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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 August 2004, at 3 p.m.

Chairperson: Mr. SORABJEE

later: Ms. RAKOTOARISOA
(Vice-Chairperson)

later: Ms. MOTOC
(Vice-Chairperson)

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

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2004/13, 14, 16-20, 22 and Add.1, 23, 24, 25 and Add.1, 27 and Corr.1, 44 and 45; E/CN.4/Sub.2/2004/NGO/2, 6, 10, 14, 20, 23 and 27)

1. The CHAIRPERSON invited the Sub-Commission to continue its consideration of the working paper by Mr. Decaux on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/Sub.2/2004/24).
2. Mr. CHERIF said that, although he agreed with Mr. Decaux's recommendations, further analysis was required of the following aspects: "blind spots" of discrimination; ensuring effective justiciability of the principle of non-discrimination; good practices in non-discrimination; and the role of non-governmental organizations (NGOs), national organizations and governmental organizations in combating discrimination. The study on non-discrimination should pay closer attention to the role of affirmative action, especially in addressing gender discrimination, and consider the consistency of affirmative action with article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights. Since discrimination was a cross-cutting principle, the study should also demonstrate the negative impact of economic, social and cultural discrimination in terms of the enjoyment of civil and political rights, violence, terrorism, and so on. In an era of economic globalization, special attention should be paid to discrimination against illegal migrant workers and their families.
3. Mr. BOSSUYT said that there was no essential difference between the terms "distinction" and "discrimination" in international human rights law, even though "discrimination" was a slightly more accurate term to describe an arbitrary difference in treatment. In the European Convention on Human Rights of 1950, the term "distinction" had been used in French and translated as "discrimination" in English. Consequently, the European Court of Human Rights had ruled that the terms were equivalent for the purposes of the Convention.
4. Where Mr. Decaux had referred to discrimination "criteria", he preferred to use the term "grounds", which should not be confused with the "causes" or "reasons" for discrimination. The Universal Declaration of Human Rights cited the following possible grounds for discrimination: "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". It was important to realize that those grounds were given merely as examples, and were not intended to be exhaustive. Discrimination could occur on grounds other than those mentioned in the Universal Declaration. For example, the European Court of Human Rights had ruled that discrimination had taken place on the basis of parents' domicile, and the Human Rights Committee had found discrimination with regard to the different lengths of military and civilian service.
5. It was interesting to compare article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights with article 26 of the International Covenant on Civil and Political Rights. The scope of the latter was not limited to the rights set forth in the Covenant,

but provided for non-discrimination in respect of all human rights. Consequently, the Human Rights Committee had found violations of article 26 in areas, such as the right to a pension, usually addressed by the Committee on Economic, Social and Cultural Rights.

6. It was important to recognize the specificity of economic, social and cultural rights. To provide for their progressive realization, States were often required to carry out active interventions. On the other hand, the protection of civil and political rights usually required States to refrain from creating arbitrary distinctions. Even though the failure to implement economic, social and cultural rights did not necessarily constitute a violation of the Covenant (provided the State party was taking steps towards their full realization to the maximum of its available resources), discrimination always constituted a violation of the International Covenant on Civil and Political Rights.

7. Ms. MOTO said that Mr. Decaux had prepared a coherent and exhaustive working paper. According to the Human Rights Committee in its General Comment No. 18, “discrimination” should be understood to imply any form of distinction or exclusion, including on grounds never previously taken into account, such as genetic material, domicile and so on. It was vital to pursue the search for effective remedies. If employers could escape conviction for implicit or covert discrimination in France - a country with a long-standing commitment to human rights - it was virtually impossible for victims of discrimination to seek effective remedies in countries where the rule of law was either weak or non-existent.

8. Mr. PINHEIRO welcomed the innovative approach taken by Mr. Decaux in his working paper. With regard to paragraph 22, he agreed with Ms. Warzazi that religious and cultural sensitivities should be taken into account when considering sexual orientation. However, the fact remained that, to date, human rights law had failed to protect men and women suffering throughout the world from discrimination on account of their sexual orientation. The subtle reference to sexual orientation in paragraph 22 left open the possibility of strengthening protection in that area.

