Is the agency performing its responsibility assigned to it by the proclamation and the regulation?. For example the main responsibilities given to it under Art 13(1) of the proclamation is to utilize the pension fund only for: ¹⁸

- a) Effecting benefit payments stipulated in the Proclamation;
- b) investment in treasury bonds and other profitable and reliable investments to be specified by directive of the Ministry of Finance and Economic Development; and
- c) covering the operational expenses of the Agency

As mentioned above the Agency is entrusted with the authority to invest the pension contribution in treasury bonds and other profitable and reliable investments that will be specified by directive of the Ministry of Finance and Economic Development (MoFED) under Art 13(1)(b) of the Proclamation. Art 5(9) of the regulation also stipulates the same as the proclamation. However, except on government Treasury bond, there is no any investment made by the private organizations' employees' pension fund. According to sources since the last six year the Agency accumulated big amount of money. At this moment the Agency has 34 billion Birr in cash. But except government Treasury bond the Agency didn't invest the money in any form of investment. It is also stated that the agency is not move as it is expected to take its responsibility by investing on any profitable and reliable investments. The Ministry of Finance did not specify areas in which other investments options are available to the agency. The investment on the government Treasury bond has no significance, it is too small that the Agency earns in the form of interest. Therefore the money is idle without any other investment activity.

Some people put their suspicion that, the government is using the money for its own purpose to fill budgetary shortfalls. Thus, the Agency may deliberately refrain from investing the money due to the government's interest since the government will have the opportunity to access the pension fund easily.

¹⁸ Private Organization Employees Pension Proclamation, 2011, proc. No 715, *Nega.Gaz.*, year 17, No. 79.

So the agency is facilitating the fund to be used by the government. Due to this reason the agency is failing to fulfill its responsibility by violating the mandate given to it by the law.

The other issue raised is regarding payments to the beneficiaries. As mentioned above the proclamation under Art 13(1) one of the fund's purpose is to utilize the fund for effecting benefit payment to the beneficiaries.¹⁹ From the proclamation it is important to consider that the Ethiopian system is a defined benefit system.²⁰

The main complaint in this regard is, the pensioners are abusing the system by using the weak side of the law and taking much amount of money as retirement pension. To make the point clear, let us assume that Mr. 'A' is an employee working in a private organization paid 10,000 Birr monthly. Based on Art 19(1) of the proclamation his retirement pension will be 30% of his average salary of the last three years preceding retirement. So in order to get 30% of Mr. 'A's average salary that is his retirement pension, we should calculate the last three years monthly salary, times by 30% and divide by 36 months. $[(10,000 \times 36) \times 30\%]$ divided by 36 months, which is $= 360,000 \times 30\% / 36 = 3000$ Birr.

So, Mr. 'A's retirement pension is 3000 Birr. But If Mr. 'A' is a family or a friend of the owner of the organization one month ahead of the beginning of the pension time that is one month ahead of the 36 months, fictitiously they will increase Mr. 'A' salary by 100,000. So based on the calculation Mr. 'A's retirement pension will be 30,000. Hence Mr. 'A' is earning unreasonable retirement pension. Due to this reason the majority pensioner's money is taking away by many pensioners. Therefore these are the major challenges the Agency is facing now. This in effect will empty the pensioners' money in the account and the majority pensioners will be endangered.

Therefore reforming the present administration of the private sector pension fund in Ethiopia is the necessary task. Hence, this research will also attempt to scrutinize the importance of the reform and will try to indicate the reform type.

1.3 Research Questions

As it is mentioned in the statement of the problem the Agency has empowered to collect and administer the pension fund. The administration extends to invest on the pension funds. Additionally if it is find necessary it also has given the power to delegate any of the activities in relation to the collection and enforcement of pension contributions to other bodies. Based on this it delegate the collection to the

¹⁹ Art 19(1) of Private Organization Employees Pension Proclamation, 2011, proc. No 715, *Nega.Gaz.*, year 17, No. 79.

²⁰ Kennedy Boateng, "Evaluating The Performance Of Pension Funds": *A Case Study Of Social Security And National Insurance Trust August* (2015) P. 20. Defined benefit system pension payments are based on a specific pension crediting formula and years of service.

Ministry of Revenue. Having this in mind, this study will try to answer the following key research questions,

In relation to the collection of the pension contribution

- What was the reason that the Agency delegates the task to the Ministry of revenue?
- How the delegation is made?
- How much the collection is effective by the delegated body?

In relation to the pension fund administration

- How the Agency is investing in the fund?
- Generally, is the agency performing its responsibility assigned to it in the collection and administration of the pension fund?

1.4 Objectives of the study

Proper administration of the private sector pension fund is being taken as a means to achieve the goals set by the preamble of the private sector administration proclamation. In the opposite, improper administration of it may end up with harsh result on the intended objectives.

Currently, people are questioning on the administration of the private sector pension fund in Ethiopia. Therefore, the main objective of the study is to assess the practical challenges of Ethiopian private sector pension fund administration and to imply some possible reform towards the current problem.

To achieve this general objective, the following specific objectives were addressed.

- Examining the pension funds administration of the POESSA
- Identifying the challenges faced by POESSA in its pension funds Administration and collection,
- Assessing the pension funds investment of the agency, and
- Forwarding some possible reforms.

1.5 Significance of the Study

Generally, the purpose of the study is to assess the practical challenges of the administration of the private sector pension funds in Ethiopia and to suggest possible reform. Understanding the challenges on the administration of the sector has academic as well as policy relevance. That is, it likely contributes to the body of knowledge by bringing information on the practical challenges of the sector. It has policy relevance in that it helps the policy makers to understand the practical challenges of the administration of the private sector pension funds and to make some reform. Moreover, it initiates the concerned organization to reassess its existing practical challenges regarding the administration of the private

sector pension funds with a view to bring reforms on how pension funds should be administered. Employee associations, active employees who currently contribute for the fund, employers, employer's association, private companies particularly insurance companies and also other parties will be benefited from the study. The study assists them in understanding how the fund is administered and how it positively or negatively affects their benefit. As a result, they can develop a potential to argue with the concerned body. Additionally, it is believed that the study will be used as a stepping stone for further research concerning the administration of the private sector pension scheme in Ethiopia.

1.6 Scope

This study focuses on the analysis and appraisal of the practice and challenges of the private sector administration of pension fund in Ethiopia in achieving the responsibility stated by the proclamation and the regulation. In doing so, the study bases itself on the analysis of the private sector proclamation, the regulation, and the practical applications of these laws. And also the study will address the practice on the POESSA. Moreover, different countries experiences in relation to this issue will be assessed. The research is as limited as it did not go to examine the effect of other employee welfares other than and beyond the administration of the private sector pension scheme. A Social Security Agency that covers the public sector employees was not considered as the subject for the purpose of this study.

1.7 Methodology of the study

This research does make use of both primary and secondary sources. As a primary source an intense analysis is carried out, mainly, on the private pension fund proclamation, the regulation and other relevant laws and regulation provisions deals with the issue at hand.

In the process of expounding the challenges on the investment administration of the private sector pension fund in Ethiopia reliance is made on elucidations from literatures like books, journals, unpublished materials, reports, news papers and bulletins and internet sources. Appraisal of the administration of the pension funds of developed countries will be examined since they have widely developed experiences in the sector. These countries experience regarding the administration of the pension fund in achieving their goals are also used as a framework to evaluate the system in Ethiopia. Beside this researcher does make use of interviews in the institutions which have direct and indirect responsibility in regulating this issue. Like PEOSSA, Ministry of Revenue, Ministry of Finance. In doing so, the researcher will use both doctrinal and empirical methods of research and finally will indicate some possible reform.

1.8 Limitations

As it is indicated that this study tried to examine, analyze, check the law and the practice and show the gapes on the administration of the private sector pension fund in Ethiopia and suggested the possible solution which supposed to help the responsible authorities in this case to the policy maker to come up with the suggested reform. In doing so some limitations were there. One of the biggest limitations encountered by the writer in the research was scarcity of organized local written literatures on the area. Furthermore, during the interviews, there was limited time with the interviewees because interviews were held in offices that were not completely free from frequent interruptions. Despite aforementioned limitations, a great care was made in doing the research.

1.10 Organization of the Study.

The paper is therefore in the four chapters: The first chapter gives the general background, statement of the problem, objectives, significance, scope and methodology of the research. In chapter two various literatures are reviewed to discuss the definition, types and the multi-pillar approaches of pension. Current experience of pension in developed countries and the rational of the reform from public to private administration also discussed. In chapter three, overview of the general developments of social security in Ethiopia is discussed. In so doing different legal materials are reviewed since 1961 till present in the public servant sector. Following this, the last chapter looks critically the challenges facing by the private organization employees social security Agency's and indicated possible reforms to alleviate the challenges. Finally conclusions and recommendation are made at the end.

Chapter Two

2. Theoretical and Conceptual Analysis of Pension Fund Law and Administration

2.1 Pension in General

Different literatures defined pension in different manner but towards similar concepts. It is tried to show how pension is defined by different scholars in the introduction part. Others also defined it in different wording but to similar idea that, pension is a fund into which money is added during an employee's employment years, and from which payments are drawn to support the pensioner's retirement from work in the form of periodic payments. A pension may be a "defined benefit plan" where a fixed sum is paid regularly to a person, or a "defined contribution plan" under which a fixed sum is invested and then becomes available at retirement age²¹.

Pension is a social security and it is the protection that a society provides to individuals and households to ensure access to healthcare and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner²².

So based on the definitions one may understand pension as, it is a social security that aims to protect a society by providing benefits to an employee paid by the government or a company usually in regular installments in the case of retirement, death, unemployment, sickness, invalidity, work injury based on past contribution records.

2.2 Types of pension plan

According to Juan Yermo, pension schemes can be classified as; public vs. private pension plan, occupational vs. personal pension plans, defined benefit vs. defined contribution plans, and funded vs. unfunded pension plans.²³ Let us look at each of them in short.

