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Public institutions in Africa whose mandate is in the protection and promotion of human right include:

The African commission on human and people’s rights

The African court of human and people’s rights

The Ecowas Community Court of Justice

Challenges of the African commission are inherent; its constitutive instruments delineates its powers which are said to be overly restrictive

For instance ***article 55 of the ACHPR*** provides that the commission may consider communication from persons other than state parties, only if a simple majority of its members accept such communication.

; ***Article 56 ACHPR*** also provides that such communication may be accepted if they were made after the exhaustion of local remedies, unless it is obvious to the commission that the local procedure is unduly prolonged

***Article 57 ACHPR*** provides that prior to any substantive considerations all communications shall be brought to the knowledge of the state concerned by the chairman of the commission. This provision offers the respondent state the opportunity to respond appropriately

Solutions to these challenges include;

1. Creation of awareness of the African commission
2. Making decisions binding through the use of ***MAPUTO PROTOCOL[[1]](#footnote-1)***

Challenges of the African court of human and people’s rights

1. Lack of proper access to the court by individuals and NGOs

***Articles 5(3) and 6*** are a major clog on the access individuals and NGOs to the court; this is as as a result to the half hearted approach in following the ways of **the European Commission and American convention of human rights**

1. Non compliance of the African states with ***article 5(3) and 34(6) of the protocol of the ACtHPR***

This has affected the efficient functioning the court. This has led to the dismissal of cases for lack of compliance with ***article 34(6)***; this was seen in the case of ***Michelot Yogogombaye v. Senegal***

Solutions for the court include;

The broadening of the jurisdiction of the Court in human rights cases as the proposed statute of the court appears to give individuals and NGOs access to the court, in addition to giving national human right commission access to the court

Decentralization of the powers of the African commission which makes access to court more readily accessible to individuals through the machinery of national human rights commission.

Challenges of the Ecowas Community Court of Justice

1. Problem of Enforcement of ECCJ Decisions

The problem of lack of enforcement of ECCJ decisions by member States remains a recurring decimal and undermines the efficacy of the Court’s human rights man- date. There are ECOWAS Community texts that provide that the decision of the court are binding on Member States of ECOWAS and also give them the responsibility of implementing the decisions of the Court in accordance with their Rules of Civil Procedure. For instance ***Article 15(4) of the ECOWAS Revised Treaty*** provides that the “Judgments of the Court of Justice shall be binding on member States, the Institutions of the Community and on individuals and Corporate bodies”. ***Article 2(3) of supplementary Act A/SP. 13/02/12*** on Sanctions against Member States that fail to honor their obligations to ECOWAS of 16 to 17 February, 2012. Furthermore ***Article 22(3) of Protocol A/PI/7/91*** on the Community Court of Justice also provides that “Member States and Institutions of the Community shall take immediately all necessary measures to ensure execution of the decision of the Court”.

1. Factors inhibiting Access to the Court

Notwithstanding the clear provision of ***Article 10 (d) (ii) of the Protocol on the Court as amended,*** on access rules to the court, there are other factors that inhibit access to the ECOWAS Court of Justice. The first constraint is the geo- graphical location of the seat of the Court at Abuja Nigeria which makes it difficult or Community citizens to have unfettered access to the Court because of the huge distance to Abuja from most parts of the Community and transportation difficulties. Secondly, there is no provision in the Protocol or Rules of the Court for Legal Aid for indigent litigants. It is believed that the establishment of sub-Registries of the Court in Member States of the Community will facilitate greater access to the Court.

Solutions to these challenges include;

For effective delivery of justice and realization of Community objectives, it is very imperative for Member States to demonstrate greater political will in the enforcement of the Community Court’s judgments as required by the Community law.

Furthermore, in order to avoid conflicting interpretations of ECOWAS Community Texts, it is highly desirable for National Courts to comply with the provisions of ***Article 10 (f) of the 2005 Supplementary Protocol on referral*** for such interpretations to the Community court of Justice.

1. This is the protocol that led to the establishment of the African court [↑](#footnote-ref-1)