I. Introduction

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, conducted a mission to South Africa between 7 and 15 July 2011, at the invitation of the South African Government. During his mission, the Special Rapporteur met with Mr. Ebrahim Ebrahim, Deputy Minister of International Relations and Cooperation; Mr. Gugile Nkwinti, Minister for Rural Development and Land Reform; Ms. Bathabile Dlamini, Minister for Social Development; Ms. Tina Joemat-Pettersson, Minister for Agriculture, Fisheries and Forestry; and with Mr. Collins Chabane, Minister for Performance Monitoring, Evaluation and Administration. He also held meetings with the Departments for Trade and Industry, for Economic Development, and Labour. He met with the Chief Justice of the Constitutional Court, Honourable Justice Sandile Ngoboz; the South African Human Rights Commission (SAHRC); the Municipality of Johannesburg; and, in Durban, with the Municipality of eThekwinini as well as with the authorities of the Province of KwaZulu-Natal. The Special Rapporteur would like to record his appreciation for the high level of cooperation he benefited from on the part of the Government, and on the part of the various authorities he met.

Civil society organisations were consulted in Johannesburg, Pretoria, and Durban. The Special Rapporteur also met with the UN agencies present in South Africa, as well as with academic experts. The mission also included field visits to the informal settlement of Diepsloet in the Gauteng Province and to the Province of KwaZulu-Natal, where the Special Rapporteur visited a number of sites, and resettled communities around the area of Greytown. The Special Rapporteur is grateful for those who made possible these visits and consultations, that served to inform his views about the situation of the right to food in the country.

II. Purpose of the mission

The aim of the mission was to review the policies that South Africa is implementing in order to realize the right to adequate food as recognized in international law. The right to food requires the possibility either to feed oneself directly from productive land or other natural resources, or to purchase food. It also requires that food be available, accessible and adequate for everyone without discrimination. States have immediate obligations to respect the right to food by abstaining from the adoption of measures that could infringe on this right, and to protect the right to food by regulating the conduct on private actors. They also are imposed an obligation to fulfil the right to food by dedicating the maximum of available resources to the progressive realization of the right to food and ensuring that people are free from hunger.

Since it moved towards democracy with the abolition of apartheid in 1992–1994, South Africa has been facing the challenge of moving from an economic system that was exclusively serving the interests of the white minority, representing one tenth of the population, to a much more inclusive
system, that could reverse the injustices of the past and close the gap between the various groups composing society. This requires a broad-based development strategy aiming at the full realization of the right to food can support this. In what follows, the Special Rapporteur outlines some of the main themes of his discussions during the mission, and his preliminary findings. He will present his full report to the Human Rights Council.

III. The situation of food insecurity

The proportion of people living in poverty in South Africa declined during the first part of the decade, but this trend was reversed in 2008 as a result of the national and international economic downturn. 60 per cent of the population live in income poverty, a very high level compared to other middle income countries. Children are particularly affected: 64 per cent of all children (11.9 million) live in income poverty, with significant disparities between regions, ranging from 36.7 per cent in Western Cape to 83.3 per cent in Limpopo. Inequality has deepened over the past decade, making South Africa today one of the most unequal societies in the world, with a Gini coefficient measures to 0.77 in 2006. Stark disparities in income remain between the South African white and black populations, and female headed households are generally much poorer than men.

Certain segments of the population remain highly vulnerable to food insecurity. In 2008, an estimated 20 per cent of South African households had inadequate or severely inadequate food access, and more than one in three children (32 per cent) are experiencing hunger or are at risk of hunger in South Africa. Again, there are significant disparities amongst regions, ranging from 33.5 per cent in Free State to 11.9 per cent in Limpopo and 14.5 per cent in Western Cape. Women are also significantly more likely to experience food insecurity than men.

IV. The legal and policy framework

The legal framework

South Africa has ratified the majority of the core international human rights instruments that protect the right to food, and the Constitution of the Republic of South Africa guarantees the right of everyone to have access to sufficient food and to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. The Constitution further obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of these rights. Inexplicably however, South Africa has not yet ratified the International Covenant on Economic, Social and Cultural Rights. This is especially surprising since the Constitutional Court has developed an interpretation of the economic, social and cultural rights contained in the Constitution that is among the most progressive in the world.