9. Mr. GUISSÉ said that the author of the future study should ensure that all legal and judicial traditions were taken into account. What was true in Europe, as ruled by the European Court of Human Rights, was not necessarily applicable in other parts of the world, such as Africa and Asia. The temptation to base the study on just one system should be avoided.

10. Ms. WARZAZI, supported by Mr. SALAMA, said that the Convention on the Elimination of All Forms of Discrimination against Women should not be interpreted as offering protection from discrimination on grounds of sexual orientation. The drafting committee for the Convention had never considered issues relating to sexual orientation. Therefore it was wrong to extrapolate additional protections from a Convention intended for an entirely different purpose, and she could not support the comments made in paragraph 22 of the working paper.

11. Ms. MBONU, introducing her preliminary report on corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights (E/CN.4/Sub.2/2004/23), said that, in the words of a senior Kenyan judge, “corruption always fights back”. Corruption was a universal scourge, cutting across faiths, age groups, and economic and political systems. Since, even from a purely legal perspective, there was no universally agreed definition of corruption, she had taken an empirical approach in her report. In

chapter II, she described general and specific manifestations of corruption, some of which, in spite of their devastating impact on the enjoyment of human rights, had never been discussed at the United Nations. While she had named several companies involved in corruption scandals, such as Enron, Halliburton, Parmalat and WorldCom, the list was by no means exhaustive. One of the root causes of corruption was the entrenchment of dictatorial regimes that lacked transparency, accountability and the rule of law. Not surprisingly, most of the 10 most corrupt leaders mentioned in paragraph 17 of the report were known to have presided over the most oppressive regimes of recent times.

12. The report also dealt with some of the less tangible effects of corruption, such as the political cost of the erosion of democratic institutions. She had undertaken a case study to assess measures taken by the Government of Kenya to sanitize a judiciary tainted by years of corruption. She expressed her sincere appreciation to the Governments of Kenya and Nigeria for their willingness to cooperate with her inquiries.

13. The report further addressed private-sector corruption and, in particular, the contrast between corporate codes of conduct and the behaviour of corporate executives. The collapse of Enron had exposed some of the worst cases of corporate greed and betrayal. Consequently, the Organization for Economic Cooperation and Development had adopted a revised version of its Principles of Corporate Governance, containing new recommendations for good practice.

14. The remaining chapters of the report addressed the campaign against impunity for perpetrators of corruption, taking into account valuable national, regional and international mechanisms, such as the African Peer Review Mechanism and the New Partnership for Africa's Development (NEPAD), and offered recommendations for future work.

15. Ms. MOTOC said that corruption was universal and at the centre of human rights concerns. The definition of corruption was controversial and the report had preferred to leave the term undefined. However, in the evolution of regional and international instruments against corruption, from the 1996 Inter-American Convention against Corruption to the December 2003 United Nations Convention against Corruption, the definition of corruption had become increasingly broad. Previously corruption had been defined only as bribery; nowadays, the concept included abuse of functions and trading in influence. It would be useful if the Special Rapporteur could examine the different forms of corruption in her next report.

16. Corruption touched all societies and particularly affected developing countries where, today, the rule of law was an exception. When the United Nations considered that adopting international instruments and enacting legislation would resolve the problem of human rights violations, it was looking at human rights from a Western point of view, ignoring the fact that most States did not have an administrative or judicial system that applied those norms. Paragraph 10 of the report noted how the norms of political modernity had perverted traditional practices, with corruption said to be an essentially Western construct. Developing countries did not function according to the rules imposed by the international community and were suffering from an increasing spiral of corruption. Corruption affected all human rights in such countries, because it affected every aspect of a person's life.

