

A Critical Appraisal of the Constitutionality of Regionalised Federal Development Agencies: Case Studies of NDDC, NEDC, and Hyppadec

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Abstract

Regionalized Federal Development Agencies RFDAs have over time become governmental institutions utilized to bring development closer to the grassroots in Nigeria. Chapter two of the 1999 Nigerian constitution as amended provides for Fundamental Objectives and Directive Principles of State Policy. These developmental rights, though not justiciable on their own, but are akin to the Rights to Development (RTD) under diverse international conventions and protocols signed and domesticated in Nigeria. There are divergent opinions as to whether RFDAs are not unnecessary duplications and usurpation of constitutional functions of the Local Governments Authorities. This paper argues contrarily that functions of RFDAs are rather complimentary to LGAs functions. The aim of this paper is to establish and of course justify the constitutionality of RFDAs in Nigeria. The central argument of this paper is that Regionalized Federal Development Agencies in Nigeria are constitutional, based on the following grounds: the enabling laws that established them are Acts of the Nigerian parliament; RFDA's developmental objectives are aimed at implementing the provisions of Chapter II of the 1999 CFRN (as amended); their objectives are focused on meeting peculiar developmental needs of Nigerians at the grassroots and they are government machineries used to safeguard Nigerian people's RTD, in tandem with relevant international laws (conventions and protocols) to which the FGN is a signatory and obligated to comply with. This paper discusses selected RFDAs (NDDC, NEDC, and HYPPADEC) by examining their objectives, roles, and impacts. It also examines the constitutionality of the selected RFDAs and the imbalances in the establishment of RFDAs in Nigeria. It also examines the international legal frameworks on RTD and their impacts on local laws and implementation of RTD in Nigeria. This paper adopts a qualitative research methodology and concludes by making necessary recommendations on the need for the establishment and continuity of regional agencies to foster RTD.

1. Introduction

The conceptualization of federalism as a system of governance entails the union of federating units, who voluntarily bind themselves together as one sovereign state based on terms and conditions

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agreeable to them. This happens under a negotiated constitutional arrangements freely made by themselves and for themselves, which is referred to as a federal Constitution. Governments establish and utilize the instrumentality of developmental agencies towards bringing development closer to the people and for the purpose of meeting peculiar developmental needs of their citizens, within given geographical grassroots. Devolution of power and fiscal federation, are major components of a federal constitution. In the case of Nigeria, it is arguable whether the country is actually practicing a true fiscal federalism.¹

The Nigerian constitution provides for the establishment of a central government, state governments and Local governments with different powers and functions allocated to each tier of government for effective governance.²

Again by virtue of the provisions of the 1999 constitution, as amended, there are three legislative lists that specify matters that each tier of government can legislate on, which are the Exclusive list, concurrent list, and the residual list.³ The Federal government legislates on matters on the exclusive list while the federal and state government legislate on matters within the concurrent list.⁴ Part of these constitutional legislative functions include establishment of federal agencies through acts of parliament that would enable the federal government bring development closer to the grassroots. These Federal agencies are mandated to make policies, regulations and carry out designated duties throughout the federation. While most of these federal agencies are established with wider geographical scope of mandates covering the entire federation, some are established and mandated to carry out developmental objectives for which they are created within a particular region of Nigeria. These types of agencies are referred to as Regionalized Federal Development Agencies. It is argued that given Nigeria's ethnic diversity and history, the establishment of regionalized development agencies may represent a natural step towards spreading

¹ Dele Adesina SAN, Nigeria: A Case for True Federalism. Available online at: <https://www.thisdaylive.com/index.php/2017/01/09/nigeria-a-case-for-true-federalism> > Accessed 10th August, 2023

² Sections 2(2) (3), 5 (1) (2), 7 of the 1999 constitution of the Federal Republic of Nigeria as amended.

³ Part I, II, Second Schedule of the 1999 CFRN (as amended)

⁴ Section 4, 1999 CFRN (as amended)

development. Others argue that the creation of these agencies may either undermine the constitutional recognition of local governments as the third tier of government in Nigeria or duplicate their constitutional functions.⁵ Considering critical impacts of RFDAs, this paper argues that scholars should not be preoccupied with the debate of whether or not Regionalized Federal Development Agencies are directly or indirectly given constitutional roles, but should be more concerned with developmental benefits of RFDAs to citizens at the grassroots. This would mean effective implementation of both chapter two of the 1999 Nigerian constitution as amended and citizens' RTD under international laws. In a bid to implementing these international laws, RTD nations enact laws, policies and adopt developmental strategies to ensure that development in its true sense is actualized and taken to the grassroots. Establishment of various regional agencies in various nations should be seen as government's strategies towards ensuring that citizens enjoy the right to development. Most of the regional agencies established in Nigeria are many times tailored toward the specific needs of a particular region. For instance, Niger Delta Development Commission (NDDC) is a regional agency in Nigeria established specifically to address peculiar developmental needs in the oil-producing region that has been devastated by energy needs of Nigeria and unsustainable activities of Multinational Oil Companies. This paper argues in favour of RFDAs and seeks to reinforce the importance and the need to insist on RTD globally and locally, in that, denying citizens the right to develop is tantamount to breaching their fundamental rights.

This paper is divided into five segments. The first is the introduction, while the Second segment discusses selected RFDAs by examining their legal framework, objectives, functions and developmental impacts. The third segment examines the constitutionality of the selected RFDAs and the imbalances in the establishment of RFDAs in Nigeria. The fourth segment examines the international legal frameworks on RTD and their impacts on local laws and implementation of RTD in Nigeria. The fifth segment gives

⁵ Fourth Schedule, 1999 CFRN (as amended)

a conclusion and makes recommendations on the need for the establishment and continuity of regional agencies to foster RTD.

2. Overview of Selected RFDas

This segment shall review the following development agencies namely; Niger Delta Development Commission (NDDC), North East Development Commission (NEDC) and The Hydroelectric Power Producing Areas Development Commission (HYPPADEC).

2.1 *Niger Delta Development Commission (NDDC)*

NDDC is a Federal Government Agency established by the Niger Delta Commission Establishment Act 2000 under the regime of the former Nigerian president, Olusegun Obasanjo with the sole mandate of developing the oil-rich Niger Delta region of Nigeria. In September 2008, President Umaru Yar'Adua announced the formation of a Niger Delta Ministry, with the Niger Delta Development Commission to become a parastatal under the ministry.⁶

2.1.1 *The Legal Framework of NDDC*

Section 1 provides for the establishment of NDDC. It states that there is hereby established a body to be known as Niger-Delta Development Commission (in this Act referred to as "the Commission"). (2) The Commission- (a) shall be a body corporate with perpetual succession and a common seal; (b) may sue and be sued in its corporate name.⁷

NDDC was created largely as a response to the demands of the population of the Niger Delta, a populous area inhabited by a diversity of minority ethnic groups because of the environmental impact of oil production in the area. This affected agricultural yields, fishing (main occupation of the people), livelihood of the people and escalated unemployment of youths which resulted to militancy and

⁶ Juliana Taiwo (11 September 2008). "Yar'Adua Creates Ministry of Niger Delta"

⁷ Section 1 Niger-Delta Development Commission (Establishment etc) Act, 2000.

all other criminalities. NDDC was created with the mandate to ensure development of the oil rich regions.

