Mandate of the Special Rapporteur on the right to food

Mission to Malaysia from 9 to 18 December 2013

Kuala Lumpur, 18 December 2013

END-OF-MISSION STATEMENT

I. Introduction

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, conducted a mission to Malaysia from 9 to 18 December 2013, at the invitation of the Government. During his visit, he met with senior federal government officials from the Ministry of Foreign Affairs (Wisma Putra); Ministry of Agriculture (MOA); National Security Council (MKN); Ministry of Women, Family and Community Development (MWFCDS); Ministry of Human Resources (MOHR); Ministry of Rural and Regional Development (KKLW); Department of Orang Asli Development (JAKOA); Ministry of Urban Wellbeing, Housing and Local Government (KPKT); Ministry of Natural Resources and Environment (MNRE); Ministry of Health (MOH); Ministry of Education (MOE); Attorney General’s Chambers (ACC); Ministry of Domestic Trade, Cooperatives and Consumer Affairs (FPDKK); Prime Minister’s Department, Economic, Planning Unit (EPU) and Performance Management and Delivery Unit (PEMANDU); Department of Islamic Development (JAKIM); and Federal Land Development Authority (FELDA). A series of meetings were also held with senior representatives of ministries of the State Governments of Sabah, in Kota Kinabalu, and of the State of Sarawak, who met with the Special Rapporteur in Putrajaya.

Moreover, the Special Rapporteur met with members of the Parliament of Malaysia and of the Sabah State Legislative Assembly, the National Human Rights Commission (SUHAKAM) as well as with members of the United Nations Country Team. He also convened five roundtable discussions with representatives of non-governmental organizations, indigenous communities of West and East Malaysia, trade unions, farmers associations and academics, held in the Federal Territory of Kuala Lumpur and the states of Selangor and Sabah. In Petaling Jaya, Selangor, the Special Rapporteur met with residents of a low-cost flats neighbourhood (Desa Mentari); and in the village of Terian, Sabah, he met with communities from nine villages affected by a proposed dam project in the Ulu Papar region.

The Special Rapporteur is very grateful to the Government for facilitating his visit and for the open and constructive spirit in which dialogues were conducted. He expresses his thanks and appreciation to the wide range of people and local communities he was able to meet with. He would like to thank the United Nations Country Team and the United Nations Resident Coordinator in Malaysia for the excellent support they provided.

II. Overall progress in reducing poverty and food insecurity

Malaysia has seen sustained economic growth since its independence in 1957, and today has the status of high human development and an upper middle-income country. Since the 1970s, the economy has gradually changed from being based on primary production to becoming diversified with important secondary (manufacturing and production of processed goods) and tertiary (services) sectors. Agriculture, which accounted for more than 20 per cent of gross domestic product (GDP) in 1985, dropped to 7.3 per cent in 2012, surpassed by other sectors of the economy including services (56.4 per
cent), manufacturing (24.9 per cent), and mining and quarrying (8.4 per cent) of GDP. With the move away from agriculture, Malaysia has seen a rapid growth in urbanization. Between 1970 and 2010, the proportion of the population living in urban areas increased from 27 per cent to 71 per cent.

Over the past decades, Malaysia has also made impressive strides in reducing poverty. Between 1995 and 2012, the incidence of aggregate national poverty was reduced from 8.9 to 1.7 per cent and urban poverty was reduced from 3.7 per cent to 1 per cent, and rural poverty from 15.3 per cent to 3.4 per cent. Disparities in income levels amongst Malaysia’s 13 States and 3 Federal Territories have also been narrowing. The poorest state, Sabah, has experienced the highest reduction in poverty, from 19.7 per cent in 2009 to 6.1 per cent in 2012. The number of people living in hard-core poverty, unable to meet their basic food needs, has decreased from 0.7 per cent in 2009 to 0.2 per cent in 2012.