17. Grand corruption was more subtle and had other consequences. As the Special Rapporteur had pointed out, it involved transnational corporations. Consequently, it would be useful to examine the concept of corporate responsibility that had been included in several anti-corruption instruments.
18. Future reports should look at different forms of corruption and the human rights they affected, and make a greater distinction between political and judicial corruption. They should also examine how the international financial institutions could contribute to combating corruption and promoting good governance.
19. Ms. Rakotoarisoa, Vice-Chairperson, took the Chair.
20. Mr. ALFREDSSON suggested that future study of corruption and its impact on human rights should include further elaboration of substantive links between anti-corruption work and existing human rights standards. There were at least two instances of such links in existing human rights instruments - the Code of Conduct for Law Enforcement Officials and the Guidelines on the Role of Prosecutors. The argument could be made that, where there was corruption, rights were denied and discrimination occurred.
21. Other components related to anti-corruption work also had a close relationship to human rights. For example, transparency, which was the requirement imposed on elected or appointed officials, was comparable to provisions in human rights law relating to freedom of expression and information; and accountability was comparable to the independence and impartiality of the judiciary. The NGO, Transparency International, had issued a publication, the "TI Source Book", which described some of those substantive links.
22. Bridges should be built between anti-corruption efforts and human rights in order to take advantage of some of the guidelines on human rights standards and monitoring mechanisms. If separate anti-corruption standards and monitoring mechanisms were set up, then it should be ensured that such efforts were consistent with human rights procedures.
23. It would be useful to examine the guidelines on good governance and anti-corruption action being developed by the international financial institutions, which were part of an emerging body of standards. The issue's relevance to other items on the agenda should also be looked at.
24. Mr. SATTAR commended the Sub-Commission on joining the struggle against corruption, which had already resulted in the signature of the 2003 United Nations Convention against Corruption by over 100 States. The Convention recognized that the prevention and eradication of corruption was the responsibility of all States and that they should cooperate with one another to that end; it also provided a comprehensive international framework for criminalization and punishment. It made cooperation on criminal matters compulsory, and established provisions for the recovery of illicit assets and their repatriation to States where funds had been stolen or transferred abroad by corrupt leaders and officials.
25. However, the Convention was not yet in force and States should be encouraged to sign and ratify it. The United Nations Office at Vienna (UNOV) had formed a group to sustain the momentum for ratifications. He suggested that the Secretary could establish contact with UNOV

to discuss an appropriate way for the Sub-Commission to associate itself with the efforts of the "Friends of the Convention". In particular, the work of the Special Rapporteur could benefit from such association.

26. The Convention provided a mechanism to improve cooperation between States to achieve its objectives and to review and promote its implementation. States should also establish their own anti-corruption mechanisms, as the Special Rapporteur had recommended. They should devise a set of standards, measures and rules to strengthen legal and regulatory regimes to combat corruption and to build up the administrative and legal capacity to take advantage of the opportunities provided by the Convention.

27. One problem was the interminable delays and high costs of litigation in some States harbouring illicit assets for corrupt officials; consequently, victim States had recovered only a fraction of such assets. It was to be hoped that the Convention provision that States parties should provide extensive mutual legal assistance in investigation and prosecution would reduce the magnitude of the problem. Some of the recovered funds could perhaps be used to reduce the external debt of victim States.

28. Lastly, corruption was not necessarily linked to authoritarianism, and democracy was not a guarantee of non-abuse of power by elected leaders.

29. Ms. CHUNG said the report showed that corruption attacked fundamental values of human dignity and political equality. She suggested that it would be useful if the next report examined three elements: that corruption perpetuated discrimination, prevented the full realization of economic, social and cultural rights, including the right to development, and led to the infringement of civil and political rights, in order to guide the Sub-Commission's discussions on preventive measures and remedies.

30. Dictatorship was not only a root cause, but also a result, of corruption. However, corrupt practices occurred even under representative democracies, although many countries in the process of democratization were making efforts to bring perpetrators to justice and to establish preventive measures. That was one of the most significant aspects of transitional justice, which encompassed individual criminal responsibility for acts of corruption committed by State agents. It would also be useful if the Special Rapporteur could examine State practices that improved the national criminal justice system and also national institutions established to combat corruption, in order to recommend measures to end the culture of impunity persisting in many countries.

31. The current report did not discuss cultural causes of corruption. Nevertheless, corrupt practices, including the sale of degrees, had penetrated the education system in several countries and an examination of such practices could strengthen preventive measures. Moreover, the importance of education in combating corruption should be underscored within the framework of the World Programme for Human Rights Education.

