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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

**Доклад Специального докладчика по вопросу
о праве на питание Оливье де Шуттера**

Добавление

Миссия в Канаду**Резюме*

Настоящий доклад, представленный во исполнение резолюции 13/4 Совета по правам человека, содержит выводы и рекомендации Специального докладчика по вопросу о праве на питание по итогам его поездки в Канаду, состоявшейся 6–16 мая 2012 года. Сначала в докладе рассматриваются положение в области продовольственной безопасности в Канаде (глава II) и правовые и политические рамки для реализации права на достаточное питание (глава III). Затем в нем освещаются конкретные вопросы, касающиеся сельскохозяйственной политики (глава IV); защиты наиболее уязвимых слоев населения (глава V); доступа к надлежащим рационам питания и все большей распространенности лишнего веса и ожирения (глава VI); вклада Канады в обеспечение глобальной продовольственной безопасности (глава VII); и конкретных проблем, с которыми сталкиваются представители коренных народов (глава VIII).

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Приложение

[English and French only]

Report of the Special Rapporteur on the right to food on his mission to Canada (6 to 16 May 2012)

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I. Introduction

1. The Special Rapporteur on the right to food undertook an official visit to Canada from 6 to 16 May 2012, at the invitation of the Government. The purpose of the mission was to examine the way in which the human right to adequate food is being realized in Canada. The Special Rapporteur wishes to thank Foreign Affairs and International Trade Canada for coordinating the visit. Additionally, he is grateful to the representatives of the following federal government departments who met with him: Aboriginal Affairs and Northern Development Canada; Agriculture and Agri-Foods Canada; Fisheries and Oceans Canada; Health Canada; Human Resources and Skills Development Canada; Justice Canada; and the Canadian International Development Agency. He also met with the Minister of Health, Leona Aglukkaq.

2. The Special Rapporteur also had the opportunity to meet with provincial and municipal authorities, including the Nunavut Department of Health and Social Services; the Ontario Ministries of Agriculture, Food and Rural Affairs, Children and Youth Services, and Health and Long-Term Care; the Ontario Human Rights Commission and the Human Rights Legal Support Centre; the City of Toronto (Food Strategy Team and Food Policy Council); and the Manitoba Ministry of Aboriginal and Northern Affairs, Ministry of Agriculture, Food and Rural Initiatives, Ministry of Family Services and Labour, and Ministry of Healthy Living, Seniors and Consumer Affairs. The Special Rapporteur also met with political party officials, including Thomas Mulcair, leader of the New Democratic Party, and Bob Rae, interim leader of the Liberal Party.

3. During his visit, the Special Rapporteur travelled to Montreal, Québec; Ottawa and Toronto, Ontario; Winnipeg, Manitoba; and Edmonton, Alberta. In these locations, he convened eight civil society meetings in which he met with farmers' organizations, food security groups, human rights organizations, academics, researchers and community members. He received submissions from across Canada, both at these meetings and in writing.

4. The Special Rapporteur also had the occasion to meet with aboriginal groups and communities in Québec, Ontario, Manitoba and Alberta, including the Inuit Tapiriit Kanatami, Inuit Circumpolar Council-Canada and the Congress of Aboriginal Peoples. In particular, the Special Rapporteur would like to warmly thank the Assembly of Manitoba Chiefs, Manitoba Keewatinowi Okimakanak and Southern Chiefs Organization for facilitating his visits within Manitoba to the Sagkeeng First Nation (where he met with chiefs, council and community members from Chemawawin Cree Nation, Pukatawagan/Mathias Cree Nation, Lake Manitoba, Peguis, Swan Lake and Treaty 3 First Nations) and to God's River, Manto Sipi Cree and Wasagamack First Nations around the Island Lakes area. The Special Rapporteur also extends his gratitude to the Confederacy of Treaty 6 First Nations, the Alexis Nakota Sioux First Nation and the International Indian Treaty Council for facilitating his visits in Alberta (where he met with chiefs, council members and communities from Treaties 6, 7, 8, the Enoch Cree First Nation and the Northwest Territories). He is grateful for the hospitality of the First Nations communities, and he thanks them for their time and engagement with him.

II. The situation of food insecurity

5. Canada is ranked sixth in the Human Development Index¹ and has an average GDP per capita of \$39,070.² While the recent financial and economic crises have impacted Canada, with rising unemployment rates and a drop in income per capita, Canada has fared reasonably well compared to its peers.³ Meanwhile, however, the gaps between those living in poverty and the middle- and high-income segments of the population are widening. In 2008, the Organisation for Economic Co-operation and Development (OECD) estimated that the average income of the top 10 per cent (Can\$103,500) was 10 times higher than that of the bottom 10 per cent (Can\$10,260) and noted widening disparities in labour earnings and a lack of redistributive mechanisms. Statistics Canada indicates that the ratio of after-tax income of the top 20 per cent of families to the bottom 20 per cent of families rose from 4.6 in the early 1990s to about 5.5 in 2000, remaining fairly stable since. Canada, however, ranks very high in the OECD 2010 Intergenerational Social Mobility Index.

