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Chairperson: Mr. Bossuyt

later: Ms. Chung

later: Mr. Bossuyt (Chairperson)

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The meeting was called to order at 3.05 p.m.

Economic, social and cultural rights (agenda item 4) (A/HRC/Sub.1/58/CRP.10, A/HRC/Sub.1/58/16)

1. **The Chairperson** invited the Special Rapporteur responsible for carrying out a comprehensive study on the question of corruption and its impact on the full enjoyment of all human rights to present her second progress report, which had been distributed in the room in English only.
2. **Ms. Mbonu** (Special Rapporteur) said that corruption was a universal phenomenon, independent of the level of economic development of countries, which violated not only economic, social and cultural rights but also civil and political rights. The second progress report on corruption and its impact on the full enjoyment of all human rights contained a questionnaire drawn up on the basis of previous reports and of comments made by the members of the Sub-Commission at previous sessions. It would be sent to Member States, NGOs combating corruption, grass-roots organizations and local civil society entities. The responses to the questionnaire would serve as a basis for the preparation of the final report.
3. The questionnaire first asked respondents to indicate whether their domestic legislation contained a definition of corruption, whether it dealt with different cases of corruption — corrupt officials, procurement irregularities, various kinds of misconduct, illicit enrichment, money-laundering, political party financing — and whether it provided for appropriate sanctions. The second part of the questionnaire concerned measures taken to combat corruption and national bodies established by States to that end. States were also asked to describe measures taken to ensure the independence of the judiciary, set up national bodies to combat corruption, establish a civil service ethical code, regulate public procurement, ensure transparency and access to information, foster the participation of civil society and raise public awareness with regard to the phenomenon of corruption. The third part of the questionnaire related to international cooperation in the combat against corruption. States were asked to give examples of measures taken in the framework of international cooperation to combat corruption. The fourth part of the questionnaire concerned ties between anti-corruption measures and activities and the exercise of human rights, in particular economic, social and cultural rights. States were invited to give specific and relatively recent examples so that the impact of corruption on the enjoyment of those rights could be measured.
4. **Mr. Sattar** regretted that so few States considered the problem of corruption to be sufficiently serious to call for urgent measures. Unfortunately, developing countries were all too often led by a corrupt elite and were therefore hardly inclined to put an end to that phenomenon. In certain industrialized and developing countries, flexible banking legislation was maintained by the authorities in order to attract foreign capital. Powerful interest groups prevented the repeal or modification of such laws, which was unfortunate as that would make it possible to discourage or penalize illegal banking operations. States had developed effective methods for detecting and blocking the transfer of terrorist funds; why could they not do so for corruption money?
5. The Special Rapporteur should broaden the scope of her questionnaire to include the comments of States that had successfully combated corruption. It would be interesting to know how many ministers and high-level officials had been investigated and sentenced in the past three years. The question of the restitution of fraudulently acquired money was also important. Responses to those questions would make it possible to draw up more effective anti-corruption strategies. The impact of corruption on civil and political rights must also be analysed.

6. **Mr. Decaux** said that he fully endorsed the questionnaire drawn up by the Special Rapporteur and hoped that States would make it their duty to reply to it. Certain independent institutions could serve as Ms. Mbonu's natural correspondents within States. For example, in France, it would be interesting to establish ties with the Court of Accounts (Cour des comptes) or the Financial Markets Authority (Autorité des marchés financiers). Comparable institutions existed in other countries and it would be useful to make contact with them. As Mr. Sattar had pointed out, the questionnaire could be modified to include civil and political rights. Furthermore, the courts themselves were not free from corruption; Ms. Mbonu could accordingly place even more emphasis on independent national institutions to combat corruption. In Turkmenistan, calls for the dismissal of the Prosecutor General for corruption, during the major trials in December 2002, had had an impact on the credibility of the country's entire system of justice. It should be kept in mind that international organizations were also affected by corruption. An analysis of the impact of corruption on cultural rights, in particular in the developing countries, would be of interest.

