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HUMAN RIGHT TEST

ANSWER

The African commission on Human and People’s Rights is established under **ARTICLE 30 ACHPR,** it is embodied with the duty to ensure fundamental human rights are protected and upheld in African countries, **ARTICLE 45**  The African commission has a General procedure which include: STATE COMMUNICATION, this occurs when a state party has reasonable grounds to think another state party has violated the provisions of the charter and may present the issue by written communication to the erring party or the commission. The Aim of the commission is to bring the states to friendly state, it has investigatory powers to demand information whether written or oral from both states, when information has been gathered and the commission sees no possible friendly position, it sends a report of its findings to the Assembly of heads of states and governments.

THE CHALLENGES OF THE COMMISSION IS THIS: It is overly restrictive, **ARTICLE 55** provides that a Communication shall be considered by the Commission if a simple majority of its members so decide. This is a problem and shouldn’t be so as swerve matters can be denied by the commission and the victim would suffer, another challenge is found in **ARTICLE 55 & 56,** The commission has a long process to be followed and victims whose cases need immediate attention may suffer even greater damages due to the wait. Also After the conclusion of the commission’s report, The Assembly of heads of state and government determine when/ whether the reports may be published, now this shouldn’t be so as such should be made available to everyone, The Assembly of heads of state have too much restraint on the commission making it ineffective. **ARTICLE 59(1)** states reports of the commission may be concealed from the public as was in the case of **Constitutional rights project & 6 ors V. Nigeria.**

The SOLUTION to these challenges is **ARTICLE 68,** stating that amendments can be made to these articles, the amendments shall be ratified and accepted by voting through ⅔ majority of the member states.

The African court on human and peoples’ right is also a public institution in Africa, It was made to strengthen the African commission on Human and People’s right, one can say it’s mandate is similar to that of the African commission, The OAU gave a go ahead to the protocol of the ACHPR to establish a court on June 1998, but the court came into force on the 25th January, 2004. The court was supposed to start deliberating on cases by july 2004 , it became fully Operational in 2009.

The CHALLENGE of the court is that it has no competence on state member who have ratified the african charter, except they make a declaration stating the court’ competence, another challenge is that states are given priority over individuals whose rights have been violated demonstrated in **ARTICLE34(6)**, the AfCHPR can then be seen as a toothless bulldog, as states haven’t ratified the protocol in order to avoid justice being brought to them. In the case of **Femi Falana V. A.U,** the applicant sought to have **ARTICLE 34(6)** annulled as it was in opposition to **ARTICLE1, 2, 7, 13, 26 & 66,** it was held that the AfCHPR had no jurisdiction to try the case. The SOLUTION would be the annulment of **ARTICLE 34(6)** as stated in the above case.

ECOWAS community court also uses the African Charter for State members who have ratified the treaty, one can say the ECCJ also promotes and protects human rights. **Protocol/A/PI/7/91,** established the community court signed on july 6, 1991, it then came into force November 5, 1996. The CHALLENGE with the ECCJ was with the old Treaty, as **ARTICLE 11&56**, limited the court to the interpretation on the ECOWAS treaty and no other Law, This was freed by the **Revised Treaty of 1993**, The **2005 Supplementary Protocol** also expanded the court’s jurisdiction to include private actions by individuals in Human Rights cases and also for the court’s interpretation & application of international law in general. Another challenge of ECCJ is the national court power of references, that is the court receives preliminary references from the national court. Judging from the European Union experience, Preliminary reference is the most effective way of building up the legal system between the court and the national court, but judging from the prevailing relationship, the preliminary reference would have to suffer delay until a time where there is a unification in the application of the **ECOWAS treaty** , because the national courts have to be willing to make this reference. The SOLUTION would be the adoption of the ECOWAS treaty in others, like the EU, both courts can have a better legal system between them.