

NAME: HARRISON DEBORAH MANUCHIMZE

MATRIC NUMBER: 17/LAW01/129

COURSE TITLE: HUMAN RIGHT TEST

COURSE CODE: LPI 306

LEVEL: 300

QUESTION;

With the aid of legal authorities, identify and examine the challenges plaguing public institutions in Africa, whose mandate is the promotion and protection of human right. In a creative way, proffer solution to each identified problem.

There are various institutions for enforcing human right some of which are, the African commission of Human and people's right, the African court, The ECOWAS community court of justice.

**The African commission** by virtue of **Article 30 of ACHPR**, the mandate is to ensure that human right is protected, promoted and upheld. The challenges the court faces in enforcing human right are a lot. Metaphorically, the commission is said to be "a toothless dog that barks but cannot bite" this is because in **Article 58**, when the commission realizes that there has been 2 or more cases of massive human right violation, they are expected to make an in-depth research and draw a report which is tendered to the assembly of the head of state and government. If approved by the head of state, these states are not sanctioned instead their name are just published. Another obstacle is the fact that there is a principle of non-interference in the internal affairs of member states, how then is the commission going to enforce human right when they are expected to not interfere. My solution to this challenge is that states that violate human rights should be sanctioned, comparing a state to a criminal who keeps committing crimes without being punished, that individual will continue because there is no consequence.

In **Article 56**, the commission cannot look into the issue until domestic remedies are exhausted. This is a problem because atimes the procedures are unduly prolonged and this violation has to be looked into immediately to avoid the victim from suffering greater loss. My solution to this challenge is that individuals should be allowed to bring cases to the commission without having to exhaust domestic remedies first. The commission after making an indebt research on communications that are unruly and infringe on the human right of individual, when approved by the head of state, they are to publish it and make it available to the public but **Article 59** provides that in some cases, the commission conceals its findings which's effect is sanctioning and allowing impunity. In the decided case of ***Ken Saro Wiwa v. FRN***, Nigeria didn't adhere to the judgement of the commission to foresee the execution. In another case of **Constitutional Right Project(in respect of Zamani Lekwot and 6 others) v. FRN**, the plaintiff brought an allegation against Nigeria for forcing their legal representatives to withdraw from the case and given them conviction for a capital offence without legal representatives and the commission decide to come to Nigeria on a mission but did not publish and the findings or facts it found.

**The African court**, by virtue of **Article 5(3)**, only NGO'S with observer status before the court can bring an action before the court for the violation of human right which is subject to the condition provided for in **Article 34(6)** which provides that every state shall make a declaration accepting the competence of the court before they can bring cases under **Article 5(3)**. This poses a big problem because from the 26 states that has ratified the protocol of the court, only 6 states have made the declaration and Nigeria is not part of it. Looking at the case of *Femi Falana v. African union*, he brought case to the court alleging that **Article 34(6)** should be declared inconsistency with the charter because Nigeria has refused to make the declaration prevention him and other Nigerians from bringing their case to the court. The court held that it didn't have jurisdiction. This is big challenge which I suggest can be dealt with by forcing states that has already ratified to make a declaration, giving them no alternative because there is no point of ratifying without making the declaration. See also the cases of *Ekollo Alexander v. the Cameroon and Nigeria*.

A challenge faced by the **ECOWAS court** is the inability of citizens to access justice, this can be seen in the case of *Afolabi Olajide v. FRN*. Also, states have failed to comply with the judgement of the court. The consequence of this is that the confidence in the court will be eroded so much that it will be unable to entertain matters of human right violation. This is evidenced in the case of *SERAP V. FRN*, where the court held that free and compulsory education should be provided for all Nigerian child but the Government is yet to enforce this judgement.

All this challenge tends to a straight line that the enforcement mechanism of this institutions are not credible. In conclusion my solution to this is that the courts should proffer a more credible and effective enforcement mechanism so that it will be able to carry out its objective effectively. There should be corporation between member states and courts and ECOWAS treaties should be directly applied to national system.