2.2.1 Public vs. Private Pension Plan

Public pensions are the retirement plans for those who work in central, state, and local governments, including social security institutions/ administer the payment of pension benefits. Their purpose is to provide minimum benefits on retirement for the population those who work in public sector. Public plan have been traditionally pay as you go (PAYG) financed.²⁴

Private pension plan, on the other hand, is a pension plan where employees who work for companies are covered by it, and it may includes the informal sectors. Private pension plans are managed by the

²¹ Thomas P. Lemke, Gerald T. and Lins 'Wikipedia the free encyclopedia' (2010)

²² Facts on Social Security(ILO), available at, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf

²³ Supra at note 10 p 3

²⁴ Tim Plaehn, "Public Pensions vs. Private Pensions" November 21, 2018 available at, <http://classroom.synonym.com/public-pensions-vs-private-pensions-13732.html>

employer acting as the plan sponsor, a pension entity or a private sector provider. Private pension plans may be complements or substitutes to social security systems.²⁵

2.2.2 Occupational vs personal pension plans

Occupational pension plans: access to such plans is linked to an employment relationship between the plan member and the entity that establishes the plan. Occupational plans may be established by employers or groups of employers (e.g. industry associations), sometimes in conjunction with labor associations. Generally, the plan sponsor is responsible for making contributions to occupational pension plans, but employees may be also required to contribute. Sponsors may also have administrative or oversight responsibilities for these plans.²⁶

A personal plan is not linked to an employment relationship. That is, individuals independently purchase and select material aspects of the arrangements without intervention of their employers. The employer may nonetheless make contributions to personal pension plans. Some personal plans may have restricted membership.²⁷

2.2.3 Defined benefit vs defined contribution plans

Defined Benefit Plan: Benefits to members are typically based on a formula linked to members' wages or salaries and length of employment. Defined Contribution Plan: a pension plan by which benefits to members are based solely on the amount contributed to the plan by the sponsor or member plus the investment return thereon.²⁸The difference between Defined Benefit Plan and Defined Contribution

Plan expressed also as follows:

Under a defined contribution plan each employee has an account into which the employer and, if it is a contributory plan, the employee make regular contributions. Benefit levels depend on the total contributions and investment earnings of the accumulation in the account. Often the employee has some choice regarding the type of assets in which the accumulation is invested and can easily find out what its value is at any time. They are therefore not of much concern to government regulators. Where as defined benefit is any pension plan other than a defined contribution plan, including all plans in which the financial or longevity risk are borne by the plan sponsor.²⁹

²⁵ Ibid

²⁶ Journal of developments in social services, policy and legislation in Ireland, Volume 46: Issues 1-2, January/February 2019, available at, https://www.citizensinformationboard.ie/downloads/relate/relate_2019_01.pdf

²⁷ Investopedia.com/contributors, available at <https://www.investopedia.com/ask/answers/032415/how-does-defined-benefit-pension-plan-differ-defined-contribution-plan.asp>, Updated Nov 15, 2019.

²⁸ Thomas P. Lemke, Gerald T. and Lins “Wikipedia the free encyclopedia” 2010, p 30

²⁹ Ibid

2.2.4 Funded vs. Unfunded Pension Plans

Funded pension plans have accumulated dedicated assets (may be identified reserves in the plan sponsor's balance sheet or/and segregated assets) to pay for the pension benefits.³⁰

On the other hand unfunded pension plans are those that are financed directly from contributions from the plan sponsor or provider and/or the plan participant. Unfunded pension plans are said to be paid on a pay-as-you-go,³¹ method. Unfunded plans may still have associated reserves used to cover immediate expenses.³²

2.3 The multi-pillar approaches of pension

As shown above pension schemes can be categorized into various classes, different literatures also categorized the above mentioned pension plans in to five broad categories as,³³

- (i) Non-contributory pensions or transfers in old-age assistance (Zero Pillar);
- (ii) Mandatory contributory pension schemes (1st pillar);
- (iii) Mandatory contributory pension schemes (2nd pillar);
- (iv) Voluntary, regulated occupational or personal pension savings and insurance arrangements (3rd pillar); and
- (v) Other informal voluntary savings arrangements and household assets, savings or transfers to support the elderly (4th pillar).

i) Zero pillar or non-contributory elderly assistance schemes provide assistance to protect the elderly from poverty. Such schemes may be universal, providing benefits for all elderly over an eligibility age; pension-tested, whereby eligibility may be based on alternative sources of pension income, or means-tested, whereby eligibility is based on some type of means-testing arrangement.³⁴

ii) Pillar 1: Large, mandatory public or quasi-public systems with inter- and intra-generational redistribution, which can be partially funded, but mostly unfunded, where the benefits are determined by a defined benefit formula.³⁵

iii) Pillar 2: Fully funded, defined contribution systems where benefits depend on the assets in the individual's account at retirement. It is an individual financial account system, where the

³⁰ Supra at note 10, p. 4

³¹ PAYGO scheme is a Defined Benefit scheme, unfunded, mandatory and managed by government.

Arun Muralidhar, "The Three Crumbling Pillars of Retirement Insecurity" Global Investment Solutions, October 2011

³² Ibid

³³ Mark Dorfman, "Pension Patterns in Sub-Saharan Africa" Social Protection and Labor Discussion Paper No 1503, July 2015, p. 3,

³⁴ Id, p.5

³⁵ Louise FOX, Edward PALMER, "New approaches to multi-pillar pension systems: What in the world is going on" International Social Security Association (Issa) Research Programme, June 2000, p. 2

participant's money is invested in privately managed market funds. Benefits may be lump sum, used to purchase an annuity, or taken out in phases.³⁶

iv) Pillar 3: is a voluntary savings privately managed pillar, available to anyone who wants to supplement the retirement income provided by the first two pillars.³⁷

v) Pillar 4: voluntary saving for old-age in the form of assets, insurance contracts, which should include not direct monetary benefits but the provision of non-monetary benefits such as housing and health care for the retired poor³⁸

The World Bank also presented these different pillars in clear manner as it is shown on the table below³⁹.

Target Group				Main criteria		
Pillar	Very Poor	Informal Sector	Formal Sector	Characteristics	Participation	Funding (Collateral)
Zero	X	X	X	“Basic” or “social pension,” at least social assistance (universal or means tested)	Universal or residual	Budget or general revenues
1			X	Public pension plan, publicly managed (defined benefit)	Mandated	Contributions, perhaps with some financial reserves
2			X	Occupational or personal pension plans privately managed (fully funded defined contribution)	Mandated	Financial assets
3	X	X	X	Occupational or personal pension plans privately managed (fully funded defined contribution)	Voluntary	Financial assets
4	X	X	X	Access to informal support (family), other formal social programs (health care), and other individual financial and nonfinancial assets (homeownership)	Voluntary	Financial and nonfinancial assets

³⁶ Ibid

³⁷ Larry Willmore, “*Universal Pensions for Developing Countries*”, International Institute for Applied Systems Analysis (IIASA), Laxenburg, Austria, May 2006, p.6.

³⁸ Ibid

³⁹ Robert Holzmann and Richard Hinz, “*Old-Age Income Support in the 21st Century*” An International Perspective on Pension Systems and Reform, Washington D.C., 2005, p. 10.

2.4 The current experience of pension in Developed continents

2.4.1 Europe

The development of Pension in the world happened in different stages. The formal pension system is originated in Western Europe to curb the dislocation effects of the industrial revolution. The two most influential pension systems introduced in the Western Europe are the Bismarckian and Beveridgean regimes both systems became popular and prevailed in other European countries.⁴⁰

Currently the need for a rapid and comprehensive reform of the pension systems in most member countries of the European Union is increasingly acknowledged by individuals and politicians.⁴¹ There are three main reasons why countries of the European Union and the future accession countries in Central, Eastern, and Southern Europe need rapid and comprehensive reforms of their national pension systems:⁴²

First, the current high expenditure level and related budgetary pressure will only worsen given the projected further aging of populations, and the national systems need to be reformed to handle aging in a manner consistent with individual preferences and macroeconomic constraints.

Second, ongoing socio-economic changes are rendering current retirement income provisions inadequate at the social and economic level. These are like increasing female labor force participation; high divorce rates and changing family structures and disability benefits.

Third, globalization creates opportunities and challenges, and to deal with them effectively requires, flexibility and better functioning factor markets that, understood as high and increasing integration of markets for goods and services, factors of production, and knowledge calls for changes in the area of pension provision. Recently, a number of Eastern Europe Member States have switched part of their public pension schemes into private funded schemes.⁴³ The western European countries have already a well developed privately managed pension system.

2.4.2 North America

The pension system in Canada is currently founded on three different layers: the publicly managed pension system, the occupational pension system and the individual pension system. The publicly managed pension system includes the federal Old Age Security program and the Canada Pension Plan.

⁴⁰ Tobias Voget, “*Bismarckian pension systems and their reform*” University of Twente, Center for European Studies, 2008

⁴¹ Robert Holzmann, “*Toward a Reformed and Coordinated Pension System in Europe: Rationale and Potential Structure*” Social Protection Sector The World Bank, Washington, D.C. March 2004, p, 3.

⁴² Id p, 7.

⁴³ “*Pension Schemes And Pension Projections In The Eu-27 Member States*”, European Commission Directorate-General for Economic and Financial Affairs, Brussels, 2008, p,28.

The occupational pension system consists of privately managed employer-sponsored plans, often called or registered pension plans. They are usually provided by employer, labor unions, association and professional organization.⁴⁴ In US America pension is started by the colonies to provide pensions to disabled men who were injured defending the colonists and their property from native uprisings. During the Revolutionary War the colonies extended this coverage to the members of their militias.⁴⁵

Now days the United States has a publicly managed Social Security system which is a defined benefit system financed by general taxes and operated at the national level. Although in general benefit formulas are based on life time earnings there is also a minimum benefit that is effectively set at the poverty level.⁴⁶ The country also has a private pension system and it is completely voluntary and operates nearly exclusively in the context of employer sponsored arrangements.⁴⁷

2.5 The rational of the reform from public to private management

2.5.1 Public administration

Countries have indicated a number of reasons for privatizing their social security schemes by reducing the state role. In many countries the current social security scheme relies on large subsidies by the state because contributions are insufficient to finance outlays. Privatization has occurred to reduce the government deficit, besides; countries see social security pension reform as a possible means of raising domestic savings, correcting economic distortions in labor markets presumably caused by traditional pay-as-you-go schemes and reducing contribution evasion.⁴⁸ In many developing countries the majority of workers are not covered by social security retirement benefits and the public sector plays little or no role in the retirement income of those workers. The role of the public sector in those countries is often largely confined to employees working in urban areas.⁴⁹

Some governments have been unable to manage adequately public defined benefit schemes and believe that management of private defined contribution schemes would be easier, both politically and financially. Publicly managed funds are usually required to invest in government securities or the securities of quasi-government entities such as state enterprises or public housing authorities-often at below-market interest rates that become negative in real terms during inflationary periods. The fund

⁴⁴ *"Pension Systems in East and Southeast Asia"*, Asian Development Bank, Philippines, 2012, p, 63.