The Act further provides for the appointment of staff in the NDDC. There shall be for the Commission, a Managing Director, and two Executive Directors who shall be indigenes of oil producing areas starting with the member states of the Commission with the highest production quantum of oil and shall rotate amongst member states in the order of production. (a) have such qualification and experience as are appropriate for a person required to perform the functions of those offices under this Act; and (b) the Managing Director shall be the chief executive and accounting officer of the Commission. (c) be appointed by the President, Commander-in-Chief of the Armed Forces and confirmed by the Senate in consultation with House of Representatives. (d) hold office on such terms and conditions as to emolument, conditions of service as may be specified in his letter of appointment and subject to the provision of section 3 of this Act. (2) The Managing Director shall, subject to the general direction of the Board, be responsible- (a) for the day to day administration of the Commission; (b) for keeping the books and Proper records of the proceedings of the Board, and (c) for - (i) the administration of the secretariat of the Board, and (ii) the general direction and control of all other employees of the Commission (3) The Board shall have power to - (a) employ either directly or on secondment from any civil or public service in 'the Federation or a State such number of employees as may in the opinion of the Board, be required to assist the Board in the discharge of any of its functions under this Act; and (b) pay to persons so employed such remuneration⁸ (including allowances) as the Board may determine.⁹

The peculiarity of the Niger Delta environment arising from MNOC activities justify the establishment of NDDC to cushion the effect of the impacts of those activities. It may be curious to query whether or not the establishment of NDDC and the Ministry of Niger Delta is not tantamount to duplication of functions. It is worthy of note that while, one is a ministry, the other is an agency of the ministry.

⁸ See Section 6(1) (a-f), *ibid* for provisions on remuneration.

⁹ Section 12 (1-3) *ibid*

Sometimes violent confrontation with the state and oil companies, as well as with other communities has constrained oil production. Youths and organizations deliberately disrupt oil operations in attempt to effect change. These disruptions have been extremely costly to the Nigerian oil industry, and both the multinationals and the federal government have vested interests in permitting uninterrupted extraction operations; the NDDC is a result of these concerns and is an attempt to satisfy the demands of the Niger Delta's population.¹⁰

2.1.2 Objectives of NDDC

Section 7 of the NDDC act provides for the objectives of the Commission. It provides thus: the Commission shall- (a) formulate policies and guidelines for the development of the Niger- Delta, area, (b) conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of tie Niger-Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications; (c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio- economic development, (d) prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes; (e) implement all the measures approved for the development of the Niger- Delta area by the Federal Government and the member States of the Commission; (f) identify factors inhibiting the development of the Niger-Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta area, (g) assess and report on any project being funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including non-governmental

¹⁰ Kelly Bryan, Ovie Ejumudo, Youth Restiveness in the Niger Delta: A Critical Discourse, <https://doi.org/10.1177/2158244014526719>. Available Online at < <https://journals.sagepub.com/doi/10.1177/2158244014526719> > Accessed 10th August, 2023.

organisations and ensure that funds released for such projects are properly utilised; (h) tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages gas flaring and environmental pollution-, (i) liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control. (j) execute such other works and perform such other functions which in the opinion of the Commission, are required for the sustainable development of the Niger- Delta area and its peoples.¹¹

In relation to the Youth, the commission aims at capacity building; gainful employment; reduction of poverty rate; protection of oil companies by putting the youth to work, skill acquisition and other gainful activities; provision of free educational facilities; improvement of productivity; primary health care facility and good environment to aid the youth mentally, physically and academically as the environment foster a crucial part of life.

2.1.3 Impacts of NDDC

The assessment of the socio economic impact of interventionist projects is a very important paradigm for true understanding and justification for the huge public funds spent on such projects. The neglect of the Niger Delta Region and the activities of oil mining business have created a lot of problems in the region and the provision of these facilities by NDDC is geared towards improving the socio-economic and security situations in the region.¹²

Life in the Niger Delta communities before the emergence of NDDC was not a palatable one. NDDC projects

¹¹ Section 5(1) (a-f), NDDC Act 2000.

¹² Alphonsus Okpechi Isidihon & Prof. Dr. Mohammad Shatar B. Sabran, Socio- Economic Impact of Niger Delta Development Commission (NDDC) Infrastructural Projects in Selected Communities in IMO State, Nigeria Asian Journal of Humanities and Social Sciences (AJHSS). Volume 3, Issue—2, May, 2015, ISSN: 2320-9720. www.ajhss.org 109.

especially on water, electricity and roads in these communities is encouraging compared to how it was before the establishment of the Commission. NDDC is the fifth interventionist agency in the Niger Delta to implement a programme for sustainable prosperity and peace to the region.¹³ Amongst all, NDDC has created more and meaningful impact in accordance with the master plan despite all the accusations and questions on her accountability and effectiveness. Youths restiveness and illegal activities in the region due to the worsening social economic and environmental problems in that, they violently protested against incessant oil spillages-pollution, under-development, exclusion and the over 50 years of gas flaring that have impacted negatively on the people of the region and the ecology of their environment”.¹⁴

According to NDDC PMIS Portal, the NDDC has done over 15,000 projects since 2002 and over 919 since 2015 alone. Roads, Electricity and Water Supply Account for **57%** of all projects. Rivers, Delta and Akwa Ibom are states with the highest number of projects. NDDC Projects have touched the lives of many in the Niger Delta Region by bringing relief to remote communities. Over 2,066 Solar water and Solar projects have been embarked on since 2015 to reach disconnected communities. Over 4,940 Rural Electrification and Rural Water projects have been embarked on to provide needed access to clean water and electricity to far reaching communities deep in the Delta.¹⁵

The above show the list of projects handled by NDDC in the various communities both abandoned, ongoing and completed. Looking at the list, one would have no doubt that the Commission has actually impacted meaningfully on the

¹³ Philips O. Okolo, (2014). NDDC, Conflict, Peace-Building and Community Development, in the Niger Delta Region. Global Journal of Political Science and Administration vol.2, No.1, pp.36-54, March 2014. <https://www.eajournals.org/wp-content/uploads/NDDC-Conflict-Peace-Building-and-Community-Development-In-the-Niger-Delta-Region.pdf> < Accessed on 17, May 2023>

¹⁴ ibid

¹⁵ Niger Delta development commission PMIS portal. ><https://pmis.nddc.gov.ng/>> accessed 10th may 2023

socio economic life of the people despite the fact that many of the projects are abandoned. It was discovered that many of the road and water projects especially in Ohaji/Egbema and Oguta communities of Imo state have been completed while some were undergoing construction as at the time of survey. The electrification projects in Oguta are effective while those of Ohaji/Egbema in Imo state have not been so effective. Despite the complaint of the participants, some places in Ohaji/Egbema of Imo state still enjoy electricity. These projects were visited by the researcher despite the high risk of such visits as the militant youths were really hostile during the data collection.¹⁶

2.2 North East Development Commission (NEDC)

The NEDC was established under the North East Development Commission (Establishment) Act, 2017 and charged with the responsibility of among other things, receiving and managing funds allocated by the federal government and international donors for the resettlement, rehabilitation, integration and reconstruction of roads, houses and business premises of victims of insurgency as well as tackling the menace of poverty, illiteracy, ecological problems and any other related environmental or developmental challenges in the North East states.¹⁷

2.2.1 The Legal Framework of NEDC

Section 1 of NEDC Act provides for the establishment of the Commission. it provides that there is established the North-East Development Commission (in this Act referred to as “the Commission”), (2) The Commission- (a) shall be a body corporate with perpetual succession and a common seal ; and

¹⁶ Compiled from NDDC publication; The Capitol, Volume 4 Number 5 (2010).
><https://ajhss.org/pdfs/Vol3Issue2/8.pdf>> accessed 10th May 2023

¹⁷ Explanatory Memorandum, North-East Development Commission (Establishment) Act 2017.