The policy framework

South Africa has various strategies and policies to realize the right to food. They include the Integrated Food Security Strategy (2002), the Zero Hunger Strategy (2009), and the strategic objectives identified by the Government is the Medium Term Strategic Framework 2009–2014 entitled Together Doing More and Better. The Government has also adopted 12 Outcomes that address the priority areas for the implementation of these strategic objectives. Among these Outcomes is Outcome 7, defined as “vibrant, equitable and sustainable rural communities and food security for all.” The Outcome 7 Delivery Agreement frames food security policy by addressing food availability, accessibility, utilization and affordability. It sets out the key work to be completed by 2014 as well as long-term targets for improving food security by identifying the specific activities particular departments must undertake to reach the outlined goals. Although the Outcomes are not legally binding, the Government has committed to ensuring the achievement of the Outcomes through the establishment of the Department for Performance Monitoring and Evaluation (DPME) within the Presidency.
These various strategies and policies demonstrate the strong commitment of the Government to address the food security of its population. However, commitments should translate into concrete action. Tremendous disparities in food security persist, linked strongly to inequality in terms of geography, gender and race. In order to overcome these disparities, the various strategies and policies, in particular the Outcomes Approach, should be strengthened by adopting a rights-based approach. This means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; that the authorities responsible for implementation should be held accountable for results; that the indicators allowing the measure progress should be based on the normative components of the right to food, including non-discrimination. Most importantly, to ensure accountability, independent monitoring is required of the Government plans, which could be entrusted to the South African Human Rights Commission. Additionally, ring fencing of resources is required to ensure sustainable funding of these plans. Until these different conditions are met, the various strategies adopted by the Government may remain ineffective, since there will be no sanction associated with a failure to deliver.

V. Food availability: reforming the agricultural sector

Three worlds of farming

One of the legacies of apartheid is a strongly dualized farming system. However, while the opposition between white large-scale commercial farmers and black small-scale subsistence farmers has been used for long and remains valid, South Africa’s agriculture is best described today as a three-tiered sector. First, an estimated 35,000 large-scale commercial farmers, predominantly of white origin own farms with an average size of 2,500 hectares according to AGRI-SA. These farmers produce 95 per cent of all marketed outputs and they collectively occupied 87 per cent of the agricultural land in 2003, and there is no indication that this figure has significantly changed since then. A second category of farmers is composed of approximately 200,000 black farmers “emerging” since 1994. These black entrepreneurs have benefited from post-1994 opportunities and public support such as agrarian reform and Black Economic Empowerment policies. The third category is composed of 4 million people from over 2.5 million households, mostly residing in the former homelands, which practice small-scale subsistence farming, predominantly as an activity complementing other types of income sources, such as temporary work-related migration, social grants, off-farm employment, remittances from relatives living in urban areas, and other subsidiary livelihoods strategies such as hunting and collecting edible plants in certain regions. In addition to these three categories, approximately 800-900,000 farm workers, and a much wider number of labour tenants and farm dwellers, also rely partly or completely on agriculture for their livelihoods.

The future of agrarian reform

In 1994, 87 per cent of the land was in the hands of 65,000 large white commercial farmers. In order to overcome this very unequal distribution of land that was one of the major legacies of apartheid, South Africa has placed a strong emphasis on land reform. This has included restitution of land to communities evicted during and prior to the apartheid era; a land redistribution scheme, through which the government buys land from large commercial farmers in order to provide land to disadvantaged individuals; and a grants programme, which allows disadvantaged individuals to acquire land.

The stated policy aim of the government is to have 30 per cent of the land held by the white commercial farmers redistributed by 2014. However, this objective shall not be achieved: it is estimated that 6.8 per cent of the land held by the white commercial farmers has been transferred to black farmers or communities since 1994 (including 3.7 per cent through restitution), and of these, almost 2 per cent have been returned to the former owners or to other white commercial farmers. Redistribution of land is thus proceeding at a very slow pace and in fact, as a number of white commercial farmers have left farming since 1994 without being replaced, land concentration has increased since that period. While the total area controlled by white commercial farmers has remained almost the same, the number of farmers has almost halved. Even more striking, the Government has
failed to provide adequate post-settlement support for the beneficiaries of land reform. The result has been that the vast majority of these beneficiaries have not been able to use the land productively. Many have been relegated to subsistence agriculture. Some have resold the land they received, or they have leased it back to large landowners.