7. **Ms. Rakotoarisoa** said that she wished to place emphasis on money-laundering, which had been established as a crime under the United Nations Convention against Corruption. That crime had serious consequences owing to its close link with various types of transnational criminal activity: arms trafficking, drug trafficking, forced prostitution or terrorism financing. In capital markets, it was easy to hide the source of funds — cash transactions left no trace — and to launder the money; according to estimations, 10 billion dollars were laundered each year. The combat against money-laundering was especially challenging in economies that were based primarily on cash transactions, in particular in developing countries which sometimes had no banks. Such economies were easy targets for criminals, who always endeavoured to find the weak links in the chain of strategies to combat money-laundering. The Special Rapporteur should make a clear distinction in her questionnaire between the money-laundering operation and the original crime, since laundering presupposed a prior crime. She should also ask States what mechanisms they had adopted to monitor cash transactions. Finally, the importance of returning the fruits of corruption to the countries that had been despoiled should be underlined.

8. **Mr. Guissé** said that corruption was one of the causes of chronic underdevelopment, an obstacle to the economic development of southern societies. As illustrated by the questionnaire drawn up by Ms. Mbonu, corruption was a multidisciplinary question. For every corrupt person, there was someone who had done the corrupting, and the phenomenon of corruption concerned all countries and all social classes. Corruption also affected public procurement and could blight the entire national economy of a country. In such cases, heads of State and members of their cabinet or their immediate family were directly involved. The impact of that type of corruption on democracy was devastating; where corruption was widespread, democracy could no longer exist.

9. Ms. Mbonu should focus on corrupt practices and economic crime, such as misuse of company property, breach of trust or fraud which, left unpunished, were a source of economic or even political instability. The laundering of money generated by arms trafficking, drug trafficking, organ trafficking, trafficking of women and children or organized prostitution was a problem that should be addressed. Corruption also concerned international organizations, a fact which should be reflected in the questionnaire. The question of exploitation of the cultural heritage, especially the cultural heritage of developing countries, should also be addressed.

10. **Mr. Salama** said that he had recently participated in the first meeting of the High Contracting Parties to the United Nations Convention against Corruption, at which mention had been made of setting up a mechanism to monitor the implementation of the Convention. Ms. Mbonu could use the results of that meeting to draw up a list of items in relation to which a new contribution could be made, so that the work being carried out by

other bodies, which were entrusted with that question more often than the Sub-Commission itself, would not be duplicated. She should also broaden her investigation by gathering specific examples of the impact of corruption on economic, social and cultural rights. The double nature of corruption, which was both a crime and a violation of economic, social and cultural rights, would thus be more clearly underlined.

11. Ms. Mbonu should not underestimate the role of national human rights bodies in the combat against corruption and could draw attention to the link between her theme and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Since corruption gave rise to the violation of those rights, it would be interesting to know whether injured parties could invoke the Covenant. While States cooperated in the combat against terrorist financing, they failed to do so in the combat against corruption, which was far from being a priority. That was especially regrettable since the methods used to combat terrorist financing could be used to combat corruption. In conclusion, he asked the Special Rapporteur not to focus solely on judicial mechanisms to combat corruption.

12. **Mr. Kartashkin** fully endorsed the questionnaire proposed by Ms. Mbonu; the responses to it would provide a comprehensive view of the situation in each country and in the world. The highest circles of power were not free from corruption, which could involve high-ranking officials, ministers, judges, public prosecutors or deputies. That type of corruption was particularly harmful; poverty and low levels of economic development were the direct consequences of it. It constituted a violation of all human rights – economic, social and cultural but also civil and political. Corrupt individuals at the highest level of government were usually not brought to trial. Still, a certain number of States were successfully fighting corruption. In China for example — even if it was only a matter of isolated cases — high-ranking officials had been dismissed for corruption. It would be interesting to know how many high-ranking officials had been brought to trial worldwide, and if national law provided for the restitution of ill-gotten assets in cases of corruption. That did not seem to be the case in many countries.

13. **Mr. Chen** agreed with Mr. Sattar about the need to broaden the scope of the questionnaire. Despite international anti-corruption efforts, the success achieved was not as great as what had been hoped for and many problems persisted nationally. It must be recognized that the Chinese authorities were actively combating corruption, which was reflected in the legal action that was being taken against ministers, but substantial challenges remained to be met. Corruption was not now limited to a single country, but was an international phenomenon. International cooperation to combat corruption, which implied a genuine political will, was therefore of the utmost importance. He encouraged States that had ratified the United Nations Convention against Corruption to take effective implementation measures. Perhaps States could be asked to provide examples of international cooperation to measure how fully they were complying with their international obligations. The anti-corruption discourse of the developed countries, towards which corruption money was most often transferred, must not remain a simple profession of faith. It was regrettable, for example, that some States welcomed corrupt officials to their territory and granted them refugee status when instead they should extradite them and confiscate their assets. That was the only way to combat corruption effectively in the developing countries.