⁴⁵ Robert L. Clark, Lee A. Craig, and Jack W. Wilson, *"A History of Public Sector Pensions in the United States"* Pension Research Council, The Wharton School of the University of Pennsylvania, 2003, p.2

⁴⁶ *"The Evolution of Public Pension Plans Past, Present and Future"*, National Conference on Public Employee Retirement Systems, Washington, DC 2001, p, 5.

⁴⁷ *"Plan Design and 401(k) Savings Outcomes,"* National Tax Journal Forum on Pensions, June 2004, p, 1.

⁴⁸ Gillion, C, Turner, Bailey, C.; Latulippe, *"Social security pensions. Development and reform"* Geneva, International Labour Office, 2000 page 37-38

⁴⁹ Ibid

earns less than it could have on the open market and must charge higher contribution rates or pay lower benefits than it would have otherwise.⁵⁰ In some cases, as government gets privileged access to large pension reserves, it may be induced to spend and borrow more. Borrowing from the pension fund is less transparent than that from the open capital market. It is often not reported as part of the public debt, and the interest cost is generally lower. This may tempt governments to increase deficits pending and therefore deter private investments that might otherwise have been made.⁵¹ In the other case if the publicly managed funds are partially invested in the private sector another problem arises: fund managers maybe motivated by political rather than economic objectives. In general central planning has not been the most efficient way to allocate a country's capital stock. Pension funds hold a large part of the financial assets in a country, especially if the funds are mandatory. So the net impact on growth may be to the negative.⁵²

2.5.2 Private administration

Privatization has been motivated by the poor quality of services provided by government social security institutions. Competition in private sector management is thought to be more efficient and to lead to better services than monopolistic management by government.⁵³

Privately managed schemes-in which workers or employers choose their fund managers-are usually not required to accept below-market returns and are less likely to encourage deficit spending by government. In general, private managers have invested much more heavily in private securities and have earned much higher rates of return than their public counterparts. They have incentives to allocate capital to stocks and bonds that offer the best risk yield combinations, whether these securities are public or private. They can benefit from international diversification of investments and international managerial expertise. Government can and do borrow from these funds but very transparently, as part of the national debt, and by paying the market interest rate.⁵⁴

In general, international experience has revealed the advantages of private pension system will

- Develop the financial market by creating long-term savings in the economy; increase in national savings, hence additional investments and stimulation of the economic growth;
- Create effectiveness, generate products of high quality, and better customer service due to high

⁵⁰ Supra at not 9, pp, 94-96

⁵¹ Ibid

⁵² Ibid

⁵³ Chris Daykin, "*Privately managed old-age pension schemes: theory and reality*" the International Social Security Association (ISSA), Malaysia, November 1999. P, 2.

⁵⁴ Ibid

competition among managers and political neutrality;

➤ Freedom to choose: a pensioner will himself/herself determine how to deal with personal pension savings; the amounts of pensions are determined only by personal pension contributions and investment income.⁵⁵ Indeed these arrangements too are not trouble-free, it may have higher marketing costs and may not benefit from economies. But these drawbacks can be resolved by the prudent regulation of the privately managed pension fund.⁵⁶

⁵⁵ Pablo Antolin And Fiona Stewart, “*Private Pensions And Policy Responses to the Financial and Economic Crisis*”, OECD Working paper on Insurance and private pensions No 36, April 2009, P,5

⁵⁶ Id

Chapter Three

3. Over view on the General Development of Social Security in Ethiopia

3.1. The Historical Development of Social Security

It was a traditional and religious duty to Ethiopians to look after the aged, the sick the aged, and the disabled relatives. The blood relationship in Ethiopia was very strong that it was also a cultural obligation to look after the children of poor relatives and orphans. So, the burden was not considered at all as the duty of the government. However, benefits consisting of a piece of land were given to public servants as a reward for life service and gallant actions in the battle field.⁵⁷ During the reign of Menelik II, if a military servant gets old he had the right to demand the authorities to replace his son in his place. This was done so that the son would be able to take care of his aging father.⁵⁸ Although this laudable piece of act can be considered as to have marked the beginning of a sort of social security service in Ethiopia, it was not without flaws. There was no law to ensure its enforcement, it lacked uniformity in application and, surely, not everyone involved benefited equally as it created room for favoritism since it was not be claimed as legal right.⁵⁹

In the 1930s with the appearance of modern institutions and the development in bureaucratic machinery as well as the growth in the number of paid officials in all spheres of government operations, the need for a pension law was felt by the parliament. By then, Ethiopia was invaded by fascist Italy and all national efforts of economic and social development came to end. Right after the end of the war, the government tried to compensate the injured and the families who lost their breadwinner by giving out land and money payable annually.⁶⁰

In December 1933, a bill containing the pensioning of old and incapable soldiers was introduced into parliament and which contained 16 articles marked the first legally established pension system in Ethiopia. The retirement age was fixed to seventy (70) years.⁶¹

The payment benefit was to be made both in kind and cash according to the circumstances. Those soldiers who were to be given land as payment for their services were allowed to keep one-third of it at retirement. In situations where the pensioner had a son capable of replacing him as a soldier, the land

⁵⁷ Abebe Mesfin "Development Of Social Security: Practices, Problems And Prospects Of Pension Plan In Ethiopia." Regional and Local Development Studies, Addis Ababa, July 2003. P, 49.

⁵⁸ Ibid

⁵⁹ Mengistu Gebru, "Pension Fund Investment In Ethiopia: Opportunities And Challenges": A Case of Ethiopia Social Security Agency, Addis Ababa University Post Graduate Program Msc in Accounting and Finance Addis Ababa, Ethiopia, June 2009, p, 29.

⁶⁰ Ibid

⁶¹ Supra at note 57, p. 49

would be transferred to the son and he would be responsible for looking after his old father.⁶² In situations where the military person's service period had started from the battle of Embabo, Harar and Adowa, he was entitled to the use of all that he was possessing before retirement. Where the salary was made in cash, the salary was transferred to the son if the former had one. The son was made responsible to look after his father. If the son was found fit enough, he was also given the rank of his father. In case where the pensioner had no son, he was given certain amount of benefits. Where the pensioner had a minor son, the son was given benefits till he reached majority.⁶³

It would be interesting to note here that the benefit was paid only to the elder son and that a condition was attached to it. The condition was that the son had to go to school. In addition to this, the survivors were entitled to three months pay of the deceased for the preparation of his "Tezkar",⁶⁴

Gradually the civil service was organized and grew up and it was found necessary to provide the civil servants with pension. Consequently, in 1958, the Ministry of Pension was established by Imperial Order (Negarit Gazeta, Order No. 20 of 1958). The duties and responsibilities were specified⁶⁵. Then after various laws are enacted in different period till the present pension proclamation as highlighted below.

3.1.1. The Public Servants' Pensions Decree No. 46 of 1961

The decree lays down the foundation of the pension scheme. It is the first elaborated law in the Ethiopian pension history although semi-legalized pension practices existed long before its coming in to effect. It set forth the legal, Administrative, and financial basis of the scheme on its Art 35 and 42.⁶⁶ It also provides under Art 39(1)&(2) a procedure for appeal against benefit determination by the authority and for the establishment of Pensions Appeal Tribunal as well.⁶⁷

Before the Decree, there were some pension practices. The Decree repeals such previous systems whether written or customary and replaces them by provisions based on modern principles. Previously, as was mentioned before, land and sometimes money benefits were available. Under the Decree, only money benefits are payable. The Decree also repeals any legal situation created; right acquired or consequences arising out of previous laws which are not expressly provided by the Decree⁶⁸

⁶² የጡረታ መተዳደሪያና ዋስትና ባለስልጣን፡ ልዩ እትም፡ ብርሃንና ሰላም ማተሚያ ቤት፡ ግንቦት 1980፡ ገጽ 16.

⁶³ ዝክረ ነገር፣ ከባላምባራስ ማህተመ ሥላሴ ወ/መስቀል፣ አዲስ አበባ 1942 ዓ.ም በነፃነት ማተሚያ ቤት የታተመ፣ ገጽ 246.

⁶⁴ Ibid

⁶⁵ Id, p,17.

⁶⁶ Public servant Pension decree, 1961, Decree. No 46, *Nega.Gaz.*, year 20, No. 17.

⁶⁷ Art 39 of the decree

⁶⁸ Art 2 of the decree

Those who retire after the date of the Decree are entitled to benefits provided for by the Decree regardless of the length of time for which contributions have been paid by or in respect of him. The benefits are incapacity benefit. Incapacity benefit includes occupational injury and occupational disease Art 11 of the decree.⁶⁹

3.1.2. The Public Servants Pensions Proclamation No. 209/1963

The proclamation amends and renumbers the Decree. When the later was adopted and promulgated on August 31, 1961, parliament was not in session. Parliament, having deliberated on it, with some amendments, the approval was proclaimed as the Public Servants Pensions Proclamation *Negarit Gazeta*, proclamation No. 209/1963. It is stated under Art 2 “The public servant pension decree No 46/1961 is here by renumbered as Public Servants Pensions Proclamation No. 209/1963.” It is important to note here that effective date of this proclamation relates back to the date to the Decree enters into force. Thus, the effective date of the scheme counts from December 1/1961 when the Decree enters into force.⁷⁰

3.1.3. The Public Servants Pensions Contribution Proclamation No. 199/1963

As stated by the Decree and later approved by the proclamation No. 209/1963, the contributions are paid by the employer and the public servant. As per article 3 of this proclamation, the total amount of the contribution payable to the public service civilian pension fund is ten percent (10%) of the basic salaries of all public servants.⁷¹ The proportionate amount of contributions payable is six percent (6%) by the employer and four percent (4%) by the public servant. The proportionate amount of contributions payable to the military public servant fund was sixteen percent (16%) from the employer and four percent (4%) from the employee.⁷²

3.1.4. The Public Servants Pension (Amendment) Proclamation No. 5/1974

This is an amendment proclamation to the proclamation No. 209 of 1963. Among other things, the following can be cited from the amendment:

- i) under Art 2(1)(a) The retirement age both for men and women be fifty-five (55) Years⁷³ instead of sixty (60) for men and fifty-five (55) for women under the previous proclamation.⁷⁴

⁶⁹ Art 10 of the decree

⁷⁰ Public Servant Pension proclamation, 1963, proc. No 209, *Nega. Gaz.*, year 22, No. 23.

