



**THEMATIC RESOLUTIONS OF THE FORUM ON THE PARTICIPATION OF NGOs IN  
THE 46<sup>TH</sup> ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND  
PEOPLES' RIGHTS AND 20<sup>TH</sup> AFRICAN HUMAN RIGHTS BOOK FAIR  
7-9 NOVEMBER, 2009  
KAIRABA BEACH HOTEL - BANJUL, THE GAMBIA**

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**TRES/001/11/09**

**Resolution to end all forms of discrimination based on sexual orientation and gender identity in Africa.**

We, the participants to the NGO Forum in preparation of the 46<sup>th</sup> ordinary session of the African Commission on Human and Peoples' Rights,

**Recalling** “the inherent dignity of and the equal and inalienable rights of all members of the human family” and that “All human beings are born free and equal in dignity and rights” and that all human rights are universal, interdependent, indivisible, and interrelated;

**Affirming** that “human beings of all sexual orientation and gender identity are entitled to the full enjoyment of all human rights” as established in the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity;

**Further recalling** Article 2 and 4 of the African Charter on Human and Peoples' Rights, the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), the African Commission on Human and Peoples' Rights Resolution 69[XXXV]04 on the Protection of Human Rights Defenders in Africa;

**Noting** the failure by states to ensure the enjoyment of the right to the highest attainable standard of health by everyone irrespective of their sexual orientation and gender identity, which has impacted to the scourge of HIV in communities of men who have sex with men (MSM) and women who have sex with women (WSW) despite the proven impact of the pandemic in these communities and the population at large;

**Notwithstanding** that human rights protection for all women are guaranteed in various international instruments including the U.N. Security Council Resolution 1325 on women, peace and security which deals with the impact of conflict situations on women and girls especially as victims of sexual violence, the African Commission on Human and Peoples' Rights Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 18 of the African Charter on Human and Peoples' Rights, Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Solemn Declaration on Gender Equality in Africa, states continue to fail in their obligation to protect the rights of lesbian, bisexual and transgender women;

**Noting** that Article 60 of the African Charter requires the African Commission on Human and Peoples' Rights to draw inspiration from the content of other international treaties and laws, and further noting that articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which all African states are party, establish the principle of non discrimination on grounds of sexual orientation, as elaborated by the United Nations Human Rights Committee, and that U.N. treaty bodies and Special Procedures, including the U.N. Working Group on Arbitrary Detention, the U.N. Special Rapporteur on torture and other inhuman, degrading and cruel punishments and treatments, the UN Committee on Social, Economic and Cultural Rights, and the Committee on the Elimination of Discrimination against Women, have consistently held that all U.N. treaties include protection against discrimination based on sexual orientation and gender identity;

**Further noting** the continuing and increasing human rights violations against individuals and communities on the basis of their sexual orientation and gender identity, which include arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail, hate speech, violent attacks, including rape and other sexual assault, physical assaults, torture and murder, as well as the failure of protecting the rights to safety and security of the person, freedom of movement and association, freedom of expression;

**Recognizing** that lesbian, gay, bisexual, transgender and intersex people are not a homogenous group and that certain identities including race, ethnic and social origin, sexual orientation and gender identity, as well as legal, economic, social and cultural situations disproportionately impact on their experiences and access to the full enjoyment of all rights and freedoms;

**Particularly alarmed** for the situation of hatred and persecution against individuals on grounds of their perceived or real sexual orientation and gender identity by state and non-state actors in Uganda, that recently led the Parliament to consider a piece of legislation, the so-called Anti-Homosexuality Bill 2009, whose draconian measures would lead to extreme persecution of individuals because of their real or perceived sexual orientation and gender identity, as well as of anybody who would be suspected of supporting human rights of lesbian, gay, bisexual, transgender and intersex

individuals in or outside the country, and to violations of human rights of privacy, non-discrimination, freedom from arbitrary arrest and detention, freedom of expression, peaceful assembly, and association, and ultimately to a disruption of the democratic order.

**Call for** urgent and sustained action by the African Commission on Human and Peoples' Rights to ensure the realization of the full range of human rights for all people living on the African continent, in particular people whose sexual orientation and gender identity render them more vulnerable.