III. From ‘first-generation’ to ‘second-generation’ development challenges

With the impressive achievements listed above, it now time for Malaysia to take new steps towards the realization of the right to food: to move towards agrifood policies that are both more resilient and more sustainable (section IV below); to further improve living conditions, building on the recent introduction of a minimum wage for the working poor (section V); to strengthen social protection by moving from ad hoc schemes to the guarantee of legal entitlements (section VI); to address the remaining obstacles faced by vulnerable communities in their access to adequate diets, paying a particular attention to the population of indigenous communities, comprising some 12 per cent of the national population (section VII), and to the non-citizen population, comprising some 4 million migrant workers (around 14 per cent of the total population) and a significant number of refugees and asylum seekers (section VIII); and finally, to improve the adequacy of diets for all, in a context where non-communicable diseases linked to a "nutrition transition" are rising (section IX).

The time is ripe to address these ‘second generation’ development challenges. Through the Vision 2020, the Tenth Malaysia Plan (10MP) for the period 2011-2015, the Economic Transformation Programme (ETP) and the Government Transformation Programme (GTP), the Government has set as its target and developed policies and programmes to transform Malaysia into an advanced, high-income country by 2020. It is now working on the formulation of the Eleventh Malaysia Plan 2016-2020 as well as a National Human Rights Action Plan (NHRAP), to further move the country towards this target.

These processes offer ideal opportunities to improve the human rights record of the country, to prepare the ground for acceding to key international human rights instruments, to further institutionalize intersectoral coordination and the participation of civil society in policy making and to address the challenges in achieving the right to food detailed below. It is the hope of the Special Rapporteur that the considerations provided in his Final Report shall be helpful in guiding these efforts already underway.

IV. Towards resilient and sustainable food systems

In order to achieve the right to food, Malaysia will need to move towards more resilient and sustainable food systems. In this respect, Malaysia has made many key advancements in recent years, though some areas require further attention and remain challenges.

1. Increasing food production

With the exception of poultry, pork and fisheries, Malaysia depends on imports for most of its foods. The food trade deficit has grown from RM1 billion in 1990 to RM13 billion in 2013. The country is self-sufficient in some food commodities, such as poultry meat, eggs, and fisheries, but not in others such as rice, fruits, vegetables, beef, mutton and milk.

As underlined in the National Agrofood Policy (NAFP) 2011-2020, the Government is well aware of the need to increase the levels of self-sufficiency, wherever possible, as the prices of food commodities on international markets shall be more volatile and higher in the future due to the effects of climate change,
increasing input costs and competitive use of food for bio-fuel production, population growth and changing consumer preferences. Indeed, partly in response to rising food prices in 2008, the Government created the National Food Security Policy (2008-2010), directed at increasing rice production towards maintaining an adequate level of self-sufficiency and encompassing various programmes to accelerate food production.

2. **Addressing the environmental challenge**

The expansion of commercial tree crops, for oil palm especially, and the prioritization of monocropping schemes over more diversified farming systems, is posing challenges to the realization of the right to food in Malaysia. The expansion has severe environmental impacts, including a high rate of deforestation, greenhouse gas emissions, and the contamination of soils and water. In response, the Government seeks to encourage sustainable farming through the Good Agricultural Practices (GAP) scheme for farmers, animal and fish breeders and organic vegetable growers.

These commendable efforts. Nevertheless, the Special Rapporteur was struck by the lack of attention given to agroecological modes of production in the training and support programs of the Ministry of Agriculture. He refers in this regard to his report on the contribution of agroecology to the realization of the right to food (A/HRC/16/49), and to the emerging consensus on the need to move to less input-intensive and more knowledge-intensive types of production, and place the restoration of soil health at the centre of agronomic choices.

3. **Challenges specific to the palm oil industry**

Palm oil plays an important role in the agronomic landscape of the country as well as in its economy: about 5 million hectares of land are dedicated to palm oil production, out of a total arable land of around 7 million ha in the country. Malaysia is the second largest producer of palm oil in the world and the first exporter. However, the expansion of palm oil cultivation means that less land is available for the production of food crops. It also has severe environmental consequences, as mentioned above. In addition, palm oil plantations rely heavily on the availability of a cheap and compliant workforce, made up of foreign migrant workers primarily from the Philippines and from Indonesia, who reside often in highly precarious circumstances.