This failure illustrates that in agrarian reform schemes, a significant portion of the resources should go to supporting the beneficiaries in order to allow them to use the land productively, or else the reform will fail to improve livelihoods sustainably. South Africa must make a clear choice: either it wishes to pursue land reform, and it must then accept the responsibility of providing effective support to its beneficiaries, or it must redefine its priorities, and provide the disadvantaged and landless blacks with alternative livelihood options. The current stated "Proactive Land Acquisition Strategy" of the Department of Rural Development and Land Reform is to buy land on the market and to lease it out to candidate black farmers, for a limited period at the end of which the ability for the lessee to use the land productively should be assessed. While certainly a step in the right direction, this new strategy is not as such an answer to the question of capacity-building. Individuals without or with only little experience require many years to become productive farmers. And they need what the State has to a large extent not delivered: adequate support, and hospitable markets.

It took almost ten years for the Government to realize the need to improve post-settlement support. In 2003, the Comprehensive Agricultural Support Programme (CASP) was launched to provide post-settlement support to beneficiaries of the land reform programme. It had a budget of US$119 million for 2010/11. The current administration is well aware that improving the livelihoods of millions of rural households will require much more than improved access to land (through land redistribution and restitution). It will require improved access to credit, skills, infrastructure and markets. But the lack of human capacity in public authorities is an important constraint to deliver outcomes, probably as important as the budget constraints. Coordination must also improve between land, agricultural and developmental policies. The efforts of the Government to improve the quality of the support given to farmers could benefit from three important shifts.

First Shift: From meeting needs to guaranteeing rights in agricultural support programmes

First, there is a need to adopt a more rights-based approach to the agricultural programmes in place. This means favouring the participation of the most vulnerable groups in the design of such policies; focusing policies on the needs of the most vulnerable groups, in particular by adopting a gender-sensitive approach to all programmes; defining the beneficiaries as rights-holders that can claim certain services from the Government, which is turn incurs obligations towards them. This improves the responsiveness of the policies to the real needs of the beneficiaries, moving towards a more bottom-up approach to agricultural support as well as their ability to deliver results.

Second Shift: Making markets more hospitable to small-scale farmers

A second reorientation of agricultural support programmes would start with the recognition that South Africa is confronted with a strongly dualized agricultural sector, and that the current organization of markets has been inherited from the apartheid era. In contrast to the large white commercial farmers, the newly established black farmers are small-scale farmers, with a poor access to markets, a lack of marketing skills, and a weaker bargaining position in the food chains. The Special Rapporteur believes that the food systems could and should be made to work better for this group of farmers. This can be achieved by providing these farmers with adequate support through well-targeted agricultural policies. But it is also the market environment that can be improved, and the food chains reformed.

First, the Competition Commission could be encouraged to contribute further to addressing the imbalances in the food chain, not only by ensuring that the levels of
concentration remain within acceptable limits, but also by protecting small food producers from the abuse of buyer power. It may be recalled in this regard that excessive buyer power can result, not only from excessive concentration at certain segments of the food chain and in certain markets, but also from the concrete obstacles that small farmers may face in reaching markets, when they are in remote areas with poor communication routes to the urban centres, and face buyers that are de facto in a quasi monopsonistic position -- in effect, the gatekeepers through which farmers must pass in order to reach consumers.

Second, incentives could be developed to encourage the large commercial farmers to support emerging farmers – for instance by providing them with technical advice or by allowing them to benefit from their access to markets and relationships with buyers. The 2008 Transformation Charter for Agriculture partly fulfils this function, as it encouraged the establishment of a mentorship programme to accelerate the transferring of skills to new black entrants. But the AgriBEE seems to have had limited impacts in that respect. Incentives, including fiscal incentives, could be strengthening to further support this process. The Special Rapporteur would welcome the establishment of a permanent forum to encourage chain-wide learning of good practices in order to move towards food chains that are more inclusive. One encouraging development in this regard is that, at the time of the mission, the South African Human Rights Commission expressed its intention to set up an advisory committee that could deepen the work launched through the Southern African Food Security Change Lab, linking the various actors of the chain in the search of innovative solutions that can improve the sustainability of the food chains. This initiative could be further supported, and the further institutionalization of this dialogue could form part of a new framework law on the right to food.

Third, sourcing policies could be reviewed in order to ensure that they improve the access to markets for the benefit of small-scale farmers. The Preferential Procurement Policy Framework Act (No. 5 of 2000) already provides that public bodies may include among the specific goals of their procurement policies "contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability" (s 2, d)). The Act could be further improved to allow for preferential treatment in favour of small-scale farmers, for instance for school-feeding or food relief programmes. Similarly, the private sector could be given incentives to source from local, small-scale farmers. This could be done gradually, with the proportion of sourcing from small-scale farmers rising over a number of years, in order to allow the sector to build up its capacity to meet demand.

