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COMMISSION ON HUMAN RIGHTS
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Agenda item 11

CIVIL AND POLITICAL RIGHTS

Cuba and Russian Federation: draft resolution

2003/... Integrity of the judicial system

The Commission on Human Rights,

Guided by articles 5, 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4, 6, 7, 10, 14, 15 and 26 of the International Covenant on Civil and Political Rights, and bearing in mind the Vienna Declaration and Programme of Action,

Recalling other important documents on the issue of the integrity of the judiciary endorsed by various forums of the United Nations, in particular the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, the Basic

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,

Recalling also its resolution 2002/37 of 22 April 2003 on the subject,

Convinced that the integrity of the judicial system is an essential prerequisite for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Stressing that the integrity of the judiciary should be observed at all times,

1. *Reiterates* that every person is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her;
2. *Also reiterates* that everyone has the right to be tried by ordinary courts or tribunals using established legal procedures and that tribunals that do not use such duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals;
3. *Stresses* the importance that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he/she has had all the guarantees necessary for the defence;
4. *Urges* States to guarantee that all persons brought to trial before courts or tribunals under their authority have the right to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing;
5. *Underlines* that any court trying a person charged with a criminal offence should be based on the principles of independence and impartiality;
6. *Calls upon* States to ensure the principle of equality of arms within their judicial systems, inter alia by providing to those being tried the possibility to examine, or to have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
7. *Reaffirms* that every convicted person should have the right to have his/her conviction and sentence reviewed by a tribunal according to law;

8. *Calls upon* States that have military courts for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and use the duly established legal proceedings;

9. *Stresses* the importance of developing cooperation between the national judicial systems, inter alia with a view to strengthening the protection of persons deprived of their liberty;

10. *Takes note* of the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2003/65 and Add.1-4) as well as of the report on the issue of the administration of justice through military tribunals (E/CN.4/Sub.2/2002/4) submitted by Mr. Louis Joinet to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-fourth session;

11. *Also takes note* of the efforts of the Special Rapporteur on the independence of judges and lawyers to make use of resolution 2002/37 in his communications with States and encourages him to continue this practice;

12. *Requests* the Special Rapporteur to take full account of the present resolution in the discharge of his mandate and in his report to the sixtieth session of the Commission.