Concerns about the social and environmental impact of palm oil production led to the establishment of the Roundtable on Sustainable Palm Oil (RSPO), a private multi-stakeholder initiative. To date, the RSPO has certified an estimated 14 per cent of palm oil production, including the produce from a total area of 1,092,423 ha in Malaysia, involving more than 100 farms working under 13 plantation companies.

The Special Rapporteur encourages efforts to improve the sustainability of palm oil production. While the RSPO could be strengthened, any attempt to weaken the sustainability criteria should be discouraged.

V. **Guaranteeing a minimum wage**

The Special Rapporteur commends the adoption of a minimum wage across Malaysia. Ensuring, in law, access to decent work and a living wage, is key for families and individuals who rely on an earned income to meet their food needs. The introduction of the minimum wage should help ensure a higher standard of living for the working poor across Malaysia and ensure that the working poor are not left behind in Malaysia’s move towards high-income status.

Under the National Wages Consultative Council Act (No. 732) 2011, beginning on January 1 2013, the minimum wage for private sector employees was set at RM800 for workers in Sabah, Sarawak and Labuan and RM900 per month for employees in peninsular Malaysia. This wage is a basic wage and does not include any additional payment allowances provided by employers. Under the law, some
provisions were made for a progressive implementation of the minimum wage, and as of 1 January 2014 all employers in Malaysia, regardless of the size of the workforce, are required to pay their employees the minimum wage.

Further, the minimum wage applies to all employees, whether local or foreign, and in all economic sectors, except those in the domestic service sector such as gardeners, childcare providers, and housekeepers. The minimum wage also applies to sectors in which wages are not paid on an hourly, weekly or monthly basis. In particular, estate and plantation owners must pay employees at least a minimum wage, even if they are paid on a pieces-rate, tonnage, trip- or commission basis. Employers are required to supplement the wages of these employees if their income does not meet the minimum wage.

While the Special Rapporteur welcomes the adoption of the minimum wage as a means to ensure more equitable development, he expresses concern over the rate at which the minimum wage was set. For a minimum wage to make strides in improving equality and ensuring access to an adequate standard of living, including an adequate diet, it must provide at least a living wage. A living wage allows for a life above the poverty line, and ensures the ability to access housing, food, education, health and other basic necessities. The current rate for the minimum wage – at RM800 for workers in Sabah, Sarawak and Labuan and RM900 per month for employees in peninsular Malaysia – does not provide a basic living wage to Malaysia’s poor and hardcore poor. The Poverty Line Income (PLI) for a 5-member household is RM830 in peninsular Malaysia, RM1090 in Sabah and RM920 in Sarawak. Community members, with whom the Special Rapporteur met during his visit, uniformly expressed concerns that the PLI was not sufficient to meet a basic standard of living for families in Malaysia. With the minimum wage set well under the PLI for Sabah and Sarawak, and not considerably above the PLI for peninsular Malaysia, the Special Rapporteur remains concerned that despite the significant efforts of Malaysia to institute a minimum wage, it has failed to institute a living wage that will lift people out poverty. In particular households who rely on one income, paid at the minimum wage, or who are in precarious employment, may remain under the poverty.

The Special Rapporteur also expresses concern over the exclusion of the domestic service sector from minimum wage requirements, although some domestic workers receive a minimum wage under bilateral inter-governmental agreements. Individuals employed in domestic service are often the most vulnerable to abuse from their employers. Because of the nature of their work in the home, they are hidden from society and unable to seek redress for human rights violations. Employers often remove significant portions of wages for room and board, and fail to pay any overtime. The Special Rapporteur believes that Malaysia should amend the National Wages Consultative Council Act 2011 to include domestic workers, and to ensure that room and board are considered additional payment allowances, not to be calculated as a part of the minimum wage.