6. A growing number of people across Canada remain unable to meet their basic food needs. In 2007/2008, 7.7 per cent of households reported experiencing moderate or severe food insecurity,⁴ approximately 1.92 million people, aged 12 or older, lived in food-insecure households and a staggering one in 10 families, with at least one child under the age of six, were food insecure.⁵ Preliminary household data from the Canadian Community Health Survey (CCHS) 2011 indicates that 8.2 per cent (1.1 million) households now may be food insecure, some estimates putting the figure at 4.3 million people.⁶ Furthermore, in 2007/2008, 55 per cent of households in which the main source of income was social assistance were food insecure, the result of a pronounced discrepancy between social assistance levels and the rising costs of living.⁷

7. The inadequacy of social protection schemes to meet the basic needs of households has precipitated the proliferation of private and charity-based food aid. In 2011, Food Banks Canada calculated that nearly 900,000 Canadians were accessing food banks for assistance monthly, slightly over half of whom were receiving social assistance.⁸ However, without access to food banks, vulnerable households in remote and northern communities also depend on private and charitable food support, although no figures are available on this.

8. Certain segments of the population remain particularly vulnerable to food insecurity. Households with low incomes, those relying on social assistance as their main source of income, those who do not own their own dwelling, women single-headed households,

¹ International Human Development Indicators, <http://hdr.undp.org/en/statistics/>.

² Statistic from OECD.Stat Extracts 2011, <http://stats.oecd.org/index.aspx?queryid=558>.

³ Conference Board of Canada, <http://www.conferenceboard.ca/hcp/hot-topics/recession.aspx>.

⁴ Health Canada. Canadian Community Health Survey, Cycle 2.2 Nutrition (2004): Income related household food insecurity in Canada. Ottawa, ON: Office of Nutrition Policy and Promotion, Health Products and Food Branch 2007.

⁵ Health Canada, "Household Food Insecurity in Canada in 2007-2008: Key Statistics and Graphics", <http://www.hc-sc.gc.ca/fn-an/surveill/nutrition/commun/insecurit/key-stats-cles-2007-2008-eng.php>.

⁶ NDP Submission – UN Special Rapporteur on the Right to Food, 2012 Mission to Canada, prepared by the Office of the Leader of the Opposition, Parliamentary Affairs Department, May 8, 2012, p. 1, [http://foodsecurecanada.org/sites/foodsecurecanada.org/files/NDPSubmissiontotheUNSpecialRapporteur\(May82012\)EN.pdf](http://foodsecurecanada.org/sites/foodsecurecanada.org/files/NDPSubmissiontotheUNSpecialRapporteur(May82012)EN.pdf)

⁷ Health Canada, Household Food Insecurity in Canada in 2007-2008 (see footnote 5)

⁸ Food Banks Canada, <http://www.foodbankscanada.ca/Learn-About-Hunger/About-Hunger-in-Canada.aspx>.

Aboriginal populations living off-reserve and new immigrant households⁹ confront increased food insecurity in comparison to the average Canadian household. The Special Rapporteur was disconcerted by the deep and severe food insecurity faced by Aboriginal peoples living both on- and off-reserve in remote and urban areas. In the Yukon, the Northwest Territories and Nunavut, where the greatest concentration of Inuit populations resides, food insecurity in 2007/2008 was 11.6 per cent, 12.4 per cent and 32.6 per cent respectively.¹⁰ First Nations Regional Longitudinal Health Survey (RHS 2008/10) indicates that 17.8 per cent of First Nations adults (age 25–39) and 16.1 per cent of First Nations adults (age 40–54) reported being hungry, but did not eat due to lack of money for food in 2007/2008. Though the situation of food insecurity is monitored through surveys such as the Canadian Community Health Survey, the Inuit Health Survey and the First Nations Food, Nutrition and Environment Study, data on food insecurity in Métis populations was not found.

III. The legal and policy framework

A. The legal framework

9. Canada's record on civil and political rights has been impressive. Its protection of economic and social rights, including the right to food, has been less exemplary.

10. As a party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child, Canada has a duty to respect, protect and fulfil the right to food. Yet, Canada does not currently afford constitutional or legal protection of the right to food. The 1982 Canadian Charter of Rights and Freedoms protects a number of civil and political rights, but has no substantive provisions protecting social and economic rights, broadly, and the right to food, more specifically. While section 7 (protecting the right to life, liberty and security of the person) and section 15 (guaranteeing the right to equality before and under the law) provide avenues for the protection of the right to food, and the judiciary has repeatedly affirmed that international human rights norms constitute persuasive sources for constitutional and statutory interpretation,¹¹ case law has yet to recognize explicitly the right to food.

