Statement of the Special Rapporteur on the Right to Food
Mr. Olivier De Schutter

Mr. President, Ms High Commissioner,
Distinguished Members of the Human Rights Council,
Excellencies,
Ladies and Gentlemen,

Let me begin by saying how thankful I am to the Human Rights Council for having decided to hold a special session on the impact of the global food crisis on the right to food.

By thus standing up to its responsibilities in these unique circumstances, the Human Rights Council is sending three messages to the international community – to governments, but also to international agencies. First, by holding its first special session ever on an economic and social right, the Human Rights Council sends a strong message to the international community about the equal value of all the rights of the Universal Declaration of Human Rights. Second, the fact that the special session is convened on a thematic issue rather than on a particular country or region highlights the fact that human rights should be seen not only as obligations imposed on States acting individually, but also as having to be realized through international dialogue and cooperation – and cooperation, in particular, between food-exporting and food-importing countries, which the imposition of export bans, sometimes a form of speculation by governments, has been testing during these last few months. Third, and most importantly, thanks to this special session, the global food crisis is treated not like a natural disaster, but as a massive threat to the right to adequate food for millions of individuals. Natural disasters do not constitute violations of human rights, unless the States in a position to assist the victims stand by and do nothing. The disaster which, for many, results from the increase of international prices of food commodities is of a different kind. It is a man-made disaster. The causes are identifiable.¹ Both immediate and medium-term solutions can be agreed upon. This imposes on all States an obligation to act, and to act without delay.

Since I entered into the mandate three weeks ago, I have spoken to a wide range of actors about the initiatives they are taking in order to address the impacts of the soaring food prices in the short term, and in the medium to long term, to boost production in agriculture, and particularly to support agriculture in Africa. All these actors, including the World Bank and the WTO, have responded favorably to my requests to consult with them. Indeed, the unified United Nations response to the

¹ For an analysis of the structural causes behind the soaring food prices, see my Background Note on the Global Food Crisis, 2 May 2008.
global food price challenge shows the willingness of the international community to react to the exceptional nature of the crisis by exceptional forms of cooperation. At the meeting of the Chief Executives Board held in Berne on April 29th, it was decided to establish a task force on the global food crisis under the leadership of the Secretary-General, in order to enhance coordination. A number of States have contributed funds to allow the World Food Programme to meet the urgent needs of the populations which are hungry. The FAO has launched its Initiative on Soaring Food Prices (ISFP), which offers technical and policy assistance to poor countries affected by high food prices in order help farmers improve production in the coming agricultural seasons, by facilitating access to inputs such as improved seeds, organic and inorganic fertilizer and water. The International Fund for Agricultural Development (IFAD) made available significant sums from existing loans and grants to provide an urgent boost to agricultural production in the developing world.

These initiatives are of course welcome, and deserve our full support. Yet, in this range of reactions, hunger and malnutrition are still treated as humanitarian questions, or as questions of macro-economic policy, rather than as violations of the human right to adequate food. And it is this message focused on the right to food which, today, the Human Rights Council is sending. Both General Comment No. 12: The right to adequate food, adopted in 1999 by the Committee on Economic, Social and Cultural Rights, and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by the Member States of the FAO General Council in November 2004, have clarified the implications of the human right to adequate food on a number of issues relevant to the current crisis. The implications can be identified at five distinct levels.

1. The right to adequate food as a guide to meeting the urgent need to feed the hungry

As regards the emergency, humanitarian measures, which the current situation calls for, the provision of international food aid should comply with Guideline 15 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