⁷¹ Public Servant Pension contribution proclamation, 1963, proc. No 199, *Nega. Gaz.*, year 22, No. 15.

⁷² Art 4 of the proclamation

⁷³ Public Servant Pension amendment proclamation, 1974, proc. No 5, *Nega. Gaz.*, year 34, No. 6.

⁷⁴ Art 2(c) of proclamation, No 209/1963.

ii) It is now possible to retire a public servant due to inefficiency.⁷⁵ Under the previous law, an employee who is terminated due to inefficiency, even if he had many years of service to his credit, could only be entitled to a refund of his own contribution without interest.⁷⁶ Under this proclamation an employee who is terminated from public services due to inefficiency could automatically be entitled to a proportional pension if he has at least ten (10) years of service. But if his service is less than ten (10) years, he will get a refund of his own contribution without interest.⁷⁷ The new situation has, therefore, enabled the public servant who is terminated due to inefficiency to collect pension proportionate to his years of service and this simultaneously created an employment opportunity for a competent job seeker.

3.1.5. Public Servant Pension Contribution (Amendment) Proclamation No. 6/1974.

This has only very little change from that of proclamation No. 199 of 1963. To mention one, in the previous proclamation, members of the Armed Forces who were noncommissioned officers and other ranks were not obliged to pay contributions whereas in the amendment proclamation they are obliged to pay contributions⁷⁸

3.1.6. Employees of Government-Owned Undertakings pension Proclamation No. 49/1975.

The proclamation under Art 2 entitles pension rights for those: persons who, on the date of transfer of the undertaking, is a permanent employee of an agricultural, commercial, industrial, transport, banking or insurance undertaking whose ownership or majority share holding has been transferred to the Government or a person employed thereafter in any of these undertakings; a person who is a permanent employee of a Government-owned share company; or a permanent employee of the Franco-Ethiopian Railway Company.⁷⁹ As per this proclamation, payment of contributions by both the employee shall commence effective 8th February, 1975⁸⁰ whereas all periods of service rendered by an employee before the effective date of the Proclamation in any undertaking and in the Public Service shall be considered a period of service.⁸¹ Regarding the contribution, the employer will contribute 6% and 4% will be contributed by the employee and it is the same as that of the public servants.⁸²

⁷⁵ Art 2(1) of proclamation, No 5/1974.

⁷⁶ Art 2(c) of proclamation, No 209/1963.

⁷⁷ Art 2(1)(b) of proclamation 5/1974

⁷⁸ Public Servant Pension contribution amendment proclamation, 1974, proc. No 5, *Nega.Gaz.*, year 34, No. 6.

⁷⁹ Employees of Government-Owned Undertakings pension Proclamation, 1975, proc No 49, *Nega.Gaz.*, year 34, No. 43.

⁸⁰ Art 5(3) of the proclamation

⁸¹ Art 6(1) of the proclamation

⁸² Art 7 of the proclamation

3.1.7. Social Security Authority Establishment Proclamation No. 38/1996

The proclamation promulgated was to establish the Social Security Commission as a Federal Authority and called the Ethiopian Social Security Authority, and it becomes an autonomous federal office, having its own juridical personality accountable to the Council of Ministers.⁸³ It also stated the power and duties of the Authority, the organization of the Authority and the Appeal Tribunal in details.⁸⁴

3.1.8. Public Servants' Pension (Amendment) Proclamation No. 190/1999

This proclamation amended few articles of the previous Public Servants' Pension Proclamation No. 209/1963. Under Art 3 of this proclamation, the meaning of a 'Public Servant' had been redefined to incorporate others than before.⁸⁵ The other main change made by this legislation was the abolition of the difference in the rights of pension between a widow and a widower. The Provision of this Proclamation provided for a widow shall equally apply to widower's pension.⁸⁶

3.1.9. The public servant pension proclamation No.345/2003

This proclamation is mainly issued to repeal the previous laws in action like Public Servants' Pensions Proclamation No. 209/1963, Public Servants' Pension Contribution Proclamation No. 199/1963 and Employees of Government Owned Undertakings Pension Proclamation No. 49/1975.⁸⁷ As indicated in the preamble it is found necessary to strengthen, to the extent circumstances allow, the public servants' pension scheme organized under existing laws, and to amend and consolidate the pension legislation.⁸⁸ It also defines the Public Servant "any person permanently employed in any public office this includes a government appointee, member of the Defense Force and the police."⁸⁹ So the basic purpose of this proclamation is just to consolidate and organize in to one documents the previously existing laws.

3.1.10. The Public Servants' Pension (Amendment)' Proclamation No. 424/2004

In this proclamation there is a little amendment is made on the age limitations of the pensioners on Public Servants' Pension Proclamation No. 345/2003. Some addition is made in the new proclamation it was not on the previous one that, "A public servant who has completed at least 20 years of service and who has attained at least 45 , years" of age may receive retirement (pension for life where the government office he has been working for has ceased to exist *or* he is reduced from the work force in

⁸³ Social Security Authority Establishment Proclamation 1996, proc No 38, Nega Gazet, year 2 No 26.

⁸⁴ Art 5,6 and 11 of the proclamation.

⁸⁵ Public Servants' Pension (Amendment) Proclamation 1999, proc, No 190, Nega.Gazet, year 6, No 18.

⁸⁶ Art 4 of the proclamation.

⁸⁷ Infra Art 55(1)

⁸⁸ Public Servants' Pensions Proclamation 2003, proc, No. 345, Nega Gazet, year 9 No 65.

⁸⁹ Art 2(1) of the proclamation

connection with privatization or his contract of employment is terminated as a result of inefficiency by the decision of the council of Ministers."⁹⁰

The other amendments made by the new proclamation, if a beneficiary who has been receiving Invalidity and incapacity pension re-enters the public service and receives salary, the pension shall be discontinued.⁹¹ The amended law was denied the pensioner if he/she re-engaged in any kind of gain full activities.⁹²

3.1.11. Social Security Authority re-establishment Proclamation No. 495/2006

Proclamation No.495/2006 issued to re-establish the Social Security Authority as an autonomous federal agency having its own juridical personality and change its accountable to the Prime Minister.⁹³ As it is seen the name is changed from authority to agency and the accountability is also changed from the council of minister to the prime minister. So there is no any other significant change on this proclamation.

3.2. The Current Social Security Law in Ethiopia

Though the purpose of this research is to assess the administrative efficiency of the POESSA's pension fund, it is appertaining to indicate the overall picture of the social security system in the country. So establishing Ethiopia's social protection framework is part and parcel of an integrated approach to the progressive realization of social and economic rights noted in the constitution. The constitution states under Article 41(5) "The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian."⁹⁴ Article 41(6) also states "The state shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programs and public work projects."⁹⁵ Article 41(7) states that "The state shall undertake all measures necessary to increase opportunities for citizens to find gainful employment."⁹⁶ After the constitution, legal reforms with the aim of revisiting discriminatory laws to protect the rights of vulnerable groups have been enacted. These are the Revised Family Code proclamation No 213/2000, the Revised Criminal Code proclamation No 414/2004, the Labor Proclamation No 377/2003 as recently replaced by proclamation No 1156/2019, Vehicle Insurance Against Third Party Risks Proclamation No. 559/2008), Proclamation to Provide for

⁹⁰ Public Servants' Pensions amendment Proclamation 2004, proc, No. 424, Nega Gazet, year 11 No 9.

⁹¹ Art 2&3 of the proclamation

⁹² Art 17(2)& 30(2) of Proclamation No. 345/2003

⁹³ Social Security Authority re-establishment Proclamation 2006 proc, No. 495, Nega Gazet, year 12 No 31.

⁹⁴ The Constitution of the Federal Democratic Republic of Ethiopian 1995, proc No 1, Nega Gazet, year 1 No 1.

⁹⁵ Article 41(6) of the constitution

⁹⁶ Article 41(7) of the constitution

Social Health Insurance Proclamation No. 690/2010) and the public and the private organization pension proclamations. The social security benefits stated by the ILO convention No 102/1952 also reflected by the current labor and civil servant proclamations like Medical benefits, sickness benefits, Maternity benefits and employment injury benefits respectively.⁹⁷

According to the Ethiopian National social protection policy document, though Ethiopia does not have a comprehensive and integrated social protection system; the country has an array of support mechanisms, programs, action plans and interventions that serve a variety of social protection purposes.⁹⁸ Among them, Social Insurance Program, Food Security Program, Provision of Basic Social Services, National Nutrition Program ,Support to Vulnerable Children, Disaster Risk Management, Support to Persons with Disabilities, Support to older Persons, Urban Housing and Grain Subsidies, Employment Promotion, Community Based Social Support. Even though a wide range of social protection actions are being implemented across the country as described above, these interventions have gaps in their design, implementation, budget allocation, scope, and coverage and service quality resulting in people not being protected.⁹⁹

3.3. The Pension schemes in Current Public Servants' Pension Proclamation No 714/2011

As clearly noted by the proclamation No 714/2011, there are four types of pension benefits applicable to the public servants. These are retirement pension, invalidity pension, incapacity pension and Survivor pension.

A. Retirement Pension

In this pension the public servant will be benefited based on the period of service and other conditions. As stated under the proclamation, a public servant who has completed at least 10 years of service and retires upon attaining retirement age shall receive retirement pension for life.¹⁰⁰ The voluntary resignation from the public service also enables the civil servant to be benefited from the retirement pension for life if he/she has completed at least 20 years of service.¹⁰¹ A public servant who separates from the service after completing at least 25 years of service also receive retirement pension for life beginning with five years prior to retirement age.¹⁰² Here what it has to be noted that, a senior

⁹⁷ Labor Proclamation 2019, proc No 1156, Nega Gazet, year 25 No 89, Art 105,85,88, 103 and Civil servant proclamation 2017, proc No 1064, Nega Gazet, year 24 No 12, Art 59,43,42,60.