32. Lastly, it would be helpful to consider measures of protection for those investigating corrupt State practices. To date, existing legal instruments and the institutional framework had not gone far enough towards establishing an international legal regime to combat corruption.

33. Mr. TUÑÓN VEILLES said it was not so much that corruption had increased as that measures of transparency had made it more noticeable. In her conclusions, the Special Rapporteur had stated that corporate corruption needed to be tackled adequately and that the international community should focus its attention on systemic corruption in corporate bodies. Corruption could originate from various sources in both the public and private sectors; however, the latter benefited most and, at times, actively attempted to avoid laws and administrative procedures in order to obtain individual benefit and increase profits from direct or indirect dealings with the State. For example, one of the main goals of private corporations was to obtain State contracts and, to that end, they were involved in multiple corrupt practices.
34. Mr. GUISSÉ said that corruption was a cross-cutting offence that involved the violation of all human rights. It was also universal since it existed in all societies, both developed and developing. The Special Rapporteur was right not to define corruption, because it was an evolving concept. It usually referred to money, but there were other important forms of corruption, including corrupt practices by public officials and influence trading. Political party funding was also a source of corruption; and, when a party assumed power, the finance for its activities generally came from public funds.
35. Corruption always involved two parties, the corrupter and the person corrupted; both of them were responsible and both warranted punishment, although it was not always possible to punish the corrupter. Corruption was not merely a national crime, it was transnational, because international economic activities involved profit-seeking, which played an important role in corruption. Consequently, combating corruption depended on collaboration between national and international systems. Corruption should be considered an international economic crime that could be brought before an international court.
36. All States had laws against corruption, but they were isolated, and corruption and those who practised it could move easily across borders. In developing countries, corrupt officials with political responsibilities had Western accomplices and the assets they stole from the national economy were deposited in Western banks. The complicity of the Western banks should not be hidden; it should be studied, and recommendations made on how such banks should take part in the restitution of funds resulting from corruption or theft.
37. But to combat corruption, it was necessary to establish the rule of law and make all individuals and institutions subject to the same law. After external debt, corruption was the major obstacle to the achievement of the economic, social and cultural rights of the developing countries.
38. Mr. CHEN said that corruption was extremely prevalent and difficult to combat because the corrupt could always find a haven, many of which were in developed countries. Corruption hampered and violated human rights, but such countries often provided safe haven under the pretext of human rights. The corrupt sought refugee status or political asylum, and were granted it because they were rich.
39. As Mr. Sattar had pointed out, developing countries encountered great difficulties when attempting to recover assets or financial resources deposited abroad and could often recover only a small part, if any. To combat corruption, it was necessary to implement the 2003 Convention against Corruption and strengthen international cooperation and solidarity. It was particularly

necessary to help victim countries recover funds lost as a result of corruption and to refrain from using different pretexts to refuse the return of such financial resources. Judicial cooperation was also required. In many cases, corrupt officials fled to countries with which there was no extradition treaty, to avoid being returned to their country of origin. Lastly, corruption should be considered a human rights issue and human rights should not be used as a pretext to refuse cooperation. Non-cooperation in that area was, in itself, a violation of human rights.

40. Ms. Motoc, Vice-Chairperson, took the Chair.

41. Mr. CHERIF said that the growing scourge of corruption represented a major threat to the rule of law and the administration of justice and could undermine any democratic system. Large-scale corruption at the international level was a type of “economic terrorism” and took the form of organized crime. It had devastating effects, especially for developing countries. He welcomed the link established by the Special Rapporteur between external debt and corruption and supported the recommendations contained in her report (E/CN.4/Sub.2/2004/23). The Sub-Commission should devote further attention to the issues addressed in the report, taking into account in particular the difference between petty corruption at the domestic level and grand corruption at the international level. The latter form of corruption was increasing at an alarming rate as a result of globalization and the growth of transnational corporations. Effective practical and legal measures should be adopted in order to guarantee transparency, prevent money laundering and fight corruption at all levels. International cooperation was crucial in that regard. In her next report, the Special Rapporteur should address the effects of corruption not only on economic, social and cultural rights, but also on civil and political rights.