(b) may sue or be sued in its corporate name.¹⁸ While section 2 established the governing board.

Part of the major objectives of the NEDC is to provide support for the resettlement of displaced persons and the restoration of their livelihoods. This includes providing assistance for the resettlement of internally displaced persons (IDPs), supporting the creation of jobs and economic opportunities, and promoting sustainable agriculture.¹⁹

Section 8 of the act provides for the functions of the Commission and it provides that the Commission shall (a) formulate policies and guidelines for intervention in the development of the North east zone (b) cause the north east zone to be surveyed in order to ascertain the extent of loss or destruction and embark upon the measures that are necessary for proper planning and implementation of physical and socio-economic reconstruction of the zone, and the survey shall include ascertainment of persons who were killed or missing and the details of their dependents. Detailed account of destruction and valuation of infrastructure and assets destroyed.²⁰

Section 12 provides for the staff of the Commission. it provides that there shall be for the Commission, a Managing Director who shall be an indigene of the North-East Zone and the position shall rotate among Member States in accordance with the order set out in the second Schedule to this Act and who shall- (a) have such qualification and experience as appropriate for a person: required to perform the functions of

¹⁸ Section 1(1), North-East Development Commission (Establishment) Act 2017.

¹⁹ Available online at:
https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&ved=0CAIQw7AJahcKEwi4rP6F4KeBAxUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fnedc.gov.ng%2Ffile_downloads%2FNESDMP%2520VOLUME%25201-FINAL.pdf&psig=AOvVaw1b8nFLNhMz6doNnUPJd87s&ust=1694699604492136&opi=89978449 >
 accessed 10th August, 2023

²⁰ Section 8 Ibid

the office under this Act, (b) be the Chief Executive and Accounting Officer of the Commission; and, (c) hold office on such terms and conditions as to emolument, conditions of service as may be specified in his letter of appointment and subject to: the provisions of section 3 of this Act. (2) The Managing Director shall, subject to the general direction of the Board, be responsible for—(a) the day-to-day administration of the Commission and (b) general direction and control of other employees of the Commission, (3) There shall be for the Commission such other staff as may be employed by the Board under section 4 (f) of this Act.²¹

2.2.2 The objectives of NEDC

The North East Development Commission (NEDC) in Nigeria has several objectives, including:

1. Rehabilitation and reconstruction: One of the primary objectives of the NEDC is to rehabilitate and reconstruct infrastructure, institutions, and communities that have been affected by the Boko Haram insurgency in the Northeast region of Nigeria. This includes the reconstruction of schools, hospitals, bridges, and other critical infrastructure.²²
2. Resettlement and livelihoods: Another objective of the NEDC is to provide support for the resettlement of displaced persons and the restoration of their livelihoods. This includes providing assistance for the resettlement of internally displaced persons (IDPs), supporting the creation of jobs and economic opportunities, and promoting sustainable agriculture.
3. Humanitarian assistance: The NEDC also provides humanitarian assistance to those affected by the Boko Haram insurgency, including the provision of food, water,

²¹ Section 12(1) Ibid

²² Section 8 b(iii) North-East-Development-Commission-Act-2017

and shelter. The commission also supports efforts to improve health, education, and other basic services for people in the Northeast region.²³

4. **Peace building and security:** The NEDC is committed to promoting peace building and security in the Northeast region of Nigeria. This includes working with local communities, traditional leaders, and other stakeholders to promote reconciliation and social cohesion, and support efforts to counter violent extremism.²⁴
5. **Coordination and partnership:** The NEDC also plays a coordination role, bringing together various stakeholders from government, non-governmental organizations, and the private sector to work together towards the common goal of rebuilding the Northeast region of Nigeria. The commission also seeks to establish partnerships and collaborations with international organizations to leverage resources and expertise in support of its objectives.

2.2.3 The Impact of NEDC

The North East Development Commission (NEDC) has made a significant impact on the rehabilitation and development of Nigeria's Northeast region since its establishment in 2017. The Commission's primary objective is to coordinate the reconstruction and development of the region, which has been severely affected by the Boko Haram insurgency. The impact of NEDC can be seen in several areas;²⁵

- i. **Infrastructure Development:** The NEDC has made significant progress in the rehabilitation and reconstruction of infrastructure in the Northeast region. The commission has completed several road construction projects, including the reconstruction of the Maiduguri-Damaturu highway, which is critical to the economic

²³ Section 8 b(v) North-East-Development-Commission-Act-2017

²⁴ Section 8 b(vii) North-East-Development-Commission-Act-2017

²⁵ <https://businesspost.ng/general/nedc-has-effectively-tackled-poverty-illiteracy-in-north-east-group/>

development of the region. The commission has also reconstructed schools, hospitals, and other critical infrastructure that were destroyed during the insurgency. These efforts have improved access to basic services for the people of the Northeast region.

- ii. **Resettlement and restoration of livelihoods:** The NEDC has also played a critical role in supporting the resettlement of internally displaced persons (IDPs) and the restoration of their livelihoods. The commission has provided assistance for the resettlement of over 1.5 million IDPs, including the provision of food, water, and shelter. The commission has also supported the creation of jobs and economic opportunities for people in the region through its Small and Medium Enterprises (SMEs) program. The commission has also provided support for sustainable agriculture, including the distribution of fertilizers and seeds to farmers in the region.
- iii. **Humanitarian Assistance:** The NEDC has provided critical humanitarian assistance to those affected by the Boko Haram insurgency in the Northeast region. The commission has provided food, water, and shelter to IDPs, as well as support for health, education, and other basic services. The commission has also provided assistance to vulnerable groups including women, children, and the elderly.²⁶
- iv. **Peace building and Security:** The NEDC has been actively involved in peace building and security efforts in the Northeast region. The commission has supported community-driven peace building initiatives, including the establishment of peace committees in local communities. The commission has also supported the reintegration of ex-combatants and the rehabilitation of those affected by the insurgency. These efforts have contributed to the restoration of peace and security in the region.²⁷
- v. **Coordination and Partnership:** The NEDC has played a critical role in coordinating the efforts of various stakeholders towards the reconstruction and development of the Northeast region. The

²⁶ <https://www.vanguardngr.com/2021/04/north-east-idps-and-the-efforts-of-nedc/>
²⁷ *ibid*

commission has brought together government agencies, non-governmental organizations, and the private sector to work towards a common goal. The commission has also established partnerships and collaborations with international organizations, including the United Nations Development Programme (UNDP), to leverage resources and expertise in support of its objectives.

2.3 The Hydroelectric Power Producing Areas Development Commission (HYPPADEC)

The HYPPADEC is charged with the responsibility of formulating policies and guidelines for the development of Hydroelectric Power Producing areas and managing ecological menace due to operations of dams and other hydroelectric power activities.²⁸ The mission of this Commission is to harness resources in the most transparent, acceptable and cost-efficient manner towards ameliorating the negative effects of hydroelectric dam operations in HYPPADEC member states.²⁹ Furthermore, the Commission has the vision to bring equitable and sustainable development that will impact positively on HYPPADEC member states.³⁰

2.3.1 Legal Framework of HYPPADEC

By **Section 1** of the Act³¹ that established the Hydroelectric Power Producing Areas Development Commission, the Act provides that the Commission (a) shall be a body corporate with perpetual succession and a common seal; (b) and sue and be sued in its corporate name.

