Beijing Law Review, 2022, 13, 265-277
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

Unending Reforms of the Nigerian Pensions Act: The Dilemma of the Pensioners

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How to cite this paper: Etuk, E. U. (2022). Unending Reforms of the Nigerian Pensions Act: The Dilemma of the Pensioners. *Beijing Law Review, 13,* 265-277.
https://doi.org/10.4236/blr.2022.132017

Received: March 6, 2022
Accepted: May 8, 2022
Published: May 11, 2022

Abstract

The dearth of satisfactory retirement plans coupled with poor retirees' well-being led to the introduction of the contributory pension scheme. Pensions administration in Nigeria dates back to the 1950s. However, with effect from June 2004, a new Pension scheme evolved with the enactment of the Pension Reforms Act 2004. The new Act introduced the new pension scheme in Nigeria, a defined contributory scheme, unlike the old scheme which was mostly derived benefits. Although the new scheme was anticipated to be better than the old scheme as it was expected to remedy the lacuna and shortfalls predominant in the old scheme, there were noticeable errors and it subsequently became imperative to enact the Pension Reforms Act 2014 on 1st July 2014, and there are already agitations for a change. Unfortunately, most retirees or would-be-retirees do not understand the procedures or activities of PENCOM, the Pension Fund Administrators, and other relevant participants in the industry. This is made worst by the lack of education in this regard until workers are on their exit year. This research is carried out to assess the glitches occasioned by the different reforms of the Nigerian Pension Act. This paper has examined the preparedness and fears over retirement. It is advocated that the continuous or unending reforms of the Pensions laws in Nigeria, coupled with the fraud exposed by the National Assembly in 2012 with the new Pension Scheme, only adds up to the dilemma of the Pensioners.

Keywords

Retirement, Retirees, Pension, Pension Scheme, Contributory Pension, Dilemma

1. Introduction

The issue of pension has received global attention in recent times, with many policymakers in different countries of the world, to simplify privately subsidized retirement revenue (Odia & Okoye, 2012).

Pension has thus become pension system that has come not only a significant multi-pillar scheme for the alleviation of poverty, principally in developing nations but also plays an important role in the countries' transformation agenda, over "its impact on state budgets, financial and monetary sector, productivity and infrastructural investment (Oladeinde, 2021).

According to the Law Dictionary & Black's Law Dictionary 2nd Ed, Pension is "a retirement fund that is partial compensation in the future for work performed by employees and may contain some portion contributed by employees with a contribution from the employer". Contributory pension, as the name implies, is a pension arrangement whereby the employer and employee contribute certain percentages of the employee's income towards the employee's pension at retirement.

Pension has also been said to comprise the lump sum payment made to an employee upon his detachment from active service (Adebayo & Dada, 2012).

It is the lifeline of the Pensioner, and possibly the only security of the Nigerian workers as they age and retire or are laid off before retirement. In some cases, pension is entirely that which stands between the retiree and hopeless poverty. It is also the prize of long, commendable service (Bruce, 2009).

There are fundamentally five classes of pension, to wit:

1) **Superannuating Pension**: at the statutory retirement age of 60, 65 or 70 years 60 or 65 years of age, particularly where the years of service are not a ground for retirement, the years of service are used to determine the earned benefits of the officer/retiree.

2) **Retiring Pension**: This is where an officer has served for 35 years, but without attaining the statutory retirement age of 60 years.

3) **Compensatory Pension**: This occurs when an employee's appointment is determined without serving for 35 years or attaining the statutory retirement age of 60 years. In such instances, the employee is to be retired at a grade level higher than his current level.

4) **Contributory Pension**: This is where both employer and employee or just the employer contribute monthly into the employee's Retirement Savings Account. This is the current practice in Nigeria.

5) **Compassionate Allowance**: This is a situation where an employee is sacked and not entitled to any form of compensation. He can be given a one-off payment on compassionate grounds.

Consequent to the fact that payment of pension benefits has always been delayed, the retirees have unconsciously come to accept it as something normal and predictable (Ezenwa & Obiagwu, 2020). Retirees appear to have been seen as a threatened group, destined to die by the simple failure of the system.

The retirees' experiences have become alarming, thus shortening their life expectancy. It is rather unfortunate that once some workers become aware of the fact that they will retire in a short while, fear sets in most resort to unethical conduct, just to secure the uncertain future.