This requires, in particular, that the provision of food aid support the national efforts of receiving States to achieve food security, rather than be imposed or decided upon unilaterally. It requires that donor States provide assistance in a manner that takes into account the importance of not disrupting local food production and the nutritional and dietary needs and cultures of recipient populations. Food aid should be provided with a clear exit strategy and avoid the creation of dependency. Donors should promote increased use of local and regional commercial markets to meet food needs in famine-prone countries and reduce dependence on food aid. Wherever possible, aid in cash, allowing agencies such as the World Food Programme to buy food on the local markets or in the neighbouring regions in order to provide food to the most vulnerable segments of the population, would be preferable to aid in kind (Guideline 15.1). In the distribution of aid, in addition, beneficiaries should be carefully targeted and specific attention should be paid to the situation of vulnerable groups, particularly women and children, indigenous peoples, and refugees and displaced persons who depend on aid for their subsistence.
2. The right to adequate food and international cooperation: creating an enabling international environment

International cooperation is essential to the realization of the right to adequate food. In any situation where a State lacks the resources to provide food to its population in situations where it can not feed itself, it must seek international support to ensure the availability and accessibility of the necessary food. In addition, Guideline 15.2 of the Voluntary Guidelines provides that ‘States and relevant non-state actors should ensure, in accordance with international law, safe and unimpeded access to the populations in need, as well as for international needs assessments, and by humanitarian agencies involved in the distribution of international food assistance’. Not to seek such international support when it is needed, or obstructing the work of international agencies seeking which provide such support, constitutes a serious violation of the right to adequate food. Conversely, the International Covenant on Economic, Social and Cultural Rights, as well as Article 56 of the Charter of the United Nations, and as reaffirmed in paragraph 34 of the Vienna Declaration and Programme of Action adopted at the Vienna World Conference on Human Rights of 14-25 June 1993, require that States cooperate in the identification and elimination of the obstacles to the full realization of the right to food. Therefore, States in a position to assist should do so, as part of the fulfilment of their international obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights, and Article 56 of the Charter of the United Nations. Thus, the obligation of international assistance and cooperation imposes duties both on the States in need of aid, or which are receiving aid, and on the States which are in a position to provide assistance.

The modalities of international cooperation should be based on the principles of national ownership, and it is, first and foremost, for each country to define its national strategy for the realization of the right to food, to the fullest extent possible by participatory means. At the same, the international community must ensure that an enabling environment is created, allowing such national strategies to flourish, and providing financial and technical assistance where needed. This, indeed, constitutes another, and richer, meaning of the obligation of international cooperation. The required interaction between national strategies and the establishment of an enabling international environment should guide us both in our immediate responses to the current crisis, and in our mid- and long-term strategies.

For instance, an immediate priority – and part of the ‘enabling environment’ we should create – is to support agriculture in developing countries, particularly by smallhold farmers. Agriculture in developing countries, particularly in Sub-Saharan Africa, has suffered both from distorted competition from agricultural producers from the North, legitimized under the current WTO agreements, and from underinvestment in infrastructure. One issue which deserves urgent attention, is the need to ensure access to seeds and fertilisers before the close of the planting season in June, in order to prepare the next harvests. Due to the combined effects of the sharp increase in the prices of oil, of the protection of the intellectual property rights of the producers of intrants (seeds, fertilizers, pesticides), and of a high concentration rate in this sector,
the prices of intrants have skyrocketed⁴ and, while the profits of companies producing such intrants have risen significantly, the smallhold farmers are struggling to prepare the next crops. They need help. This is urgent. We must feed the hungry now, but we must also prevent famines from occurring tomorrow.

Another priority it to invest massively in infrastructure, particularly irrigation and communications, in the rural areas of developing countries, and to facilitate access to credit for farmers in these countries. The private sector will not suffice for this. Sovereign wealth funds should consider investing in agriculture, particularly in Africa, as proposed by the President of the World Bank Group R. Zoellick. But in addition, more and better aid is required from the international community. I note in this regard that, despite the Eighth Milenium Development Goal, which is to develop a global partnership for development, one of the indicators of which is the level of ODA for countries committed to poverty reduction (Target 13), and despite a reaffirmation of this commitment in the Millenium Declaration, in the Monterrey Consensus⁵ and in the the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,⁶ developed countries have failed, for the most part, to meet the targets for ODA of 0.7 percent of GNP to developing countries and 0.15 percent to 0.2 percent of GNP to least developed countries.⁷ If there were any time when these commitments should go beyond words, that time is now.

