I. Introduction

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, conducted a mission to Mexico from 13 to 20 June 2011 at the invitation of the Mexican Government. The Special Rapporteur would like to record his appreciation for the high level of government cooperation from which he benefited, the remarkable degree of preparation of the authorities, and the dedication and support of the Directorate of Human Rights and Democracy of the Ministry of External Relations (SRE) and of H.E. the Sub-Secretary on multilateral affairs and human rights, Ambassador Juan Manuel Gomez Robledo.

During his mission, the Special Rapporteur met with a wide range of authorities, including the Office of the Presidency of the Republic (OPR); the Ministry of Social Development (SEDESOL); the Ministry of Agriculture, Ganaderia, Rural Development, Fisheries and Food (SAGARPA); the Ministry of Agrarian Reform (SRA); the Ministry of the Environment and of Natural Resources (SEMARNAT); the Ministry of Labour and Social Prevention (STPS); the Ministry of the Economy (SE); the Ministry of Health (SALUD); the National Agency for Family Development (DIF); and the Ministry of Public Education (SEP). He expresses his thanks in particular to the Minister of Agrarian Reform, Mr. Abelardo Escobar Prieto; the Minister of Labour, Mr. Javier Lozano; the Minister of Agriculture, Mr. Francisco Mayorga Castañeda; and the Coordinator of the Office of the Presidency of the Republic (OPR), Ms. Sofia French Lopez Barro, with whom the Special Rapporteur held extensive discussions.

He also met with members of the Senate and of the Chamber of Deputies of the Federal Congress, under the chairmanship of Senator Zoreda Novelo, and with presidents of State Congresses. He visited the Fideicomisos Instituidos en Relación con la Agricultura (FIRA), which guarantees loans to agricultural producers. Finally, he met with the UN departments and agencies present in Mexico, with a number of non-governmental organizations and representatives of indigenous peoples, and with academic experts.

The mission included visits to the States of Chiapas and Jalisco. In Chiapas, the Special Rapporteur held meetings in the rural sustainable towns of Nuevo Juan de Grijalva and Santiago el Pinar and in San Cristóbal de Las Casas. He met with members of the government of Chiapas, as well as with Governor Juan Sabines Guerrero, and with a wide range of civil society organizations from the States of Chiapas, Guerrero and Oaxaca. In Jalisco, the Special Rapporteur met with members of the government, as well as with civil society organizations from Jalisco, Nayarit and San Luis Potosi. He held a meeting at the newly established National Centre for Genetic Resources (CNRG). He also visited the village of Temacapulín and the neighbouring population centre of Talicoyunque, which included meetings both with the communities concerned by the building of the El Zapatillo dam and with a representative of the State Water Commission.
II. The situation of food insecurity

Mexico has made significant progress in improving a key indicator for the realization of the right to food, i.e., achieving the Millennium Development Goal of reducing the national average of children below five years who are underweight (Target 1.8) from 14.2 percent in 1998 to 5 percent in 2006. Yet, progress has been uneven and deprivation levels in enjoyment of the right to food remain dramatic for a large part of the population. The National Council on the Evaluation of Social Development Policy (CONEVAL) estimates that 18.2 percent of the population (19.5 million persons) lived in “food poverty” in 2008, an increase from 13.8 percent (14.4 million persons) in 2006. The situation has remained largely unchanged since 1992.

These national averages cover significant disparities between deprivations in access to adequate food between urban and rural areas as well as between States in north, south and central Mexico. Out of the 18.1 million persons who live in municipalities considered to have a high or very high degree of marginalization, 80.6 percent live in rural areas.

There are also marked differences in relevant right to food indicators between indigenous and non-indigenous populations. For both groups, child malnutrition rates have decreased gradually. Nevertheless, one in three (33.2 percent) indigenous children under the age of five suffered from chronic malnutrition in 2006, compared to one in ten (10.6 percent) non-indigenous children.

