



# **AFE BABALOLA**

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## *UNIVERSITY*

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ASSIGNMENT TITLE: Public International Institutions

COURSE TITLE: Human Rights Law II

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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 proper solutions to each problem identified.

## CHALLENGES FACED BY PUBLIC INSTITUTIONS IN AFRICA

Beginning with the African Commission and moving on to the fulcrum of this work, the first challenge this writer will identify is one that is inherent in its constructive instrument; Its powers are restrictive. This is a major challenge of the African Commission. The very creative powers of the African Commission, have ensured that the African Commission will remain subject to the former in every way. They have suppressed its powers so much that the African Commission has been disabled in many ways. Take for installation, Article 55,<sup>1</sup> which provides that before the commission can consider any communication, a simple majority of its members must accept such communication. Bear in mind that the communications are brought against the same people that must accept it. The subsequent disregarded and rejected cases are not a surprise.<sup>2</sup> Although, it is good to check the powers of this commission, too much restraints on its powers as to suffocate it and render it useless will rid it of its entire purpose. For the conciseness of this work, this writer will discuss one more challenge. The commission is passive by nature and they do not publish their findings. Not only does the African Commission not actively chase the matters of human rights, on the strength of Article 59(1) it may conceal its findings which gives room for it to escape from being reprimanded by the public. In *International Pen Constitutional Rights Project, Interights on behalf of Ken Saro Wiwa Jr. and Civil Liberties Organisation v. Nigeria*,<sup>3</sup> the African Commission did nothing about the violation of human rights and also its orders by the Nigerian government. Also in, *Constitutional Rights Project (in respect Zamani Lekwot and 6 Ors v. Nigeria)*,<sup>4</sup> the findings of the African Commission after visiting Nigeria was not published. The solutions this writer will prefer to this will be to abolish Article 59, which allows it to keep its findings private, since the matter of human rights is so sensitive that it cannot be concealed.

Next is the African Courts which was established by, Article 1 of the Protocol to the African Charter.<sup>5</sup> Its function is obvious, owing to the fact that it is a court. Its major challenges, like the African Commission lies in its constitutive elements. Article 5(3) entitles courts to entertain cases from Non-governmental Organizations that have observer status and

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<sup>1</sup> African Charter on Human and People's Rights

<sup>2</sup> Similar restrictive provisions can be found in Articles 56, 57 and 58

<sup>3</sup> Communications 137/94, 139/94, 154/96, and 161/97 (1998)

<sup>4</sup> (2008), AHRLR 183 (ACHPR 1995)

<sup>5</sup> Maputo Protocol

individuals, only if they have fulfilled a condition under Article 34(6), which states summarily that, states have to make a declaration accepting the court's competence to try any matter under Article 5(3). The relevance of this articles is yet to be discovered. Article 6 which deals with admissibility, and in its subsection 3 which provides that, the court can request opinion of the African Commission when dealing with admissibility of cases and should transfer the case to the Commission when unable to admit it. Article 33 says that the court can draw its own rules but after consulting with the African Commission. Article 5(1)(b) states that the court cannot entertain a case that is already pending before the commission. Neither can it give an opinion on a matter pending before the African Commission. In the same vein, its judgments must always be notified to the Commission. From the above, it is seen that the African Court is too dependent on the African Commission, thus, impairing its ability to carry out its function effectively. The African courts is in dire need of radical separation from the African Commission. A permanent feature of a court, is its ability to be independent and without this independence the African court is purposeless. This writer hereby recommends this and the need for the African court's decision to be binding and generation of its awareness to the public.

Finally, the ECOWAS Court, established by the Protocol to the Treaty that established ECOWAS itself is domiciled in Abuja, Nigeria. A major challenge it suffers is lack of cooperation by Member States. Member States often times refuse to implement the decisions of the ECOWAS Court, although it is binding. In doing this member states undermine the authority of the Ecowas court. Article 15(4)<sup>6</sup> states that the decisions of the Ecowas court are binding on member states, the institutions of the community and individuals.<sup>7</sup> Furthermore Article 2(3) of the Supplementary Act,<sup>8</sup> provides for sanctions against members that fail to uphold the decisions of the Ecowas court. This writer thus urges the Nigerian judiciary to take the gauntlet to make judgments of the ECOWAS court effective in Nigeria.

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<sup>6</sup> Ecowas Revised Treaty

<sup>7</sup> Article 22(3) of Protocol A/PI/7/91

<sup>8</sup> A/SP. 13/02/12