This paper aims to examine the different Pension Reforms in Nigeria—the Old Pension Scheme, which was often flawed by irregularities; such as the inclusion of names of "ghost pensioners", while the benefits of the real pensioners remained unpaid for several months or even years, leading to the introduction of the New Pension Scheme in 2004.

The first part discusses in context from reliable sources, the pension administrations in Nigeria. Part two focuses on the legal regime for contributory pension. Part three interrogates the Contributory Pension Scheme vis-a-vis the old pension scheme and the dilemma of retired and retiring Nigerian workers. It ends with some concluding thoughts.

2. Pension Administrations in Nigeria

Two kinds of pensions have been in operation in Nigeria at different times—the defined contribution plan and the defined benefit plan (Ijeoma & Nwufo, 2015). Pension administration in Nigeria can be discussed under the following sub-headings:

2.1. The Pension Ordinance of 1946

The Nigeria pension scheme commenced in 1951 when the British colonial masters established the Pension Ordinance of 1946, thus the Ordinance had a retrospective effect from 1946. It was however applicable only to officials of the United Kingdom who had been posted to Nigeria.[1]

The Pension Ordinance of 1946 contained vital information regarding the public sector pension scheme in identifying Native Administrative employers/employees, the nature of benefits (pensions and gratuity), and entitlement conditions (Uzoma, 1989).

2.2. The National Provident Fund (NPF) Scheme of 1961

The National Provident Fund (NPF) Scheme, established in 1961, was the first regulation to address pension matters of private establishments in Nigeria (Odia & Okoye, 2012). This was the first social protection scheme for the non-pensionable private-sector employees in Nigeria; and was mainly a compulsory saving scheme where both employee and employer contributed the sum of N4.00 each on monthly basis. The scheme provided for only one-off lump sum cash payment to its members when their employment ends either due to old age or incapacity (Ebere, 2016).

The National Provident Fund (NPF) Scheme was thus incorporated under the Presidency as a parastatal of the Nigeria Pension Board (NPB) (Odia & Okoye 2012). However, in its operations, the National Provident Fund was ineffective

[1]Zakari Ahmadu, MBA, CIFE. Elite Relationship Management Sigma Pensions, available at https://ng.linkedin.com/in/zakari-ahmadu-mba-cife%E2%84%A2-0ba0902a?trk=pulse-article.

in many features, such as:

1) Workers were neither enlightened nor aware of the pension system, nor their accrued rights;

2) Contribution towards the pension was made only by the employers, therefore, the responsibility was only on the employer;

3) The management of the pension system was inaccessible to the projected beneficiaries (the retirees);

4) There were massive allegations of Pension funds misappropriation.

2.3. Armed Forces Pension Acts No 103 of 1972

This Act which became effective on April 1, 1974, consolidated all enactments dealing with pensions, war pensions, and disability benefits and gratuities for members of the armed forces of the federation of Nigeria.

This Act was limited in scope as its application was limited to only members of the Nigerian Armed Forces.

2.4. Pension Acts No. 102 of 1976

All of the Ordinance Acts and Decree is covered by Decree No. 102 of 1979, which took effect from April 1, 1974, precisely 18 years after the enactment of the National Provident Fund (NPF) Scheme.

It consolidated all previous enactments on pensions in Nigeria and incorporated pensions and gratuities as invented for public officers by the Udoji Public Service Review Concision in 1974 (Anazodo et al., 2014). Udoji Commission of 1974 was set up during General Yakubu Gowon's administration to review and overhaul the entire public service, and to ensure the development and optimum utilization of manpower for efficiency and effectiveness in the service.

The Act also repealed about 113 existing pension laws previously in force, from 1st January 1946 to 31st March 1974.

2.5. Pensions Act (No. 102) of 1979[2]

A major step to alleviate and normalize the pension scheme in Nigeria was taken in 1979 with the signing into law of this Decree, known as pension Act No. 102 of 1979, (Now CAP 346, laws of the federation of Nigeria 1990) with 1st April 1974 as its commencement date.

The Act also consolidated all enactments on pensions and merged pensions and gratuity scales developed for public officers by the Udorji public service Review commission in 1974.