**And further calls on** the African Commission on Human and Peoples' Rights to adopt a resolution to:

1. Acknowledge the continuing and increasing incidence of human rights violations, including murder, rape, assault, persecution and imprisonment based on perceived or actual sexual orientation and gender identity on the continent as a problem requiring urgent action;
2. Condemn these acts of human rights violations;
3. Condemn discrimination and exclusion of individuals and communities from the enjoyment of rights and the full realization of their potential because of their sexual orientation and gender identity;
4. Specifically condemn the situation of hatred and systematic attacks by state and non-state actors against lesbian, gay, bisexual, transgender and intersex individuals and, more in general, against any human rights defenders who is operating for the protection of LGBTI human rights in Uganda, that culminated with consideration of draconian legislation by the Parliament of the country;
5. Mandate the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Rights of Women and the Special Rapporteur on the Freedom of Expression to coordinate a Special Committee to investigate, document and report on these violations in order to develop appropriate responses and interventions;
6. Create a mechanism to address human rights violations based on sexual orientation and gender identity;
7. Ensure that states put in place mechanisms for access to HIV prevention treatment and care services for everyone regardless of their sexual orientation and gender identity.
8. Strongly urge states to:
  - 8.1 Comply with the African Charter on Human and Peoples' Rights, and other binding international treaties, by repealing laws which criminalise non-heteronormative sexualities and gender identities, such as laws criminalizing sexual conducts between consenting adults of the same sex, or laws banning cross-dressing, and by amending other laws that are implemented with the purpose of persecuting individuals and communities based on their sexual orientation and gender identity, such as laws against indecency, impersonation, and debauchery, among others.

- 8.2 End impunity for acts of violation and abuse, whether committed by state or non-state actors, by enacting appropriate laws, ensuring proper investigation, arrests and punishment of the perpetrators, and establishing judicial procedures favorable to the victims.
- 8.3 Protect the right of all people, regardless of their sexual orientation and gender identity, to freedom of association and assembly, freedom of expression, and freedom to participate in civil society and key decision-making organs of government.

Done in Banjul, The Gambia – 9<sup>th</sup> November, 2009



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**TRES/002/11/09**

### **Resolution on Strengthening International Justice in Africa**

We, the participants of the NGO Forum on the participation of NGOs in the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, held at the Kairaba hotel in Banjul, Gambia on 7-9 November 2009,

*Recalling* the Resolution on the Ratification of the Treaty on the International Criminal Court by the African Commission on Human and Peoples' Rights, Banjul (1998), the Declaration and Plan of Action of Grand Bay, Mauritius (1999), the Resolution on the Ratification of the Statute of the International Criminal Court (ICC) by OAU/AU Member States, Pretoria (2002) and the Resolution on ending impunity in Africa and on the domestication and implementation of the Rome Statute of the ICC of the African Commission on Human and Peoples' Rights (2005),

*Further Recalling* the adoption in 2005 of World Summit document where member states of the United Nations expressed their commitment to the protection of civilians from genocide, war crimes, crimes against humanity and ethnic cleansing

*Noting with concern* the numerous human rights abuses in parts of the African continent, most notably that women and children have suffered the heaviest brunt of acts of genocide, war crimes, crimes against humanity and other crimes recognized under international human rights and international humanitarian law,

*Recalling* that the establishment of the ICC represents an important development in the struggle against impunity for the most serious crimes as crimes of war, crimes against humanity and genocide, and that there is no peace without justice,

*Noting* that by attempting to punish those responsible for these crimes, the ICC is a crucial court of last resort in defending African victims and attempting to prevent the future occurrence of such atrocities,

*Committed* to the development of national capacity to address international crimes, and noting that under the complimentary principle, the ICC has jurisdiction only when national states are unwilling or unable to investigate and prosecute international crimes,

*Recalling further* that three African states (Uganda, the Democratic Republic of Congo and the Central African Republic) voluntarily referred situations on their territories to the ICC and that the UN Security Council referred Darfur to the ICC, given the gravity of crimes there,

*Welcome* the report of the African Union High Level Panel on Darfur otherwise known as the 'Mbeki Report' and the consultations with civil society organizations that contributed to it,

*Noting that* 30 African states have ratified the Rome statute,

**Call on the African Commission on Human and Peoples' Rights to:**

Urge the member states of the African Union that have not yet done so to ratify the Rome Statute and to ensure its effective implementation at the national level,

Urge the member states of the African Union (AU) to support victims by promoting judicial and other efforts to end impunity as well as promoting accountability for serious crimes under international law including through strengthening support and collaboration with the ICC,