In addition, with respect to access to a living wage, the Special Rapport notes with concern reports about children working with their parents in the plantation sector. While Malaysia regulates the employment of children through the Children and Young Persons (Employment) Act 1966 (Act 350), the Special Rapporteur has concerns that payment schemes in the plantation sector that pay on a piece-rate rather than salaried basis, encourage parents to have their children assist in the plantations. This is especially a concern for the children of undocumented migrant workers, who have no access to education, and as a result have idle time that can be spent on labour. The Special Rapporteur requests that Malaysia explore means to address child labour on plantations through addressing the impacts of piecemeal wages, and the lack of educational opportunities for the children of undocumented migrant workers.

VI. Social protection: protecting from extreme deprivation

Social protection is an essential means of access to food for those who are unable to work or to produce their own food. Rather than assistance-based measures, Malaysia has generally prioritized employment-oriented schemes that seek to assist individuals in entering and remaining in the workforce. For
example, at the national level, the 1AZAM Programme aims to lift low-income households out of poverty through means of employment, entrepreneurship, agricultural activities and services. The Ministry of Rural and Regional Development (MRRD) also coordinates employment based programmes, including income enhancement through participation in economic projects, skills training and career development, with a focus specifically on rural communities. At the state level, Sarawak focuses on enhancing human capital development through awareness programmes, agricultural training and education assistance, as well as income generating activities, while Sabah’s entrepreneurial schemes, such as the Mini Estet Sejahtera (MESEJ), focus predominately on developing land through palm oil and rubber, as well as aquaculture, as a means to increase the income of poor households. To date, MESEJ has included over 2,000 participants, engaged in more than 48 enterprises. Other programmes including Program Pembangunan Rakyat Termiskin (PPRT), facilitating the creation of joint ventures to which the "hardcore poor" contribute land to be developed, and Kampung Sejahtera, which seeks to increase human capital.

Another set of social protection schemes seek to assist the poor and hardcore poor by providing access to food at below market rates. In this respect, the Government of Malaysia subsidizes a list of 12 essential items, including wheat flour, chicken, cooking oil and bread; establishes price controls to some food items during festive seasons; and has created a number of 1Malaysia initiatives, including the 1 Malaysia Stores (Kedai Rakyat), which aim to provide access to wide range of basic foods (predominantly those with long shelf-lives rather than fresh produce) at a reduced price. In addition, the Price Uniformity Programme, renewed under the 2014 Federal Budget, endeavors to ensure that the costs of essential food items are the same in rural and urban Malaysia as well as East and West Malaysia by subsidizing the transportation costs for these items.

Finally, a number of programmes provide access to income, cash transfers or transfers in kind that assist individuals and families in meeting basic needs. The federal government’s BR1M programme, for example, provides individual cash transfers to families on an ad hoc basis, not exceeding one transfer per year. Similarly, the KARISMA programme provides social assistance, in the form of financial assistance, access to services at state institutions, community assistance and counseling, to benefit children, senior citizens, the disabled (OKU), police and army widows. The Federal Welfare Assistance scheme, which covers peninsular Malaysia, provides additional financial assistance to individuals or families in financial distress for a limited period of time or for the period required to help them gain financial self-sufficiency.

While the Special Rapporteur welcomes the efforts by all levels of government to ensure access to an adequate standard of living and access to adequate food, two concerns arose from consultations held during the visit.

First, community members from Sabah, Sarawak and peninsular Malaysia, with whom the Special Rapporteur met, regretted the extremely limited availability of the 1Malaysia initiatives and as a result their limited impact on alleviating the high cost burden of purchasing food for the poor. Similarly, individuals from rural and remote communities indicated that even with the Price Uniformity Programme the costs of goods in rural areas in Sabah and Sarawak still remained above that in urban areas and peninsular Malaysia.

