Chapter 5
Scope of Individual Duties in the African Charter

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1 Introduction

The African Charter on Human and Peoples’ Rights (ACHPR) possesses a number of peculiarities one of which is the degree of detail that is given to the provisions on the duties of the individual.1 The ACHPR is intended as a regional human rights instrument for the people of Africa that should take into consideration ‘the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights’.2

In traditional African society, the individual’s security, both physical and economic, was encased within that of the group. This conception of mutual support was very conducive to the mode of economic production in traditional Africa. If that machinery of mutual support was to be kept in operation, then a correlative class of duties must be imposed upon the individual. African communalism, in the words of Cobbah, is more than a mere lifestyle:

... it is a worldview of group solidarity and collective responsibility. In effect, in the same way that people in other cultures are brought up to assert their independence from their community, the average African’s worldview is one that places the individual within his community.3

The typical traditional African system was a system in which the possibility of accumulation by individuals against rainy days or old age was not economically and scientifically feasible; hence the duty of members of a family to render support to

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1 Other peculiar features are the detailed provision of a category of Peoples’ Rights, and the subjection of Civil and Political Rights and Economic, Social and Cultural Rights to the same enforcement mechanisms.

2 See paragraph four of the Preamble to the African Charter on Human and Peoples’ Rights.


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other members of the family both young and old. Even in modern Africa, very few can effectively insure against old age and rainy days. It is therefore to be expected as prudent that the ACHPR balanced the rights protected with a well defined class of duties of the individual. The communalistic approach to life in the traditional society could be explained essentially as an economic dictate.

The preamble emphasises the rights of the individual as an individual and also as an individual within the communal setting. The primacy of the individual with rights is sustained to a substantial degree, but at the same time is further guaranteed through the imposition of duties on other members of the community. According to paragraph six of the Preamble to the ACHPR, ‘the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone’.

2 Individual Duties in Human Rights Instruments

The ACHPR is not the only human rights instrument that touches on the issue of the duties of the individual; various other human rights instruments such as the Universal Declaration of Human Rights (UDHR),⁴ the American Declaration on the Rights and Duties of Man,⁵ as well as the American Convention on Human Rights⁶ all mention the duties of the individual.

The fact of the realization that the life of man makes meaning within a human society has informed the formulation in Article 1 of the UDHR that human beings ‘should act towards one another in a spirit of brotherhood’. In a comment on article 1 of the UDHR Piechowiak explained that ‘Human beings are social beings; relations with others, a certain social and cultural environment are an indispensable condition of development’.⁸

Article 29(1) of the UDHR further emphasizes the strong link between the individual and his/her community and therefore provides that ‘everyone has duty to the community in which alone the free and full development of his personality is possible’. Again in Article 29 of the UDHR the individual in the enjoyment of his rights and freedoms is subject to general duties to the community because it is within the context of the community that the individual can achieve his/her free and full development.

The UDHR does not specifically itemize the said duties of the individual leaving it to the State to formulate the duties. In the formulation of such duties, limitations will be imposed on the rights of individuals. However, in the imposition of such limitations certain restraints are expected on the part of the State; in the words of Article 29 (2):

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⁴ GA res. 217A (III), UN Doc A/810 at 71 (1948).
⁵ OAS Res. XXX (1948).
⁶ OAS Treaty Series No. 36, 1144 UNTS 123.
⁷ UDHR, Article 1.