III. The legal and policy framework

Mexico, as a signatory to the International Covenant on Economic, Social and Cultural Rights, has the legal obligation to respect, protect and fulfil the right to adequate food as set out in the Covenant as well as other international human rights treaties. Recent reforms of the Constitution demonstrate the commitment of Mexico to strengthen the protection of right to food. On 10 June 2011, days before the mission, the President of Mexico promulgated a constitutional revision elevating to constitutional rank all international human rights treaties ratified by Mexico. Moreover, a reform to explicitly recognize the right to food under the Constitution is now close to fruition.

Mexico has joined the small but rapidly growing group of States that are making the right to adequate food explicit in their domestic constitutions. Now is the time to further improve the legal framework by adopting a framework law on the right to food, as has been done in a number of other countries in the region. Such framework laws are recommended by the Committee on Economic, Social and Cultural Rights and under the Voluntary Guidelines on the progressive realization of the right to adequate food in the context of national food security to identify more clearly the beneficiaries and as a source of increased participation with civil society. A national strategy for the realization of the right to food then should be adopted in accordance with the framework law. Such a national strategy presents four major advantages:

(i) First, it improves coordination between the different relevant ministries and between the national and sub-national levels of government. At present, there are inconsistencies across the various sectoral policies implemented in Mexico. For instance, some of the agricultural support programmes disproportionately benefit the richest producers in the wealthiest part of the country, increasing inequality in the rural areas, which in turn are addressed through social protection programmes.

(ii) Second, a national strategy could help to identify complementarities between different instruments that currently serve to improve food security in order to achieve multiplier effects. In particular, measures aimed at supporting food producers and measures aimed at improving the accessibility of
adequate food to consumers should be made mutually reinforcing, rather than designed in isolation from each other.

(iii) Third, due to their multi-year nature, national strategies can help address the tension between short-term objectives, such as ensuring a supply of low priced food to the urban populations and increasing production, and long-term objectives, such as increasing the incomes of small-scale farmers and inclusive rural development with a responsible use of natural resources.

(iv) Fourth, a national strategy should improve accountability, by clearly allocating responsibilities across various branches of government, and by setting precise timeframes for the adoption of measures that will ensure the progressive realization of the right to food. An independent body could contribute to monitoring the implementation of the strategy by using appropriate indicators.

In the remainder of his statement, based on his assessment of the challenges facing the country, the Special Rapporteur identifies the issues that such a national strategy could address under the four dimensions of the human right to adequate food.

IV. A national strategy for the realization of the right to food

1. Food availability: supporting agricultural production

Between 1991 and 1996, Mexico implemented a “Second agrarian reform” to prepare its agricultural sector for the liberalization of agriculture markets linked to the signature of the North American Free Trade Agreement (NAFTA). The three programmes that formed the basis of this reform remain the backbone of Mexico’s agricultural policies: the Programa de Apoyos a la Comercialización, an output-based subsidy program, the main instrument of which is Ingreso Objectivo; the Programa de Apoyos Directos al Campo (PROCAMPO), a per hectare direct transfer programme decoupled from production and commercialization established by the Decreto que Regula el Programa de Fomento Agrícola, Procampo, DOF (25 July 1994); and the Alianza para el Campo, a family of investment support programs (including the Programa de Desarrollo Rural (PDR), the Programa de Fomento Agrícola, and the Programa de Fomento Ganadero).

The adoption in 2001 of the Ley de Desarrollo Social Sustentable, an umbrella law for rural development, has been an important step in improving rural policies, although the Programa Especial Concurrante para el Desarrollo Rural Sustentable (PEC), the coordinating framework for ARD expenditures which was created by the law, has not impacted much the allocation of ARD resources. Resources allocated to the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) have significantly increased throughout the 2000s, going from 47.9 billion pesos to an estimated 73.9 billion pesos budget in 2011. In addition a series of programmes were introduced more recently, such as MasAgro, Promaf, Tropico Humedo, Proyecto Estrategico de Seguridad Alimentaria (PESA), which is a welcome development. Agricultural production, including fisheries, increased at an average annual rate of 2.4 percent during the period 2000–2010.