11. The Canadian Human Rights Act also does not protect economic and social rights. Similarly, while each province has human rights legislation, in many cases, listing "social condition" or "source of income" as a protected class under the law, none codifies the right to food or economic and social rights more broadly. At the federal level, however, poverty and socio-economic status are not recognized as a prohibited ground for discrimination, though a panel appointed by the Minister of Justice to review the Canadian Human Rights Act found, in 2000, "ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy," and recommended that "social condition" be included as a prohibited ground for

⁹ In 2007/2008, 12.6 per cent of recent immigrant households were food insecure, in comparison to 7.5 per cent of non-immigrant households, and 7.8 per cent in non-recent immigrant households, see Health Canada, "Household Food Insecurity in Canada in 2007-2008" (see footnote 5).

¹⁰ Health Canada, "Household Food Insecurity in Canada in 2007-2008" (see footnote 5)

¹¹ See Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, para. 21.

discrimination.¹² This is also recommended by the Committee on Economic, Social and Cultural Rights.

12. The Special Rapporteur is concerned about the growing gap between Canada's international human rights commitments and their implementation domestically. The Government has affirmed that the Charter can be interpreted as guaranteeing the right to the means necessary for an adequate standard of living.¹³ For example, in its submission to the Committee on Economic, Social and Cultural Rights during its second periodic review, the Government averred that "[w]hile the guarantee of security of the person under section 7 of the Charter might not lead to a right to a certain type of social assistance, it ensured that persons were not deprived of the basic necessities of life."¹⁴ It is thus perplexing that when the issue arose before the courts, successive governments opposed interpretations of Charter provisions that would provide remedies to homelessness, hunger or other violations of the right to an adequate standard of living. The Special Rapporteur is also concerned that although the Continuing Committee of Officials on Human Rights (comprised of officials at the federal, provincial and territory levels) has been established to ensure follow-up of recommendations from the United Nations human rights mechanisms, such follow-up is in practice uneven (E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, para. 12).

B. The policy framework

13. A growing number of provinces are implementing or developing poverty reduction strategies, some of which have been enshrined in legislation, such as An Act to Combat Poverty and Social Exclusion in Québec, the Poverty Reduction Act, 2009 in Ontario, or Manitoba's 2011 Poverty Reduction Strategy Act. Provinces have taken steps to develop rural economies, encourage the production and consumption of local foods and adopt policies seeking to improve food security and promote healthy diets, including British Columbia's Community Food Action Initiative, the Yukon's Nutrition Framework, Alberta's Nutrition Guidelines for Children and Youth, Manitoba's Northern Healthy Foods Initiative, Ontario's Student Nutrition Program and Nunavut's Framework for Action on Nutrition. In addition, some provinces have adopted legislation to protect agricultural land from urban development, such as Québec, British Columbia and Ontario. These are all important steps toward ensuring the right to food. But no province has adopted a food strategy as such, combining different objectives in a holistic approach cutting across sectors.

14. Food policies are emerging at the municipal level. A large number of food policy councils have been formed across Canada, establishing a forum for dialogue among the diverse actors working on food issues, and working from a food systems perspective in an effort to integrate issues of food, agriculture, health, transportation, economy and social protection. The Special Rapporteur met representatives of the Toronto Food Policy Council, established in 1991 under the auspices of the Toronto Board of Health. The Food Policy Council, comprised of 30 members from the community, the Board of Health, the City Council, local farming communities and the Toronto Youth Food Policy Council, advocates for innovative community food security programmes and works on various city initiatives concerned with food security. Such participatory models of food system management deserve support from the provincial, territorial and federal levels, in order to integrate them into a national level framework.

¹² Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000) at 105-112.

¹³ E/1994/104/Add.17, para. 8.

¹⁴ E/C.12/1993/SR.5, paras. 3 and 21.

15. In the course of the visit, it became clear to the Special Rapporteur that Canada would benefit from a national right to food strategy, as recommended both by the Committee on Economic, Social and Cultural Rights¹⁵ and under the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, adopted unanimously by the members of the Council of the Food and Agricultural Organization of the United Nations (FAO), including Canada, in 2004. This is important for two reasons. First, in order to effectively combat hunger, food insecurity and malnutrition, it is necessary to have a comprehensive understanding of who is hungry, food insecure and malnourished. The Special Rapporteur is concerned that changes in the current budget will make the collection and analysis of data more complicated, particularly by changes to data collection through the elimination of the requirement for individuals to complete the long-form census. Concerns were also raised regarding the dismantling of the National Council of Welfare, which provided a forum for data collection and comparison of, inter alia, social assistance rates across the country. By moving towards a national strategy for the realization of the right to food, Canada could decide which data are required to support evidence-based policies that move towards the eradication of hunger and malnutrition, including obesity, and to monitor progress.