14. **Ms. Chung** said she had taken note that the questionnaire drawn up by Ms. Mbonu would be sent to the Member States, NGOs, grass-roots organizations and civil society organizations. She wished to know what the Special Rapporteur meant by “civil society” and whether the organizations mentioned and the States would receive the same questionnaire.

15. *Ms. Chung, Vice-Chairperson, took the Chair.*

16. **Mr. Sorabjee** drew the Sub-Commission's attention to the case of India, where corruption unfortunately flourished. Anti-corruption legislation nonetheless provided that when an individual's assets were disproportionate to his or her known sources of income, such assets were reputed to be ill-gotten; it was then up to the person concerned to prove the origin of those assets. Despite those laws, no sentences were ever actually handed down. That could be explained by the fact that the procedures were very long and that the presumption of innocence often worked in favour of the accused: it was difficult to establish guilt in cases of corruption. As Mr. Kartashkin had said, ill-gotten money should be confiscated so that the person who had engaged in corruption would not profit from it. Unfortunately, no political party was taking resolute steps to get laws of that nature adopted. Every corrupt official was not only guilty of making money fraudulently but also of violating human rights. It was therefore important to adopt strict laws and educate the public. The United Nations Convention against Corruption should be incorporated into national law; India had moreover taken steps in that direction. Nevertheless, it was essentially at the political level, rather than the standard-setting level, that problems arose.

17. **Mr. Tunon Veilles** said that in some Latin American countries, globalization was giving private stakeholders a share of public enterprise capital in the energy and telecommunications sectors. Privatization contracts often led to corruption. Far from offering the lower prices promised, those operations actually led to increases in electricity or telephone rates for consumers. Since such acts were not covered under the law, it was very difficult to establish them before a court, owing in particular to lack of proof. One illustration of the impact of corruption on economic, social and cultural rights was the case of a project in a Latin American country to construct a road serving indigenous regions and a school for children living in those regions. The initial appropriation had been reduced by half owing to corruption and, as a result, the road had not been completed and the school would never be built. That was a clear example of the impact of corruption on human rights. In her final report, Ms. Mbonu should make reference to that type of act, which was seriously damaging to human rights but was nevertheless not punishable by law. She might contact certain NGOs which would no doubt have useful information to give her on that subject. Lastly, as Mr. Decaux had pointed out, while corruption had a direct impact on cultural rights, such consequences were also not punishable by law.

18. **Mr. Alfredsson** said that mention should perhaps be made of two basic international human rights instruments: the Code of Conduct for Law Enforcement Officials, article 7 of which provided that law enforcement officials must rigorously oppose and combat all acts of corruption; and the Guidelines on the Role of Prosecutors, which also dealt with corruption.

19. **Mr. Yokota** said that he was fully in favour of sending the questionnaire to all the stakeholders mentioned by Ms. Mbonu. He agreed with the other experts that, contrary to a generally accepted idea, corruption was not more widespread in developing countries, but equally affected industrialized countries, including Japan. Populations in developing countries appeared however to suffer more from the consequences of corruption. When transnational corporations set up operations in developing countries, not only were the political leaders of those countries concerned but also the transnational corporations of the industrialized countries themselves; attention should therefore be paid to both the industrialized and developing countries. As Mr. Guissé had said, every corrupt person had been corrupted by someone else.

20. It was important to send the questionnaire to the different United Nations agencies since it was well known that international civil servants were not free from corruption, as demonstrated by the case of the Oil-for-Food programme. When an official of the Office of the United Nations High Commissioner for Refugees demanded sexual favours from a woman to admit her, and her family, into a refugee camp, that was an appalling act of

corruption. The United Nations should set an example, especially in the developing countries in which it operated. In that regard, he welcomed the measures taken by the Secretary-General concerning the case in question. More generally, the United Nations should demonstrate greater transparency by publishing its internal reports on corruption. Ms. Mbonu could then incorporate those concerns into her questionnaire.

21. **Mr. Guissé** said that with regard to corruption among government officials, it might be possible to request States to provide information on the salary they received. Derisory salaries might actually encourage corruption.

