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LEVEL: 300 LEVEL

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

**ANSWER**

The Ecowas Court of Justice, The African Commission of Human and People’s Rights and the African Court of Human and People’s Rights are charged with the human right mandate of promoting and protecting human rights. In the exercise of their human right mandate, they face the following problems:

* **Problem of Enforcement of Socio-Economic Rights:** This is a major problem facing public institutions in the exercise of their human right mandates. If the member states fail to domesticate the African Charter on Human and People’s Rights, which is the charter upon which these public institutions enforce rights, citizens cannot approach these public institutions to seek redress. In the case of ***Archbishop Olubunmi Okeji v A.G. Lagos State***, the applicants could not enforce ***S.18 of the CFRN 1999 (as amended)*** rights because of the provision of ***Section 6(6) of the CFRN 1999*** ***(as amended)*** which provides that the rights contained in ***Chapter 2 of the CFRN 1999 (as amended)*** are not justiciable.
* **Enforcement of Judgements and Decisions:** In each of the public institutions, there is a provision in their charters and protocols that provides that the decisions of the public institutions are binding on member states. Theprinciple of state sovereignty serves as a major threat to this provision. States merely enforce these judgements when it pleases them. Thus, in the case of ***Dasuki Sambo******v FRN***, the federal government of Nigeria was ordered to release the applicant but they failed to obey the decision of the ECOWAS Court of Justice.
* **Lack of Independence:** The Heads of State and Government of member states of these public institutions with human rights mandate have a firm grip on the public institutions in Africa whose mandates are the promotion and protection of human rights. This serves as a major threat to the exercise of their human right mandate as it restrains them in enforcing their decisions. In order for the public institutions to exercise their human right mandate, it is necessary for them to be independent and be free from any form of fear or favour. Also, these public institutions depend on funds derived from donations from member states and it is the heads of these member states that determine the amount of funds these public institutions spend. In a situation where the public institutions have to give judgment against these member states, they may be hasty to do so because of their problem of funding.
* **Exhaustion of Local Remedies:** Applicants are required to exhaust all local remedies before accessing the African Court of Human and People’s Rights by virtue of ***Article 56(5) of the Charter***. This would lead to frustration on the part of the applicant and he/she would give up at a point and would not be able to enforce his rights. Thus, in the case of ***Dumbaya v The Gambia***, the applicants who failed to exhaust local remedies could not bring its case before the African Commission of Human and People’s Rights.
* Ignorance of the existence of the public institutions and their mandate due to the fact that illiteracy is rampant in Africa. Thus, these public institutions become underutilized and their human rights mandates cannot be exercised.

**SOLUTIONS**

Possible solutions to the challenges faced by the public institutions in Africa in exercising their human right mandates include:

* Member states should domesticate the African Charter on Human and People’s Rights so as to allow their citizens to easily approach the public institutions. The African Court should adopt the same measures as the ECOWAS court which allows the applicant to approach the court even though the ACHPR is not domesticated in the municipal laws of a member state. This was seen in the cases of ***SERAP v FRN*** and ***Abacha v Fawehinmi*** where the government of Nigeria had to enforce rights contained in ***Chapter 2 of the CFRN 1999 (as amended)*** because Nigeria had domesticated the charter.
* Member States should exercise greater political will to adhere to decisions of the court and enforce them when given. If this does not work certain sanctions should be imposed on member states which fail to adhere to court decisions as per ***Article 77 of the ECOWAS Revised Treaty.***
* Judges should have access to funds without restrictions.
* A great effort must be made by all member states to sensitize and educate their citizens on the existence of the public institutions with human right mandates. This can be done through the use of enlightenment programs in order to educate citizens of Africa about the public institutions and their human right mandate.
* All the public institutions with human right mandates should adopt the ways of the ECOWAS Court of Justice which does not require applicants to exhaust local remedies before bringing their case before the court.