42. Mr. OWADE (Observer for Kenya) said that the Special Rapporteur’s preliminary report (E/CN.4/Sub.2/2004/23) provided a sound basis for a more in-depth study on corruption, which was a global phenomenon that continued to stifle the efforts of developing countries to overcome poverty and deprivation. Corruption was a many-headed monster that had to be fought from all sides. Kenya had been the first country to sign and ratify the United Nations Convention against Corruption and was convinced that concerted multilateral efforts were essential in order to combat corruption, especially with regard to tracing and recovering assets concealed abroad. Further efforts should be made to seal all of the legislative loopholes that enabled corrupt leaders and government officials in poor countries to conceal embezzled public funds. He welcomed the Special Rapporteur’s recognition of the courageous efforts by the Government of Kenya to eradicate corruption. The democratically elected Government, which had been in power for 19 months, had adopted a “zero tolerance” approach to corruption and took the view that a transparent, impartial and independent judiciary was crucial in the fight against corruption. Nevertheless, it recognized the numerous legal, administrative, social and political challenges that it faced. It had invited the Special Rapporteur to visit Kenya so that she could assess the situation first-hand.

43. Ms. HAMPSON said that she welcomed the preliminary report by the Special Rapporteur on corruption (E/CN.4/Sub.2/2004/23) and associated herself with the statements made by Ms. Motoc and Mr. Guissé in that regard. She had been astounded to learn that the collapse of Parmalat had affected companies and jobs in 30 countries.

44. It was essential to distinguish between the various different forms of corruption and to consider the cause of each case. One common type of corruption was bribery by public officials,

the principal objective of which was personal enrichment. Since low salaries were often mentioned as being a motivation for such bribery, it would be useful to examine the salaries of those who accepted bribes. Another form of corruption occurred when officials demanded additional payments for services that should be available on payment of a set fee. Corrupt practices also occurred when government ministers, motivated by greed, accepted bribes from companies in exchange for contracts.

45. Without proper regulation, political parties could disrupt the integrity of the political process by accepting financial support from undesirable sources. Such corruption not only affected internal politics, but had far wider repercussions. Corruption also occurred when Governments initiated politically motivated judicial proceedings, and when political leaders manipulated legislatures to produce laws that were to their advantage. All such forms of corruption had an impact, not only on economic, social and cultural rights, but also on civil and political rights.

46. In many African countries with valuable natural resources, a problem arose when non-State actors sold those resources to finance conflicts or for personal gain. Requiring buyers to prove that they had the authority of the State to receive resources would prevent the natural assets of a State from being squandered with no benefit to the people of that State, and might help to reduce conflicts. Another cause for concern was the corruption that existed within international organizations and in the context of international field operations. Such corruption had serious human rights implications. It was regrettable that the human rights bodies of the United Nations had taken so long to realize that.

47. Mr. Sorabjee resumed the Chair.

48. Ms. WARZAZI said that the establishment of the rule of law and democracy did not automatically bring an end to corruption. After all, government officials in democratic countries had often been involved in highly corrupt practices. In her next report, the Special Rapporteur should focus on the impact of corruption, not only on economic, social and cultural rights, but also on civil and political rights. She should look into corruption of the electorate.

49. It was not easy to identify all the different facets of corruption that existed. However, the Special Rapporteur had rightly made a distinction between petty corruption and grand corruption. In cases of grand corruption by transnational corporations or government officials, particularly those involving the sale of arms for use in internal conflicts, it was the corrupters, rather than the corrupted, that were largely to blame.

50. Poverty was one of the main factors that contributed to corruption. The Special Rapporteur should examine more closely the link between low salaries and corruption among State officials. She should encourage Governments to introduce appropriate anti-corruption legislation, adopt measures to punish corrupt officials and ensure that all embezzled funds were repaid. All banking institutions should be obliged to cooperate with the international community in its efforts to end corruption and ensure the restitution of stolen funds.