Encourage the AU to include members of the African Commission on Human and Peoples' Rights in any discussions relating to impunity, including the ICC, in light of its role in the promotion and protection of human rights in Africa,

Further Urge the AU to take steps in effectively disseminating the report of the AU high level panel on Darfur otherwise known as the 'Mbeki Report' and encourage the participation of both local and international NGOs in the implementation of the report,

Encourage the Assembly of Heads of State and Government of the AU to urge its member states, including those under investigation by the ICC, to fully cooperate with the Court in its efforts to bring to justice suspected perpetrators of international crimes,

Ensure that the worst crimes under international law are adopted as crimes under national law and investigated and that those responsible are brought to justice in their domestic courts in accordance with internationally recognized fair trial standards,

Appoint a Special Rapporteur on fighting Impunity in Africa, to carry out activities aimed at ensuring that those responsible for the worst crimes under international law are brought to justice; and strengthening international rule of law.



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**TRES/003/11/09**

**Resolution on Follow-up of the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance**

We, the participants at the Forum on the participation of NGOs in the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul (7<sup>th</sup> – 9<sup>th</sup> November 2009):

**Considering** the provision of the Durban Declaration and Programme of Action which were adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as well as the Durban Review Conference Outcome Document;

**Deeply concerned** that despite the landmark achievements in the global efforts to combat racism, racial discrimination, xenophobia and related intolerance, the racist phenomena persist and are affecting the lives of millions of victims all over the world including Africa;

We, therefore resolve to:

1. Further examine the Durban Review Conference Outcome Document and fully participate in the follow-up of the implementation of the Durban Declaration and Programme of Action in close collaboration with the African Commission on Human and Peoples' Rights, African governments and national human rights institutions and other partners at the regional and international levels.
2. Call on NGOs to design specific strategies for national mobilization and to participate in all regional and sub-regional efforts to give effects to the Durban Review Conference Outcome Document including the upcoming Conference to be held in Lomé (Togo) from 8 to 10 December 2009.
3. Cooperate with the Office of the United Nations High Commissioner on Human Rights in its efforts to coordinate global action to combat racism, racial discrimination, xenophobia and related intolerance.
4. Devote adequate space and time to examine issues of racism, racial discrimination, xenophobia and related intolerance at the Forum on the

participation of NGOs at the 47<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights.

5. Create an African NGO Special Interest Group on racism, racial discrimination, xenophobia and related intolerance.

Done at Banjul, The Gambia -9<sup>th</sup> November 2009





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**TRES/004/11/09**

**Resolution on Strengthening the Implementation of the Responsibility to Protect in Africa**

We, the participants of the NGO Forum on the participation of NGOs in the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, held at the Kairaba hotel in Banjul, Gambia on 7-9 November 2009;

**Recalling** the adoption in 2005 of World Summit Outcome Document where UN Member States expressed in Paragraph 138 and 139, their commitment to protect civilians from genocide, war crimes, crimes against humanity and ethnic cleansing; and the subsequent Security Council Resolution 1674 on the protection of civilians ;

**Re-affirm** the African Commission on Human and People's Rights (ACHPR) 'Resolution on Strengthening the Responsibility to Protect in Africa – 117 (XXXII) 07' which was adopted at the 42nd Ordinary Session in Brazzaville, Republic of Congo in November 2007;

**Welcome** the report of the United Nations Secretary General on 'Implementing the Responsibility to Protect' (A/63/677) especially the formulation of the 'three pillar approach';

**Encouraged** by the positive contributions of African governments during the July 2009 General Assembly debate on the Responsibility to Protect, in particular the reference by many member states to Article 4(h) of the Constitutive Act of the African Union and its transition from the principle of non interference to the principle of non indifference ;

**Call on the African Commission on Human and Peoples' Rights to:**

**Urge** the member states of the African Union (AU) to make a priority in advancing efforts to prevent and halt genocide, war crimes, ethnic cleansing, and crimes against humanity.

**Urge** the member states of the African Union (AU) to enhance early-warning mechanisms within the region, strengthen its collaboration with the UN and other regional bodies in the prevention of mass atrocity crimes, and provide assistance needed for states to fulfil their responsibility to protect their populations.

***Urge*** the member states of the African Union (AU) to commit themselves to taking timely and appropriate action in specific situations where these crimes and violations threaten to occur.