These programmes represent very significant efforts to improve food availability in Mexico. The Special Rapporteur, however, notes that Mexican agricultural policies are insufficiently pro-poor. While more than 95 percent of the expenditure in social programmes of the PEC focuses on people living in poverty, less than 8 percent of the expenditure in agricultural programmes is targeted. In a country that has 80 percent of its farmers with less than 5 hectares, this is an area in which large improvements should be made. Agricultural policies favour the richest states, the richest municipalities and the richest producers/households. In 2005, the poorest six states received only 7 percent of total agricultural public expenditures despite being home to 55 percent of those living in extreme poverty.
Although these figures do not account for the latest policy changes, one can only conclude that agricultural public expenditures contribute to increasing income inequality in Mexico and fail to align with the requirement that the State should dedicate the maximum of available resources to the progressive realization of the right to food (articles 2(1) and 11 of the International Covenant on Economic, Social and Cultural Rights).

The Special Rapporteur, therefore, calls for a “Third Agrarian Reform” that would include the following interrelated features: (i) a reorientation of a significant portion of agricultural public expenditure towards people living in poverty via targeted programmes, such as PESA; (ii) the allocation of a larger portion of agricultural public expenditure towards public goods, including access to credit and financial services, agricultural extension services, support to producers, organizations and cooperatives, measures to protect agricultural producers from price volatility, and infrastructure, such as communication routes and transport and storage facilities; (iii) the launching of a SAGARPA-SEMARNAT joint programme to develop agro-forestry systems as well as rainwater harvesting techniques on the basis of the successful principles of the ProArbol programme, including local community participation and payments for ecological services; (iv) the reduction of the Tarifa 9 subsidies to rapidly stop the overuse of aquifers and the reallocation of an important portion of the current expenses for large-scale dams and hydrological infrastructure towards the promotion of rainwater harvesting techniques: such techniques have the additional advantage of being pro-poor, as a number of food-insecure smallholders live in arid environments and depend upon such programmes to regain options to decent livelihoods.

2. Food accessibility: fighting poverty: rural and urban

2.1. Social protection programmes

Mexico has been a pioneer in conditional cash transfer programmes. *Oportunidades* currently covers 5.85 million households throughout the country, and the coverage is particularly impressive in the poorest states, such as Chiapas (where 61.3 percent of the population benefits from the programme), Oaxaca (52.6 percent) and Guerrero (51.5 percent).

In 2008, Mexico has launched *Programa de Apoyo Alimentario* (PAL) to provide support to families who could not comply with the conditionalities of *Oportunidades*. This food aid programme served 677,027 families in 2010. In June 2008, both *Oportunidades* and PAL were strengthened by the provision of an additional cash transfer to beneficiaries. In addition, the Social Milk Programme (LICONSA) provides fortified milk to 6.05 million individuals in poor families. Finally, the Rural Food Support Programme (DICONSA) sells basic food products at affordable prices (approximately 5.5 percent below the market price), benefiting an estimated 29 million people.

The Special Rapporteur commends the Mexican authorities for these programmes, which demonstrate their commitment to ensuring economic accessibility to food for the population. Certain improvements, however, could be made. First, it should be systematically ensured that the programmes targeted towards the poorest households (*Oportunidades*, PAL and LICONSA) are institutionalized in legislation that clearly defines the beneficiaries, and that permits households, who believe they were unjustifiably excluded, to file claims against such exclusion. Second, these programmes should more systematically source a minimum proportion of food from local small-scale farmers, to whom a minimum price should be guaranteed. This could reduce price volatility for all local producers and a significant multiplier effects could result. Third, it is important that these programmes pay greater attention to the adequacy of the food provided. For instance, for the families depending on the
DICONSA stores, these stores could provide a range of fresh foods, including fruits and vegetables, to encourage healthier diets.

2.2. Workers' rights

The Special Rapporteur is concerned that the constitutional mandate according to which the minimum wage should be aligned on the cost of the canasta basica is not complied with. The minimum wage is currently set at approximately 57 pesos per day, around 25 percent of what would represent a living wage. Such a living wage should provide a decent income as required under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. The Special Rapporteur fully acknowledges that raising the minimum wage could encourage employers not to register their workers. Yet, he concludes that the tripartite national commission on minimum wages, in charge of setting the minimum wage for various levels of qualification, is in violation both of its constitutional duties and of international human rights.

