

Public institution these are institutions funded by state and controlled by public officials of their appointees. Challenges of public institutions include: enforceability, funding, inadequate staffing, Dependence to function, corruption. Some Institutions: The African commission, ECOWAS Court of justice, African Court of Human and Peoples' Rights.

African Court: Article 5(3) of the Protocol provides that relevant Non-Governmental Organizations with observer status before the institutions in Africa Commission and individuals may institute cases directly before the court. The Commission retained by the AU made it impossible for the court to fully function independent of the commission. The Court shall draw its rules in consultation with the Commission as appropriate; the court cannot entertain a case and cannot give an opinion on a matter already pending before the commission (article 33 and 5(1) (b))

Direct access to court is regulated by combined provisions of article 5 and 34(6) the effect of reading the foregoing provisions together is subject to the deposit by respondent state of a declaration authorizing a case to be brought before the court.

The Court shall not receive any petition under Article 5(3) regarding a state party which has not made necessary optional declaration. Application shall be dismissed if the state concerned did not make the necessary optional declaration or the organization did not have an observer status

The other aspect of limitation in article 34(6) was applied in National Convention of Teachers Trade Unions v Gabon, where the court held the application inadmissible on the ground that the organization did not have observer status before AU and Gabon had not make the optional declaration. The two preconditions for seising the court were fulfilled in Tanganyika Law society &Anor v Tanzania.

COMMUNICATION: The Commission may consider communications from persons other than State parties , communications may be accepted if they were made after the exhaustion of local remedies , unless it is obvious that local procedure are unduly prolonged. Certain violations require immediate redress and the immediate redress and victim might suffer irreparable loss should he await exhaustion of local remedies. All communications shall be brought to the knowledge of the state concerned. (Article 55, 56 and 57of the ACHPR, respectively).

When one or more communications apparently relates to special cases which reveal the existence of a series of serious massive violations of human rights and peoples' rights, the attention of Assembly of Heads of State and Government shall be drawn. The Assembly of Heads of States and Governments may request an in-depth study of the cases and make a factual report accompanied by its findings and recommendations. Cases that required urgency are submitted to the Assembly of Heads of States and Governments who may request and in-depth study.

Relevant case: International Pen, Constitutional Rights Projects, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v Nigeria .

ECOWAS Court of Justice: subcontinental group of West African States. The court operates on its revised treaty. Protocol A/P1/7/91 established the Community Court. The Court was comatose and unable to function effectively due to its state-centric jurisdictional threshold- individuals and NGOs had no direct access to the court. The court is empowered to act as arbitrator (Article 16). The Court has power over disputes arise from agreements of ECOWAS. The court has exclusive jurisdiction.

## CHALLENGES

The most essential is Funding, the financial aspect. Every public institution in Africa requires monetary support to achieve its aim and objective. This is why some institutions result to taking bribes and embezzling public funds (corruption) they lack funds. Currently Nigeria is facing the Corona pandemic and funds have been raised for the health sector to protect lives by making available necessary medical tools but the funds are being embezzled by officials in high places. Institutions such as the African Court cannot perform its function fully independent of the Commission; the court may request the opinion of the commission, notifies the commission of its judgement. The court cannot entertain cases already pending before the commission. The court shall only receive petitions under article 5(3) involving state party which has made the article 34(6) declaration.

Case: SERAP v Federal Republic of Nigeria

IN Conclusion, The following are some solutions to the challenges faced by public institutions in Africa:

**ACCOUNTABILITY:** The institution shall be made accountable to the citizens of in respect of any decision or rule its takes. For example there should be a link between the individuals and institutions.

**Independence:** public institutions should be made independent from other organizations. i.e It is regrettable that the AU did not just retain the commission but also made it impossible for the Court to function independent of the commission. Every institution shall fulfill its functions efficiently if it works independent and not subject to another. An institution should be free to function independently just like judges are to act independently.