**Done in Banjul, 8 November 2009**



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**TRES/005/11/09**

## **Resolution on the Effects of Climate Change on the Full Enjoyment of Human and Peoples' Peoples' Rights in Africa**

We the participants at the Forum on the participation of NGOs in the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul (7<sup>th</sup> – 9<sup>th</sup> November 2009):

**Considering** the provisions of the United Nations Framework Convention on Climate Change and the objectives and principles thereof, the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development,

**Recalling** Resolutions 7/23 and 10/4 adopted by the United Nations Human Rights Council on Human Rights on Climate Change;

**Considering** the provisions of the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights, the Charter of the United Nations Organisation and other relevant regional and international human rights instruments;

**Welcoming** the Nairobi Declaration on the African Process for Combating Climate Change of 29<sup>th</sup> May 2009 in which African states reaffirmed their commitment to implement policies, strategies, decisions and recommendations from various regional and sub-regional consultations on climate change;

**Concerned about** the serious effects of climate change on the full enjoyment of human and Peoples' rights in Africa, particularly the implications for the most vulnerable parts of populations on the continent;

**Deeply concerned that** climate change already impacts on the lives and human rights of millions of peoples particularly in East Africa; with disproportionate burden shouldered by the most vulnerable segments of the population due to factors such as armed conflicts, competition over resources, geographic location, poverty, gender, indigenous and minority status and disability, and that the situation could further exuberate unless concerted efforts are taken on international, regional, national and local levels to facilitate climate change mitigation and adaptation strategies both globally and in Africa;

**Concerned that** climate change exacerbates existing inequalities between the developed and rapidly industrialised countries on the one hand and the poor developing countries on the other, including those inequalities between men and women;

**Noting that** increased participation of women, indigenous peoples and other vulnerable communities in the decision-making on climate change on all levels is prerequisite to sustainable solutions;

*NOW THEREFORE: Call on the African Commission to:*

1. **STRESSES** the collective and individual responsibility of African States to take measures to ensure equal protection of the rights of all individuals and peoples under their jurisdiction against the actual and projected impacts of climate change;
2. **CALLS ON** all African State Parties to the United Nations Framework Convention on Climate Change to agree on and implement a legally binding international climate change framework that prevents dangerous climate change while fully respecting the human rights protected in the African Charter on Human and Peoples' Rights and other international human rights instruments;
3. **URGES** African governments to provide clear indications of the assistance needed to ensure that the rights of individuals and peoples under their jurisdictions are fully protected against the impact of climate change and bring their needs to the attention of State Parties to the United Nations Framework Convention on Climate Change as appropriate;
4. **URGES** State Parties to the United Nations Framework Convention on Climate Change listed in Annex I to the Convention to adequately compensate African States for the adverse impacts of climate change on the rights of individuals and peoples under their jurisdictions;
5. **CALLS ON** all governments to prioritise small-scale poverty reduction and mitigation projects as a key component of international solutions for climate change;
6. **CALLS ON** all governments to ensure that decision-making on climate change occurs with the involvement of and respect for the rights of those directly affected, particularly women, children, indigenous people and persons displaced or migrated as a result of climate change;
7. **INVITES** the African Commission on Human and Peoples' Rights to participate actively in the 15<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change;

8. **ENCOURAGES** the African Commission on Human and Peoples' Rights to examine the human rights implications of the Copenhagen outcome document and inform State Parties to the African Charter on Human and Peoples' Rights about these implications during its 48<sup>th</sup> Ordinary Session.

Done at Banjul, The Gambia - 9<sup>th</sup> November 2009



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TRES/006/11/09

## Resolution on Forced Eviction

We, the participants at the Forum on the Participation of NGOs at 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul 7<sup>th</sup> – 9<sup>th</sup> November 2009.