It can therefore be concluded that the pension Act 102 of 1979 is the foundation for all the rudimentary pension laws, in the Nigerian public service (Safana, 2020).

The other laws which cater for precise professional groups but retain the main

[2]Nigeria-Pensions Act (No. 102 of 1979) (Chapter 346). Available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=52881.

component of Act 102 of 1979 are:

1) The Armed forces pension Act No. 103 of 1979;

2) The Pension Rights of Judges Act No. 5 of 1985 and the amendment Acts No. 51 of 1998, 29 of 1991, and 62 of 1991;

3) The Police and other Agencies Pensions Decree No. 75 of 1993 which took retrospective effect from 1990;

4) The Local Government Pension edict which culminated in the setting of the Local Government Staff Pension Board of 1987;

5) National Social Insurance Trust Fund (NSITF) scheme was set up by Decree No. 73 of 1993 to replace the defunct NPF scheme with effect from 1st July 1994;

The predominant features of all these pension schemes were:

1) Employees made no contributions to their Pensions. The benefits were paid through budgetary allocations. Due to the paucity of funds, the amount released was usually not sufficient for the actual appropriation made for the payment of workers' pensions.

2) Politicians used it as bait during electioneering campaigns to promise pension increments and even supposedly borrow from the Pensions funds.

3) Even where budgetary provisions were made, the insufficient and precocious release of funds caused delays and accumulation of arrears of pension.

The unsustainability of the Defined Benefits Scheme, therefore, became very apparent.

2.6. Pension Reform Act 2004

The Obasanjo-led government introduced a Pension Reform which was to address and eradicate problems related to the Old Pension Scheme (Federal Ministry of Information and Communication, 2004). Until the passing of this Act by the National Assembly, the Nigerian government operated on a Defined Benefits Scheme, which was unfunded, and the payment of retirement benefits was budgeted for annually.

The Act repealed the Pension Act of 1979 (CAP 345 Laws of the Federation of Nigeria, 1990) and automatically amended the Nigeria Social Insurance Trust Fund Act of 1993 which previously regulated retirement benefits both in the Public and Private sectors.

The 2004 Act made provisions for uniform regulations and standards for pension administration and retirement benefits for both Private (SS.34 & 40) and public sectors, most importantly, it introduced the Contributory Pension where both the employer and employee, contributed 7.5% each, of the employees' emoluments, towards the employee's pensions.

Only those who had three years or less to retire were exempted from the Act.

The Act established the National Pension Commission (PENCOM) as the supervisory body for pensions in Nigeria (S. 14). The primary object of the Commission was "*to regulate, supervise and ensure the effective administration of* *pension matters in Nigeria.*" (S. 15)

The 2004 Act also repealed all other existing pension acts in Nigeria, such as:

1) The Pension Act, 1990.

2) The Police and other Agencies Pension Offices (establishments, etc.) Act, 1993.

3) The Police Pension Rights of Inspector-General of Police Act, 1993.

The Act also provided for the transfer of all Boards of Trustees of various pension departments in the Federal, State and Paramilitary Services to the commission (PENCOM) (S. 30(1)-(4)).

The Act also licensed **The Nigeria Social Insurance Trust Fund (NSITF) established by the Pension Act of 1993**, to establish a Pension Fund Administrator (PFA) in accordance to take care of contributors to the Social Insurance Scheme of NSITF (S. 42 (1)-(7)).

With regards to the Contributory Pension, the Act was made applicable to every organization that had up to five or more employees (S. 1(2)(b)).

The Act made it mandatory for every employer to have a Retirement Savings Account (RSA) with any of the registered Pensions Funds Administrators (PFA) *o*f his choice*,* and furnish his employer with the identity of such an account (S.11).

Apart from the contribution, the employer was required to maintain a life insurance policy for the employee for at least, three times the annual total emolument of the employee (S. 9(3)).

The amounts are payable as retirement benefits were not taxable. But, any voluntary contribution (S. 9(5) made by the employee as additional payment to his contributions if withdrawn within 5 years of the contribution was liable to tax at the point of withdrawal (S. 9(10)).

The Retirement benefits could be accessed upon retirement or attainment of the age of 50 years, whichever is later (S. 4).