Second, the Special Rapporteur was struck by the ad hoc manner in which many of the social protection schemes in Malaysia are instituted, their generally limited reach, and the lack of legal protection afforded under the schemes. He therefore welcomes plans to develop a comprehensive social safety net, integrating and coordinating the various efforts of different ministries into one coherent policy, and to introduce a rights based approach to social protection. It is time to redefine as legal entitlements benefits that have traditionally been seen as voluntary handouts from States, in the spirit of International Labour Organization (ILO) Recommendation No. 202 concerning national floors of social protection. The institutionalization of social protection schemes, following this rights-based approach, facilitates decentralized monitoring of their implementation and broader accountability. It thus acts as a safeguard against elite capture, corruption, political clientelism or discrimination.
VII. The rights of indigenous peoples

The indigenous peoples in Malaysia comprise the Orang Asli, in Peninsular Malaysia, and around 100 ethnic and sub-ethnic groups in Eastern Malaysia. The Orang Asli number some 178,000 people, about 0.6 per cent of the population. While there is a lack of specific statistics on the situation of individual ethnic groups in Sabah and Sarawak, it is generally recognized that these indigenous rural communities are among the poorest and most vulnerable groups in the country.

At the heart of the recognition of the rights of indigenous peoples in international law, is the idea that indigenous peoples have a right to make decisions about their future as a people and should not face forced assimilation: they have a right to make decisions regarding their development path. It is this dimension, closely linked to the right of indigenous peoples to give their free, prior and informed consent to any change to their lands and territories that has proven the most contentious in Malaysia. While the legal and policy framework to protect the rights of indigenous peoples present some differences from state to state within the Malaysian federation, the concerns expressed by indigenous peoples with whom the Special Rapporteur met were very similar. They related, in particular, to problems faced in accessing traditional sources of livelihood as a result of the encroachment on their lands and the degradation of ecosystems caused by development projects, as well as by logging and the expansion of palm oil plantations. Closely related to such concerns were problems faced by communities in acquiring official recognition of native customary land rights and in participating in decision-making processes related to major development projects affecting their lands and livelihoods.

Access to land for indigenous communities may be threatened by large-scale development projects, including the construction of dams. Based on his visit to communities in the Ulu Papar region where the construction of a dam would require the displacement of nine villages and affect their agricultural land and other sources of livelihood, the Special Rapporteur recalls that processes around environmental impact assessments or social impact assessments should build trust between the authorities and people affected by development projects. Consultations should allow for discussion about alternatives and serve to ensure that, consistent with the right to development, development projects will “aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”, as stipulated in the 1986 Declaration on the Right to Development adopted by the UN General Assembly.

With respect to how to address the rights of indigenous communities to their lands, the Special Rapporteur welcomes the presentation by SUHAKAM of the results of the National Inquiry into the Land Rights of Indigenous Peoples. The recommendations included in the report are in line with international human rights law, including the Declaration on the Rights of Indigenous Peoples adopted in 2007 by the UN General Assembly with an affirmative vote from Malaysia, as well as with the protection of indigenous peoples’ rights by the Malaysian courts. The Special Rapporteur takes note, with appreciation, of the task force set up by the Malaysian Government to consider how the Report’s recommendations can be implemented.

In addition, the Special Rapporteur recalls the obligation of the Government to ensure the demarcation and protection of native customary land rights, as underlined in the UN Declaration on the Rights of Indigenous Peoples. Under the Declaration, States shall give legal recognition and protection to the lands, territories and resources which indigenous peoples have traditionally owned, occupied or otherwise used or acquired; and they shall recognize indigenous peoples the right to own, use, develop
and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

The Special Rapporteur also stresses the importance of the principle of free, prior and informed consent, for any change to the lands and territories of the indigenous peoples, as also provided for in the UN Declaration on the Rights of Indigenous Peoples. As the Declaration underlines, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

This principle requires that any option proposed to the indigenous communities be part of a range of alternative options from which they should be able to make a genuine choice, and that they be fully informed of the long-term consequences of such choice on their livelihoods. It is not enough to consult the communities about the consequences of development choices made on their behalf without their involvement: instead, they must have a right to oppose the project proposed.

VIII. Migrant workers and refugees

1. Migrant workers

Malaysia hosts some 2.2 million documented foreign workers, representing almost 20 per cent of its workforce, and an estimated additional 2 million undocumented foreign workers. Roughly 70 per cent of labourers on palm oil plantations in the country are foreign migrants, most commonly from Indonesia. The Cabinet Committee on Foreign Workers (JKKPA-PATI) sets policy on foreign workers at the national level, while Sabah and Sarawak are each responsible for their respective immigration legal framework and policy direction.

