HUMAN RIGHTS TEST

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There are public institutions in Africa that are charged with the responsibility of protecting, and promoting human rights in Africa. These institutions include the African court, African Commission, and ECOWAS court of justice. The aforementioned institutions have their various speculated mandates, provided for in different treaties that bind them but all their functions boils down to the protection of human rights among Africa states.

In carrying out their duties, these institutions are faced with challenges that originate either from the way the treaties are formed, or various other means. These challenges hinder them from exercising full powers over human right matters in Africa. This writer would proceed to evaluating those challenges as well as recommending solutions.

Firstly, there is a reoccurring challenge of individuals not having direct and unlimited access to those institutions, because of their state-centric jurisdiction.

***Article 55 of ACHPR***, provides for the commission to consider handling cases if a simple majority of its members vote in favor of accepting that case. This therefore means that not all cases of individuals may be voted for, in the African commission.

According to the ***protocol of the******ECOWAS court of justice 1991*** the court could not entertain cases directly from NGO’s and individuals, therefore they had no access to the court at all, which was why in the case of ***Olajide Afolabi v FRN*** , the applicant was denied access to the court. However ***Article 3 of the supplementary protocol 2005***, allowed individuals the access to the court. ***Article 4*** further enumerated the situation in which they can access the court. This is still not full access of individuals to the court.

In the African court, ***Article 5(3)*** provides for only relevant NGO’s and individual with observer status could directly access the court and only if they had fulfilled the conditions of ***article 34(6) of the protocol***, which basically entails that the state of the NGO’s, individual or the respondent state going against them, must have made a declaration accepting the court to receive individual cases. This is however still not full access, as multiple cases still get dismissed as a result of lack of ***article 34(6), see Amir Timan v Republic of the Sudan.***

Prior to the above challenge, this writer’s recommendation is that individuals and NGO’s should be allowed unlimited access to the court, without having to go through strenuous methods in order to access the court, when they are faced with human rights problems.

Secondly there is the challenge of the lack of binding jurisdiction of these institutions, on African States. The decision of the institutions is not binding on state parties, and this hinders the powers of the institution, in protecting human right. When the decisions are reached by these bodies, it seeks to promote human rights in such cases, and not the opposite. However if the state parties involved don’t follow does judgment as a result of them being a sovereign state independent of control, we can as well say there is no use of giving the judgment. In the case of ***SERAP V FRN and UBEC,*** the applicant claimed that the FRN, violated the right to quality education which were guaranteed under the ACHPR. The court held that the right to qualify education is binding in Nigeria on the note that it was provided for in the charter that has been enforced and ratified in Nigeria.

Also in the case of ***Ken Saro-Wiwa Jr and civil liberties organization v Nigeria*** the order of the commission was not complied with, which brought about the execution of the applicant.

This writer would recommend that the decisions of these courts should be made binding therefore only states that chose to implement the decisions can approach them. This writer would also suggest that the monism practice should be employed by all states in the application of treaty.

Thirdly these institutions have only been settling interstate matters of member states, and not actual human rights government. Instead of actually looking into cases with actual breach of human rights these bodies mostly solve cases arising from dispute in dealings between member states. In this writer’s opinion, it may be as a result of the limited access to the institutions, to individuals who may actually be faced with severe breach of human right cases.

This writer suggests that the institutions should pay more attention to human rights issues, because that is what their mandate is all about, and reduce the acceptance of cases under of interstate problems by first recommending the use of Alternative dispute resolutions to solve minor misunderstandings between states.

In conclusion the recommendations of this writer should be looked into to help eradicate the challenges.