22. **Mr. Cherif** said that corruption was indeed a serious, widespread and growing scourge which violated all human rights. It was a practice that interfered with the mechanisms for the exercise and protection of human rights, in contrast to the principle of equality of opportunity. That particular violation of human rights that consisted of buying consciences was an obstacle to the enjoyment of all human rights – economic, social and cultural rights as well as civil and political rights. Corruption and money-laundering had increased with globalization; they had acquired a transnational dimension which Ms. Mbonu might study further. Freedom of expression could play a central role in the prevention and repression of corruption, an immoral practice that seriously violated human rights. Specific examples of sanctions applied in cases of corruption should be collected and contact should be made with NGOs in that regard. Corruption was also a serious threat to the right to development and the right of peoples to freely dispose of their wealth.

23. **Ms. Motoc**, underlining the importance of the study carried out by Ms. Mbonu, said that corruption affected all human rights. Corruption was found both in the industrialized countries, where it most often involved political parties or businesses, and in the developing countries, where it had a more direct impact on the daily life of individuals and was sometimes a threat to the right to life itself. It was difficult to realize just how widespread corruption could be in countries where the government was weak. In such cases, corruption affected all human rights and arose from weak application of the rule of law. Ms. Mbonu should focus on transnational corporations which, for reasons of efficacy, did not hesitate to enter into collusion with corrupt politicians. Steps should be taken to sanction such corporations when they failed to respect the law. In States where democracy was particularly weak, the best way to combat corruption was to begin by re-establishing the primacy of law; the judiciary and the police must become priority domains of action. Ms. Mbonu should also address the question of corruption within international organizations. It was to be hoped that there would be many responses to the questionnaire and that she could continue her investigation in the framework of the future expert body.

24. **Mr. Sorabjee** said that a German law, now repealed, had legalized certain commissions paid in the context of deals made with African countries, on the grounds that corruption was somehow a necessary part of the operation. States might be asked to indicate whether their legislation contained provisions of that nature.

25. **Ms. Mbonu** (Special Rapporteur) thanked the experts for raising such basic points; she would give due consideration to their comments on the questionnaire. It would certainly be useful to modify it in order to obtain information about the success States had had in combating corruption even if the questionnaire, as it currently stood, was already designed to gather information of that kind. With regard to the number of persons prosecuted for corruption and the amount of the assets confiscated, she was unfortunately not able to answer that question precisely. Still, it should be pointed out that proceedings had been brought against high-ranking politicians and they had been sentenced for corruption, including in her own country, Nigeria. For example, a high-ranking army officer who had misappropriated a substantial amount of money, approximately 700 million dollars, had been sentenced to return the entire amount. The Swiss authorities were moreover to be congratulated for their cooperation in that affair. In general, international cooperation was

vital for obtaining restitution, which made it possible to fight effectively against extreme poverty when such amounts were at stake.

26. States, which along with international organizations and the NGOs concerned were the primary recipients of the questionnaire, were asked to provide information about the different forms of corruption examined in depth in the previous reports. Some experts had suggested that the questionnaire should address civil and political rights. That was in fact the case since the question of the independence of the judiciary, a guarantee of effectiveness in the combat against corruption, was already broadly addressed. Mr. Decaux's comments about the dissemination of the questionnaire were useful, and it would indeed be interesting to address the question of the impact of corruption on cultural rights.

27. Thanking Ms. Rakotoarisoa for her comments on money-laundering, she said, however, that the question was already adequately addressed in the questionnaire, as was that of the restitution of ill-gotten assets. Mr. Salama's suggestion that a link be established between corruption and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights merited support. Lastly, thanking Mr. Kartashkin for his remarks, she said that she would take full account of them.

28. *Mr. Bossuyt (Chairperson) resumed the Chair.*

29. **The Chairperson** invited Mr. Bengoa to present the final report of the ad hoc group of experts on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty (A/HRC/Sub.1/58/16).

30. **Mr. Bengoa** (Coordinator of the ad hoc group of experts) said that the report under consideration was the product of a group effort in which Mr. Guissé, Mr. Decaux and Ms. Motoc had actively participated. The report would not have been possible without the contribution of numerous stakeholders, including the French Government, Mr. Despouy, former Special Rapporteur on the question of human rights and extreme poverty, and Mr. Sengupta, currently the Independent Expert on the question of human rights and extreme poverty. All of them should be warmly thanked. The report, prepared on the basis of numerous consultations with organizations of persons affected by poverty, was first of all a concrete document. The first lesson to be learned from it was that all the stakeholders had considered that an international declaration on human rights and extreme poverty would be extremely useful, as it would provide a legal framework for combating the phenomenon effectively. The Sub-Commission could thus recommend that the Council adopt the draft guiding principles under consideration.