Despite the positive step of introducing a minimum wage for the country, the Special Rapporteur remains highly concerned about the legal situation and working conditions of documented and undocumented migrant workers in Malaysia, and the impact that these have on the rights of migrant workers to have an adequate standard of living, including access to adequate food.

Migrant workers, and in particular those who are undocumented, often face abuse and malpractice, unfavorable employment terms such as low wages and informal or unwritten contracts of employment, coercion at various stages of the recruitment, migration and employment process, and hazardous working conditions (long hours of work, physically demanding and arduous jobs, workplace injuries and ill-health, limited social protection coverage). Some migrant workers in Malaysia are the victims of trafficking in persons as they are recruited through fraud or deception for the purpose of exploitation. Workers coming from Indonesia, the Philippines, Nepal, Vietnam and Myanmar have reported restrictions on their freedom of movement, retention of passports and delayed or non-payment of wages. Some find themselves in a form of debt bondage for the length of time it takes them to repay the fees charged during the recruitment process.

Working permits in Malaysia are linked with one specific employer, making the ability of migrant workers to complain about human rights abuses, even through legal means, precarious as termination of employment results in the cancellation of working permits, depriving migrants the right to stay and work lawfully in Malaysia. The fear of retaliation by their employers has a chilling effect on migrant workers reporting human rights abuses to the authorities, and as a result employers are able to continually abuse migrant workers without any sanctions.

The Special Rapporteur is encouraged by recent efforts of the federal government to issue amnesty to undocumented migrant workers in the country through the 6P Programme. Providing regularized status for undocumented workers will help to reduce the ability of employers to exploit their employees. He also is encouraged by the establishment of the Royal Commission of Inquiry to review of the situation of migrant workers.
2. Refugees

Another group who find themselves at risk of food poverty is the population of refugees and asylum seekers in Malaysia. The United Nations High Commissioner for Refugees (UNHCR) estimates that their number was around 150,000 individuals at the end of 2012.

Malaysia is not a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Therefore, refugees, whose status has been so determined by UNHCR, are not recognized under Malaysian law. Asylum seekers and refugees do not have access to the formal labour market, and are expected to rely for their livelihoods on the charity of non-governmental organizations.

Likewise, refugee children are not permitted to attend public schools and as a result depend on informal schools set up by the refugee community, with some limited support from the UN System and non-governmental organizations, negatively affecting the children’s future livelihood opportunities. Refugees do find employment outside the formal labour market, but often have no option but to accept work at below minimum wage and in sub-standard conditions.

IX. The adequacy of diets

Malaysia, like many other middle-income countries today, is experiencing what is referred to as a nutrition transition, characterized by a shift to more processed foods, generally higher in saturated fats, sugars and salt, and a move a towards more sedentary life styles. The prevalence of obesity increased three fold among adults between 1996 and 2006 from 4.4 per cent to 14 per cent and then increased more gradually to 15.2 per cent in 2011. Diabetes rates have also seen a steady increase over the same period, with current figures suggesting that around 15 per cent of Malaysians are now diabetic.

Addressing changing diets, and increasing rates of non-communicable diseases requires a coordinated and interministerial action plan by government. The Special Rapporteur lauds the National Plan of Action for Nutrition of Malaysia (NPANM) 2006-2015 and the National Strategic Plan for Non-Communicable Diseases (NSP-NCD) 2010-2014, which coordinate government in an effort to achieve and maintain the nutritional well-being of Malaysians and prevent and control non-communicable diseases. He also commends Malaysia for the recent policy decision to end subsidies for sugar, in an effort to reduce the sugar intake of Malaysians in the face of rising obesity and diabetes rates. Malaysia will need to continue to invest in and engage in strategic planning to address diabetes and obesity, if it is to ensure a healthy population in the future.

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Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly. He will present his report on Malaysia before the Human Rights Council in Geneva, on 10 March 2014. For more on the work of the Special Rapporteur on the right to food, visit www2.ohchr.org/english/issues/food/index.htm or www.srfood.org.