⁹⁸ National social protection policy of Ethiopia, Ministry of Labor and social affairs, Addis Ababa, March 2012, pp,7-12

⁹⁹ Ibid

¹⁰⁰ Art 19(1) of Public Servants' Pension Proclamation 2011, proc No 714, Nega Gazet, year 17 No 78

¹⁰¹ Art 19(2) of proclamation 714/2011

¹⁰² Art 19(3) of proclamation 714/2011

government official or a member of parliament, who has served at least one full term and has attained the age of 50 years when he leaves office can have the right to receive retirement pension for life.¹⁰³

B. Invalidity pension

As stated under the proclamation, a public servant who has completed at least 10 years of service and separates from service due to health problems preventing him from engaging in any remunerated work shall receive invalidity pension for life.¹⁰⁴ A senior government official or Member of Parliament also receive invalidity pension for life if has served at least one term and separates from service due to health problems.¹⁰⁵

C. Incapacity pension

Art 36 of the proclamation states that a public servant who sustains employment injury of not less than 10% and separates from work due to permanent incapacity that prevents him from engaging in any remunerated work shall receive incapacity pension for life.¹⁰⁶ Regarding the amount to be paid the incapacity pension shall be 47% of his salary which he was receiving during the month prior to the occurrence of the injury.¹⁰⁷

D. Survivor pension

This Pension shall be paid to the survivors of a public servant who dies: while receiving retirement or invalidity or incapacity pension or while in service upon completing at least 10 years of service; or due to employment injury.¹⁰⁸

3.3.1. Contribution and failure to pay contribution

Regarding contribution the Proclamation noted under Art 10 the civil service fund contribution by the employer 11% by the public servant 7%. For military and police fund service contributions by the employer 25% by the employee 7 % art 11of the proclamation.¹⁰⁹ Where a public office fails to pay contributions for a period of more than three months, the Agency shall have the power to cause the deduction of the arrear contributions from the budget allocated to it by the government or from its bank account.¹¹⁰ But in the amendment proclamation No 907/2015 additional obligation is added that, “If the public enterprise or self financing public office fails to pay pension contribution collected within 30 days, it shall be liable to pay interest with the bank deposit interest rate and in addition 5% penalty for

¹⁰³ Art 19(5) of proclamation 714/2011

¹⁰⁴ Art 23(1) of proclamation 714/2011

¹⁰⁵ Art 23(2) of proclamation 714/2011

¹⁰⁶ Proclamation 714/2011

¹⁰⁷ Art 37 of proclamation 714/2011

¹⁰⁸ Art 40(1) of proclamation 714/2011

¹⁰⁹ Proclamation 714/2011

¹¹⁰ Art 12(8) of proclamation 714/2011

the unpaid pension contribution calculated from the first day of the month following the last day of the month in which payment of salary has been effected¹¹¹

Besides, in line with the directive issued by the Ministry of Finance and Economic Development to determine the rule for enabling the collection of tax by seizing and selling the property of tax payers who failed their obligation to pay tax, the Agency shall have the power to sell, through tender, the property of a public office for the purpose of collecting arrear contributions that could not be collected.¹¹² According to some stake holders, the Agency has given in the proclamation excessive power in collecting the contribution in the case of failure to pay by the public office; however, it is difficult for its applicability.

3.3.2. Retirement age

Regarding retirement age, according to proclamation 714/2011 the retirement age of the public servant other than the defense force and police is 60 years. But for the defense force and the police force the retirement age will be determined by the legislation regulating to the administration of the defense force and the police force respectively.¹¹³ However, there are special conditions that the retirement age will be higher or lower from the limit provided by the proclamation. This will be done on the basis of studies submitted by the Agency to the Council of Ministers with respect to professions that may deserve special consideration to increase the retirement age or hazardous jobs or on jobs involving risks to health and life to reduce the retirement age.¹¹⁴

3.3.3. Utilization of the pension fund

According to the proclamation 714/2011 the pension fund which is collected from the public servant only used for the following purposes:¹¹⁵

- a) effecting payments of benefits stipulated in this Proclamation;
- b) investments in treasury bonds and other profitable and reliable investments to be specified by directive to be issued by the Ministry of Finance and Economic Development; and
- c) covering the operational expenses of the Agency.

In relation to the investment activity stake holders raise complain that, except on government Treasury bond, there is no any investment made by the public servant pension fund. At this moment the Agency has a big amount of accumulated money. The investment on the government Treasury bond has no significance, it is too small that the Agency earns in the form of interest.

¹¹¹ Art 2(3) of Public Servants' Pension (Amendment) Proclamation 2015, proc No 907, Nega Gazet, year 21 No 61

¹¹² Art 12(11) of proclamation 714/2011

¹¹³ Art 18(1) of Proclamation 714/2011

¹¹⁴ Art 18(2)&(3) of Proclamation 714/2011

¹¹⁵ Art 14(1) of Proclamation 714/2011

Chapter Four

The private organization employees pension fund administration.

4. The Private Organization Employees' Social Security Agency (POESSA)

4.1. Establishment

Private organizations employees' social security agency was established as an autonomous federal Government Agency having its own judicial personality in 2011¹¹⁶ and it is accountable for the Ministry of Labor and Social Affairs as well.¹¹⁷ It gives social security coverage to private organizations' employees with the objective of strengthening and expanding private organizations' employees' social security program¹¹⁸. The benefit Packages covered by the Agency are the same as that of Public Service Social Security Agency and its way of administration is similar that both administered by the Government. The private organization social security Agency was established recently in 2011 but it has collected very high amount of money in short period of time which is 34 billion Birr. where as the public servant social security Agency is 76 billion birr since its establishment.¹¹⁹

4.2. Current Challenges of the Private Organization Employees Pension System.

The main reason for having the private sector pension system in Ethiopia is to provide permanent employees of private organizations with reliable and sustainable social security, encourage personal savings, creating industrial peace and to transform the society to the better living standards. So the private organizations' employees' social security Agency has given the responsibility for the attainment of the stated objectives and particularly the specific objectives stated in Art 5 of the establishment Regulation, No.202 /2011.¹²⁰ However, the Agency is facing challenges, basically in two ways that, challenges in relation to the administration of the fund and challenges in relation to the collection of the fund.

4.2.1. Challenges of the Agency in Relation to the Administration of the Pension Fund.

The Current challenges facing by the Agency in relation to the administration of the pension fund can be observed in four ways which are, challenges in investment of the pension funds, challenges in the amount of the pension funds, challenges in deciding on the entitlement benefits of the pensioners and challenges in relation to some provisions in the proclamation.

¹¹⁶ Art 2(1) of Private organizations' employees social security Agency establishment regulation, 2001, Reg No.202 Neg. Gaz, year 17 No 26, Addis Ababa.

¹¹⁷ Art 2(2) of the Regulation No 202/2011

¹¹⁸ Art 3of Private Organization Employees Pension Proclamation, 2011, Proc, No 714 Neg.Gaz, year, 17, No. 79, Addis Ababa

¹¹⁹ Fortune News paper, "*Pension Fund Mismanagement Sends Billions of Birr Down the Drain*", 10/16/2019, p 5.

¹²⁰ Private Organizations' Employees Social Security Agency Establishment Regulation No 202/2011

A. Investment of the Pension Funds

The Agency is given the authority to invest the pension contribution in treasury bonds and other profitable and reliable investments that will be specified by directive issued by the Ministry of Finance and Economic Development, Art 13(1)(b) of the proclamation.¹²¹ Art 5(9) of the regulation also stipulates the same as the proclamation.¹²² However, except on government Treasury bond, there is no any investment made by the private organizations' employees' pension fund. In order to complete this research, the writer conducted an interview with an expert working in the Agency named Ato Mulugeta Wondimu, with the position Investment Expert IV. The Expert replied to the question, why the Agency shouldn't invest on the pensioned funds, at this moment the Agency has more than 34 billion Birr cash. Though the Agency is allowed to invest on other secured businesses as mentioned in the proclamation and the regulation, except government Treasury bond there is no any investment made on the money in other areas. The Ministry of Finance is repeatedly requested by the Agency to specify areas in which other investments options to be available to the Agency for investment. Ato Mulugeta Wondimu added that, "the Ministry of Finance not only requested by the Agency to specify areas of investment available to the Agency, but also as a responsible organization the Agency brought a proposal to the Ministry of Finance possible areas to invest on the money like buying the Bond of the Great Ethiopian Renaissance Dam (GERD), to have a time deposit Bond, because both have better interests than Government Treasury Bond. The investment on the government Treasury bond has no any significance, it is too small that the Agency earns in the form of interest. But there was no any positive response by the Ministry of Finance.¹²³ Since last three months (since December 2019, because the interview is conducted on March 2020) there is some little green light is there for the Agency to invest on the money that in a discount method which is a kind of financial market started by government."¹²⁴ The researcher also brought the issue to the attention of Ato Yohannis Hailu a Debt Management Directorate director in the Ministry of Finance. The director replied that, it is true that his organization did not allow them to invest the funds as they wish for one basic reason that, due to shortage of liquid cash on government deposit since it is clearly known that, government has a lot of giant investment projects and needs cash. Due to this reason the Agency is not allowed to use the pension fund to invest in any areas except in some government treasury bonds.¹²⁵ The next question raised to the director was, how much it is proper to use a

¹²¹ The Private organization Employees pension proclamation No 715/2011

¹²² Private Organizations' Employees Social Security Agency Establishment Regulation No 202/2011

¹²³ Ato Muluget Wondimu, an expert working with the private organizations employees social security Agency with the position of investment expert IV, Interview conducted on 18/03/2020

¹²⁴ Ibid

¹²⁵ Ato Yohannis Hailu, a directorate director of debt management on the Ministry of Finance. Interview conducted on 23/03/2020

pensioners' money by the government without the authorization of the pensioners or the agent of the pensioners (which is the Agency), The director replied that, "it seem logical when it is seen only in the side of the pensioners. But if it is seen in a wider manner the government also has some justification to use the money. These huge projects particularly power generation, sugar industry and the likes need a lot of money. If the government is successful in finalizing the projects and makes them for use, not only the pensioners but also the whole citizens of the country will have a better living condition." The director added that, "but now by considering the complaints of the Agency the Ministry of Finance allowed the Agency to participate in the financial market and the Ministry decides since 2020 not to use the pensioners' money for its own purpose, rather to find other financial sources like as it is declared that, by privatizing different huge projects for external and domestic private sectors. As government declared that committees are organized and different documents are also prepared and the government is working on it."¹²⁶

B. Amount of Retirement Pension

According to the proclamation Article 19(1) the retirement pension due to any employee of private organization shall be 30% of his average salary of the last three years preceding retirement.¹²⁷ From the proclamation it is important to consider that the Ethiopian system is a defined benefit system.¹²⁸ According to the word of Ato Mulugeta Wondimu, the challenge facing the Agency is the pensioners are abusing the system by using the weak side of the law and taking much amount of money as retirement pension than their contributions justify.¹²⁹ To make clear, let us assume that Mr. 'A' is an employee working in a private organization paid 10,000 Birr monthly. Based on Art 19(1) of the proclamation his retirement pension will be 30% of his average salary of the last three years preceding retirement. So in order to get 30% of Mr. 'A's average salary, we should calculate the last three years monthly salary, times by 30% and divide by 36 months.

