

Country Specific Resolutions

RESOLUTION ON THE SITUATION IN Kenya

We participants at the Forum on the participation of NGOs at the 45th Ordinary Session of the African Commission on Human and Peoples' Rights in The Gambia, resolve as follows:

Considering the provisions of the Constitutive Act of the African Union, , as well as those of the African Charter on Human and Peoples' Rights and other regional and international human rights instruments to which Kenya is a state party;

Highlighting that as a signatory to the African Charter, the Geneva Conventions and various human rights treaties and as a member State of the International Criminal Court, Kenya has a duty to respect the right to life and an obligation to bring to justice perpetrators of serious international crimes;

Further considering Kenya's obligations under the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (the UN Declaration on Human Rights Defenders);

Welcoming the findings of the Commission of Inquiry on Post-Election Violence (Waki Commission);

Deploring the failure of the Kenyan coalition government of national unity to establish a constitutionally entrenched Special Tribunal as recommended by the Waki Commission;

Condemning the widespread problem of extrajudicial executions and enforced disappearances in Kenya;

Deploring the deeply entrenched culture of impunity, and the lack of an independent and impartial legal framework to ensure prompt and independent investigations into violations of the right to life and acts of torture and other inhumane and degrading treatment or punishment , notably at the hands of Kenyan security services and law enforcement personnel;

Highlighting the failure of the Witness Protection Act to offer significant and necessary protection to witnesses in Kenya;

Concerned by the current harassment and attacks on Human Rights Defenders, primarily those involved in investigations into extrajudicial killings, notably the killing of Mr. King'ara and Mr. Oulu of the Oscar Foundation Free Legal Clinic, on 5th march 2009

The NGO ForumEHAHRD-Net calls upon the ACHPR to take all necessary measures to pass a resolution

- To call on the Kenya authorities to publicly condemn the continued practice of arbitrary executions and to take all the necessary measures to ensure that those responsible are held to account notably allowing for an independent criminal investigation into the killings and to carry out sweeping police reforms, including the establishment of a civilian police oversight body as called for in the preliminary fact-finding recommendations by the UN Special Rapporteur on Extrajudicial Killings

- To call on the Kenyan government to immediately establish a constitutionally entrenched Special Tribunal as recommended by the Waki Commission, after a broad consultation, with amongst others members of the Kenyan civil society and legal community;
- To call on the Kenyan government to establish an independent witness protection mechanism that is not dependent on the Kenyan security forces or the Attorney General,
- To encourage the Kenyan government to put an immediate end to the harassment of human rights defenders in Kenya;
- To call on the Kenyan authorities to observe the provisions of the 1998 UN Declaration on human rights defenders, the African Charter on Human and People's Rights and other human rights treaties to which Kenya is signatory;
- To encourage the Kenyan government to call for a prompt impartial and independent criminal investigation into the killings of Mr. King'ara and Mr. Oulu and to ensure that those responsible for the killings, once identified, are held to account;
- To call for and support an international criminal investigation into the allegations of human rights violations committed notably against HRDs during the post-election violence and in the course of the military actions in the Mount Elgon region;
- To call on the government to invite without delay the Special Rapporteur of the ACHPR on Human Rights Defenders;
- To call on all AU member states to exert pressure on the Kenyan government to ensure a full and prompt implementation of the Waki Commission recommendations amongst other recent investigations
- To encourage all AU member states to use their influence on the Kenyan authorities to bring an end to the culture of impunity and to offer support- political/ logistical – to ensure the establishment of independent and impartial accountability mechanisms;
- To encourage the African Union to call on the Kenyan authorities to offer an open invitation to Special Rapporteur of the ACHPR on Human Rights Defenders.

Banjul, The Gambia- May 2009