The establishment of an enabling environment also relates to the trade negotiations in the framework of the WTO Doha development round, and to negotiations on climate change. We need to move towards a regime of international trade in agricultural products which facilitates, rather than impedes, the choices made at national level about how to achieve food sovereignty, and which allows an adequate mix of national capacity for food production and openness to trade. We require a regime allowing for appropriate flexibilities, and we need to put an end to trade-distorting policies.

Climate negotiations also should take into account the obligations imposed under the right to adequate food. We all acknowledge the impact of climate on our ability to feed the world, and the particular threat it represents to developing countries’ food security. In the post-2012 agreement on climate change, industrialized countries - recognized under the UNFCCC as ‘Annex I’ - must provide legally-binding radical emission reductions of at least 40% on 1990 levels by 2020. And they must finance community-based adaptation and mitigation in the South in addition to domestic emission reductions.

⁴ As a result of the sharp increase of oil prices, the price of nitrogen fertilisers has risen in significant proportions: according to the US Department of Agriculture, the US price index for nitrogen fertiliser stood at 118 in 2000 but reached 204 by 2006. Seed prices are also rising, fueled by an increase in the costs of royalties for genetics and technology (traits) as well as the current increase in commodity prices.
⁵ Final Outcome of the International Conference on Financing for Development, adopted on 22 March 2002 in Monterrey, Mexico, A/CONF/198/3.
⁶ Chap. III, para. 12.
⁷ The total ODA provided by the members of the OECD Development Assistance Committee fell in 2006 to 104.4 billion USD, which was 4.5% lower than in 2005 and represented the first fall in ODA since 1997 in real terms; in 2007, ODA fell by 8.4% in real terms to USD 103.7 billion, representing a drop from 0.31% of members’ combined gross national income in 2006 to 0.28% in 2007. These recent decreases in comparison to 2005 can be attributed for the most part to the end of large debt relief operations for Iraq and Nigeria. But the rhythm at which the levels of ODA in proportion to GDP are increasing remain very insufficient.
The question of agrofuels exemplifies well how the realization of the right to adequate food is a shared responsibility of the international community, rather than an obligation which each State can fulfil individually. Agrofuels has been one major factor driving the prices of food commodities upwards, because of the competition between food, feed and fuel for scarce arable land. One study estimates that an extra 100 million hectares of land would be required for a worldwide blend of 5% of agrofuels by 2015. This is slightly above the surface of arable land we will be losing in Sub-Saharan Africa during the same period as a result of desertification, according to estimates of the Intergovernmental Panel on Climate Change (IPCC). The current path is simply not sustainable. Yet, what have we done? Since 2004, the total increase in the production of corn in the United States has gone to the production of bioethanol: some 25 percent of the 13.1 billion bushels of corn produced in the U.S. in 2008 will be dedicated to bioethanol production, and the 2007 Energy Independence and Security Act set a mandatory Renewable Fuel Standard (RFS) requiring fuel producers to use at least 36 billion gallons of biofuel in 2022. The EU has set for itself an objective of 10% of agrofuels in transport by 2020. These targets are unrealistic. By abandoning them, we would send a strong signal to the markets that the price of food crops will not infinitely rise, thus discouraging speculation on commodity futures. I have therefore proposed a freeze on all new investments and subsidies favoring the production of fuel by growing crops on arable and non-degraded lands, when such lands are suitable for the production of food crops.