$[(10,000 \times 36) \times 30\%]$ divided by 36 months, which is $= 360,000 \times 30\% / 36 = 3000$ Birr.

So, Mr. 'A's retirement pension is 3000 Birr. But If Mr. 'A' is a family or a friend of the owner of the Business, one month ahead of the beginning of the last crucial three years that is one month ahead of the 36 months, fictitiously they will increase Mr. 'A' salary by 100,000. So based on the calculation Mr. 'A's retirement pension will be 30,000. Hence Mr. 'A' is earning unreasonable retirement pension. Due to this reason the majority pensioner's money is taking away by many pensioners.

¹²⁶ Ibid

¹²⁷ Private Organization Employees Pension Proclamation No 715,2011

¹²⁸ Supra at note 20

¹²⁹ Supra at note 123

C. Decisions on Entitlement Benefits of the Pensioners

The Agency is also given the power to decide on any cases related to the entitlement assigned to it by law. Art 53(1) of the proclamation deals, the fulfillment of conditions for entitlement to any kind of benefit payable in accordance with this Proclamation and the amount of the benefit shall be decided by the Agency.¹³⁰ The proclamation also put some limitation on the decision of the Agency under its Art 54(1) to review its previous decision upon request by an aggrieved beneficiary or on its own initiative.¹³¹ Even though the law obliged the Agency to review its previous decision, with a reasonable ground the law gave the same body to decide on the deduction, cancellation or termination of benefits.¹³² Here what is to be note that any decision in relation to the benefit made by the Agency is not final. Art 55(1) of the proclamation gives the beneficiary who is aggrieved by the decision of the Agency shall have the right to lodge an appeal to the Social Security Appeal Tribunal established pursuant to Article 57 of Public Servants Pension Proclamation No. 714/2011.¹³³ Art 55(2) the private organizations' employees pension proclamation also clearly referred as Article 56 of the Public Servants Pension Proclamation No. 714/2011 shall be applicable to employees of private organizations lodging appeals.¹³⁴ Hence the Social Security Appeal Tribunal which is established under Art 57(1) of the proclamation 714/2011 is the appropriate organ to decide on appeals submitted to it in accordance with Article 56 of the public servant pension proclamation. So this tribunal has been empowered by the proclamation upon examining the appeal submitted to it in line with the provisions of the Proclamation and regulations for the implementation of the Proclamation, may reverse, vary or confirm the decision of the Agency.¹³⁵ Under Art 56(4) of the proclamation also states that, the decision of the Tribunal shall be final; provided, however, that any party may appeal to the Federal Supreme Court within 30 days, if there is a fundamental error of law in the decision.¹³⁶ Some stake holders raised a complaint against this provision that 30 days is short for appeal to the Supreme Court and it is challenging the constitutional right of Appeal.

Backing to the challenge of the Agency some criticisms are there in the decision of the Tribunal. The main criticisms are there is lack of efficiency in the Tribunal decisions. For example members of the tribunal sometimes lack appropriate knowledge to understand and interpret the law. Besides, cases will not get there end in the estimated time, they take much time than they should.

¹³⁰ Private Organization Employees Pension Proclamation No 715,2011

¹³¹ Private Organization Employees Pension Proclamation No 715,2011

¹³² Art 54(2)&(3) of the Private Organization Employees Pension Proclamation No 715,2011

¹³³ Private Organization Employees Pension Proclamation No 715,2011

¹³⁴ Private Organization Employees Pension Proclamation No 715,2011

¹³⁵ Art 56(3) of the Public Servant Pension Proclamation No 714/2011

¹³⁶ The Public Servant Pension Proclamation No 714/2011

D. Challenges in Relation to the Pension Laws.

This is an indirect challenge in relation to the provisions on the proclamation No 715/2011. Art 11(1) of the proclamation states that, every private organization shall deduct contributions of its employees from their salaries and pay the amount, together with its own contributions to the Pension Fund monthly.¹³⁷ It adds, contributions referred in this Article shall be paid to the Pension Fund within 30 days from the last day of the month in which payment of salary has been effected.¹³⁸ The amendment proclamation on its part also states under Art 11(1) "If the private organization fails to pay pension contribution collected pursuant to Article 11(1) within 30 days, it shall be liable to pay interest with the bank deposit interest rate including 5% penalty for the unpaid pension contribution calculated from the first day of the month following the last day of the month in which payment of salary has been effected."¹³⁹ Beside proclamation No 715/2011 also empowered the Agency with a huge authority. If anyone reads the proclamation from Art 11(6) to Art 11(9), it is simple to understand how the law is authorized the Agency with huge power. Art 11(6) states where a private organization fails to pay contributions for a period of more than three months, the Agency or the delegated body has the power to cause the deduction of the arrear contributions and additional payments from the money deposited in its bank account.¹⁴⁰ So without any court order the Agency has the power to deduct from the private organization money deposited in a Bank. The proclamation also puts an obligation on a Bank saying that, any bank shall, when requested by the Agency or the delegated body, have the obligation to deduct, without any precondition, the amount of contributions to be collected from the account of the private organization and pay to the Agency or the delegated body.¹⁴¹ Here because the private organization which pays salary to employees covered by pension scheme have the obligation to notify, in writing, to the Agency the branch of the bank and the account number in which it has deposited money, and any change of address of the bank and bank account within 15 days of the occurrence of such change.¹⁴² The proclamation not only stops by authorizing these powers to the Agency, under Art 11(9) it gives additional power up to confiscate the property of the private organization. It reads as, "In line with the directive issued by the Ministry of Finance and Economic Development to determine the rules for enabling the collection of tax by seizing and selling the property of tax payers who failed to perform their obligation to pay tax, the Agency or the delegated body shall have the power to sell, through tender, the property of the private organization for the purpose of collecting arrear contributions that

¹³⁷ Private Organization Employees Pension Proclamation No 715,2011

¹³⁸ Art 11(2) of the Private Organization Employees Pension Proclamation No 715,2011

¹³⁹ Art 2(2) of the Private organization Employees pension (Amendment) Proclamation No. 908/2015

¹⁴⁰ Private Organization Employees Pension Proclamation No 715,2011

¹⁴¹ Art 11(7) of the Private Organization Employees Pension Proclamation No 715,2011

¹⁴² Art 11(8) of the Private Organization Employees Pension Proclamation No 715,2011

could not be collected.¹⁴³ As the word of Ato Girma Sisay, he is the legal Affairs directorate director of the private organization employees' social security Agency there are more than 250 private organization are penalized and the Agency is collected from 200 to 300 million birr.¹⁴⁴ The writer of this paper also visited some of the sample documents in the Agency in which the law applied on the Private companies.

1. A letter written by the Agency to 16 private Banks including commercial Bank which requests for the deduction of money on 9 (nine) private companies accounts found in the mentioned Banks and transfer to the Agency's account.
2. An internal letter also written by the Agency Legal Department to the Registration and Allowance Payment Department mentioning that, the Agency is taking more money than needed from a private company (SATCON Construction) and to return the extra money of the company.
3. Other letter written by the Agency to Sebeta City Land Development and Management Office. By stating its power, the Agency sold the Gust house owned by Ayka Addis Textile and Investment Group. (all the letters are attached as an annex).

So regarding these huge powers different stake holders argued that the Agency is given a power more than it should have. Beside rumors are blowing that, this huge power of the Agency makes the positioned people in the Agency to conspire with the private companies. In other words the power led them for some abuse of power and corruption. Though Ato Mulugeta Wondimu is not agree that there is corruption and abuse of power, he totally agrees on the huge power of the Agency in light of private investment and saying that,

“First, if a private company fails to pay for one month it will directly enter to a worrying penalty

The other issue the Agency is not executes the penalty by applying to the court, rather directly go to the Bank account of the private company and deduct on the money.

The third and the harsh thing is the Agency or the delegated body has the power to sell the property of the investor. So this is directly discouraging private investment in our country. As we all know we have a lot of problems in relation to the economy, the unemployment is high, hence rather than encouraging the investors, having this kind of law is not proper to my opinion.”

He also added that, he understood the logic of the legislature why it enacted this law. The reason is by worrying about the futures of the pensioners. But in his view it will be better to balance both sides. So this indirectly affects the Agency's mission and objectives given by the proclamation.¹⁴⁵

¹⁴³ Art 11(9) of the Private Organization Employees Pension Proclamation No 715,2011

¹⁴⁴ Ato Girma Sisay Bogale, The legal Affairs directorate director of the private organization employees social security Agency, interview conducted on 18/03/2020

¹⁴⁵ Supra at note 123

However, Ato Girma Sisay Bogale, does not agree with the Agency's huge power vested to it, and argued that, before simply reading the law and criticize it, it is better to understand the whole purpose of social security. It is the issue of the future life of the people who contribute to the nation. He further argues that,

“First, if the company will not pay this small amount of money within the given period of time; there may be a Bankruptcy issue, so to have the money soon is very important.

Second, if the company pays salary to its employee, what is the big deal not to pay this small amount of pensioners' money?

Third, we have a worry that there may be conspiracy that if we give them time, they may come with the name of other company by closing the existing one.

Forth, we are executing the law, we don't have the mandate to minimize the penalty we don't have also a procedure to give easement time.”