Section 8 of the Act implements all measures approved for development of hydroelectric power producing areas by the Federal Government; power producing areas; assess and report on any project being funded or carried out in the hydroelectric power producing areas and ensure that funds released for such project are

²⁸ <https://www.nannews.ng/2022/12/18/more-funds-needed-to-achieve-hyppadec-objectives-says-md/>
Accessed 11th May 2023

²⁹ ><https://www.hyppadec.gov.ng/background#:~:text=Mission,operations%20in%20HYPPADEC%20member%20states.&text=To%20bring%20equitable%20and%20sustainable,positively%20on%20HYPPADEC%20member%20states.>> Accessed 11th May 2023

³⁰ Ibid

³¹ Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act, 2010

properly utilized; tackle ecological problems that arise from overloading of dams in the hydroelectric power producing areas and advise Federal and State Governments on the prevention and control of floods and environmental hazards; identify factor inhibiting the development of the hydroelectric power producing areas and assist States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the hydroelectric.

Section 12 of the Act provides for the membership of HYPPADEC. It provides that there shall be a Managing Director for the Commission who shall be- (a) appointed-by the President subject to confirmation by the Senate; (b) be a competent Nigerian; and (c) hold office on such terms and conditions as may be specified in his letter of (2) The Managing Director shall-, (a) be an indigene from among the member States of the Commission whose appointment and tenure shall rotate among member States in alphabetical order provided that the Chairman and Managing Director shall not be indigenes of the same State: (b) he responsible for the general supervision of the employees of the Commission, (c) be the Chief Accounting officer or the Commission; and (d) hold office for a term or 4 years and renewable for another term or 4 years and no more. (3) The Director of the Directorate of Legal Services shall be the Secretary of the Commission and shall, subject to the general direction of the Council, be responsible for- (a) the administration of the Secretariat of the Council; and (b) keeping the books and proper records of the proceedings of the Council.³²

2.3.2 Impacts of HYPPADEC

The Hydro Power Producing Areas Development Commission (HYPPADEC), has impacted tremendously and positively in most of the communities ravaged by flood in Niger, Kebbi, Kwara, Kogi, Plateau, and Benue states.

The Commission achieved this through infrastructure, human capital development, entrepreneurship, youth empowerment,

³² Section 12(1), Ibid

provision of housing, among others. Live jackets are also provided for the people to guide against loss of precious lives while security gadgets are as well made available to curb the menace of incessant insecurity prevalent in the affected host communities.³³

HYPPADEC places so much premium on education of the youth who constitute the larger percentage of the host communities' population. The Commission has expended enormous amount on Students Education Support (SES) in Niger state.³⁴

Considering the role, the youths play in any progressive society, HYPPADEC's focal point is to galvanize them for social transformation via skills acquisition which is the centre point of the President Muhammadu Buhari administration.

As a way of complementing the efforts of the conventional security agencies in Niger state, it is reported that HYPPADEC leadership provided motorcycles in various wards. In like manner, it is reported that HYPPADEC provided relief materials in various LGAs and IDP centers.³⁵

Hydroelectric Power Producing Areas Development Commission (HYPPADEC) has assured host communities of more projects in 2023 as part of efforts to improve the living standard of the people. The Commission has announced that it is set to commence its medium-term strategic action plan (HMTSP) for 2022 to 2027 to meet the needs of the host communities.³⁶

Besides key sectors such as education, energy, infrastructure, agriculture, and entrepreneurship, the Commission said it will be tackling ecological menaces in the member states and communities of HYPPADEC.³⁷

³³ Fatai Ibrahim Reflecting on the impact of HYPPADEC in Niger state > <https://www.blueprint.ng/reflecting-on-the-impact-of-hyppadec-in-niger-state/> > accessed 11th May 2023

³⁴ Fatai Ibrahim, Reflecting on the Impact of HYPPADEC in Niger State. Available online at: < <https://blueprint.ng/reflecting-on-the-impact-of-hyppadec-in-niger-state/> > accessed 11th August, 2023

³⁵ Ibid

³⁶ Ibid.

³⁷ Tunde Oguntola HYPPADEC Assures Host Community Of More Projects > <https://leadership.ng/hyppadec-assures-host-community-of-more-projects/> > accessed 11th May 2023

3. Constitutionality of Regionalized Federal Development Agencies (RFDA)

The intellectual debate as to whether or not it is constitutional for Nigeria to establish regionalized Federal development agencies is a continuous one. The perspective of a scholar on this subject matter may be influenced by one reason or another best known to the scholar. However, the truth remains that RFDA's have come to stay in Nigeria given cultural, ethnic and regional divergence of the people of Nigeria. It is not in doubt that RFDA's facilitate in no ways bringing developments to grassroots where they are established. This section will discuss the author's perspective of this subject matter while taking into cognizance other scholar's rights to hold divergent opinions and positions on this subject matter.

3.1 *Basis for Constitutionality of RFDA's*

The Author holds the view that the creation of RFDA's by Nigerian Federal government is constitutional based on the following reasons:

1. Legal frameworks establishing RFDA are Acts of Nigerian Parliament which the Constitution of Nigeria empowers them to do: RFDA is established by virtue of Acts of Parliament³⁸. All agencies are established by virtue of constituted powers of the National Assembly.
2. Exclusive and concurrent legislative list: In the second schedule of the 1999 Constitution of the federal republic of Nigeria as amended provides for the exclusive and concurrent legislative list. As provided in the constitution, only the federal government can legislate on matters contained in the exclusive legislative list while both the federal and state government can legislate on matters contained in the concurrent legislative list. On March 17, 2023, a bill was passed into law³⁹ to alter certain provisions

³⁸ section 4 of 1999 CFRN

³⁹ The 1999 Constitution of the FRN (Fifth Alteration) Bill No. 33, 2022 (National grid System-Part I and II Second Schedule), passed by both chambers of the 1st of March, 2022 is to the effect that the various states

of the 1999 Constitution of the Federal Republic of Nigeria, to allow constituent states within the Nigerian federation (the “States”) to generate, transmit, and distribute electricity in areas covered by the national grid as against how it used to be that electricity matters was solely under the exclusive legislative list.

3. Grass roots development: grass root development is important which is why the system of government in place in Nigeria is a federal system of government. Such that there is the presence of three tiers of government to aid proper administration. The federal government at the federal level, state government to oversee governance and development at the state level and the local government for proper governance at the grass root.
4. Citizens’ Right to Development as provided under Chapter 2 of the 1999 constitution as amended makes certain provision for certain rights though not justiciable but has become justiciable over time.
5. The provisions of the law of some international organizations which Nigeria is a signatory to establish and promote the RTD.

3.2 Constitutionality and Peculiarity of NDDC in Niger Delta Region

In analyzing the socio –economic impact of the commission, one would first briefly explain the situation in the region before its creation. The environmental impact of the activities of oil companies operating in this region has seriously affected the livelihood of the communities. The effects of the pollution from oil activities in this communities has adversely affected crops, vegetation, animals and humans and this has motivated violence and other illegal activities.⁴⁰

The Niger Delta region is characterized by farmers and fishermen who were more or less subsistence farmers, even when they have surplus of farm products to sale they had no access roads through which they could transport them to the cities. They were using water as major means of transportation, using the local canoes

can generate, transmit and distribute electricity to cover areas connected to the national grid, and same was signed by President Buhari on the 17th of March 2023.

