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**HUMAN RIGHTS LAW II (LPI 306)**

Individuals, groups and nations claim a variety of rights and these rights have at one time or the other been asserted, denied, exercised, waived, violated and above all discussed interpreted and disputed in local and international communities and forums.

Public institutions have arisen to ensure that rights ranging from individual rights to group and societal rights are protected and promoted as they are prone to violation. They include;

1. The African Commission on Human and Peoples Rights: The Commissions mandate are found in *Article 45* of the Charter. Its functions inter alia include ensuring the protection of human rights under the Charter and this is why the Commission interpreted *Article 1* of the Charter as having a 3-fold obligation which is to respect, ensure and fulfill human rights obligations contained in the Charter and this was seen in ***Association of Victims of Post electoral Violence and Inter-Rights v Cameroun***; “the member States of the OAU parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to abduct legislative or other measure to give effect to them”. The problem of enforcement led to the creation of the Court.
2. The African Court on Human and Peoples Rights: This was created by *Article 1* of the Protocol to the African Charter. The difference between the Commission and the Court is the binding nature of their decisions. The Court assumes jurisdiction over States signatory to the Charter by submitting cases before it; therefore, by ratification in the case of ***Abacha v Fawehinmi***. The Court is mandated to complement the protective mandate in *Article 2* *of the Protocol*. The court has contentious in the case of ***Efoua Samuel v Pan African Parliament*** and advisory jurisdiction in *Article 7* and *Article 4*.
3. The Community Court of Justice (ECtJ): This is a sub-regional human rights enforcement body which applies to signatory West African member States in *Article 4(g) of the Revised ECOWAS Treaty*. The ECtJ applies the African Charter as the basic human rights instrument of the community in ***SERAP v FRN***, “the courts implementation is important…the ECOWAS Court is obliged to apply human rights within the principles of customary international law which guarantees human rights”. It shares competence with national courts within member States, which means either a national court or the ECtJ can be approached for a redress to a human right violation. Therefore, once an effective and adequate remedy has been obtained under either of the two courts, it becomes *res judicata* - the applicant cannot recover a separate remedy in the other as seen in ***Aliyu Tasheku v FRN***.

Although these institutions are working hard, there are still many challenges attached to each of them in the fulfillment of their mandate of promoting and protecting human rights. They include;

1. Process of seeking redress for a human right violation: The ECtJ does not have this problem because it can be approached directly without exhausting local remedies. The exhaustion of local remedies which is a criterion to approaching the African Commission by virtue of *Article 55 and 56 of the Charter* and *Article 37* for approaching the African Court. It is not necessarily difficult to comply with but there are certain violations which require immediate redress or else the victim will suffer irreparable loss. I cannot proffer a sufficient solution to this problem, but I suggest that adequate assistance be given to individuals who are seeking redress on how to go about it.
2. Transparency: The concealment of reports by the Commission under *Article 59* allowsfor impunity as seen in the case of ***CRP v Nigeria***; Nigeria was found guilty of violating Article 7 of the Charter but the facts of its findings were never published. A solution to this can be the introduction of a human rights law report which can be published concurrently like weekly and monthly law reports and any State which fails to submit its decided cases be sanctioned financially or by any other agreed method which will coerce States into submission.
3. Control/Restraints on Institutions: The Assembly of the Head of States and government has a strong grip on the Commission which in turn affects the Court, this is implied in *Article 57*. The Assembly of the Heads of state have the power to determine when and whether reports may be published and these restrictions suffocate the commission and make it ineffective. In ***Inter-Rights on behalf of Ken Saro Wiwa v Nigeria***; the Commission ordered interim measures to forestall the trial and eventual execution of Ken without due process, but the Nigerian government did not comply with it. This can be addressed by revising the power the Assembly has over the Commission, and clearly separating it to allow the Commission perform freely without restrictions and placing proper sanctions to deter States from future defaults on decisions reached by the Commission and Court.
4. Another pressing issue is lack of awareness of victims on how they can enforce their rights have been/are being violated and this is a mandate of the African Commission which has not been fully realized. Public awareness in the simplest is the best remedy.