

NAME: Muraina Oreoluwa Precious

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#### Assignment

With the aid of legal authorities, identify and examine the challenges plaguing public institutions in the Africa court whose mandate is the promotion and protection of human rights. In a creative way, prefer solutions to each problem.

#### Answer

The main purpose of these public institutions is to protect and promote human rights and make people feel safe and educated about their basic rights. They ensure the protection and promotion under the principles laid down by the charter. Now, the **African Commission on Human and Peoples' Rights (ACHPR)** is a quasi-judicial body tasked with promoting and protecting human rights and peoples rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter. This includes investigating human rights violations, creating and approving programs of action towards encouraging human rights, and set up effect communication between them and states to get first hand information on violations of human rights. Although the ACHPR is under a regional government facility, they don't have any actual power and enforcement over laws. The Commission has three broad areas of responsibility:

- Promoting human and peoples' rights
- Protecting human and peoples' rights
- Interpreting the African Charter on Human and Peoples' Rights.

The **African Court on Human and Peoples' Rights(the Court)** is a continental court established by African countries to ensure protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights.

The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), which was adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol came into force on 25 January 2004 after it was ratified by more than 15 countries.

The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. Specifically, the Court has two types of jurisdiction: contentious and advisory.

The mission of this Court is to enhance the protective mandate of the African Commission on Human and Peoples' Rights by strengthening the human rights protection system in Africa and ensuring respect for and

compliance with the African Charter on Human and Peoples' Rights, as well as other international human rights instruments, through judicial decisions.

Thirdly, the ECOWAS court of justice which is the judicial organ of the Economic Community of West African States (ECOWAS) and is charged with resolving disputes related to the Community's treaty, protocols and conventions. The ECOWAS Community Court of Justice has competence to hear individual complaints of alleged human rights violations.

The ECOWAS Court of Justice was created pursuant to the revised treaty of Economic community of the West African states of 1993, and is headquartered in Abuja, Nigeria. In addition to providing advisory opinions on the meaning of Community law, the Court has jurisdiction to examine cases involving:

- an alleged failure by a Member State to comply with Community law;
- dispute between Community institutions and their officials;
- Community liability
- human rights violations, and
- the legality of Community laws and policies

The Court has heard cases involving education . Example is *SERAP v. Federal Republic of Nigeria*, finding that education is a legal and human right).

Problems facing the institutions.

#### **Lack of Individual and NGO Standing**

Article 30 of the ACHPR Statute provides for standing on human rights and only the following entities are entitled to submit cases to the African Court on any violation of rights guaranteed under the instruments . The limitation should not be magnified to the extent that it can undermine the effort of the commission. In a similar manner the African Commission's unlimited access to the African Court should be effectively used to refer cases and initiate new ones to the African Court.

#### **Problem of Enforceability**

The major problem encountered by most African judiciaries is the problem of enforceability and implementation of their decisions. This problem is even more graver when we come to disputes involving human rights matters, as most of the time, such disputes are charged with political interests of the States. The Court does not possess any power to ensure that its judgments are adhered to, and appears powerless to react whenever its decisions are ignored. Nonetheless, in this authors view, it is important to empower the Court with the mandate to enforce its own decisions rather than solely conferring such power on a political organ so it can punish states that doesn't comply with the judgement.

#### **Financial Constraint**

One of the reasons for the failure of the Commission is lack of adequate funding from. The African Commission was, and still is, bound to ask for external donors, in order to fill its budget deficit every year which has got a great implication on its independence and impartiality. Unfortunately the Court, that is meant to rectify the shortcomings of the Commission,

is coming in to force at the time when the AU is struggling to fulfill the financial needs of its organs, which are increasing exponentially.

#### Limited Number of Ratifications

The main concern of human rights activists with regard to the establishment of human rights judicial organ in Africa is whether all AU member States will accept and ratify the Protocol of establishment.

Above all, the citizens should not only help the government to protect their rights but they should also live responsibly to protect the rights of others at all levels of human relationship ranging from the family to the global arena. Hence, citizens should be more patriotic, have respect for the law, assist the law enforcement agencies and co-operate with international organizations on human rights issues.