The situation of jornaleros raises specific concerns. According to the Secretariat of Labor and Social Security (STPS), at least 2 million workers are employed as agricultural day labourers on large agricultural plantations. One fifth are migrant workers, travelling from the poor states to the richer agricultural regions in the North in search of employment. A majority of them move with their families. This situation raises a number of challenges, including providing continuous education to children, ensuring that children are not employed on the plantations and, protection human rights, in a context where about 90 percent of the agricultural day labourer have no formal employment contract.

The STPS has undertaken an impressive series of efforts to address this issue over the past few years. An interdepartmental coordination mechanism was established to address the various issues raised by the situation of the jornaleros, and a number of good practices have resulted. Although the labour inspectorates are clearly understaffed and lack capacity – there are 376 labour inspectors for the whole country – the number of plantations inspected has been rising over the years: from 132 in 2008 to 255 in 2010, with a target of 500 in 2011. The number of registered workers has risen significantly since the new strategy was put in place.

These achievements notwithstanding, more could be done. The labour inspectorates should be strengthened and the existing legal restrictions on unannounced visits to plantations should be abolished immediately. Jornaleros and the unions active in the agricultural sector should be informed about their right to report abuses anonymously to STPS, and to provide incentives to report such abuses, an employer found in violation of his obligation to register workers should be subjected both to fines and to the obligation to pay back salaries to the workers.

2.3. Large-scale development projects and the right to food

During his visit, the Special Rapporteur heard testimonies from persons from all over the country who faced the threat of resettlement due to major development projects, such as the construction of dams, urban infrastructure projects and mining.

International human rights law establishes safeguards that protect persons against being arbitrarily displaced from their home (see the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) and the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex I)). In assessing whether or not displacement can be justified, States must adequately assess the impact on affected communities and be able to justify any negative impacts by compelling and overriding public interests and adequately explore alternatives that could minimize such negative impacts. States must also ensure that all potentially affected persons are fully
consulted and, in cases of resettlement, are provided with fair compensation and not deprived of their sources of livelihood. Thus, persons who are resettled should be compensated with land commensurate in quality, size and value, or better.

In the testimonies by communities affected by large-scale development projects presented to the Special Rapporteur, a common concern expressed was the lack of adequate consultation and of efforts to ensure free and prior informed consent by the relevant authorities. Another common concern was the lack of fair compensation and excessive delays in its provision. While courts and administrative tribunals can protect communities against arbitrary resettlement that would have an adverse impact on the right to food and other human rights, according to information received court orders were in some cases not complied with. The Special Rapporteur visited the community of Temacapulin, where inhabitants over the past six years have tried to stop the construction of the Zapotillo Dam, which would inundate their town of about 400 inhabitants. Following his discussion with a representative of the State Water Commission and people living in Temacapulin, the Special Rapporteur is concerned that the land offered as compensation will not allow the inhabitants of Tamacapulin to continue growing the crops on which the livelihoods of many depend.

It was also brought to the attention of the Special Rapporteur that in a number of cases, people engaged in social protests related to the loss of land and livelihoods caused by large-scale development projects have been subject to threats and harassments and, in some cases, criminalized. In this regard, the Special Rapporteur recalls the United Nations Declaration on Human Rights Defenders and underlines the importance of ensuring adequate protection of human rights defenders.

2.4. The special case of the "rural sustainable towns"

One challenge faced by the authorities in the rural areas is the relatively high dispersion of the rural population, which makes it difficult to provide rural households with basic services, including healthcare and education. The concept of "rural sustainable towns" ("ciudades rurales sustenables") is seen as an answer to this challenge. It has been experimented in the State of Chiapas with support of a number of UN agencies. The Special Rapporteur visited the two existing "rural sustainable towns" of Nuevo Juan de Grijalva and Santiago el Pinar.

The intention behind the creation of such "rural sustainable towns" is laudable. In principle, such towns should improve access to healthcare and education, so that women and children will not have to travel long distances to attend healthcare centres and schools. And it should allow the creation of off-farm jobs through the development of small processing facilities. However, the Special Rapporteur notes that the efforts to support production have not yet been matched by appropriate capacity building to improve access to markets on equitable terms, as entering long food chains poses a number of risks, such an overreliance on the sale of one specific crop to one specific buyer.