The balance in the Retirement Savings Account (RSA) could be utilized as follows:

1) **Programmed withdrawals** (monthly or quarterly)—calculated based on a projected life span of the retiree;

2) **Annuity for life** obtained from a life insurance company;

3) **A Lump Sum** from the balance of the retirement savings account an amount not less than 50% of his annual salary as of the date of his retirement (S. 9(5).

Unlike the previous Pension Acts, the 2004 Act was fully funded and contributions were kept by a custodian, whose main business was that of managing the retirees' contributions.

Although widely applauded after its enactment, the pertinent question then was *whether the contributory scheme has effectively removed the potentiality of failed pension plans in the country* (Marcellus & Osadebe, 2014).

The Pension Reform Act of 2004 was faced with some problems. Coverage of the scheme did not seem to include the Local Government employees, who appeared very reluctant to switch over to the scheme. There were no stated means of enforcing compliance to firms who employed more than 5 persons coupled with the issue of corruption that we have already been known for, and most importantly, the lack of education on the benefits of Pensions at old age in essence hindered the smooth administration of the reform act.

This explains why the established NSITF scheme for Private Sector does not live up to expectations.

2.7. Pension Reform Act 2014 (Currently in Use)

President Goodluck Jonathan signed the Pension Reform Act of 2014 into law on 1st July 2014. This consequentially repealed the Pension Reform Act of 2004.

The new law was to ensure that:

1) Retirees received their pensions as at when due, and workers could be assisted to save towards their retirements;

2) Like the 2004 Act, it states that any interests, profits, dividends, investments, and other income accruable to pension funds or the asset is not taxable.

3) Voluntary contribution withdrawn by retirees is no longer subject to tax if withdrawn within 5 years.

4) An employee who disengages from employment or is disengaged before the age of 50 and is unable to secure employment within 4 months of disengagement is allowed to make withdrawals an amount not exceeding 25% of the total amount in his Retirement Savings Account.

5) An employee still has the liberty to open his Retirement Savings Account with any Pension Fund Administrator, and where an employee fails to open one within six months of his employment, the employer is expected to invite a Pension Fund Administrator to open one for the employee.

6) The act makes it a criminal offense for any Pension Fund Administrator to misappropriate the savings of an employee.

7) It further precludes an employee from resorting to arbitration or commencing an action at the national Industrial Court where an employee is aggrieved by his Pension Fund Administrator, without first approaching PENCOM for redress.

8) Contributions are now based on "monthly emoluments" as against the basic pay, thus employees are not seeing a 100% increase in their Pensions contributions.

9) The rates of contributions under the new Act by both the employer and employee are a minimum of 10% and 8% respectively (against the 7.5% of the employee's monthly basic, housing, and transport allowances by both parties under the repealed Act).

10) An employer is obligated to remit pension contributions to pension fund custodians within seven (7) days after payment of salaries; or he "*shall be liable to a penalty*" which shall not be less than 2% of the total contributions that remain unpaid, for each month of default.

11) There is **no effective date stated in the Act**.

The Act however does not seem to address so many issues, for instance, it has made mandatory contributions applicable only to organizations where there are 5 or more employees (previously 5 employees), thus reducing the number of beneficiaries to the scheme.

2.8. The Legal Regime of Contributory Pensions

The introduction of the Contributory Pension in Nigeria was primarily to cater for retirees (Abada et al., 2018). The benefits of this contributory pension include:

1) All employees have a Retirement Savings Account;

2) Employees are forced to save their earnings;

3) The burden of pension funds is removed from the employer and government;

4) Retirees will receive their retirement benefits as at when due.

5) Pensioner may likely earn more from the Retirement Savings Account from the interests that accrue to him, than from personal savings.

Unlike the Defined Benefit Scheme where the retirees have to wait for long hours in queues to receive their stipends, with the Contributory Pension Scheme, pensions are paid directly into their bank accounts. Their pensions are deposited into their retirements savings account and are being managed by their Pensions Fund Administrators (Ijeoma & Nwufo, 2015).

It must also be noted that where an employee changes his job, the employee can retain his account with his Pensions Fund Administrator. The employee is also at liberty to switch from one Pensions Fund Administrator to another, but not more than once a year (S. 13).