⁴⁰ Alphonsus Okpechi Isidiho & Prof. Dr. Mohammad Shatar B. Sabran Socio- Economic Impact of Niger Delta Development Commission (NDDC) Infrastructural Projects in Selected Communities in IMO State Nigeria ><https://ajhss.org/pdfs/Vol3Issue2/8.pdf>< accessed 10th May 2023

and later engine boats. The income level was so low and the schools were not much available to the children. There were few health centres and far from one village to the other. There were much water surrounding the people but all were not fit for human consumption and seal of oil cover the water and the aquatic lives were lost because of the oil that covers the water coupled with the gas flaring which has much health hazards.⁴¹ Vegetation dies off and nature was being adjusted and destroyed by the oil spillages and gas flaring. The communities had no functional electricity and most places were in darkness except few families who could afford generators which they only use mostly in the night for few hours before they go to sleep. People were drinking water from the rivers, streams and dug wells and such water were not good for human consumption as such leads to lots of water borne diseases. Life generally was close to nature and unsafe.⁴²

It was in a bid to reducing the negative impacts of these activities that the need for this commission arose. The commission was set up in line with the peculiarity of the region being an oil producing region and have been negatively affected by the activities of the oil companies. The commission is set up to offer lasting solution to the socio-economic difficulties of the Niger Delta region which are: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, Rivers.

3.3 *The Constitutionality and Peculiarity of NEDC*

The North-East Development Commission (NEDC) was established in Nigeria in 2017 to coordinate the rehabilitation, reconstruction, and development of Nigeria's Northeast region which comprises of: Adamawa, Bauchi, Borno, Gombe, Taraba, Yobe, affected by the Boko Haram insurgency.⁴³ The Northeast region of Nigeria has been severely affected by the Boko Haram insurgency, which has resulted in the displacement of millions of people, destruction of infrastructure and loss of lives and property. The

⁴¹ Ajugwo, A.O. (2013) Negative Effects of Gas Flaring: The Nigerian Experience. *Journal of Environment Pollution and Human Health*, 1, 6-8. <https://scirp.org/reference/referencespapers.aspx?referenceid=1281418>. Accessed May, 17, 2023.

⁴² Ibid

⁴³ ><https://nedc.gov.ng/>> accessed 11th May 2023

commission was set up to develop infrastructure, resettlement of displaced persons, and economic empowerment of the people of the region.⁴⁴

The NEDC “among other things, is to receive and manage funds from allocation of the Federal Account and international donors for the settlement, rehabilitation and reconstruction of roads, houses and business premises of victims of insurgency as well as tackling menace of poverty, illiteracy level, ecological problems and any other related environmental or developmental challenges in the North-East states”.⁴⁵

The North East Development Commission (NEDC) has made a significant impact on the rehabilitation and development of Nigeria's Northeast region. The commission's efforts in infrastructure development, resettlement and livelihoods, humanitarian assistance, peace building and security, and coordination and partnership have improved the lives of millions of people in the region. Despite the challenges, the NEDC remains committed to its mandate and continues to work towards the sustainable development of the Northeast region of Nigeria.

Furthermore, the establishment of the NEDC is constitutional, and it is backed by relevant provisions in the Nigerian Constitution. Firstly, the creation of the NEDC is consistent with the provisions of Section 14(2)(b) of the Constitution⁴⁶, which provides that “the security and welfare of the people shall be the primary purpose of government.” The establishment of the NEDC is aimed at rehabilitating and reconstructing the Northeast region of Nigeria, which has been severely affected by the Boko Haram insurgency. This is consistent with the government's responsibility to ensure the security and welfare of the people.

The establishment of the NEDC is consistent with the provisions of the Constitution, which provides that the government shall “control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen on the

⁴⁴ J.H Dauda, *Terrorism: The Leading Cause of Rising Displacement of Persons in Nigeria*, KIU Journal of Social Sciences Kampala International University ISSN: 2413-9580; 8(4): 119–130. Available online at: < file:///C:/Users/LENOVO/Downloads/1546-1-4306-1-10-20230109.pdf > accessed 15th August, 2023.

⁴⁵ Ibid

⁴⁶ Constitution of the Federal Republic of Nigeria 1999(as amended)

basis of social justice and equality of status and opportunity”.⁴⁷ The establishment of the NEDC is aimed at promoting economic development and creating opportunities for the people of the Northeast region. This is consistent with the government’s responsibility to control the national economy in a manner that promotes the welfare and happiness of every citizen.

Also, the establishment of the NEDC is consistent with the provisions of Section 162(2) of the Constitution, which provides for the creation of the Federation Account Allocation Committee (FAAC). The NEDC is funded from the federation account, and its allocation is determined by the FAAC. This is consistent with the provisions of the Constitution, which provides for the sharing of revenue from the federation account among the federal, state, and local governments.

Finally, the NEDC Act was passed by the National Assembly, which is empowered by the Nigerian Constitution to make laws for the peace, order, and good government of the country. Therefore, the Act is presumed to be constitutional, except it is proven otherwise by a court of law.⁴⁸

In conclusion, while the establishment of the NEDC is based on constitutional provisions and was passed into law by the National Assembly.

3.4 Constitutionality and Peculiarity of HYPPADEC

The Hydroelectric Power Producing Areas Development Commission was established by an Act of the National Assembly (HYPPADEC establishment Act 2010) to address ecological challenges from the operations of Hydroelectric Dams. This followed agitations by individuals, groups and formal institutions affected by construction and operations of these dams in Nigeria. The move was to cushion the ecological, socioeconomic and psychological effect of the dams on the communities that suffered a great deal of imbalances from the projects without commiserate reward to bridge the gap created in their lives. To make progress, a comprehensive review of the negative effect and devastation caused by the operations of

⁴⁷ Section 16(1)(b) 1999 CFRN as amended

⁴⁸ Section 4, 1999 CFRN as amended

Kainji, Shiroro and Jebba Dams on the communities was carried out which culminated into a bill for consideration by the National Assembly.⁴⁹

Vital to point out that HYPPADEC establishment Act 2010 has been amended by the Hydro-Electric Power Producing Areas Development Commission (Establishment, etc) (Amendment) Act, 2018. This Act amends the Hydro-Electric Power Producing Areas Development Commission (Establishment, etc) Act No. 7, 2010 by reducing the percentage from 30% to 10%, on the total revenue deductible from revenue generated by any company or authority from the operations of any hydroelectric dam in any member State of the Commission.⁵⁰

HYPPADEC establishment Act 2010 provides that there is the Hydro-Electric Power Producing Areas Development Commission (in this act referred to as the commission) which (a) shall be a body corporate with perpetual succession and a common seal; (b) and sue and be sued in its corporate name.⁵¹

Section 8 of the act provides for the function of the commission which amongst others includes the formulation of policies and guidelines for the development of hydroelectric power producing areas.⁵²

4. Imbalance of Establishing RFDAS

From the foregoing, it is evident that the creation of Regionalized Federal Development Agencies are constitutional. They are a product of the enactment by the National Assembly and these agencies are set up in line with the peculiarity of the regions concerned. However, it worthy of note that these development agencies are focused on some regions while other regions are left unattended to. This has resulted in imbalance in development of other regions. This however can be said to be tantamount to

⁴⁹ HYPPADEC establishment Act 2010. ><https://www.hyppadec.gov.ng/about-2#:~:text=HYPPADEC%20establishment%20Act%202010,-The%20Hydroelectric%20Power&text=The%20move%20was%20to%20cushion,gap%20created%20in%20the%20lives> > accessed 11th May 2023

⁵⁰ Section 1 HYPPADEC establishment Act 2010

⁵¹ Section 1 HYPPADEC establishment Act 2010

⁵² Section 8 HYPPADEC establishment Act 2010

marginalization. It has been noted that NDDC was established as a RDFA because of environmental devastation and other consequences of MNOC activities. It has also been noted that HYPPADEC was established to mitigate environmental impacts of hydropower electrification plants in the region. Also NEDC was established to ameliorate Boko Haram insurgency within the region.