**Mindful** that member states of the African Union have committed themselves to promote and protect human and peoples' rights including economic, social and cultural rights as set out in the AU Constitutive Act and the African Charter on Human and Peoples' Rights;

**Concerned** that each year, thousands of people across Africa are rendered homeless or landless and without sources of livelihood as a result of forced eviction, that the authorities usually carry out forced eviction in violation of regional and international human rights law, including the African Charter on Human and Peoples' Rights and that in most cases evictions are conducted without due process, consultation, reasonable notice or adequate alternatives or compensation;

**Mindful** also that forced eviction as a last resort, once all other feasible alternatives have been explored and only after appropriate procedural and legal safeguards are in place including genuine consultation with the affected people, prior adequate and reasonable notice, adequate alternative housing and compensation for all losses, and that governments under the circumstances are required to ensure that no one is rendered homeless or vulnerable to other human rights violations as a consequence of an eviction;

**Aware** that situations of mass forced evictions have been documented in numerous African countries, including Angola, Chad, Egypt, Equatorial Guinea, Ghana, Kenya, Nigeria, Sudan, Swaziland and Zimbabwe and that in all these cases governments have acted in violation of regional and international human rights treaties, including the African Charter on Human and Peoples' Rights;

**Aware** that evictions result not only in people losing their homes and personal possessions but also access to clean water, food, sanitation, health and education, work and sources of income;

**Deeply concerned** that persons living in poverty are not only inclined to be victims of forced evictions but also to be negatively affected by the consequence of losing their homes and possession on their enjoyment of a wide range of economic and social rights human rights with a disproportionate burden shouldered by women and children;

We hereby call upon the African Commission on Human and Peoples' Rights to:

1. Condemn forced evictions any where on the African continent and to adopt guidelines on forced evictions that comply with regional and international human rights law.
2. Urge all member states of the AU to immediately stop forced evictions, to respect national and international law principles that guarantee the rights to own property and titles and to enact measures to protect the victims of forced evictions, particularly women, children, and indigenous people and ensure adequate alternative housing, health care and education facilities, clean water and sanitation and means of livelihoods.
3. Urge State Parties to the African Charter on Human and Peoples' Rights to speedily adopt the Principles and Guidelines on Economic, Social, and Cultural Rights in the African Charter and to promote and implement these principles and report on the progress made thereof.
4. Advice African states to enact national legislations that specifically prohibit forced evictions, clearly sets out the procedure and conditions in which evictions may be carried out, in accordance with regional and international human rights standards and provides for penalties on those carrying out forced evictions.

Done at Banjul, The Gambia - 9 November 2009



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TRES/007/11/09

## RESOLUTION ON HUMAN RIGHTS DEFENDERS IN AFRICA

We, the participants at the Forum for the Participation of NGOs at the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights,

**Recalling** United Nations General Assembly resolution 53/144 of 9 December 1998, by which the Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to that resolution, and reiterating the importance of the Declaration and its promotion and implementation;

**Recalling** the obligations of States under the African Charter on Human and People's Rights, the Grand Bay Declaration and Plan of Action, and the Kigali Declaration;

**Emphasizing** the important role that human rights defenders, including individuals and civil society institutions, non-governmental organizations, groups and national human rights institutions, play in the promotion and protection of all human rights and fundamental freedoms for all;

**Deeply concerned** at the situation of human rights defenders in several countries on the continent, including the Gambia, Democratic Republic of Congo, Sudan, Burundi, Swaziland, Liberia, Zimbabwe, Cameroon, Uganda, South Africa, Rwanda and Senegal;

**Expressing particular concern** at the vulnerabilities and risks faced by women human rights defenders, human rights defenders working on the rights of lesbian, gay, transgender and inter-sex persons; defenders working on economic, social and cultural rights and human rights defenders during election periods;

**The NGO Forum calls upon the African Commission on Human and People Rights to:**

1. **Urge** member States to protect human rights defenders in their respective countries against violations of their rights, including protection from harassment, arbitrary detention, torture, extra-judicial executions, and violations of freedom of assembly, freedom of expression and freedom of assembly, in accordance with international and regional human rights standards;



2. **Urge** member States to ensure that human rights defenders do not face retaliation for exercising their fundamental right to freedom of expression and that any violations will be promptly and impartially investigated;
3. **Call upon** member States to recognize and protect the rights of human rights defenders working on specific areas who face particular risks when carrying out their work, such as women human rights defenders, defenders working on the rights of lesbian, gay, transgender and inter-sex persons; defenders working on economic, social and cultural rights and human rights defenders during election periods
4. **Call upon** member States to support the mandate of the Special Rapporteur on human rights defenders of the African Commission on Human and People's Rights and the mandate of the UN Special Rapporteur on human rights defenders, including by cooperating with the requests of the mandate for country visits, promptly providing information as requested and otherwise providing all necessary support in order to ensure that Rapporteurs can effectively fulfill their mandates.

Done in Banjul, The Gambia - November 2009.