2.9. Eligibility for Gratuity and Pensions in the New Pension Scheme

1) An employee must have served for at least 10 years and can access his pension if he is up to forty-five (45) years of age.

2) Where an employee has worked for less than 5 years to 10 years, he or she will only be entitled to gratuity, but where an employee has worked for 10 years and above, he or she will be entitled to both pensions and gratuity.

3) If unfit to continue in service and has been so ascertained by a properly constituted Medical Board.

4) Where an employee has worked for 10 years and is deceased, his designated next-of-kin would be paid the gratuity he would have earned if he had lived to retirement.

5) Where an employee has worked on a contract or temporal basis before moving to a pensionable appointment, the number of years worked will be taken into consideration in the computation of his pensions and gratuity.

6) Where an employee has worked for both the State and Federal Government, the services would be merged in the computation of his or her pensions

and gratuity.

It is rather unfortunate that most retirees pass through a lot of hurdles to access their contributory pensions, and this has been occasioned by the different systems of government (Uma, 2015).

Ijeoma & Nwufo (2015) have enumerated the challenges of this contributory Pension Scheme to include, but not limited to the following:

1) Difficulty in the Remittance of the retirement benefits to the Retirements Savings Account (RSA) by the employers and employees;

2) Authenticity of our licensed Pension Fund Administrators;

3) Lack of an authentic legal framework by the government that will be sustainable;

4) No modalities have been put in place by PRNCOM to supervise, monitor, and enforce compliance with the provisions of the Act.

3. The Pension Acts and the Dilemma of the Retirees

Retirement ordinarily means to withdraw and retreat. Today's retirees and potential retirees, however, are facing retirement without adequate psychological/emotional, and economic preparation.

Payment of pension entitlements to retirees in organized nations of the world is taken very seriously. Every government that is accountable to its citizens, knows the importance of the pensioners because it appreciates their contributions to the development of the nation. For instance, in the United Kingdom, pension usually forms part of the campaign manifestoes of the political parties (Uma, 2015).

On the contrary, retirement in Nigeria is characterized by unsubstantiated fears leading to negative deviances like complacency, falsification of records, and large-scale corruption (Iheama, 2017).

Retirement in Nigeria also goes with self-isolation and poverty; consequently, retirees even at very old age seek employment or menial jobs to maintain themselves. This only confirms that the insufficient amount received by pensioners is not adequate to sustain the retirees and their dependents.

The dilemma of retirees can be enumerated as follows:

3.1. Sharp Practices by Employers[3]

The delay in the release of funds by employers to their retired staff is a thing of great concern.

The laxity in the enforcement mechanism has made many employers debit and not remits the monies to the Retirement Savings Account of employers. The National Pension Commission had in 2018 attempted to penalize companies and forced them to remit over N6 billion in penalties for the default.

[3]The Challenge with Pensions In Nigeria Proshare Nigeria Pvt. Ltd., Available at https://www.proshareng.com/news/PENSIONS%20N%20RETIREMENT/The-Challenge-With-Pensions-In-Nigeria/41962.

3.2. Lack of Insurance Policy for Workers' Funds

Sections 85-91 of the Pensions Reform Act 2014 provides for the investment of the pensions fund by the Pension Fund Administrator, however, there is however no provision made in the Act for an insurance cover for workers' funds with the Pensions Fund Administrators.

This has increased the fears of some contributors in the new system, who are worried about the safety of their contributions. This fear is compounded also with the Senate Committee's discovery of "*idle cash worth* N273.9 *billion in seven major pension offices*" (Jaiyesinmi, 2012). The affected offices in the military, parastatals, the police, and universities. Commercial banks were also indicted in the report for collaborating in the looting of pension funds.

This would inevitably work against the retirees in event of a crash or other financial difficulties that may befall the Pensions Fund Administrators another danger to the Contributory Pension Scheme. There is also widespread fear of inflation, charges, and other depletions that may likely arise in the process of managing and investing the pension funds over the years; coupled with the devaluation of the Naira, which may impend the value of contributions and this could make the whole policy seem like a joke.

3.3. Delays in Payments of Pensions Benefits

Nigerian media have been oversupplied with news of pensioners who slump in several parts of the country; some have died in queues to collect their monthly rituals-like pensions (Egbosiuba, 2012).

Iweka (2018) posits that the story remains the same for the civilian, military, and paramilitary.