Finally, still as part of this international environment enabling the development of national strategies ensuring food security, we need to identify measures which could mitigate the risks of volatility of prices on the international markets for commodities, which result from speculative investment. Since 2002, large investors have sought refuge from other investments in oil, and later in minerals and now, increasingly, in primary commodities, particularly in grains. It has been reported that ‘in the first quarter of 2008, the volume of globally traded grain futures and options increased by 32 percent compared with the same period in 2007’.8 This has contributed to push the international prices of such commodities upwards on specialized boards, such as the Chicago Board of Trade. There are currently no restraints on such speculative movements. Work is needed on tools that could be developed in order to discourage such speculative pressures on the prices of food commodities. The constitution of grain reserves, especially coordinated across countries at regional or global levels, would be one way to facilitate action against speculative movements of funds, leading to price levels far above the underlying physical market.

3. The right to adequate food as a guide to the adoption of medium- to long-term measures

The obligations following from the human right to adequate food are also relevant as regards the adoption of measures which, at national level, might better shield the vulnerable segments of the population from increases in the prices of food commodities – the net food buyers, whether or not they are agricultural producers, and particularly the urban poor and landless labourers. The Committee on Economic, Social and Cultural Rights, has insisted on the need for States to work towards ‘the

---

adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government; (iii) improve accountability, with a clear allocation of responsibilities, and the setting of precise timeframes for the realization of the dimensions of the right to food which require progressive implementation; and (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population. As part of such a national strategy, States should adopt a framework legislation ensuring that the right to food is justiciable before national courts or that other forms of redress are available, so that in situations such as the current one when the prices of food undergo a sudden increase, the other branches of government will not be allowed to remain passive.

We have the normative guidelines for the implementation of such national strategies for the realization of the right to food. We also may seek inspiration from certain existing good practices, for instance the adoption of Famine Codes in India and reliance on those codes by courts; or, in Brazil, the recent national system of food security (SISAN) based on the Law on Food Security in 2006, or other programmes such as the Fome Zero programme or the Bolsa-familia programme.

The current food crisis vividly illustrates the need for all States to adopt measures which will better shield the most vulnerable segments of the population, in the future, from shocks which may affect either the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals; or the accessibility of such food, both economic or physical, in ways that are sustainable and that do not interfere with the enjoyment of other human rights. The soaring of the food prices will affect most severely the population of countries which have no such national strategies in place, and which are net food-importing countries without stockpiles allowing them to mitigate the rapid increase of prices on the international markets. The adoption of a national strategy, including a framework law implementing the right to food, should therefore be identified as a priority for all States which have not taken steps towards developing such a strategy, in line with the recommendations States agreed upon under the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

4. The right to adequate food as a guide to the adoption of long-term measures

All actors involved in identifying solutions to the current crisis recognize the urgent need to reinvest in agriculture in developing countries. In the implementation of this goal too, the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security should be taken into account. The Guidelines encourage States, ‘in a sustainable manner, to increase productivity and to revitalize the agriculture sector including livestock, forestry and fisheries through special policies and strategies targeted at small-scale and traditional fishers and farmers in rural areas, and the creation of enabling conditions for private

---

9 General Comment No. 12, para. 21.
sector participation, with emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution’ (Guideline 3.7.).

Indeed, support for small-scale and traditional farmers and fishers, and the sustainability of the means of agricultural production, were among the chief concerns of the States when they adopted the Voluntary Guidelines. As regards the need to support sustainable forms of agricultural production, the Guidelines add: ‘States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry’ (para. 8.13).

In my view, it would be advisable in the future, to the fullest extent possible, to delink the costs of agricultural production from the prices of energy; to take into account the many functions the agricultural sector has to fulfil – production, but also social cohesion and environmental services; and to move towards a model of agriculture which is more sustainable in the long term, particularly given the new vulnerabilities entailed by climate change, and the scarcity of land and water due to desertification and exhaustion of soils. In this regard, I would draw the attention of the Council to the conclusions of the International Assessment of Agricultural Science and Technology for Development (IAASTD), the result of 3 years of research and consultations involving 400 experts, which over 50 governments approved at a Johannesburg meeting held in April 2008.