51. Ms. RAKOTOARISOA said that she welcomed the adoption of various international instruments to fight corruption and the progress that had been achieved. She particularly welcomed the steps that had been taken to prevent corruption within political parties. Under the

new instruments, individuals who allowed themselves to be corrupted within the political process were considered to be just as guilty as the person corrupting them. Although the adoption of international instruments represented a significant step forward, their success was dependent on the political will of States and the commitment of those States to ensure implementation. The United Nations Convention against Corruption urged Member States to take appropriate measures to promote transparency and accountability in the management of public finances. Such an approach required a sound and impartial system of justice.

52. Corruption affected all countries of the world. Given that it frequently formed part of the culture of a country, it was important to set ethical standards and provide models of good conduct. Schoolchildren should be taught to differentiate between right and wrong. Although low salaries encouraged corruption among public officials, under no circumstances should poverty be allowed to justify dishonesty. Furthermore, it was essential to draw back the curtain of secrecy that shrouded and exacerbated acts of corruption, inter alia by promoting awareness among civil society and by allowing freedom of the press. International cooperation was a crucial requirement in the fight against corruption. The Elf oil company scandal was one example of where international cooperation had proved successful.

53. Ms. O'CONNOR said that corruption among law enforcement officials had an extremely negative impact on the administration of justice, particularly in those developing countries where a system of vigilante or mob justice had developed in response to a complete loss of faith in the justice system. The Sub-Commission should examine that issue in more depth. It should also give closer consideration to the link between debt and corruption. Unlike some of her colleagues, she did not consider there to be a natural link between poverty and corruption. In her view, it was the exploitation of the poverty of certain individuals that led to corruption. Not only should the Sub-Commission examine how the failure of a State to meet the needs of its people led to corruption, it should also look at the power of the media to change attitudes or to make certain citizens more prone to corruption. Furthermore, it should examine how the development of the drug trade had influenced the growth of corruption at the national and international levels, inter alia by analysing the content of various bilateral extradition treaties. In that regard, it should consider the work already undertaken in that field by other United Nations bodies.

54. Mr. SALAMA said that the Sub-Commission should set itself the challenge of identifying the human rights aspect of any matter before it and should assess the added value of such an approach. The Sub-Commission was not qualified to cover the issue of corruption from all angles. Its aim should be to establish that corruption was a violation of human rights and that its elimination was an ongoing process. Democracy often led to more sophisticated and dangerous forms of corruption, which consequently had a greater impact on human rights. Such forms of corruption warranted closer consideration. The United Nations Convention against Corruption was a very weak document that set out very little in terms of obligations. Civil society should be encouraged to denounce corruption.

55. Mr. KARTASHKIN said it was no accident that the members of the Sub-Commission were taking such a great interest in the Special Rapporteur's excellent preliminary report. In her next report the Special Rapporteur should give attention and even have special sections on corruption amongst political parties, for such corruption had a big impact on a country's human rights situation. She should also deal with corruption amongst members of Parliament: in many countries they passed laws providing a basis for corruption; lobbying of parliamentarians could

also readily lead to corruption. Another subject to be taken up was the extradition of persons involved in corruption who had fled abroad in order to avoid prosecution; for various reasons, many countries did not allow the extradition of such persons. He supported Ms. O'Connor's suggestion that the next report should contain a special section on corruption in law-enforcement agencies, which could create a situation in which corruption went unpunished. It would also be useful for the next report to contain more concrete examples of the types of corruption and of countries in which it was prevalent, together with the reasons why corruption attained such dimensions in those countries.

56. Mr. KUMAR (International Voluntary Action Network India) said that in her next report the Special Rapporteur should perhaps describe some of the success stories - when action by citizens' groups had led to a reduction of corruption. In India, for example, the struggle waged by such groups had resulted in the adoption of legislation such as the Right to Information Act, which had helped to fight corruption at the grass-roots level and had had a direct impact on human rights violations. Attention had been drawn to the value of democracy in combating corruption, but democracy was not of itself a sufficient guarantee against corruption, but it certainly made the fight easier.

57. Mr. DIAZ (Dominicans for Justice and Peace), speaking also on behalf of Dominican Leadership Conference and Pax Christi International in conjunction with Franciscans International, expressed concern about the violation of the rights of peoples whose lands had been used by other Governments as bombing-practice sites. In some cases the toxic residues of such military activity had poisoned the environment and destroyed economies; that toxic legacy constituted a daily violation of human rights.