One wonders why the first environmental devastation and loss of millions of lives that took place in the southeastern part of Nigeria as a result of the Biafran war has not been considered enough to establish the southeast development commission since 1970 when the war ended. Although the military regime of Gen. Yakubu Gowon at the end of the war declared no victor, no vanquished, and promised three R's (reconciliation, reconstruction and reintegration of Nigerians who were on the Biafran side under 'One Nigeria'). The realisation of the 3 Rs remains a promise yet to be fulfilled 53 years after.

The NA (House of Rep. and Senate) had passed a bill to enact an Act to establish the Southeast Development Commission in 2018, and the House of Reps in 2021. However, the Bill was not assented to before the exit of the Buhari administration.

Also, a bill for the South West Development Commission has been passed by the House of Reps in 2021 but awaiting passage at the Senate. It is hoped that the new Federal administration will do the needful with respect to both the bill and establishment of the SEDC. This might help reduce violent agitations reduce issues related to insecurity in the region.⁵³

It is heartwarming to note that in the recent past that the NA had passed a bill to enact an Act to establish the southeast development commission in 2018, and the House of Reps in 2021. As at the last check, the Bill, though passed has not the assented to by the President. This lays credence to the claims of marginalization of southeastern parts of Nigeria.⁵⁴ Also, a bill for the South West

⁵³ Available online at: <https://www.vanguardngr.com/2023/08/bill-to-establish-south-west-development-commission-resurfaces-in-the-senate/> > accessed 1th August, 2023

⁵⁴ QueenEsther Iranosi 2018. Senate passes bill to establish South East Development Commission. <https://www.premiumtimesng.com/regional/ssouth-east/300713-senate-passes-bill-to-establish-south-east-development-commission.html?tztc=1>. Accessed may 17, 2023

Region has been passed by the House of Reps in 2021 but awaiting passage at the NA.⁵⁵

4. RFDAs and RTD under International Law

The evolution of the right to development has transcended from collective rights to individual rights. Aside international legal instruments enacted by committee of nations, it is pertinent to note that many nation-states including Nigeria have not only ratified those international instruments that are pro-RTDs but have also adopted and domesticated them in their local laws including constitutional frameworks. This section of the paper shall discuss the concept of RTD viz-a-viz their applications by Nigerian courts in deciding development and environmental rights cases in relation to RTD. The implication of this is that Nigeria by regionalizing federal development agencies have done so as a measure of promoting her citizen's enjoyment of RTD.

5.1 *The Concept of the Right to Development (RTD) and its importance*

The right to development (RTD) is internationally recognized and a golden right, worthy of attention by all nations of the world. As such, the onus to ensure the fulfillment of RTD is on the various governments around the world, particularly those nations who are parties to treaties and conventions on RTD. Although RTD does not denote a "right to everything," as wealthy countries have feared it might, rather it denotes a right to a process of development that places the human person at the center of the focus. In essence, RTD is a 'golden right' that demands from individuals and nations to treat others with the very manner that they would want to be treated in order to actualize their desired true development and emancipation.⁵⁶

RTD is concerned with promoting and protecting an individual's capacity to participate in, contribute to, and appreciate development – whether economic, social, cultural, or political. It proposes that "the human person" should be the central subject, participant, and beneficiary of the process of development.

⁵⁵ <https://von.gov.ng/lawmakers-pass-bill-establishing-new-commissions/>. Accessed May 17, 2023.

⁵⁶ Ibid

Consequently, the right to development is not only a human right in its own right, but it is also essential for the complete realisation of all other human rights. Additionally, it advocates for the equitable distribution of the benefits of development.⁵⁷

RTD addresses the underlying systemic and structural problems as well as the primary causes of poverty, inequality, and conflict. Its successful implementation in any country, state, or community will contribute to the alleviation of poverty and inequality, the prevention of conflict, and the promotion of progress, leaving no one behind in the process. This will make it possible for all persons and peoples to live with freedom, equality, and dignity and to experience enduring peace.⁵⁸

The author in a previous publication commented on the right to development as a fundamental right. The author argued that linking the process of development and individual human rights has gained international legitimacy. This means that denying people of the right to development is tantamount to saying they have no fundamental rights.⁵⁹ The author further explained how pivotal development is to people (including women and children) actualizing their civil, political, economic, social and cultural liberties. He also added that duty bearers such as the Government have a serious role to play in the actualization of the right to development for the people.⁶⁰

5.2 *Constitutional Provision of Citizen's Right to Development in Nigeria*

Chapter II of the Nigerian constitution, 1999 as amended contains provisions that are very important for both human and economic growth. The provisions of Chapter II are formally called "Fundamental Objectives and Directive Principles of State Policy." This section is all about socio economic rights and is meant to give

⁵⁷ Saad Alfarargi 2017. Right to Development. UN Special Rapporteur on the right to development. https://www.ohchr.org/sites/default/files/SRRRightDevelopment_IntroductiontoMandate.pdf. Accessed 15th May, 2023.

⁵⁸ Ibid.

⁵⁹ D.O. Akabuiro. 2021. The Right to Development and Sustainable Energy Access: Effective Tools for Achieving Sustainable Development. Lead City University Law Journal (LCULJ). Vol 1, No 1.

⁶⁰ Ibid.

the Nigerian government a mission that it must work hard to achieve.⁶¹

The opening provisions of this chapter under examination relate primarily to the responsibilities of the three branches of government to ensure conformity in the observance and application of this chapter, also known as the socio economic provisions of the Constitution. This chapter summarizes the philosophical foundations of the Nigerian government, which are consistent with the economic, social, and cultural liberties enshrined in the 1948 Universal Declaration of Human liberties adopted by the United Nations General Assembly.⁶²

However, this chapter is non-justiciable under subsection 6(6)(c) of the same constitution. Examining the implications of this non-justiciability reveals that citizens cannot seek recourse in court if their socio-economic, developmental, and other constitutionally guaranteed rights are denied.⁶³ Despite the fact that the Supreme Court has, through what appears to be judicial activism, made a number of pronouncements on the justifiability and enforceability of the provisions of chapter II of the Constitution, the provision of section 6 (6) (c) of the Constitution does not grant courts automatic jurisdiction.⁶⁴

In the case of *Olasifoye v Federal Republic of Nigeria*.⁶⁵ It was held that when section 15 (5) is read together with item 60 (a) of the second schedule, it can be justiciable. Also, it is the practice that the community reading of the Provision of the African Charter on Human and Peoples' Rights (AFCHPR) domesticated in Nigeria, chapter IV of the Constitution which borders on Human Rights having similar Provisions with chapter II can be employed to enforce the provisions of chapter II of the Constitution.⁶⁶

The African Charter on Human and Peoples Rights, which is applicable in Nigeria, is also found to be in place in a number of

⁶¹ Stephen Okangla 2021. Why Chapter II of the Nigerian Constitution is a Greek Gift. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3976196. Accessed 15th May, 2023.