Therefore in his opinion the law will not be a challenge to the private investment. Rather even though the employee of the Agency couldn't able to tress the real case, they heard that, when a letter is written to the Banks to which the private companies account is opened, the Banks will inform the companies and let them take the money in their account. Then the Agency will oblige to go to the next step, which is the selling of the property of the company. This is additional burden on the Agency's activity.¹⁴⁶

However, it is true that there are facts that should be considered on the opinion of Ato Girma Sisay, in the writer's view the opinion of the Legal directorate director is not much convincing. Rather the writer will tend to the opinion of the expert Ato Mulugeta Wondimu.

4.2.2. Challenges of the Agency in relation to the collection of the funds

The other responsibility is given to the private organizations' employees' social security Agency is to delegate the collection of the pension contribution of each employee of the private organization. “The Agency may delegate any of the activities in relation to the collection and enforcement of pension contributions to other bodies.”¹⁴⁷ The regulation also implies this delegation by stating that, “ensure that pension contributions are collected by the appropriate organ in time and in the correct amount.”¹⁴⁸ Based on this power of delegation, the Agency gave the collection of the pension contribution to the Ministry of Revenue by formal contract. So the Ministry of Revenue and Regional Revenue collection bodies have been given the mandate to collect pension contributions. But the issue here is, there are also major

¹⁴⁶ Supra at note 144

¹⁴⁷ Art 11(11) of Private Organization Employees Pension Proclamation No 715,2011

¹⁴⁸ Id Art 5(3) of the regulation.

challenges in connection to the pension contribution. The questions rose to both people in the Agency regarding the collection of the fund are,

1. What is the reason that the Agency delegates the task to the Ministry of revenue?
2. How the delegation is made and
3. How much the collection is effective?

According to their words, the reason for the delegation is, “Ministry of Revenue has a well developed and established system, and has expertise in the collection process whereas we don’t have. So in order to make the collection of the pension contribution effective, delegation to the Ministry of Revenue is unavoidable.”¹⁴⁹

Concerning the delegation as they said, there is a formal contract between Agency with the Ministry. It is also mentioned on the contract document that, the legal base for the contract is Art 11(11) of the proclamation. Besides it is believed by the government that, collecting the money in one government body makes the collection cost effective, it will also avoid work redundancy and it makes the collection efficient.¹⁵⁰ It is also clearly stated the legal obligation of the Agency and the Ministry in the contract document under Art 7 and Art 8 respectively.¹⁵¹ However, as the words of the two people in the Agency the reality in the ground is different. The Agency is facing a big problem due to the negligence of the Ministry.¹⁵² The reason is, the Ministry of Revenue didn’t consider the collection as its duty because the task is not its institutional mandate. Therefore the real challenge that the Agency facing now is the pension contribution is not properly collected and deposited to the Agency within the specified time as stated by the proclamation. There is no also a proper report to the Agency by the Ministry. There were also discussions but not fruit full. Because of this, the Agency will not use the money according to its plan.¹⁵³ Article 11(4) of the proclamation states that, “Contributions of private organizations and employees of private organization shall be collected within the time specified by the bodies to be delegated by the Agency and paid to the Pension Fund within the first working days of the following month.”¹⁵⁴ This is also clearly stated under Art 8(4) of the contract document as the obligation of the Ministry.¹⁵⁵ Under Art 7(5) of the contract document states that any administrative cost will be covered

¹⁴⁹ Supra at note 123 and 144

¹⁵⁰ Art 1 of The contract document made between the private organizations’ employees social security Agency and the Ministry of Revenue, signed on 12/07/2011

¹⁵¹ Ibid

¹⁵² Supra at note 123 and 144

¹⁵³ Ibid

¹⁵⁴ Private Organization Employees Pension Proclamation No 715,2011

¹⁵⁵ Supra at note 150

by the Agency.¹⁵⁶ For the question rose if there is any payment paid to the Ministry for its service according to the contract? Both people in the Agency replied that, there is no any payment which is paid to the Ministry even the contract says so. The reason is the Ministry of Revenue didn't ask for payment and there is no any initiative taken to pay in the Agency's side also.¹⁵⁷ For the other question rose by the researcher why the Agency shouldn't cancel the contract, they replied that, right now it is so difficult, because still the Agency don't build the capacity to do that. Besides, there is a fear not to waste the pensioners' money if the Agency starts the collection by itself. In deed in the Regional states the Agency is collecting the pension contribution without any support by the Regional Revenue offices. Regarding cancelation the contract document under Art 13 states that, cancelation may be possible when the two parties agreed so.¹⁵⁸ Here in the writer's view, as a legal document the provision stated about cancelation is not proper, because there is no any indication that if any of the party who didn't perform his obligation will cancel the contract and seeks remedy for the damage incurred. So it seems a formality not a properly enforceable contract.

However, all these complaints of the Agency don't hold water in the people of Ministry of Revenue. According to Ato Tulu Fite, he is the Head of East Addis Ababa Tax Payers Branch Office in Revenue Minister, the complains by the Agency is not acceptable because said Ato Tulu Fite, "First, we are transferring the collected fund to their account and reporting to them every month all our activity in relation to the collection according to our contract.

Second, we are incurring different office costs like (computer, printer, receipt, different formats, even employee salaries because we organized offices and assigned employees for this purpose). We are doing their duty without any benefit simply by looking the national interest. So this is the fact on the ground but the Agency people are complaining against us, this is a sad story."¹⁵⁹ He also added that, for the question, what is the benefit of the tax office if so, and how the office continues the task, they are doing this only for the benefit of the tax payer to ease the system by creating one window service and from the beginning both organizations reached to this agreement by looking the nation's interest in relation to this task.

Regarding the next situation according to Ato Tulu Fite's word, they are not willing to continue in such manner, and they are reporting the case to their top management.

¹⁵⁶ Ibid

¹⁵⁷ Supra at note 123 and 144

¹⁵⁸ Supra at note 150

¹⁵⁹ Ato Tulu Fite, The Head of East Addis Ababa tax payer branch office in Revenue Minister, interview held on 20/03/2020

Added Ato Tulu that, “the other basic issue that forced us not to handle this duty is, the tax office is establishing a new system which is our customers will not obliged to come and report every months like the previous one, rather to report every three months. This will affect the pension fund collection activity, because we will not have an institutional duty to assign employee and to fix budget for the collection of the pension. Beside, we are on the way to start E-payment system to our customer. Every customer will pay his tax in his office using internet. When any customer transfers his payment to our account in National Bank, the National Bank system will report to our office and immediately our system will send a receipt online to the customers. So the task of the pension collection will be affected, as I said we don’t have a duty to establish a new system for them. Regarding these matters some discussions are made still there is no consensus how to continue. But we are pushing not to continue with them to our top management, because it is additional burden for us not to modernize and focus on our tax system.”¹⁶⁰

4.3. Possible Reforms for the Private Organization Employees Social Security Agency

As mentioned above challenges are part of the administration of the private organization employees’ social security Agency of Ethiopia. The Agency will not seem have the capacity to attain the responsibility given to it due to the problems mentioned above. So in order to enhance the living standard of the private pensioners during their retirement age, to embrace the majority of workers in the informal sector and to contribute on the economic development of the country, the present system should be changed and the government owned system should be open to the private investors. In other words, like the developed and emerging countries adopting the second and the third pillar pensions are mandatory by reforming the present first pillar pension scheme or the pay- as- you- go scheme. As a common fact the Ethiopian current social security system is not comprehensive. The country has only occupational pension for government and private organization employees. Both the governmental and private pension is compulsory pay-as-you-go scheme. When we see the private sector, the employer and its employees pay contributions defined as percentages of the monthly salaries of the employees,¹⁶¹ and only retired private sector employees (and their dependents) get payments from current contributions based on their average salaries and years of services.¹⁶² At the current rate of inflation the money will be worthless by the time pensioners reach the age of retirement. It does not also serve the functions of facilitating saving, investment, corporate finance and capital market development since its benefit

¹⁶⁰ Ibid

¹⁶¹ Art 10 of Private Organization Employees Pension Proclamation No 715,2011

¹⁶² Id Art 18

payments are small and its resources are hardly invested in government Treasury bond. Besides, the existing governmental pension system has not been efficient in the tasks of collecting contribution, generating income and paying benefits. So if the government owned pay as you go system open to the private investors, apart from benefiting the pensioners at the time of retirement, it also clasps the informal sector that the government is not able to do it. This in return will help to attain at least some of the objectives stated in the investment law.

4.4. The rational of the reform in light of the objectives of the investment proclamation

As stated on the preamble of the investment proclamation, the main reason for the promulgation of the new proclamation is, recognizing that increasing the role of private sector investment in all sectors of the economy including in productive and enabling sectors has become necessary to accelerate the economic development of the country, ensure its sustainability, strengthen domestic production capacity and thereby improve the living standards of its people.¹⁶³ It also added that, to generate more and better employment opportunities, and facilitates sustainable and entwined linkage among various economic sectors.¹⁶⁴ These broad missions also stated under Art 5 of the proclamation in details. So the writer argument here is, the country's interest toward private investment is in a big ambition. If so how this ambition becomes achievable without letting open areas owned by government like the pension fund administration in which a huge amount of liquid cash is flowing. As mentioned above the Agency is in inefficient position to attain the responsibility given to it. So in order to enhance the living standard of the private pensioners during their retirement age and including the poor in the informal sector, in order to contribute on the economic development of the country as mentioned in the investment law, the present system should be changed and the government owned system should be open to the private sectors. This argument also supported by many Ethiopian experts in the financial sector. Ato Habib Mohammed, a financial expert with a decade and a half of experience in the sector interview with Fortune Newspaper, strongly argues that he does not see the reason why the sector has to be only reserved for the government. Unlike Ethiopia, where the government is the only one that has the power to collect such funds, in other countries pension funds can also be managed and administered by private companies.¹⁶⁵ Abay Yimer, who is an expert on the area also argued in his writing towards the issue as follows:

¹⁶³ Investment Proclamation, 2020, Proc, No 1180 Neg.Gaz, year, 26, No. 28, Addis Ababa

¹⁶⁴ Ibid

¹⁶⁵ Fortune Magazine, Pension Fund Mismanagement Sends Billions of Birr Down the Drain, interview with Ato Habib Mohamed on 10/16/19

*“The coverage and management of the governmental pension system is very weak. Most of both the employed and unemployed population of the country is, therefore, living without formal pension and life annuity coverage. The old are also suffering from retirement poverty. The country needs to improve on these. The Ethiopian households and individuals are reported to have very limited saving due to both their expenditure habits and the low levels of their incomes. The direct mobilization of saved resources from the households and non-households to investment is also weak due to absence of formal institutional savers and the market mechanism for direct resource mobilization. The development of private companies in the sector is necessary for these reasons along with the improvement of the governmental pension system, the encouragement of private insurance, the creation of securities market, and the taking of other developmental measures.”*¹⁶⁶

So the role of the government, in this case (the Agency) should be a regulator. It must have the regulatory role with proper organizational structure, expertise, funds and laws like the national Bank of Ethiopia as it regulates the commercial Banks in the country.

