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### TEST

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 rights. In a creative way, proffer solutions to each problem identified.

### ANSWER

The African Commission on Human and People's Rights is established in Article 30 of the African Charter to be a quasi-judicial body tasked with the duty of promoting and protecting human rights and collective rights through the African Continent as well as interpreting the African Charter on Human and People's Rights. The mandate of the Commission is to promote human and peoples' rights, ensure the protection of human and peoples' rights under the conditions laid down by the present Charter, interpret all the provisions of the present Charter at the request of a state party, an institution of the AU or an organization recognised by the AU.

The African Court of Human and Peoples' Rights, established in Article 1 of the Protocol to the African Charter, is tasked with the mandate to complement the protective mandate of the African Commission. The African Court has two types of jurisdiction namely: contentious and advisory jurisdiction.

The ECOWAS Community Court of Justice is the principal legal organ of the Economic Community of West African States (ECOWAS). It was created pursuant to Article 15 of the Revised Treaty ECOWAS 1993. It is charged with the responsibility of resolving disputes related to the Community's treaty, protocols and conventions. It also has the competence to hear individual complaints of alleged human rights violations.

A major challenge is the lack of enforcement of decisions or judgements made by the institutions. This is because of the principle of state sovereignty which states that every state is sovereign and equal and answerable to no one outside its boundaries. This makes these institutions bereft of binding force. For instance, in the case of *International Pen, Constitutional*

*rights Project, Interights on behalf of Ken Saro-Wiwa Jnr and Civil Liberties Organisation v. Nigeria*, the African Commission had ordered interim measures to forestall the trial and execution of Ken Saro-Wiwa, but the Nigerian Government disobeyed the order outrightly.

Another challenge faced by the institutions is the influence or restraints imposed by other organizations or states. For instance, the Protocol to the African Charter has made the African Court to have a strong dependence on the African Commission in the making of their decisions or judgements. Article 33 states that the court shall draw its own rules in consultation with the Commission. Also, the Protocol provides that the court's judgements shall be notified to the Commission even in cases that were not brought by the Commission. This renders the Court bereft of independence in making decisions which might not allow justice to be exercised. The Commission is also restrained by the Assembly of Heads of State and Government as the Assembly determines whether the reports made by the Commission should be published.

Another challenge is the presence of constraints in access to the institutions. For instance, there are factors that inhibit access to the ECOWAS Court. Firstly, the geographical location of the seat of the Court at Abuja makes it difficult for community citizens to have access to the Court due to the huge distance to Abuja from other communities and transportation difficulties. Secondly, there is no provision in the Protocol of Rules of the Court for Legal Aid for indigent litigants. Concerning the African Court, article 34 (6) does not permit individuals' petitions involving a state party which has not made a declaration accepting the competence of the Court. This can be seen in the case of *Amir Timan v. Republic of the Sudan*.

Solutions can still be proffered to tackle these challenges. Firstly, these institutions should be made totally independent of any entity, be it public or private. The courts such as the African Court and the ECOWAS Court should be granted total autonomy and be insulated from all manner of political wrangling by member states. This will ensure greater justice in the decisions and opinions of the court.

Secondly, these institutions should apply strict sanctions on state parties. This will ensure that other state parties will be deterred from not complying with the decisions of the organisation. The supreme organ the Assembly of Heads of State and Government should actively work towards ensuring compliance of decisions made by these institutions.

Finally, there should be the establishment of sub registries of the Court in member states to facilitate greater access to the Court. Also, the creation of a Legal Aid Fund is necessary to help litigants who cannot afford legal services.

