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There are several public institutions in Africa that have the mandate of promoting and protecting human rights. They are; African Commission for Human and Peoples' Rights, African Court of Human and Peoples' Rights and the ECOWAS Community Court of Justice. Each of these institutions faces challenges of their own.

The African Commission for Human and Peoples' Rights

The commission is basically a quasi-judicial body tasked with promoting and protecting human and peoples' rights throughout the African continent coupled with interpreting the African charter on Human and Peoples' Rights and considering individual complaints of violations of the charter. Article 45 through 55 of the charter summarizes the mandate of the African Commission on Human and Peoples' Rights. The primary mandate of the commission according to the charter are to monitor, promote and protect Human and Peoples' Rights in member states by developing and maintaining constructive and productive relations between the AU and member states.

One challenge it faces is State Sovereignty; this means that if a state is in violation of human and peoples' rights as stated in the African Charter, no other state can interfere with what that state is doing. This is a problem because it stops a state from helping those that their rights are being violated. A solution to this problem would be for the charter to allow other states interfere with those states violating the human rights of its people. Another challenge is that of communication and enforcement. This can be seen in Article 55 and 56 of the African Charter of Human and Peoples' Rights. Article 55 provides that the Commission may consider communications from persons other than state parties, only if a simple majority of its members accept such communication. Article 56 provides that such communications may be accepted by if they were made after the exhaustion of local remedies, unless it is obvious to the commission that the local procedure is unduly prolonged. This article is particularly difficult to comply with by individuals or non-state parties because certain violations require immediate redress and the victim might suffer irreparable loss should he await exhaustion of local remedies. This can be seen in the case of *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria*.

Furthermore, another challenge to the African commission of Human and Peoples Rights is concealment of facts. Strengthened by article 59(1) of the African Charter, reports of the

commission may be concealed from the public and this has the effect of sanctioning or allowing impunity. In *Constitutional Rights Project (in respect of Zamani Lekwot and Six others) v. Nigeria*, applicants who had been sentenced to death under the Civil Disturbances (Special Tribunal) Act No. 2 of 1987, brought the communication alleging that their lawyers were forced to withdraw from the case and that a conviction with respect to a capital offence was reached by the Tribunal without legal representation for the defendant. The commission found Nigeria guilty of violating article 7(1) (a) (c) and (d) of the Charter and recommended that Nigeria should free the applicants.

African Courts of Human and Peoples' Rights

The African Court on Human and Peoples' Rights (African Court) was established by a Protocol to the African Charter on Human and Peoples' Rights, which was adopted by Member States of the then Organisation of African Unity (OAU) in Ouagadougou, Burkina Faso in June 1998. The Court has jurisdiction over all cases and disputes submitted to it regarding the interpretation and application of the African Charter on Human and Peoples' Rights (Charter), the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights (Court's Protocol) and any other relevant human rights instrument ratified by States that are party to a case.

The challenges of this institution can be seen in Article 5(3) and 6 of the Protocol to the African Charter. They are a major clog on the access of individuals and NGOs to the court. The half-hearted approach of the AU is manifest upon comparison with the approach of the Council of Europe, the success of which may have no doubt informed the establishment of the ACtHPR. Article 5(3) provides that relevant NGOs with observer status before the Commission, and individuals may institute cases directly before the court. This jurisdiction can only be exercised subject to the fulfilment of the conditions in article 34(6) of the Protocol. This was applied in the case of *National Convention of Teachers Trade Unions v. Gabon*.

To proffer a solution to this problem, I would say that the court should be able to recognise all NGOs despite not having observer status.