Chapter 4

Group Rights under the African Charter on Human and Peoples’ Rights: Concept, Praxis and Prospects

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1 Introduction

It is particularly meet, on the thirtieth anniversary of the adoption of the African Charter on Human and Peoples’ Rights, to re-examine the ways in which its group rights provisions have been interpreted and applied. What is the concept of group rights that animates the ‘peoples’ rights’ provisions in the African Charter? How have these group rights been actually interpreted and applied in the jurisprudential praxis of the African Commission on Human and Peoples’ Rights, which (despite the establishment of the as yet young, and in any case, soon to be replaced African Court on Human and Peoples’ Rights) remains to date its main interpretive body? And what are the future prospects of these provisions in that jurisprudence?

These are the main questions that this chapter tackles through analytical examinations of the African Charter itself, the relevant primary and secondary literature, and the jurisprudence of the African Commission. To this end, section 2 examines the general debate regarding the concept of group rights and its place in international human rights praxis. Section 3 briefly considers the conception of group rights that animated the ‘peoples’ rights’ provisions in the African Charter. In section 4, a fairly detailed examination of the jurisprudence of the African Commission with respect to each one of the major group rights provisions of the Charter is conducted. Following that tour d’ horizon, some brief more general closing thoughts on the future of group rights in the African Human Rights System are offered in section 5.

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2 The Concept of Group Rights

One of the most intense controversies in human rights and international law scholarship concerns the exact parameters of the concept articulated in the African Charter as *peoples’ rights*. Beyond this African document, the category of rights that could be collectively held have also been described alternatively as ‘the rights of collectivities’,¹ community rights,² group rights, or solidarity rights.³ These categories include both more popular collectively-held human rights (such as the right to self-determination,⁴ ethnic minority rights,⁵ and the rights of indigenous peoples⁶) and their more controversial cousins (such as the rights of groups to development⁷ and a clean environment).⁸ Although one sub-category appears to be more accepted than the other, the two sub-categories of group rights are nevertheless controversial. Yet the polarization provoked by affirmations of these rights may not be all that surprising though, given that ‘in both the origins and the consequences of the First and Second World Wars, group rights played an extensive role.’⁹

There are two senses in which it is possible to deploy the concept of collective rights. The first denotes the possibility that group, collective or communal interests

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