⁶² Ibid.

⁶³ Ogugua Ikpeze 2015. Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development. https://www.researchgate.net/publication/282816601_Non-Justiciability_of_Chapter_II_of_the_Nigerian_Constitution_as_an_Impediment_to_Economic_Rights_and_Development. Accessed 15th May, 2023.

⁶⁴ Stephen Okangla, *supra*.

⁶⁵ (2004) 4 NWLR (Pt. 804)

⁶⁶ Stephen Okangla, *supra*.

other African nations and India, allowing courts to decide on socio economic rights. In order to facilitate socioeconomic development, it is suggested that Nigeria reposition itself to rectify this anomaly and permit the justifiability of this section of the constitution.⁶⁷

ACHPR has been ratified and domesticated by Nigeria. ACHPR is enforceable in Nigerian courts. In the celebrated case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and 2 others (SPDC)*⁶⁸. The court held that Article 24 of ACHPR that provided for peoples' right to the environment has been breached by the Defendant's gas flaring activities in the Plaintiffs' community. Though this case is centered on Article 24 of the ACHPR, it however gives credence to the fact that other Articles of the Charter include PRTD can also be enforced in Nigerian courts.

The author agrees that 'here exist RTD, or rather PRTD in Nigeria which is enforceable as a fundamental human right. The major hindrance to this right is its unpopularity (hinged on lack of awareness) among the Nigerian citizens when compared to sister rights under Chapter four of the 1999 Constitution of the Federal Republic of Nigeria (CFRN). Therefore, there is a great need for the creation of awareness of the existence of this right among the Nigerian people.' See, K.O.N. Onu (cited above)⁶⁹

Making Chapter II justiciable will ensure good governance and sustainable development, reduce poverty, create employment opportunities, quell agitation, ensure mass literacy and end violent extremism, apprehend bandits, and reduce hunger in Nigeria.⁷⁰

5.3 International Law and Right to Development

5.3.1 Declaration on Right to Development (DRTD)

The DRTD was endorsed by the General Assembly of the United Nations by its resolution 41/128 on December 4, 1986. It establishes equity, equality, and justice as the primary determinants of development, ushering in a new rights-based strategy for

⁶⁷ Ogugua Ikpeze 2015. Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development. https://www.researchgate.net/publication/282816601_Non-Justiciability_of_Chapter_II_of_the_Nigerian_Constitution_as_an_Impediment_to_Economic_Rights_and_Development. Accessed 15th May, 2023.

⁶⁸ *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005)

⁶⁹ Ibid

⁷⁰ Stephen Okangla supra

development. It provided the groundwork for advancing the United Nations agenda to integrate human rights and development. It served as a catalyst for the recognition of the right to development in a number of regional and international instruments dealing with human rights and sustainable development.⁷¹ Since the subjects and beneficiaries of the right to development are individuals under the DRTD, they are the holders of rights and are able to bring claims against the State for the promotion, protection, and fulfilment of the obligations or duties contained in the right and owed by the duty holder. As the DRTD promotes "people-centered development", it confers the right to development on individuals.⁷²

The DRTD contains 10 articles. Article 1 (1) proclaims that the right to development is an inalienable human right in the following words: "1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."⁷³

Article 2 of the DRTD identifies the human being as the central subject of development and assigns States the right and the obligation to formulate national development policies that strive for the continuous improvement of the well-being of the entire population and of all individuals. The remaining provisions of the DRTD outline the obligations and responsibilities of states regarding the realisation of the right to development.⁷⁴

Article 3 declares that, "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development." According to a high-level UN task force on the right to development, "the responsibility for the creation of this enabling environment encompasses three main levels: (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopt and implement policies that affect persons not strictly within their

⁷¹ Surya P. Subedi 2021. Declaration on Right to Development. United Nations Audiovisual Library of International Law. https://legal.un.org/avl/pdf/ha/drd/drd_e.pdf. Accessed 16th May, 2023.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

jurisdiction; and (c) States acting individually as they formulate national development policies."⁷⁵

Article 5 outlines the historical background to the violations of human rights resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war, and refusal to recognise the fundamental right of peoples to self-determination, article 6 emphasises the indivisible and interdependent nature of all fundamental freedoms and calls for equal attention to the implementation, promotion, and protection of civil, political, economic, social, and cultural rights.⁷⁶

Article 7 promotes the establishment, maintenance, and strengthening of international peace and security and general and complete disarmament under effective international control to protect human rights and development. Article 8 requires States to take all necessary steps to realise the right to development and ensure equality of opportunity in access to basic resources, education, health services, food, housing, employment, and income distribution.

Article 9 says that all parts of the DRTD's right to development are connected and should be looked at as a whole. Article 10 says that "steps should be taken to ensure the full exercise and progressive improvement of the right through the formulation, adoption, and implementation of policy, legislative, and other measures."⁷⁷

It served as a catalyst for the recognition of the right to development in a number of regional and international instruments dealing with human rights and sustainable development. Since the subjects of rights and are able to bring claims against the State for the promotion, protection, and fulfillment of the obligations or duties contained in the right and owned by the duty holder. As the DRTD promotes "people-centered development". It confers the right to development on individuals.⁷⁸

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Surya P. Subedi, Declaration on the Right to Development. Available online at: https://legal.un.org/avl/pdf/ha/drd/drd_e.pdf > accessed 10th August, 2023.

In conclusion, the DRTD firmly puts the right to development within the legal framework of international human rights and links the realisation of this right to international cooperation in the areas of economic development and social justice.

5.3.2 African Charter of Human and Peoples' Rights and Right to Development

The African Charter on Human and Peoples' Rights (Charter), also known as the Banjul Charter, was adopted by the Assembly of Heads of State and Government of the Organisation of African Union (OAU) in 1981 and entered into force five years later.⁷⁹ The African Union's African Charter on Human and Peoples' Rights (African Charter) promotes and protects human rights in Africa. The African Charter supports civil, political, socio-economic, cultural, individual, and collective rights. The African Charter is the first regional agreement to include all human rights.⁸⁰

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 22 stipulates that “all peoples” have the right to development and must exercise it.

Therefore, “peoples” are the pertinent right holders under this provision. States have the primarily responsible for ensuring the exercise of the right to development by African States, which are the only signatories to this treaty. Therefore, it is the primary responsibility of every African state to assure the realisation of the right to development for all of its peoples. These same African states

⁷⁹ Pamphlet No.6 of the UN Guide for Minorities. <https://www.ohchr.org/sites/default/files/Documents/Publications/GuideMinorities6en.pdf>. Accessed 16th May, 2023.