Consequently, the Special Rapporteur calls for a thorough, independent assessment of Nuevo Juan de Grijalva and Santiago el Pinar prior to the establishment of new such towns. The independent evaluation should include an assessment of the opportunity costs involved, and it should be conducted in a participatory manner to ensure an appropriate valuation of the disruptions created in livelihoods by the resettlement of the families concerned.

3. Food adequacy: healthy diets

There is a growing awareness about the state of emergency that Mexico is facing with regard to overweight and obesity. Thirty-five million adults - 7 out of 10 - are overweight or obese: these people will experience sickness, on average, for 18.5 years during their lifetime. Overweight and obesity are
increasing at all income levels, although fastest within the lowest quintile, which remains comparatively less affected (obesity rate of 28 percent in the lowest quintile). The consequences are considerable. Overweight and obesity are the source of type II diabetes, cancer and cardiovascular diseases. It has been calculated by SALUD that this phenomenon cost Mexico 67 billion pesos (4.9 billion USD) in medical care and in premature deaths in 2008. By 2017, the direct costs of obesity will rise to 78 billion pesos (5.6 billion USD).

In January 2010, a National Agreement for Nutritional Health was reached between several ministerial departments and other public authorities, non-governmental organisations, unions, the media and the agri-food sector, in order to address the problem. The Special Rapporteur believes, however, that more structural actions are also needed. Due to the pressure of the agri-food industry, represented through Conméxico, some important tools to influence consumer behaviour, including the raising of taxes on soda drinks and on foods rich in trans-fats or in sugars, were not made part of the National Agreement. The Agreement itself is a soft policy instrument, without binding targets being set out in legislation. It locates the problem of overweight and obesity in the consumer's behaviour, when in fact, this problem stems from the food system as a whole. Agricultural policies currently encourage the production of grains, rich in carbohydrates but relatively poor in micronutrients, at the expense of the production of fruits and vegetables. The result is that for many Mexicans, particularly in urban areas or in the northern states, switching to healthier diets is becoming increasingly difficult. The trade policies currently in place favour an increased reliance on heavily processed and refined foods, with a long shelf life, which does not favour the consumption of fresh and more perishable foods, particularly fruits and vegetables.

4. Sustainability: the future of food in Mexico

Any national strategy for the realization of the right to food should take into account the long-term consequences of responses to short-term needs. Mexico is indeed highly vulnerable to natural disasters such as earthquakes, floods, hurricanes and drought. This present vulnerability will likely increase due to climate change, which will in turn impact food security.

4.1. Transgenic crops and biodiversity

The question of transgenic crops has a particular resonance in Mexico given the importance of maize in Mexican culture. During his mission, the Special Rapporteur studied the latest scientific evidence on possible ecological risks of cultivating transgenic maize in Mexico, as well as the legal and policy developments since the 2005 Law on Biosecurity of Genetically Modified Organisms. The Special Rapporteur notes that the cultivation of transgenic maize in Mexico poses acute risks to the diversity of native maize landraces. This results from the gene flow characteristics of maize, the pollen of which is able to travel long distances, but also from the seed exchanges habits of Mexican farmers. Indeed, exchange of seeds from one farmer to another account for more than 85 percent the sources of maize seeds at national level (the seed industry accounting for 5.2 percent).

In addition, it appears that a vast majority of the transgenic maize cultivars being currently tested have an uncertain relevance compared to Mexico’s main agronomical problems, such as resistance to drought or the ability to perform on poor soils. The Special Rapporteur concludes that there seems to be no other reason for these field trials than being the first step in a gradual process that would ultimately lead to the commercialization of transgenic maize on a large-scale. The expansion of transgenic maize crops on a commercial scale, and the resulting gradual disappearance of landraces, could increase the dependency of the farmers on a technology that will transfer resources to the seed companies holding the patents on these varieties, which form a heavily concentrated industry.
The Special Rapporteur concludes that the continuation of the programme leading to the introduction of transgenic maize in Mexico could be a retrogressive step in the realization of the right to food in Mexico, and that it would not be in the country's best interest. It also diverts the attention of policy-makers away from more vital issues, such as soil erosion or resilience to climate change, and it contributes to strengthening the belief that technological options can solve food insecurity.