4.5. Regulatory system for private sector pension funds

4.5.1. Structural Organization of the companies in the private pension

Looking for the proper organizational structure of the companies which involve on the private pension is very crucial. So companies which are interested to participate in the area need to have some kind of structural formats that should be regulated properly by the regulator and pensioners. This governance system should be in the form of Share Company this is because the governance in Share Company is very clear, well managed. Besides it will be easy to collect funds not only in the formal sector but in the informal sector of the economy. Ato Mulugeta Wondimu also in favor of this structure since he believes that currently the Agency is not capable of performing the duty, opening the sector to the private companies is necessary and he adds that his Agency had a strategic plan to embrace the informal sector to the pension system. But he said let alone to bring the informal sector to the system, the formal sector is also out of the Agency’s control. Therefore organizing the private companies with the share company formats is better for the achievement of the objectives.¹⁶⁷ Ato Abay Yimer, also in favor of this structure and argued that,

¹⁶⁶ Abay Yimer, S. *“Financial market development, policy and regulation: the international experience and Ethiopia’s need for further reform.”* University of Amsterdam, 2011, p 21.

¹⁶⁷ Supra at note 123

“Ethiopia needs to consider the following market and governance related issues in developing the private pensions system. Hence, the best approach is to require institutionalization of the pensions as incorporated companies with their own governance. Requiring the share company form is also appropriate since this form is the commonest and preferred structure for organization of the financial institutions in the country. The share company form has also the advantage of combining capital, reserve, limited liability, professional management, shareholder participation (in governance), accounting, external auditing (and control), and information disclosure. This will also allow the pensioners to live with and manage their own assets and liabilities as corporate entities instead of as pool of assets that are prone to external management and abuse.”¹⁶⁸

In doing so it is important to consider the saving institutions of society such as *Equb*, *Edir* and the saving and credit cooperatives, Labor unions, Banks, insurance companies and the likes.

4.6. Investment Diversification

Regarding the investment of private pension funds studies advised that, there should be made with the view to achieving a reasonable balance between the twin objectives. A study made by Hiwot Asmare expert in finance sector stated that, pension funds should meet security and profitability. The management of the investment also should be with some degree of prudential standards.¹⁶⁹ In strengthening the management of the funds in prudent person standard, the OECD guidelines on pension fund asset management also states that, The governing body of the pension fund and other appropriate parties should be subject to a “prudent person standard” such that the investment of pension assets is undertaken with care, the skill of an expert, prudence and due diligence.¹⁷⁰

Hiwot Asmare added that, the investment policy and investment strategy should be consistent with the financing objective of the social security scheme and its cash-flow requirements, the investment policy of a social security scheme should be established taking into consideration the economic policies of national financial authorities such as the Ministry of Finance and or Central Bank and ,a statement of the investment policy and strategy should be formally articulated by the governing bodies of the social security scheme and of the investing institution and should be publicly available.¹⁷¹ If prudent person

¹⁶⁸ Id, p. 25

¹⁶⁹ Hiwot AmareTadesse, “*Practices and Challenges of Ethiopian Social Security Agency Pension Funds Investment*” a Thesis Presented in Fulfillment of the Requirements for the Degree of Master of Business Administration in Finance AAU, (2012) p. 17 (unpublished).

¹⁷⁰ OECD Guidelines On Pension Fund Asset Management’(2006) available at, <http://www.oecd.org/pensions/private-pensions/36316399.pdf>

¹⁷¹ Id p. 15

principles are applied to managing the investment of social security funds; they should be set out, with a minimum body of rules, by the governing body of the social security scheme or by the government. The governing body of the social security scheme or of the investing institution should adopt criteria concerning the expertise that is required of investment managers and other advisors on investment policy and strategy and their implementation. The social security scheme should have an appropriate structure to control decisions taken on the basis of the prudent person principles.¹⁷² Countries also focus on areas of investment in which private sector pension fund will be invested like Investment in the money market, Government securities, Business loans, Real estate and investment in social areas.¹⁷³

4.7. Instruments of the Regulation of the private companies in pension fund investment

The international experience of the pension fund regulation has three building blocks like the regulation of banking and insurance markets, namely i) the licensing (ex-ante control) block, ii) the ongoing monitoring block, and iii) supervision (ex-post) block.¹⁷⁴ The pension funds are, accordingly, subject to licensing. For example, the legal provisions where applicable should clearly state the requirements for registration and licensing (e.g. application, modification and withdrawals, governing documents, risk control, reporting and auditing mechanisms, funding policy, investment policy, capital requirements, reserve fund, governance and business plan, public disclosure and fund guarantee requirements that are implemented through prior approval).¹⁷⁵ Effective monitoring and supervision of private pension funds must be set up and focus on legal compliance, financial control, actuarial examination and supervision of those with the responsibility of operating or managing the plan. Appropriate supervisory bodies should be properly staffed and funded in order to conduct well when relevant off-site surveillance, on-site inspection and punitive or remedial measures are necessary.¹⁷⁶

The adoption and specific content of the instruments of regulation is subject to several factors. Hence, the countries that have funds operated by management companies have often focused on capital and professional credentials of the management companies in setting their licensing requirements while the countries that have followed the trust and foundation approaches have focused on trust law based liability rules and rules for board composition, responsibilities and voting. The countries that have pension plans

¹⁷² Ibid

¹⁷³ Mengistu Gebru, Pension Fund Investment In Ethiopia: Opportunities And Challenges (A Case Of Ethiopia Social Security Agency), Submitted To The Department Of Accounting And Finance For The Partial Fulfillment Of Degree Of Masters Of Science In Accounting And Finance, Addis Ababa University, June 2009, p. 18. (unpublished)

¹⁷⁴ Supra at note 166, p. 32

¹⁷⁵ Principle 2 of “*Core Principles of Private Pension Regulation*”, OECD, 2016,

¹⁷⁶ Ibid

operated by banks and insurers have relied on the banking and insurance prudential rules to protect the assets of the pension members.¹⁷⁷

So in Ethiopian case it is also possible to use the insurance company's prudential rules. Since pension and insurance particularly life insurance have major similarities in their nature. For example both life insurers and pension funds manage risks on the long term, which makes them important suppliers of saving products for the population. The funds collected in the form of insurance premiums and pension contributions are invested for the long term, and together with the accumulated returns are used to pay out benefits at the old age or when the insured risks materialize. The long tenors of their investments and the large volumes involved provide insurers and pension funds with opportunities for cost efficiencies, diversification of risks and accumulation of expertise in wealth and asset management.¹⁷⁸

That is why the writer is proposing as an option to use the prudent regulation of the insurance regulation in the private pension sector, until the country develop life insurance investment regulation, since there is no a comprehensive life insurance investment law except an indication from the national Bank directive No. SIB/25/2004.

It says, the long-term Insurance funds of an insurance company shall be invested in company shares not exceeding 15% of total admitted assets; in real estate not exceeding 25% of total admitted assets; 10% of total admitted assets in investments of the insurance company's choice.¹⁷⁹

4.8. Conclusion and Recommendation

Countries established different types of social security system in order to tackle challenges in loss of income in a situation such as incapacity, old age and the death of an employed person. Pension also one of the social security programs for such challenges.

The modern pension system in our world is originated in Western Europe to curb the dislocation effects of the industrial revolution. The two most influential pension systems introduced in the Western Europe are the Bismarckian and Beveridgean regimes both systems became popular and prevailed in other European countries and the rest of the world. But now days the pension system is well advanced in the developed world, where as it is on struggle to be reformed in the other continents.

¹⁷⁷ Supra at note 166, p. 32

¹⁷⁸ "Importance and key benefits of life insurance and private pensions, A study prepared as part of a financial education campaign organized by APPA and sponsored by Metropolitan Life'(April 2018) pp 28-29, available at, https://assets.kpmg/content/dam/kpmg/ro/pdf/2018/insurance_engleza_web.pdf

¹⁷⁹ Licensing and Supervision of Insurance Business Investment of Insurance Funds Directive No. SIB/25/2004

Recently countries of the globe have indicated a number of reasons in order to reform their pension system from public management to private, such as develop the financial market by creating long-term savings in the economy, increase in national savings, additional investments and stimulation of the economic growth, generate products of high quality and better customer service due to high competition among managers and political neutrality since all these are not prevailed by the state management of the system.

Ethiopia also has its own modern pension system since 1961. Before then piece of land were given to public servants as a reward for life service and gallant actions in the battle field. During the reign of Menelik II, if a military servant gets old he had the right to demand the authorities to replace his son in his place. This was done so that the son would be able to take care of his aging father. Gradually the civil service was organized and grew up and it was found necessary to provide the civil servants with pension. Consequently, in 1958, the Ministry of Pension was established by Imperial Order. Then another decree is issued in 1961. It is the first elaborated law in the Ethiopian pension history. Since then a number of pension laws are developed till present.

Currently there are two pension fund administration systems in Ethiopia, the private and the public sector pension fund administration. The main reason for having the private sector pension system in Ethiopia is to provide permanent employees of private organizations with reliable and sustainable social security encourage personal savings, creating industrial peace and transform the society to the better living standards. In order to achieve the stated objectives, the private organizations' employees' social security Agency has given the responsibility. However, the there are challenges facing by the Agency in the administration of the pension funds. Basically the challenges manifested in two broad ways which are, challenges in relation to the administration of the fund and challenges in relation to the collection of the fund.

Hence the present system should be reformed and the government owned system should be open to the private investors. But to attain the objectives, the private actors should be subject to a “prudent person standard” such that the investment of pension assets is undertaken with care, the skill of an expert; prudence and due diligence then the whole objective of the pension fund investment will be achieved.

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