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**MATRIC NUMBER: 17/LAW01/287**

**LEVEL: 300**

**COURSE TITLE: HUMAN RIGHTS LAW II**

**COURSE CODE: LPI 306**

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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.

A number of public institutions in Africa are saddled with the general mandate of protecting and promoting Human rights. Such public institutions include;

1. The African Commission on Human and People’s Rights
2. The African Court on Human and People’s Rights
3. The ECOWAS Community Court of Justice

The writer will now examine these institutions individually, bringing into light some of their challenges as well as possible solutions.

1. **The African commission of Human and people’s rights**

The commission was established under Article 30 of the African Charter of Human and people’s rights to serve essentially as a complaints mechanism. Its mandate is spelled out in Article 45 & 46 of the Charter and includes the promotion of Human and People’s rights, the protection of human and people’s rights and the interpretation of the African charter as well as any other tasks entrusted to it by the assembly of Heads of state and government.

Some of the challenges of this commission include;

* Access to the court – **Article 55 of the ACPHR** provides that the commission may only consider communications for persons other than state parties where a simple majority of its members accepts such communication. **Article 56** of the same charter also provides that such communication can only be accepted after the exhaustion of local remedies. These requirements are difficult to comply with because in addition to the fact that access of individuals to the courts depends solely of a simple majority vote by member states, Human rights violations usually require immediate redress in order to keep the victim from suffering irreparable loss. See the case of **Ken Saro-Wiwa jr & C.L.O v Nigeria**
* State Sovereignty – Though the concept of state sovereignty in it and of itself is considered necessary, the restrictions it poses on the African commission is largely suffocating and essentially renders the commission handicap.
* Lack of resources and Funding

Possible solutions include;

* Removal of the requirement to exhaust local remedies
* Direct and unrestricted access by individuals and NGOs to the commission
* Easement of restrictions and power held by member states
* Adequate funding

1. **The African Court of Human and People’s Rights**

The African court was established by the African Union (AU), under Article 1 of the protocol to the African Charter on Human and People’s rights on the establishment of an African court on Human and people’s rights. The court’s mandate is essentially to complement the protective mandate of the African commission with both contentious and advisory jurisdictions.

Some of the challenges of the Court include;

* Dependence on the African commission – The AU not only retained the commission but made it virtually impossible for the court to function independent of the commission. This dependence is ensured by various provisions of the court’s protocol including **Articles 33 and 5(1)(b)**
* Access to the Court – This is regulated by the combined provisions of **Articles 5** and **34(6).** **Articles 5(3) and 6** are a major obstruction to the access of individuals and NGOs to the court. See the cases of **Michelot Yogogombaye v Senegal** and **Ekollo v Cameroon & Nigeria**

Possible solutions include;

* Amendment of the structure of the court in order to offer it more independence and allow access by individuals and NGOs

1. **ECOWAS Court of Justice**

Included in the 1975 ECOWAS Treaty, was a mandate for a Community Court of Justice (CCJ) which would adjudicate disputes related to the interpretation and operation of the Treaty (as revised in 1993). The details concerning the operation of the Court were established by the 1991 Protocol on the Community Court of Justice. The Court then became operational in December 2000 with a general mandate to ensure the observance of law and of the principles of equity and in the interpretation and application of the provisions of the Revised Treat and all other subsidiary legal instruments adopted by Community. The jurisdiction of the court was however amended by virtue of the 2005 supplementary protocol, thus expanding its human right’s mandate. Due to this amendment, the ECOWAS court, unlike most of its counterparts allows direct access to the court by individuals and does not require the exhaustion of Local remedies by litigants. Nevertheless, certain challenges still remain.

Some challenges include;

* Need for Appellate Chamber – Given that this court does not have the requirement to exhaust local remedies, it serves as court of first instance, as such however, it’s judgement is final
* Inadequate Manpower – The number of judges in the court were reduced from 7 to 5 thus creating a difficulty in hearing the rising number of cases.

Possible Solutions include;

* Creation of an Appellate chamber.
* The seven judges as prescribed by the protocol should be adhered to.