The real question to be asked is whether this agricultural development path can reduce rural poverty and inequality, and whether it is sustainable in the long term. The Special Rapporteur notes in this regard that the introduction of transgenic maize in Mexico could result in a loss of agrobiodiversity, which is a crucial asset in the face of future threats and unpredictable changes brought about by climate change. In the long term, the continuous improvement of landraces by farmers’ practices of saving, re-sowing and exchanging seeds best suited to specific environments is crucial to ensure the flow of germplasm needed to support future shocks that are by definition unpredictable. Even the remarkable initiative of establishing the National Centre for Genetic Resources in the State of Jalisco, ensuring a preservation ex situ of genetic resources, is not a substitute for the permanent enhancement of agrobiodiversity.

The introduction and spread of transgenic maize in Mexico will lead the Mexican farmers to depend on input protected by intellectual property rights, that may make farming prohibitively expensive for them. The Special Rapporteur observes in this regard that some of the most respected Mexican experts on biodiversity have recently cautioned against accelerating the development of transgenic crops. They warn on the presence of important questions that have not yet been addressed, such as the risk that smallholders cultivating native landraces of maize will find crops containing genes from transgenic plants, and could be sued for infringing property rights of patent holders. The aggressive enforcement of technology use agreements in the U.S. by Monsanto has shown the importance of this issue.

The Special Rapporteur recommends that Mexican authorities: (i) declare as soon as possible a return to the moratorium on field trials and on the commercial cultivation of transgenic maize in order to protect the biodiversity of maize, while allowing possible research programmes in strictly confined environments; (ii) take steps to regulate the growing concentration in the seed sector and support smallholders in establishing community seed banks and other seed systems which preserve and maintain agrobiodiversity; (iii) improve access to information on the existing field trials and commission an independent analysis of their ecological, agronomical, social and economic impacts; and (iv) further strengthen in situ maize diversity conservation programmes by increasing the incentives rewarding farmers relying on landraces for their contribution to agrobiodiversity, as a complement to the ex situ conservation of genetic resources by the National Center for Genetic Resources (CNRG).

4.2. Water use, soil erosion and resilience to climate change

Access to water is vital in Mexico for those who rely directly on agricultural production for their right to food. Mexico’s “water crisis” is characterized by the overexploitation of key aquifers in the country, which is fuelled by the Tarifa 9, an important subsidy on electricity use for agriculture (as groundwater is mainly pumped from wells) that leads to farmers paying only 23 percent of the cost of generating and transmitting water. The Special Rapporteur also notes that the public authorities devote significant resources to hydrological infrastructure (3.3 billion pesos in 2006) as well as to irrigation (the area covered by modern irrigation increased from 1.3 million hectares in 2006 to an estimated 1.8 million hectares in 2011). At the same time, programmes to develop soil and water conservation techniques as well water collecting and storage constructions have been launched more recently, such as the Program for the Sustainability of Natural Resources (COUSSA), or the Cross Project for the Development of Arid Zones or the Catastrophic Agricultural Insurance (the latter covering 8,115 million hectares).
It is the view of the Special Rapporteur that the opportunity costs of large-scale hydrological infrastructure should be further investigated, as the potential of programmes to scale up rainwater harvesting techniques has been insufficiently explored, despite recent programmes. Moreover, there are important drawbacks to large-scale hydrological infrastructure such as dams, which displace people, disrupt livelihoods and have a high cost for public authorities. Launching massive investments in rainwater harvesting techniques in dry-land areas would allow for the cultivation of formerly abandoned and degraded lands and re-create adequate conditions for agricultural production in semi-arid areas. These methods include permeable rock dams, zaïs, contour ridges, runoff strips and semi-circular bunds slow down runoff water, improving soil moisture that make the cultivation of trees, shrubs and herbs feasible in semi-arid areas and create grazing areas in more arid ones.

Olivier De Schutter was appointed the Special Rapporteur on the right to food in May 2008 by the United Nations Human Rights Council. He is independent from any government or organization.

For more information on the mandate and work of the Special Rapporteur, visit http://www2.ohchr.org/english/issues/food/index.htm or www.srfood.org