16. Second, an integrated national strategy for the realization of the right to food should allow a clear allocation of responsibilities across different levels of government. Canada has a complex system of power-sharing between three levels of government – federal (national), provincial/territorial, and municipal or local – with varying degrees of responsibility for policy areas that affect the food system and the enjoyment of the right to adequate food. Improved coordination across these levels will allow the country to more effectively meet the challenges it is facing, creating synergies and ensuring that efforts made at each level are supported by other levels.

17. The Special Rapporteur was encouraged to see that in the 2011 federal election all major parties included a national food security strategy as a part of their platform. A number of initiatives by various stakeholders, including the Canadian Federation of Agriculture, the Canadian-Agri Food Policy Institute, the Conference Board of Canada, and the Peoples Food Policy Project, aim to develop a national food strategy. The initiatives of stakeholders point to the desire of farmers, industry and people all across Canada for a national food strategy.

IV. Food availability: agricultural policies

18. Agriculture and the agrifood sector (including foodservice; food retail/wholesale; food, beverage and tobacco processing; primary agriculture; and input and service suppliers) account for 8.1 per cent of national GDP and employ 2.1 million Canadians, roughly 13 per cent of all employment in the country.¹⁶ Canada is home to 229,377 farms. The food and beverage processing industry is the largest manufacturing industry and an important employer in many rural areas.

19. Yet, the Special Rapporteur heard many concerns about the general direction of agricultural policies. Since the 1950s, Canada has been moving to large-scale, input-intensive modes of production, leading to increasingly unsustainable farming practices and higher levels of greenhouse gas emissions, soil contamination, and erosion of biodiversity. Trade liberalization in agriculture was encouraged following the free-trade agreement with the United States in 1989 and the North American Free Trade Agreement in 1994. Export-

¹⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, para. 21.

¹⁶ Figures provided by Agriculture and Agri-Food Canada.

led policies in agriculture have resulted in increased concentration, vertical integration and buyer consolidation in the agrifood sector. Between 1988 and 2007, the number of farms decreased by 25 per cent.

20. Trade liberalization has been detrimental to many of Canada's agricultural producers, whose net incomes have decreased and whose debt has increased dramatically over the past decades. While Canada's exports tripled in value between 1988 and 2010 and while the total value of agriculture and agrifood exports increased 420 per cent during that period, realized net farm income remained stable until the recent surge in farm prices (from Can\$3.8 billion in 1988 to Can\$3.7 billion in 2010, to Can\$5.7 billion in 2011), although taxpayer-funded farm support payments may mask a net income loss: in 2007 for instance, farm support payments totalled Can\$3.7 billion, concealing a net income loss from the markets of Can\$2.2 billion. Canada's biggest farms capture a disproportionate amount of farm support payments due to the design of support programmes and to the high cap (Can\$3 million per farm) on maximum payments. Since the implementation of the Canada-US free trade agreement, total farm debt has tripled from Can\$22.5 billion to over Can\$65 billion in 2007.¹⁷

21. The long-term depression of farm-gate prices in relation to input prices and the cost of living means that margins are constantly tightening, forcing farmers to raise production levels simply to maintain income levels. To produce more, farmers have to purchase more land and chemicals, buy bigger equipment, increase herd size, and take on more debt. Family farmers are also facing increasing levels of input financing by agribusiness, and are confronted with growing commercial pressures on farmland as competition for land increases.¹⁸ In this context, the obstacles to farmer renewal are considerable: the number of farmers under the age of 35 has decreased by over 60 per cent from 77,910 in 1991 to just under 30,000 in 2006.

22. As concentration increased in the farming sector, it has become heavily reliant on temporary foreign farm workers: approximately 30,000 migrant farm workers come to Canada annually under the federal Temporary Foreign Worker Programs.¹⁹ These workers are in an extremely precarious position as the restrictions attached to their employer-specific permit and the permanent fear of being removed from Canada following a contract breach makes it impossible in practice for them to contest working conditions. Unlike other classes of temporary foreign workers, migrant farm workers, though they may have been working in Canada annually for years or even decades, are denied pathways to permanent residency or immigration. Services targeted to other newcomers, such as new immigrants and refugees, are generally not available to migrant farm workers, and despite migrant workers' contribution to the Canadian economy, they face a number of obstacles to access health care and social protection schemes. While they are eligible for health care in Canada, this coverage does not extend to their countries of origin once they are repatriated: in practice therefore, workers with serious illnesses or injuries are often left without any income, care or support, even after working and contributing to taxes in Canada for years. Although in principle they have access to employment insurance, the requirement under the Employment Insurance Act that claimants must be available for work in Canada in order to be eligible for benefits makes it virtually impossible for Mexican or Caribbean workers under the Seasonal Agricultural Workers Program (SAWP) to receive regular

¹⁷ Information received from the National Farmers Union and Agriculture and Agri-Food Canada, *An Overview of the Canadian Agriculture and Agri-Food System 2012* (based on data available as at August 2011).

