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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fifth session
Agenda item 3

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

**Mr. Bengoa, Mr. Decaux, Mr. Eide, Mr. Guissé, Ms. Hampson,
Ms. O'Connor, Mr. Park, Mr. Pinheiro, Mr. Sattar, Mr. Sorabjee,
Mr. Yimer, Mr. Yokota and Ms. Zerrougui: draft resolution**

**2003/... Discrimination against convicted persons
who have served their sentence**

The Sub-Commission on the Promotion and Protection of Human Rights,

Noting that persons convicted of crimes after serving their prison sentences and otherwise fulfilling the terms of their criminal punishment return to civil society,

Recalling article 2 of the Universal Declaration of Human Rights stating that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind,

Noting article 5 of the Basic Principles for the Treatment of Prisoners, annexed to General Assembly resolution 45/111 of 14 December 1990, which provides that except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants,

Considering principle 10 of the Basic Principles, which provides that with the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions,

Considering also article 25 of the International Covenant on Civil and Political Rights, which guarantees every citizen the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and be elected at genuine periodic elections,

Noting article 4 of the International Covenant on Economic, Social and Cultural Rights, in which States parties recognize that, in the enjoyment of those rights provided by the State in conformity with the Covenant, the State may subject such rights only to such limitations as are determined by law insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society,

Noting also the International Convention on the Elimination of All Forms of Racial Discrimination which through its articles 1 and 5 bars distinction that nullifies or impairs political rights, in particular the rights to participate in elections and to vote on the basis of universal and equal suffrage,

Concerned that some States permit official and unofficial forms of discrimination to be practised against persons who have served their terms of criminal punishment, such as disenfranchisement and denial of basic economic and social benefits accorded to other persons such as public housing, opportunities to obtain private housing, public educational benefits, public welfare benefits, employment opportunities and other types of benefits which could help such persons reintegrate successfully into civil society,

Concerned in particular that historically discriminatory practices may sometimes lead to disproportionate numbers of the poor and minorities in a criminal justice system, which in turn leads to a cycle of poverty, discrimination and greater marginalization of such persons if they are discriminated against after serving a sentence of imprisonment by virtue of their status as former prisoners,

Noting that where minorities are disproportionately represented in prison populations, denial to them of the right to vote results not only in their exclusion as a class from voting in elections, but also may result in the dilution or cancellation of the voting strength of entire racial or ethnic minorities in a given State or political subdivision,

Noting also the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), annexed to General Assembly resolution 45/110 of 14 December 1990, in particular article 12, paragraph 2, which states that the conditions to be observed in non-custodial measures shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim,

Concerned that convicted persons who believe that they will be denied employment solely on the basis of their criminal record may be less inclined to improve their job skills while in prison, which can undermine the objectives of rehabilitation and training in the penal system, keeping persons out of prison, avoiding relapses in criminal behaviour and promoting successful, rewarding employment for ex-offenders,

1. *Urges* States to examine their treatment of convicted persons after they have served their punishment and to cease any official or unofficial practices of discrimination against such persons, bearing in mind relevant international human rights standards;

2. *Requests* its sessional working group on the administration of justice to examine this question and to suggest types of information that could be collected in order to understand better the extent of discrimination against convicted persons who have served their sentences and the relevant international human rights standards which would apply to such situations;

3. *Decides* to continue consideration of this matter under the item of its agenda entitled "Prevention of discrimination".
