

## **RESOLUTION ON THE ESTABLISHMENT OF AN INDEPENDENT AND EFFECTIVE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

The Forum on participation of NGOs in the 36<sup>th</sup> ordinary session of the African Commission on Human and Peoples' Rights and the 10<sup>th</sup> Human Rights Book Fair held at the Hotel Ngor Dairama, Dakar, Senegal from 20 – 22 May 2004

**Expressing satisfaction** at the entry into force of the Protocol Establishing the African Court on Human and Peoples' Rights;

**Recognizing** that our continent is facing serious human rights violations and the existence of the prevailing culture of impunity;

**Emphasizing** the urgent need for the establishment of an independent, impartial and effective African Human Rights Court;

**Deeply concerned** at the decision taken by the Assembly of the African Union in Addis Ababa in July 2004 to integrate the African Court on Human and Peoples' Rights with the Court of Justice of the African Union;

**Considering** that the two Courts have essentially different mandates, criteria for appointment of judges and litigants;

**Considering also** that Protocol of the Court of Justice has not yet entered into force and that the immediate implementation of the decision to integrate the two courts could considerably delay the establishment of the African Human Rights Court.

### **The NGO Forum:**

1. Emphasizes that the decision of the AU Assembly to integrate the two courts is contrary to the decision of the Assembly adopted in Maputo in July 2003 that the African human rights Court "shall remain a distinct and separate institution from the Court of Justice of the African Union";
2. Emphasizes also that if the decision is to be understood to amend the two Protocols or suspend the appointment of judges of the African Human Rights Court, it would be contrary to provisions of both Protocols and the Vienna Convention on the Laws of Treaties regarding the amendment of treaties, and undermines the fundamental rule of law;
3. Expresses concern that the decision to integrate could delay, undermine and weaken the full establishment of an independent, impartial and effective African Human Rights Court;
4. Also expresses concern that the Assembly took the decision to integrate without sufficient consideration of the legal and political implications of such a decision, and that it could relegate human rights, contrary to the objectives and principles of the Constitutive Act of the African Union.

### **The NGO Forum urges:**

1. The African Union Assembly to:
  - 1.1 Establish an independent and effective African Human Rights Court without further delay through the election of judges, determination of the seat of the court, allocation of adequate resources and determination of other operational issues, while the discussions on the integration of the two courts continue;
  - 1.2 Establish without delay the Human Rights Fund so as to ensure sustainable and adequate funding to its human rights institutions including the African Human Rights Court;
  - 1.3 Ensure that the Court is established at a place that guarantees its independence and effectiveness as well as easy access for victims and civil society organisations.
2. The AU Commission to:

- 2.1 Establish a meeting of experts that would include the participation of the African Commission on Human and Peoples' Rights and civil society organisations to consider the legal and political implications of the decision to integrate the two Courts and to make public the report submitted to the Assembly;
  - 2.2 Urge the Assembly to establish the African Human Rights Court at its next Ordinary session.
3. Member States of the AU to:
    - 3.1 Ratify the African Human Rights Court Protocol if they have not yet done so;
    - 3.2 Make the necessary declaration under Article 34(6) of the Protocol, if they have not done so;
    - 3.3 If they have not done so, to comply with the Note Verbale of the AU Commission to nominate judges for election to the African Human Rights Court, and to ensure adequate gender representation, as required by the Protocol;
    - 3.4 Make contributions to the immediate establishment of the Human Rights Fund.
4. African Commission on Human and Peoples' Rights to:
    - 4.1 Be proactive in supporting the full establishment of an independent and effective African Human Rights Court and the establishment of the AU Human Rights Fund;
    - 4.2 Express its views publicly to the AU Assembly supporting the immediate establishment of the African Human Rights Court at its next ordinary session;
    - 4.3 Urge member states that have not done so to ratify the Protocol and make the declaration under article 34(6) of the Protocol;
    - 4.4 Participate in any meeting of experts established by the AU Commission;
    - 4.5 Establish a working group, which would include civil society organisations to undertake a review of its Rules of Procedure to ensure an effective relationship with the African Human Rights Court.
5. Civil society organisations to:
    - 5.1 Facilitate discussions at the national level engaging other civil society organisations and the media;
    - 5.2 Advocate at the national, regional and continental level for the establishment without delay of an effective and independent African Human Rights Court and the establishment of the AU Human Rights Fund;
    - 5.3 Contribute to the discussions of any meeting of experts established by the AU Commission.