¹⁸ National Farmers Union, *Losing Our Grip*, 2010

¹⁹ Seasonal Agricultural Workers Program since 1966, based on agreements with Mexico and Commonwealth Caribbean countries, and since 2002, the Pilot Project for Occupations Requiring Lower Levels of Formal Training, open to migrants from all countries.

unemployment benefits. In short, a marginalized category has been created essentially in order to compensate for the increased concentration in the farming sector and for the failure to ensure that farming remains attractive to Canadians.

23. A thriving small-scale farming sector is essential to local food systems, which food policy councils and localities throughout Canada now seek to strengthen. Local food systems can deliver considerable health and ecological benefits by increasing access to fresh and nutritious foods to children in schools, underserved urban and Northern remote communities, and older persons living in long-term care homes, among others. Local food systems benefit local farmers,²⁰ with strong multiplier effects on the local economy.

24. During his visit, the Special Rapporteur witnessed a number of initiatives that seek to improve food and nutrition security and foster local markets at the municipal and provincial levels, in particular through local procurement schemes and “buy local” labelling (such as Local Food Plus, Foodland Ontario, Buy Manitoba). However, the ability of all levels of government to use institutional sourcing as a way to encourage the transition towards a more sustainable food system may be restricted by legal requirements of non-discrimination imposed on public procurement.²¹ They may also be undermined by the Comprehensive Economic and Trade Agreement with the European Union, currently in draft form, which would prohibit municipal governments from using procurement of goods and services valued over Can\$340,000 in a way that favours local or Canadian goods, services or labour. Numerous municipalities across the country have opposed this restriction on the ability of local authorities to promote urban-rural linkages and local economic development through institutional purchasing, and have requested exemptions.²²

25. Canada faces other significant obstacles in transitioning to more sustainable and decentralized food systems. In the meat-packing industry, highly capital-intensive measures have been adopted in compliance with food safety requirements, making it uneconomic for smaller abattoirs to operate due to the high overhead and debt-servicing costs these investments entail.²³

26. In addition, the Government has moved to gradually dismantle existing orderly marketing systems. In 2011, the federal Government passed Bill C-18, putting an end to monopoly of the Canadian Wheat Board (CWB), and making it permissible for any party, as of August 1, 2012, to market western wheat and barley for export and domestic human consumption.²⁴ The Special Rapporteur is concerned that, as a result, the CWB will lose its

²⁰ It was estimated in 2007 that producers realize a 40-80 per cent increase in return on their products by marketing through farmers’ markets (Agriculture and Agri-Food Canada, Sectoral Policy Directorate, *Local and Regional Food Economies in Canada: Status Report*, March 2007, p. 30).

²¹ See for example, Marie-Hélène Sylvestre, “Perspectives d’achat local pour les organismes publics québécois et les municipalités. Une analyse juridique,” Institut national de santé publique du Québec, Direction du développement des individus et des communautés, Sept. 2009.

²² On 6 March 2012, the Toronto City Council voted for a permanent exemption from the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), and requested the Province of Ontario to issue a permanent exemption for the City from CETA and that it otherwise protect the powers of municipalities, hospitals, school boards, utilities, universities and other sub-federal agencies to use public procurement, services and investment as tools to create local jobs and otherwise support local economic development. An additional 50 municipalities have requested similar exemptions.

²³ See for example, National Farmers Union (Canada), “The Farm Crisis and the Cattle Sector: Toward a New Analysis and New Solutions,” November 19, 2008. p. 23.

²⁴ The law is currently challenged before the courts as its opponents argue that the proposed changes to the single desk were not made according to the procedures required under the Canadian Wheat Board Act in force at the time.

stabilizing function and no longer meet the specific requirements of small producers, leading to further concentration in the grains sector.

27. In contrast, the various supply management schemes in dairy, poultry and eggs, present advantages both for food producers and taxpayers. These legislated marketing tools have been designed to impose disciplines on sellers at a commodity-specific level and to replace a farmer-against-farmer competitiveness with a united and concerted effort by farmers to sell collectively for mutual advantage. Orderly marketing has helped ensure that a fair amount of market power remains in the hands of farmers, ensuring the viability of a number of food sectors. It has also enabled remote areas to keep farm production and processing facilities, mitigating the distribution costs to consumers living in those areas. At the same time, supply management schemes allow quotas to be traded without controls along the lines of highest bidders among licensed producers. Values may therefore go up dramatically and capitalization costs for farmers rise accordingly, limiting new entry in the sector. The system should be strengthened for its advantages, but reformed with a view to a greater equity and to facilitate entry of new farmers.