⁸⁰ Eghosa Osa Ekhatior 2015. The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case study of Nigeria <https://core.ac.uk/download/pdf/158350272.pdf>. Accessed 16th May, 2023.

are also primarily responsible for intervening internationally on behalf of their peoples in order to guarantee their enjoyment of the right to development.⁸¹

5.3.3 United Nations Declaration on the Right to Development (UNDRTD)

Article 1 (1) provides that ‘The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.’ The central subject to development should be the human person, who must also be an active beneficiary and participant to RTD. (See Article 2(1)). The attainment of RTD must be a collective effort of all human persons. (Article 2(2) of UNDRTD). States are to create an enabling environment for development. (Article 3) Parties are also mandated to promulgate policies and laws that will help actualize RTD. (See, Articles 2(3) & (3(3)). Parties also agreed to foster global policy efforts for the attainment of RTD for all.

Since the UNDRTD is a declaration, it does not create binding norms, rather it is soft law. Onu noted that ‘the South have been pushing for the convention on RTD; the North though not opposed to the principles of UNDRTD, are however reluctant to have a convention on RTD because of the fear that it may amount to "right to everything" or "right to development assistance" by the South.’⁸²

5.3.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR, adopted by the United Nations General Assembly in 1966, recognizes the right to development as a fundamental human right. Article 1 of the ICESCR recognizes the right of all peoples to self-determination, including the right to determine their economic, social, and cultural development. Article 2 of the ICESCR recognizes the right to work, the right to just and

⁸¹ Obiora Chinedu Okafor 2023. A regional perspective: article 22 of the African Charter on Human and Peoples' Rights. <https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTDBook/PartIVChapter27.pdf>. Accessed 16th May, 2023.

⁸² Ibid

favorable conditions of work, and the right to an adequate standard of living.⁸³ In keeping up with chapter two of the 1999 constitution as amended and the provisions of laws of these international organizations, the Federal government establish these agencies to bring development to the people.

5.3.5 *Judicial Decisions on Right to Development*

i. In the case of *Olasifoye V Federal Republic of Nigeria*, it was held that when section 15 (5)¹ is read together with item 60 (a) of the second schedule, it can be justiciable. Also, it is the practice that the community reading of the Provision of the African Charter on Human and People's Rights (AFCHPR) domesticated in Nigeria, chapter IV of the Constitution which borders on Human Rights having similar Provisions with chapter II can be employed to enforce the provisions of chapter II of the Constitution.

ii. One of the main issues raised for determination was;

Whether the combined effect of the provisions of sections 4(2), 15(5), Items 60(a), 67 and 68 in Part I of the Second Schedule and section 2(a) of Part III of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999, confer powers on the National Assembly to make laws for peace, order and good government of the Federal Republic of Nigeria with respect to offences arising from, connected with or pertaining to corrupt practices and abuse of power.

On the aforesaid issue, the Supreme Court gave judgment in favour of the Respondent, when it stated, per Niki Tobi, JSC:

it (is) clear to me from the above that the National Assembly has the constitutional legislative power to enact the ICPC Act, 2000, vide Item 60(a) of the Executive Legislative List as the item relates to section 15(5) of the Constitution. This is because

⁸³ <https://www.ohchr.org/sites/default/files/ceschr.pdf>.

the ICPC qualifies as an authority within the meaning of Item 60 (a).

Summary of Facts:

The applicant, Gbemre representative of the Niger Delta Iwherekan community instituted an action against (i) the Nigerian government for its failure to stop the oil and gas company Shell in gas flaring for decades and (ii) Shell for engaging in massive and unceasingly intense gas flaring in the community, in the course of its exploration and production activities (jointly respondents).

The applicant argues that Shell failed to consider the environmental impact of its activities on the communities' means of livelihood, collective survival, as well as the gas flaring's contribution to the adverse and potentially life-threatening effects of climate change.

The applicant claimed that such gas flaring activities violated the community's rights to life and human dignity as constitutionally guaranteed by sections 33 and 34 of the 1999 Nigerian Constitution, and reinforced by Articles 4, 16, and 24 of the African Charter on Human and Peoples Rights (ratified and domesticated by Nigeria as Cap. A9, Laws of the Federation of Nigeria, 2004).

In the above case, the following issues were considered by the court *inter alia*:

- i. whether by virtue of the provisions of sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 the applicants have a fundamental right to life and dignity of human person.
- ii. Also whether by virtue of articles 4, 16 and 24 of the African Charter on Human and Peoples' [Rights] (Ratification and Enforcement) Act Cap A9, vol 1 Laws of Federation of Nigeria, 2004, the applicants have the right to respect for their lives and dignity of their persons and to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favourable to their development.
- iii. That the gas flaring activities in the community in Delta State of Nigeria by the 1st and 2nd respondents are a violation of their

said fundamental rights to life and dignity of human person and to a healthy life in a healthy environment.

- iv. That no environmental impact assessment was carried out by the 1st and 2nd respondents concerning their gas flaring activities in the applicant's community as required by section 2(2) of the Environmental Impact Assessment Act, Cap E 12 vol 6, Laws of the Federation of Nigeria 2004, and this has contributed to the unrestrained, mindless flaring of gas by the 1st and 2nd respondents in their community in violation of their said fundamental rights.
- v. That no valid ministerial gas flaring certificates were obtained by any of the 1st and 2nd respondents authorizing the gas flaring in the applicant's said community in violation of section 3(2) of the Associated Gas Re-Injection Act, Cap A25 vol 1, Laws of the Federation of Nigeria, 2004.
- vi. The Federal Judge ruled that the action of the respondents in allowing and continuing to flare gas in the applicant's community is a violation of their fundamental rights to a clean and healthy environment.
- vii. The court held that Article 24 of ACHPR that provided for people's right to the environment has been breached by the Defendant's gas flaring activities in the Plaintiffs' community. Though this case is centered on Article 24 of the ACHPR, it however gives credence to the fact that other Articles of the Charter include PRTD can also be enforced in Nigerian courts.

6. Recommendations and Conclusion

The author agrees that there exist RTD in Nigeria which is enforceable as fundamental human right. The major hindrance to this right is its unpopularity (hinged on lack of awareness) among the Nigerian citizens when compared to sister rights under Chapter four of the 1999. Therefore, there is a great need for the creation of awareness of the existence of this right among the Nigerian people. It has been established that RFDA is established to promote equitable development across the country. Regional agencies are established with the aim of ensuring grass root development.

The question that comes to mind is it constitutional for the federal government to establish federal development agencies that are mandated to carry out development within a particular region. It is our contention that the overall objectives of RFDAs and their critical developmental goals should be seen as complimentary instead of competitive to the developmental roles of the three tiers of government in Nigeria especially, LGAs. In that light scholars should interrogate more, the effectiveness of their legal frameworks towards achieving their objectives.

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1. Legal frameworks establishing the RFDAs should be effectively implemented in order to achieve their laudable set objectives.
2. The amendment of the Acts establishing the RFDAs in a manner that will encourage monitoring and evaluation of performance of the agencies with a view to ensuring the deliver on their mandate.
3. Since what is good for the goose is also good for the gander, the existing imbalance in establishment of RFDA should be corrected. That is the President should give his accent to the already passed South East Development Bill as well as other pending developmental Bills that benefits regions in the country.
4. Chapter II of the CFRN 1999 should be amended to be made justiciable since the objectives are in tandem with the RTD under international Protocols and Conventions already signed and domesticated by Nigeria.

Lastly, making Chapter II justiciable will ensure good governance and sustainable development, reduce poverty, create employment opportunities, quell agitation, ensure mass literacy and end violent extremism, apprehend bandits, and reduce hunger in Nigeria.