Some of these pensioners have endured abuses and an unconducive work environment while in service and now have to put up with months of waiting for their paltry lump sum payment of 50% of their savings.

Presently, staff who retired from January 2021 have received no form of payment despite all the lofty assurances by the government.

The verification exercise had been delayed because of the COVID 10 pandemic; it was only concluded on December 31, 2021, and in the past three months of 2022, many others have retired. Yet those who retired since January 2021 have not received any kind of payment.

3.4. Non-Remittances of Contributions to the Retirement Savings Account of Employees by the Employers

A noticeable challenge with Contributory Pension Scheme is the non-remittance of contributions by some employers. This act is criminal, and some employees only discover this fact when they eventually receive their RSA Statement of Account after they have been verified and enrolled for Pensions. They become confused and do not know who to blame, where to run to, and can keep writing to their employers and PENCOM for years, and most times, they settle for whatever is available.

Section 11(5) of the Revised Guidelines for Retirement Savings Account Registration of 2019 has mandated employers to open a temporary RSA to deposit pension remittances of employees who have failed to open one, there are no known sanctions for such default, there is a dearth of reported cases where such employers have been sanctioned by either the courts or PENCOM.

It is also appalling to note that many workers have retired and discovered that notwithstanding that their salaries were debited monthly, no money was remitted to their Pension Funds Administrator.

3.5. Lack of Public Education and Enlightenment on Pensions

Of the Pension Reform Act. Even more bothersome is the fact that some retired workers at the end of their employment just realize that their contributions were either never remitted to their Pension Fund Administrators (PFA) or worst still, were remitted in some other person's names. Many contributors also do not have any idea that they could demand their account statements from the pension funds administrators and that it is their right to know how their contributions are invested and managed.

Workers are still not adequately enlightened to become aware of the pension system, nor their accrued rights.

The only time a contributor is given any form of education about pension, by way of Seminar, is at the point of his exit, in which case it becomes very difficult to change the hands of time.

The situation is made worse by the COVID 19 realities in recent times, where each parastatal is saddled with the responsibility of verifying their retirees, some have never read the Pension Acts, some do not know which of the Acts is applicable and those who have read are confused with the provisions.

The employee's registration with Pension Fund Administrator is done without any form of education and the employee/contributor most times only realizes that the fund managers were not making enough profit at the point of exit.

3.6. Non-Registration with a Pension Fund Administrator

It is incredible to note that many workers have died in active service without registering with any of the Pension Fund Administrators.

Notwithstanding the proviso in Section 11(5) of the Pensions Reform Act 2014, for employers to call for a Pension Fund Administrator to open a Retirement Savings Account for staff who have been employed for six months without opening a Retirement Savings account, this is not heeded to, neither are the sanctions for such defaulting employers.

Most Staff only rush to open one at the point of exit and then begin the battle of finding out where their debited contributions were remitted to.

In worst-case scenarios, where the staff is dead, the designated next-pf-kin only discovers that the deceased did not open a Retirement Savings Account on request for a letter of introduction to the Pension Funds Administrator. This scenario becomes pitiable given the fact that the window earlier opened by the regulating body (PENCOM) for such death benefits application (DBA), has been closed for obvious reasons. However, beneficiaries may write to the Benefits Application Unit (BAU) of PENCOM with supporting documents, and request access to the funds.

3.7. Lack of Enforcement Machinery

The successive pension Acts have also not indicated how compliance can be enforced where there is no machinery put in place to monitor the performances of the different Pension Fund Administrators at close ranges.

4. Concluding Remarks

This paper has scrutinized the different pension Acts that have been passed into law in Nigeria. It has examined the promises of the 2004 contributory pension scheme as well as the challenges which led to the amendment and passage of the 2014 Act. It has highlighted the coverage of the scheme as well as the lack of machinery to enforce compliance. It has enumerated the dilemma of the retirees, most of whom are ignorant of their investment until sometimes it becomes too late, and the fact that having a laudable law on pensions does absolve the government and its agencies from certain social responsibilities, like educating its employees on Pension laws.

To ensure that Nigerian workers take full benefit of this scheme, more enlightenment through workshops and seminars must be facilitated by stakeholders and the government to help assuage the fears about retirement.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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