28. The Special Rapporteur believes that far greater attention should be paid to the need to allow local food systems to develop. The 2007 Status Report by Agriculture and Agri-Food Canada noted that “the increasing consumer interest in local food around the globe could shut Canadian producers out of the export markets we have come to rely upon,” making it imperative for Canada to create its own markets for locally-grown food. It further noted that “Canada’s historical focus on an export food system has impeded efforts to build a healthy domestic food system;” and that the policy framework “is a significant barrier to local food systems.”²⁵

29. The Special Rapporteur concurs. He expresses the hope that these concerns will be considered in the elaboration of Canada’s next five-year agricultural policy agreement, Growing Forward 2 (2013-2018). This initiative presents an opportunity for the Government to meet the country’s considerable environmental, public health and food insecurity challenges, and to respond to the expectations expressed by the food movement by ensuring active and meaningful participation in the process of shaping the new policy.

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

A. Social protection

30. Poverty affects some 3 million Canadians. In 2010, 550,000 children lived in food-insecure households. In First Nations families, one in four children lives in poverty. Poverty is one of the leading factors that impede access to adequate food, as acknowledged by the Government in its Fifth Progress Report on Food Security: In Response to the World Food Summit Plan of Action (2008). Social protection plays an important role in improving food security. As such, establishing a comprehensive social protection system is one policy measure to enable the poorest and most disadvantaged to realize their right to adequate food, among other rights. In the absence of a national poverty reduction strategy, the Special Rapporteur is encouraged to learn that out of the 13 provinces and territories, 11 have adopted or are committed to adopting poverty reduction strategies.

31. While the great majority of the Canadian population enjoys the right to adequate food and is afforded the right to social security, a significant segment of society does not. Recognizing that the right to food is indivisible with other human rights, the provincial,

²⁵ Agriculture and Agri-Food Canada, Sectoral Policy Directorate, *Local and Regional Food Economies in Canada: Status Report*, March 31, 2007.

territorial, and municipal governments developed a solid social protection system to protect people living in poverty, comprised of measures such as income security, education benefits, employment support, and affordable housing. Yet the evidence of those suffering from hunger and poverty has been growing in recent years.

32. While the provinces and territories have jurisdiction over social policy, including social assistance, they have in the past agreed to the establishment by the federal government of national programs for employment insurance (1940), old age pensions (1951) and supplemental pension benefits (1964).

33. The social protection system in Canada was strengthened with the 1966 Canada Assistance Plan (CAP), which provided a cost-sharing arrangement between the federal and provincial and territorial governments. CAP recognized food, shelter and clothing as basic human needs and sought to ensure that the provinces and territories provided sufficient benefits to enable people to meet these needs. It was repealed in 1996 and replaced by the Canada Health Transfer and Canada Social Transfer, which provide block-funding arrangements that permit provinces and territories to allocate health, education and social programme funding according to their own priorities. While the intent of the Canada Health Transfer and Canada Social Transfer are similar to the Canada Assistance Plan, they reduce federal conditions on how provinces and territories spend federal funds, allowing them to make significant cuts to social assistance rates at their own discretion.²⁶

34. The Special Rapporteur regrets the absence of accountability provisions in the Canada Social Transfer to ensure the protection of the right to food and other human rights. Indeed, despite the existence of social assistance schemes throughout the provinces and territories, many people living in poverty are still unable to enjoy an adequate standard of living. Fifty-nine per cent of those living on social assistance are food insecure, demonstrating that social assistance benefits are insufficient.²⁷ In Nova Scotia, the monthly deficit faced by households on social assistance in 2010 was Can\$523 for a single man and Can\$473 for a family of five (with three children under the age of 15).²⁸ In Ontario, Ontario Works rates for a single person are \$599 per month for basic needs and shelter, yet the average rent for a single apartment is \$715, leaving a deficit and no money for food, let alone a nutritious diet.²⁹

35. The Special Rapporteur is concerned that social assistance levels are insufficient to access the basic goods and services required for an adequate standard of living, including the right to food. The cost of housing is a key reason people suffer from hunger and are compelled to food bank use. Unlike expenses for food, paying the rent or mortgage is non-negotiable. Even people in subsidized housing regularly go hungry due to lack of money for food.³⁰ For example, within the Greater Toronto Area, among those in subsidized housing, the average amount remaining per person per day after rent and utilities are paid is \$5.67,

²⁶ Rideout, K. et al, "Bringing home the right to food in Canada: Challenges and possibilities for achieving food security," Public Health Nutrition, p. 4.

²⁷ Goldberg, M. and D.A. Green, "Understanding the Link Between Welfare Policy and the Use of Food Banks," Canadian Centre for Policy Alternatives, April 2009, p. 11.