31. The final report was divided into two parts: the first, introductory, part was a summary of the preceding reports; the second part, contained in the annex, was a draft set of guiding principles entitled "Extreme poverty and human rights: the rights of the poor". Section 3 of the draft guiding principles concerned the duties and responsibilities of public and private stakeholders in the combat against poverty. Stress was also placed on the idea that corruption, which could be regarded as both a form of discrimination and a violation of the human rights of the poor, must be severely sanctioned by the law.

32. **Mr. Alfredsson** said that he welcomed the significant work accomplished by the members of the ad hoc group of experts on the issue of extreme poverty and human rights, and endorsed the main lines of the draft guiding principles. He wished nonetheless to return to some concerns he had already expressed during the meetings of the Social Forum, and hoped that the ad hoc group of experts would take them into account when putting the finishing touches on the draft text. Under paragraph 5 of the draft guiding principles, States and the international community must report periodically on the actions they had taken to meet their obligation to act effectively. The time limit for the submission of reports and the body responsible for examining them should be specified. In paragraphs 10, 13 and 36, it was stated that discrimination affecting persons living in extreme poverty must be

punished. It was immediately apparent that the International Convention on the Elimination of All Forms of Racial Discrimination might apply in that case. It would however be useful to specify what kinds of discrimination were subject to sanctions, as well as other applicable international instruments. Paragraph 14 of the draft guiding principles, which stated that all persons living in extreme poverty had the right to be recognized as full citizens, required some clarification. In paragraph 20 of the English version, the words “indigenous population” should perhaps be replaced by “indigenous people”, which was the expression used by the Sub-Commission. Under paragraph 27, it was stated that theft, corruption, trafficking, black marketeering and any other criminal activity involving vaccines, medical supplies, surgical or other equipment originally intended as medical aid must be severely punished and, depending on the scale of the activity, regarded as a crime against humanity subject to prosecution and trial before international courts. Such an assertion should not be contained in the body of the draft guiding principles but in the commentary relating to it. Lastly, with regard to paragraph 35 of the English version, he wished to know why the expression “right to employment” had been chosen instead of the expression “right to work” used in article 6 of the International Covenant on Economic, Social and Cultural Rights.

33. **Ms. Motoc** said that she wished to thank the Japan Foundation and the many NGOs involved, especially ATD Fourth World, for their decisive contributions. Taking note of Mr. Alfredsson’s useful comments, she recognized that the question of the legal nature of the draft text under consideration had been the subject of debate. Some had been in favour of a binding declaration considering that it would usefully fill in the gaps in international law in the area of extreme poverty and human rights. However, the ad hoc group of experts had in a way lowered its sights in considering that a set of guiding principles would be a good point of departure. The proposed text, which was certainly more an exercise in progressive development than a pure and simple codification of the law, was still a balanced text.

34. **Mr. Salama** endorsed the multidimensional approach chosen by the ad hoc group of experts which made it possible to examine the question of extreme poverty from the standpoint of all human rights and to arrive at a set of guiding principles that would aid States concretely in combating that phenomenon. The text under consideration was an excellent departure point, although he hesitated between a political declaration and a binding instrument. The Council might be asked to gather the views of States and NGOs with respect to the legal nature of the text to be adopted.

35. **Ms. Fernanando** (Observer for Sri Lanka), speaking in exercise of the right of reply and in response to a statement made by the representative of International Educational Development under item 2 of the agenda, said that such statements were contrary to the spirit of constructive dialogue that the new Council was endeavouring to promote. Contrary to what had been said, operations to provide aid to all the tsunami victims in Sri Lanka had been satisfactory, as indicated in a recent evaluation report on aid to tsunami victims, published by the United Nations. With regard to the recent resumption of violence in the country, it should be made clear that the operations carried out by the Sri Lankan security forces were uniquely defensive and intended to protect the population against illegal acts by members of the Liberation Tigers of Tamil Eelam, which were the cause of recent population displacements. Moreover, the Sri Lankan Government firmly condemned the murders of humanitarian workers belonging to the Action against Hunger organization and noted furthermore that to date those events had not been condemned by the Tamil Tigers. The Sri Lankan security forces had never used an orphanage as a target; that was a lie spread by the Tamil Tigers to divert the attention of the international community.

The meeting rose at 6.05 p.m.