5. The institutional implications of the right to adequate food

In addition to guiding the policies which are needed to feed the hungry today and to adopt preventive mechanisms for tomorrow, the adoption of a human rights approach to the current increase of international prices of food commodities should guide the processes through which such short-term and long-term policies are developed. In these processes, the principles of participation, non-discrimination, and transparency should be paramount. The requirement of non-discrimination requires not only that no individual or group be arbitrarily deprived of food or of the benefit of the policies aimed at realizing the right to adequate food, but also that the vulnerable segments of the population have their specific needs taken into account – particularly children and women, who suffer the most from food deprivation in situations where the purchasing power of the household becomes insufficient to cover their nutritional needs. In addition, the adoption of such a framework enhances the accountability of all actors: by defining the current increase of international prices of food commodities as a threat to the right to adequate food, the Human Rights Council would draw the attention of States and international agencies to their obligations, grounded in international law, whereas the emphasis is currently on humanitarian gestures. The normative implications of the right to adequate food have been made explicit by the Committee on Economic, Social and Cultural Rights, which has emphasized that all dimensions – adequacy, but also acceptability, availability, and economic and physical accessibility – should be taken into account when evaluating the impact of certain policies on the right to adequate food under Article 11 of the International Covenant on Economic, Social and Cultural Rights. We now know what the implications of the right to food are. The challenge now is to draw the consequences thereof in all fields.
Distinguished Members of the Human Rights Council,

What distinguishes a natural disaster from a violation of human rights is that, in the latter situation, we are capable of moving along the chain of causation, from the situation of the malnourished of the hungry to specific acts or abstentions by duty-holders. The current increase in the global prices of food benefit some producers, at least those which are well-connected to the markets, and may encourage the private sector to pay more attention to the need to invest in agriculture. But it also represents a massive threat for many more, including a large number of smallhold farmers, who are net food buyers. Certain reactions, such as the withdrawing of children, particularly girls, from schools, the distress sale of productive assets, or the malnutrition of pre-school age children, may have dramatic and irreversible consequences. It is our responsibility to identify both the means to mitigate the impacts of the soaring food prices on the very poor, and to act on the structural causes of this situation.

Agricultural policies, the regime of international trade, the ongoing work on climate change, food aid: the wide range of issues referred to above look as if they were solely economic and social issues, or as if they were humanitarian in nature. But these issues cannot be addressed without taking the right to food into account. Governments cannot negotiate on those issues there, and be bound by human rights obligations only once their delegates enter this room. Since we know where the underlying causes of the violations of the right to food reside, it is our responsibility to act on them; and it is the responsibility of the Human Rights Council to express its concern at the lack of initiatives on certain of these issues, or at the slow progress made on others.

For let me add this. My interlocutors, both within the UN system of agencies and outside the UN, are not opposed to integrating a human rights perspective into their approaches. Their failure to do so stems, not from unwillingness or lack of interest, but rather from ignorance about what the human right to food requires. And it stems, especially, from the perception that human rights have nothing to offer at the operational level; that they are add-ons, rather than guides to poverty-reducing strategies, or to negotiations in the fields of trade or climate change; that, in sum, they should be treated as separate from the more serious matters which policy-makers, others than those from the human rights world, deal with. This perception is wrong, and it is misinformed; but it is widespread. Its result is to relegate human rights to the margins, and to condemn them to irrelevance – when they should be at the core of what we do, now more than ever, given the important choices that lie ahead of us, particularly in the areas of international trade, of agriculture promotion, and of the development of new sources of energy beyond fossil fuels.

I am not under the illusion that we shall find immediate answers to these questions, and I am well aware that, on many of these issues, the members of the Council are divided. It will be my role to inform this debate and identify policy options. But now
is a time for unity. Call this crisis a severe threat to the right to adequate food. Beyond your differences, send across the message that human rights are relevant to defining the future shape of global food policy, and that all actors – including not only governments, but also the private sector and international organizations – should define their policies in order to achieve this common goal: to save the lives which the policies currently in place are threatening.

*****