²⁸ Williams, P.L. et al., *Affordability of a Nutritious Diet for Income Assistance Recipients in Nova Scotia (2002-2010)*, Canadian Journal of Public Health; For Ontario, see James Milway et al., *The Poor Still Pay More: Challenges Low Income Families Face in Consuming a Nutritious Diet*, Institute for Competitiveness & Prosperity, December 2010.

²⁹ Ontario Disability Support Program (ODSP) rates for a single person are Can\$1,064 per month for basic needs and shelter.

³⁰ Daily Bread Food Bank, "Fighting Hunger, Who's Hungry: 2011 Profile of Hunger in the GTA," p. 5, www.dailybread.ca.

and 46 per cent of people living in subsidized housing have reported not eating for an entire day because of lack of money for food.³¹

36. The direct and indirect costs of securing adequate housing must not compromise the ability of people to pay for food and other essential needs guaranteed by human rights law. In the case of housing, a threshold of 30 per cent of income has been widely adopted as a measure for assessing affordability. Spending more than 30 per cent of household income on shelter can jeopardize the amount of money available for food, health care, education, transportation and other basic necessities, particularly for people living in poverty. Though the Government of Canada invests about CAN\$1.7 billion annually to provide low income households with affordable and suitable housing, benefiting some 605,000 low income households across Canada, the issue of housing affordability remains a source of concern for many families. In this connection, the Special Rapporteur reiterates the recommendations made by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living in his 2009 report, including the need for a comprehensive and coordinated national housing policy.³²

37. Despite the best efforts of provinces and territories, social protection schemes and minimum wages fail to meet peoples' basic daily needs. An increasing number are turning to food banks in Canada. The reliance on food banks serves as a moral release valve for the State. But it is symptomatic of the need to step up social protection systems to align them with the increased costs of living.

B. Minimum wage legislation

38. Canada seeks to promote labour market participation as a long-term strategy to overcome poverty. The Special Rapporteur commends this approach, however he would recall that the minimum wage set in legislation should be, at least, a "living wage," that "provides an income allowing workers to support themselves and their families," as required under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.³³

C. Maximum available resources

39. Under the Covenant (art. 2, para. 1), Canada has a duty to dedicate the maximum amount of available resources to progressively achieve the full realization of economic, social and cultural rights, including the right to food, and to prioritize the needs of the most marginalized. The concept of progressive realization recognizes the obstacles faced by countries, even developed countries like Canada. Like others, Canada has experienced an increase in its public debt in recent years. Nevertheless, the current situation does not justify refraining from taking action that could guarantee the right to food.

³¹ Ibid.

³² See A/HRC/10/7/Add.3, paras. 88-111.

³³ Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work, para. 7.

40. The Special Rapporteur is concerned that the 2012 federal budget reportedly envisages a reduction of public spending of CAN\$5 billion annually, with total reduction in spending of CAN\$37 billion over five years, without the implications for the realization of the right to food having been given explicit consideration.³⁴ Canada has one of the lowest deficit-to-GDP ratios and debt-to-GDP ratios among industrialized countries, and it is precisely in times of economic and financial crisis that guaranteeing robust social protection measures is most required. Furthermore, the “maximum available resources” include resources that could be mobilized by the Government, including through fiscal reform. According to the Canadian Centre for Policy Alternatives, since 2000, cuts to personal, sales and corporate taxes have been such that the 2011-2012 tax revenues would have been CAN\$48 billion higher than the actual revenues collected if the tax regime of a decade ago was still in place. The tax-to-GDP ratio of Canada has fallen to 31 per cent of GDP and it is now in the lowest third of OECD countries. Consequently, Canada has the fiscal space to address the basic human needs of its most marginalized and disempowered.

VI. Food adequacy

41. Over 25 per cent of Canadian adults are obese as are 8.6 per cent of children between the ages of 6-17, according to a joint report by the Public Health Agency of Canada and the Canadian Institute for Health Information based on 2007-2009 data.³⁵ Overweight and obesity combined affect 62.1 per cent of the population. Obesity rates have increased significantly since the early 1980s,³⁶ and it is becoming more severe. On-reserve First Nations have particularly high obesity rates (36 per cent in 2002-2003). The risk of dying from diabetes and its complications is five times higher among First Nations women than among women in the general population.³⁷ This has led to the adoption of the Aboriginal Diabetes Initiative which supports a variety of activities to help improve healthy food access and availability in First Nations and Inuit communities.

42. The health impacts are considerable. In 2008, obesity alone cost the Canadian economy at least Can\$4.6 billion in direct (health care) and indirect (lost productivity) costs, when factoring in the eight non-communicable diseases most frequently associated with obesity; the costs for 2008 amount to \$7.1 billion taking into account a larger range of diseases associated with obesity.³⁸ Within remote Aboriginal communities, the consequences of high diabetes rates are particularly disturbing since specialized services may be inaccessible.³⁹

³⁴ Less than one-third of public institutions affected by the 2012 federal budget cuts explain the operational impacts. Office of the Parliamentary Budget Officer, “Monitoring Implementation of the Government’s Expense Plan,” 3 October 2012, <http://www.pbo-dpb.gc.ca>.