These various tools could be seen as part of a broader process of rebuilding the local food markets, which are generally more accessible to small-scale farmers than the larger export markets. Such local food markets could present a number of benefits beyond improving the incomes of the farmers supplying them. Farmers' markets developed in cities allow the urban consumers to have access to fresher, and potentially healthier and more nutritious foods, particularly as the staple foods are fortified. In rural areas, farmers' markets ensure access to affordable foods for the rural populations, who currently have to pay prices that are inflated by high transport costs, resulting in a situation where food is often more expensive in the rural areas than in urban centres.

**Third Shift: The benefits of agro-ecological approaches**

Third, mainstreaming the principles of agroecology across the DAFF policies and programmes can be particularly beneficial to small-scale farmers that have only a poor access to inputs and capital. The agricultural extension services of the DAFF could be encouraged to identify agroecological practices and disseminate them. Public support to agroecological practices such as agroforestry, water-harvesting techniques, biological control,
intercropping, and use if biological fertilizers, could be encouraged by (i) **direct grants or ecological payments**; and by (ii) **improving the Expanded Public Works Programme** (EPWP) to allow funding for the initial labour-intensive one-off investments in sustainable agriculture such as rainwater harvesting techniques and land contouring systems which prevent soil erosion.

The Special Rapporteur also encourages the local authorities to support decentralized participatory processes at local level, involving local stakeholders in consultative planning and coordination initiatives through training and facilitation, probably at local or district municipality level. These processes should define priorities and set the stages for accountability of concerned stakeholders. At the operational level, in extension services for instance, **participatory farmer-to-farmer methodologies** could be leveraged to identify and disseminate best agroecological practices, and empower small-scale black farmers. Researchers and extension services could support these farmer-led processes, which could seek inspiration from well-known examples such as the Campesino-a-campesino movement in Latin America. Several South African organizations, such as Surplus People Project, the Association of Farmers for Rural Advancement (AFRA) or Farmer Support Groups established by universities, have already launched pilot projects and established contacts with pioneer countries in this area.

**The role of urban and peri-urban agriculture**

Urban and peri-urban agriculture also has a potentially important role to play in the future to improve food security in urban areas and to provide a basic safety net to the urban populations. An original programme of the Zero Hunger Strategy is the Household Food Production Programme, better known as the “One Home, One Garden” programme. The Special Rapporteur commends the South African authorities for seeking to improve household food production, given it has proven effects on reducing food insecurity by providing direct food products, but also by providing nutritious products, and by playing a cushion against shocks. By May 2008, 15,765 food-production packages had already been distributed and 6,390 vegetable gardens established. The Special Rapporteur encourages the South African authorities to pursue their objective to improve household food production for food security purposes. However, they should review the best ways to deliver this objective, as there are indications that collective solutions such as communal (rather than individual) gardens are more cost-effective and easier to support.

The Special Rapporteur also has been particularly impressed by the strategy and programmes put in place by the City of Durban / eThekwini Municipality, which started in 2009 a peri-urban agroecology strategy. The City of Durban’s strategy – the Agroecology Delivery Model – complements the eThekwini policies to focus on poverty and unemployment. The City of Durban surveyed 800 gardens and their needs, then mapped approximately 3000 gardens through reviews of aerial photos. If supported, these gardens could materialize 60,000 job opportunities. The area, which is home to 3.5 million people, has been divided in four agricultural zones, taking into account road access and farmer association areas. Six agricultural support hubs have been established or are under development, including demonstration sites of agroecology techniques, a research and development centre on agroecology, training sites, a packing and marketing hub, and a future seed bank.

V. Food accessibility: protecting access to food for the poorest

**Social protection**

The right to food requires that food be accessible – both physically and economically. Physical accessibility means that food should be accessible to all people, including the physically vulnerable such as children, older persons or persons with disabilities. Economic accessibility means that food
must be affordable without compromising other basic needs such as education fees, medical care or housing.