58. Little progress had been made with regard to clean-up or compensation in the case of Vieques, Puerto Rico, where 20,000 acres of land and sea had been polluted by the activities of the United States navy. The exposure of the local people to toxic compounds had created a public health crisis.

59. For almost half a century the United States military bases in the Philippines had generated tons of toxic wastes and created highly contaminated sites. Since the closure of the bases in 1992, hundreds of thousands of Filipinos, most especially children, had proved to be affected by the pollution. The United States Government's evasion of its responsibility to deal with the issue constituted a violation of the human rights of Filipinos.

60. The Sub-Commission was urged to place public health issues and the toxic legacy of United States military activities in Vieques and the Philippines on its agenda. The United States was urged to compensate individual victims and commit itself to cleaning up all former military lands.

61. Mr. SOUDAN (Franciscans International), speaking also on behalf of the International Federation of Human Rights Leagues, the World Organization against Torture, the International Council of Women, and Femmes Actives et Foyer-Union Nationale, in conjunction with the Lutheran World Federation and Dominicans for Justice and Peace, said that the Sub-Commission's mandate to deal with extreme poverty in relation to human rights had been repeatedly reaffirmed by the General Assembly and by the Commission on Human Rights. Moreover, the Vienna World Conference on Human Rights in 1993 had recognized the need for

the participation of the poorest in policy matters as an essential means of fighting extreme poverty. Unfortunately, such participation was not part of the daily experience of people living in extreme poverty.

62. The right to development had been defined by the General Assembly in resolution 31/128, and the Committee on Economic, Social and Cultural Rights had provided a definition of poverty in terms of human rights in document E/C.12/2001/10 and had indicated that international human rights standards provided a framework for the struggle against extreme poverty; extreme poverty in relation to human rights had also been defined by the Sub-Commission in 1996 (E/CN.4/Sub.2/1996/13). An analysis of those documents showed that the criterion determining extreme poverty was the invisible threshold below which people were prevented from exercising their rights. A specific response to the problem was needed: an international instrument might help to deliver all human rights in a context of extreme poverty.

63. At its next session the Social Forum should deal with the theme “Extreme poverty in a context of economic growth”, for in both developed and developing countries persons trapped in extreme poverty could not take advantage of the beneficial changes occurring in their country. The Sub-Commission was urged to request the Office of the United Nations High Commissioner for Human Rights to take stock of the international human rights instruments containing articles applicable to poverty and extreme poverty and identify gaps in their implementation. And the International Labour Organization (ILO) should undertake a similar exercise with regard to its conventions.

64. Mr. VIARD (International Movement ATD Fourth World), speaking also on behalf of the Mouvement international d’apostolat des milieux sociaux indépendants in conjunction with the International Council of Women, said that, with regard to the points made about persons living in poverty and extreme poverty in paragraphs 29 and 30 of the progress report submitted by Mr. Bengoa (E/CN.4/Sub.2/2004/25), it was indeed possible for all members of a community, including the most vulnerable, to take a permanent part in projects as workers and beneficiaries. The aim was not to work for the poorest people in isolation but to involve them in the general fight against extreme poverty. The organizations on whose behalf he was speaking therefore supported the recommendation contained in paragraph 48 (b) of the report.

65. Turning to the recommendation contained in paragraph 48 (a), concerning the need for the effective inclusion in the consultations of people living in poverty and extreme poverty, he said that the poorest people had a unique experience which made them experts in human rights, for no one valued a human right more than a person to whom it was denied. The poorest were in the front line of the struggle to secure observance of human rights, but their daily efforts were rarely appreciated by their societies.

66. The difficulty of securing the participation of the poorest could not be overcome by instructions issued from an office; the solution must be based on their long experience expressed through their associations. The Fourth World people’s universities had begun to represent the poorest people, providing forums for debate and exchange of views and giving priority to people who had fewest opportunities of having their opinions heard. The universities had also contributed to the drafting of legal texts, and the organizations on whose behalf he was speaking intended to support the approach of consulting the poorest in the drafting of an instrument to combat extreme poverty.

