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HUMAN RIGHTS

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Recently, developments have been made to case laws related to human right matters and challenges faced earlier have been resolved through the establishment of several institutions for the purpose that it shall aid in the promotion and protection of human rights and ensure the enforceability of human rights both on domestic and international levels. Some of these institutions include the African Court on Human and People's Rights, the ECOWAS Court of Justice and the African Commission on Human and People's Rights (ACHPR) .

Before going into the main objective of this paper which is to discuss the challenges faced by public institutions in Nigeria whose mandate is the promotion and protection of human rights, it is important to briefly shed some light on the establishment and objectives of a few of these institutions.

### **AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS**

With the establishment of the commission by virtue of Article 30 of the Charter, the obligation to ensure the protection and promotion of fundamental human rights in countries of Africa came to birth.

Article 45 of the Charter sets out its mandates and some of them are;

- Interpretation of the provisions of the Charter on the request of either a state party, organs of the AU or individuals
- By means of its communication, it ensures the promotion and protection of human rights, allowing individuals, state parties and even non state parties to come to it with its cases of violations

### **ECOWAS COURT OF JUSTICE**

The court was founded on May 28, 1975 under the treaty of Lagos, its purpose being to promote economic cooperation and integrate West Africa.

- Having obtained the jurisdiction to hear and determine cases of human rights violations in 2005, it is now mandated to hear cases of human rights violations and also cases as regards community liability.
- By virtue of Article 9(5) of the protocol, it is mandated to cover matters as regards arbitration

- It is also mandated to ensure the peaceful settlements of disputes that might occur out of misunderstandings as regards the interpretation and application of the community acts.

## **CHALLENGES OF THE INSTITUTIONS AND SOLUTIONS**

Although there has been establishments of institutions for the promotion and protection of human rights, there are also challenges faced by these institutions in the course of fulfilling their mandates.

Just as these institutions share similar mandates, the most obvious and similar being their duty to uphold human rights and promote it, they also encounter similar challenges that halt or slow down the fulfillment of their aims and objectives. Some of these challenges include:

### **ACCESS TO THE INSTITUTION**

Looking at this challenge from the African Commission, access to it for the hearing and determining of violations is quite tight as even though Article 55 provides for it to allow communications from individuals other than state parties, this can only be done where a simple majority of its members accept it. That is, it is at the discretion of the commission to either accept or reject a case.

The restriction goes further in Article 56, making communications only acceptable where they are brought after the exhaustion of local remedies, unless local procedures are unduly prolonged. This is a big challenge as it could lead to the suffrage of losses by the victim, sometimes irreparable.

### **REFERRALS**

The ECOWAS court has opened its arms to the receiving of referrals of questions regarding the interpretation and application of the ECOWAS treaty by its member states but none of the member states have actually made any referrals, leaving the court ineffective to that use. The African Commission which is also duty bound to receive referrals has had no organ of the AU refer any case of interpretation of the Charter to it.

Sometimes this may be as a result of the unawareness of the states and so a solution would be to enlighten the member states more on the competence and services it makes available.

### **ENFORCEMENT OF DECISIONS**

A big step in every institution aiming to promote human rights is having the power to enforce their decisions on their members. This is because where their decisions are not binding on omitting or offending members, sanctions cannot take place.

Enforcement of verdicts or decisions of some of these institutions remains a challenge as they

are sometimes not binding on the member states due to the issue of sovereignty. Their decisions are sometimes merely advisory and so can be ignored by the parties at times.

A way to solve this challenge would be the imposition of sanctions on member states refusing to comply to the decisions of the institution. The ECOWAS court for instance has Article 77 of the ECOWAS Revised Treaty giving it the power to impose sanctions on member states refusing to comply to decisions and fulfill its obligations for instance by suspending community loans.