The Social Assistance Act provides a national legislative framework for the provision of different types of social assistance grants, crisis intervention in the form of social relief of distress and the establishment of an Inspectorate for Social Security. The non-contributory schemes include the child support grant, foster child grant, care dependency grant, older persons grant, disability grant, grant-in-aid and social relief of distress. In 2011, approximately 15 million people benefited from the cash-transfer programme, representing 30 per cent of the total population. Of the 15 million beneficiaries, 10 million received the child support grant; 3 million people benefited from the older persons grant; 1 million received the disability grant; and 500,000 people received the foster care grant. The reach of the cash-transfer programme highlights the profound poverty affecting South Africa today, although it has successfully achieved Millennium Development Goal 1 of halving the number of people living in extreme poverty.

The success of the South African social protection scheme has been recognized as a model worldwide, and is a point of reference for many other countries. However, although the social protection programme has been expanded to reach more people, protection gaps remain. First, while as much as 90 per cent of the people would be eligible for support in some rural areas, the take-up rates are much lower. This points to the lack of information available to potential beneficiaries. The Department of Social Development is working to address this problem through establishing more SASSA offices throughout the country, deploying mobile trucks to reach more rural areas and by convening public meetings to provide information. These efforts should be stepped up, and the proactive approach characterizing the "War against Poverty" is to be welcomed in this regard. Second, the Government should consider the creation of a basic income grant to cover in particular those individuals between the ages of 18 to 59 that are ineligible for one of the existing cash transfer grants. The aim of the basic income grant would be to provide support for a broader range of people who do not have access to any form of income, including government grants, and to help people improve their living standards, afford more and nutritious food and ultimately improve health.

Access to income-generating activities

Since 2004, South Africa has developed an impressive Extended Public Works Programme (EPWP), placed under the supervision of the Department for Public Works and falling under pillar 2 (income opportunities) of the IFSS, with a budget of 54 million USD for 2010/11. The jobs proposed under the EPWP relate to infrastructure building or to environmental or social services, and they also include community works that allow workers to reach out to the poorest communities and to identify the barriers that they face in having access to social services and in benefiting from social programmes. Five years after its inauguration, the EPWP had led 16,869 projects to be initiated and created about 600,000 work opportunities at an average daily wage of 8.90 USD, essentially in the rural provinces of Limpopo, KwaZulu-Natal and the Free State. In conformity with the stated objectives of the EPWP, the main beneficiaries were women (53 %), young people (51 %), and people with disabilities (1.7 %).

As noted above, the EPWP could be further expanded to support the transition to sustainable agriculture, which the arrangement of farming landscapes or the planting of trees may help. Particularly in the absence, for the moment at least, of a basic income grant, the Government may consider developing the EPWP into a more rights-based programme guaranteeing a minimum number of days of employment to all those who have no other source of income, following the model of the National Rural Employment Guarantee Act (NREGA) in India.

The situation of farmworkers

The Special Rapporteur is particularly concerned by the situation of farmworkers. This group of approximately 800,000 individuals is particularly vulnerable, because of the low rate of unionization
(estimated at perhaps 2 per cent) and increased casualization of labour on farms, and because of the high degree of dependency of these workers on the farmer who employs them. The Labour Relations Act, 1995 (No. 66 of 1995) and the Basic Conditions of Employment Act (No. 75 of 1997) both apply to farmworkers, a minimum wage exists (set in this sector at R1,300 by the relevant employment conditions commission), and while sectoral determinations define elements such as standards for accommodation and the allowable level of deduction from salaries for the payment of services provided by the employer or the repayment of debts to the employer. But there are serious problems of enforcement. This is attributable in part to the limited capacity of the labour inspectorates (approximately 1,000 labour inspectors cover the whole territory, for all sectors), and in part to the difficulty of performing unannounced inspections on farms locate in remote areas. In addition, whereas hired migrant workers are especially vulnerable to abuse, these workers have few incentives to report about abuses, since they fear being expelled from the territory and since it is difficult for them to find employment outside the informal sector.

Despite these constraints, more could and should be done. **The information of farmworkers about their rights should be improved**, as suggested by the South African Human Rights Commission. Just like approved inspection authorities are allowed to monitor compliance with health and safety legislation, **union representatives could, following appropriate training, be certified to conduct inspections on farms, and report to the Department of Labour any refusal by the farmer to have his/her farm inspected from compliance with labour legislation.** Inspectors could more frequently team with law enforcement officials -- police and representatives of the public prosecutor -- both in order to reduce the risk of bribery, and in order to ensure that labour inspectors are better supported in their attempts to have access to farms.

**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: [www.srfood.org](http://www.srfood.org) or [http://www2.ohchr.org/english/issues/food/index.htm](http://www2.ohchr.org/english/issues/food/index.htm)