67. Ms. DROEGE (International Commission of Jurists) said that by drafting Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights the Sub-Commission had lived up to its tradition as an independent body capable of creating new, and reinforcing existing, international human rights law. Decision 2004/116 of the Commission on Human Rights stating that the Norms had not been requested and that the Sub-Commission should not perform any monitoring function in that regard constituted yet another limitation on the Sub-Commission's work. In fact, four years after its authority to adopt resolutions on specific countries had been removed, the Sub-Commission was increasingly marginalized.

68. As the Commission had recognized in 2000, the Sub-Commission had a critical role to play in international standard-setting. The Sub-Commission had indeed developed some of the most important international human rights instruments; and the new international standards now being considered by the Commission were also the result of initiatives by the Sub-Commission. In particular, the General Assembly had welcomed the Sub-Commission's proposal for a treaty against enforced disappearances, and the Commission itself had noted that the Sub-Commission's principles against impunity were already being applied.

69. The Sub-Commission had also created special procedures and mechanisms, for example the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the independence of judges and lawyers.

70. The political nature of the Commission on Human Rights had limited its own innovatory role, but human rights innovations were frequently introduced thanks to the Sub-Commission. The Sub-Commission must continue that innovatory role and engage in a constructive dialogue with the Commission on its functions, requesting the Commission to review the restrictive measures which it had adopted.

71. Mr. BALOCH (Afro-Asian Peoples' Solidarity Organization) said that the unsavoury list compiled by the Special Rapporteur on corruption (E/CN.4/Sub.2/2004/23) might well have included the successive military dictatorships in Pakistan, the present regime of General Musharraf being no exception. The encroachment of the military into all areas of civilian life in Pakistan as it engaged in widespread corruption with impunity had had devastating consequences for millions of citizens. The country's emasculated judicial system could do no more than look on as a hapless bystander. One sensational example of that situation was the involvement of members of Pakistan's nuclear establishment in the unauthorized disposal of nuclear secrets in return for money. The Human Rights Commission of Pakistan had reported that the whole nation had been traumatized by the episode, although seasoned observers of the situation had not been surprised at all.

72. The key task in countries such as Pakistan was to raise public awareness about corruption and impunity. Civil society, particularly the media and human rights NGOs, could play a useful role in that regard. His organization urged the Special Rapporteur to continue her work, with special reference to countries such as Pakistan.

73. Mr. STREHLOW (Lutheran World Federation) said that in its resolution 1998/12 the Sub-Commission had re-framed the debate on globalization and human rights, and the work of the special rapporteurs on topics of globalization and its impact on human rights had been

acknowledged by the Commission. Although the Sub-Commission's work on human rights norms for transnational corporations had not been similarly endorsed, it was an important facet of the approaches made to the key players of economic globalization.

74. The Sub-Commission must remain actively engaged with the issue of globalization. One matter of immediate concern was the debate on agricultural trade and subsidies, for its worldwide significance was obvious. One promising new area of the Sub-Commission's work was its consideration of the distinction between "non-discrimination" as used in economic law and policy and in human rights law and policy. It was to be hoped that the further work on the subject would help to prevent the "capture" of the concept of non-discrimination by the economic-policy agenda.

75. The problem of unsustainable and illegitimate debt burdens persisted because the question of the legitimacy of specific debts had not been addressed. The question should be further examined by the Sub-Commission in the light of the work of the Commission's Independent Expert on structural adjustment policies and foreign debt, and the Sub-Commission might elaborate criteria for determining the legitimacy of debts according to human rights principles.

76. The Sub-Commission had a golden opportunity to demonstrate the cross-cutting nature of the problem of extreme poverty and the indivisibility of all human rights. It should make time to listen to people who themselves lived in extreme poverty. His organization also reaffirmed its support for the Social Forum and regretted that the realization of its potential was being constrained by financial and administrative factors. Thought should be given to bringing in the civil society networks participating in the World Social Forum in order to enhance participation in the Social Forum. There was also the possibility of coordination between the Social Forum and ILO in the follow-up to the report "A Fair Globalization: Creating Opportunities for All".

The meeting rose at 6 p.m.