³⁵ Public Health Agency of Canada, “Obesity in Canada”, 2011, <http://www.phac-aspc.gc.ca/hp-ps/hl-mvs/oic-oac/index-eng.php>.

³⁶ In 1979, Sabry estimated that 17 per cent of the Canadian population was obese (Z.I. Sabry, ‘Should Nutrition Be Part of the National Food Policy?’, in R. M. A. Loyns, ed., *Proceedings of the Agricultural and Food Marketing Forum Occasional Series*, No. 11, Winnipeg, Manitoba, Department of Agricultural Economics and Farm Management, 1979).

³⁷ C.H. Yu, B. Zinman, ‘Type 2 diabetes and impaired glucose tolerance in aboriginal populations: a global perspective’, *Diabetes Res. Clin. Pract.*, vol. 78 (2007), pp. 159-170.

³⁸ A. Anis et al., “Obesity and Overweight in Canada: An Updated Cost-of-Illness Study,” *Obesity Reviews*, vol. 11, No. 1 (2009), pp. 31-40.

³⁹ See First Nations of Québec and Labrador Health and Social Services Commission, *Scan on Diabetes in First Nations Communities in Québec*, 2011.

43. Initiatives have been taken to address this public health and economic challenge. They include nutrition labeling on prepackaged foods, as well as nutrition guidelines and policies such as Eating Well with Canada's Food Guide, infant feeding guidelines and prenatal nutrition guidelines. Some of the most interesting initiatives are adopted at the municipal level. For example, Toronto has adopted a food strategy that focuses on health using a food systems approach, which seeks to integrate considerations linked to economic accessibility, disease prevention, food literacy, environmental sustainability and economic development.

44. Provinces have also been adopting initiatives in this area. Ontario's Action Plan for Health Care includes a Child Obesity Strategy and is supported by outside partners such as the Nutrition Resource Centre and the Healthy Communities Fund. Since 2006, Ontario has benefited from the Northern Fruit and Vegetable Program that provides fruit and vegetable snacks twice a week to 18,000 northern children in 106 schools. In Manitoba, the Healthy Together Now programme supports 83 community projects that promote healthy eating, and the Healthy Schools initiative improves the quality of food served in schools (School Nutrition Policy), supports breakfast and snack programmes (School Nourishment Programs), and links local farmers to schools to ensure adequate provision of fruits and vegetables to school children (Vegetable and Fruit Pilot Program).

45. At the national level,⁴⁰ the 2010 Pan-Canadian Healthy Living Strategy includes a Declaration on Prevention and Promotion and a Framework for Action to Promote Healthy Weights (Curbing Childhood Obesity). The objective of the framework is to coordinate across the federal, provincial and territorial governments to ensure that combating childhood obesity is a priority for the respective ministers of health; to create environments that support physical activity and healthy eating by children; to identify, at an early stage, the risk of overweight and obesity in children; and to increase the availability and accessibility of nutritious foods, among others.

46. The Special Rapporteur commends the initiatives that have been adopted to date. They fall short, however, from what the urgency of the situation requires. Health professionals in Canada lament that no action is being taken to ban trans-fatty acids from diets, and that too little is done to discourage the consumption of foods high in saturated fats, sugar and/or sodium.⁴¹ Québec is the only province to have banned advertising directed towards children under 13 years of age,⁴² an initiative that may be largely symbolic until all provinces follow suit. This is not a minor issue in a broader right to food strategy: young children are particularly susceptible to advertising, and advertisers spend Can\$2.9 billion annually to influence Can\$20 billion worth of household purchases. The industry has taken some initiatives to pre-empt regulation (e.g., Advertising Standards Canada). But experts note that self-regulation attempts are "founded upon a fundamental conflict of interest," as they seek to "advance the profitability of advertisers, while also protecting children's health and well-being," making it "unlikely that significant improvements could be implemented by industry itself or that they would be effective over the long term."⁴³ They conclude that a ban on advertising directed towards children is the most effective way of addressing the challenge.

⁴⁰ Although not involving the Government of Québec.

⁴¹ See also A/HRC/19/59, presenting similar conclusions which the Special Rapporteur arrived at independently.

⁴² Sections 248 and 249 of Québec's 1980 Consumer Protection Act. Only Norway and Sweden have taken steps in this regard.

⁴³ B. Cook (for the Public Health Agency of Canada), "Policy Options to Improve the Children's Advertising Environment in Canada," Feb. 2009, p. 4.

47. There also appears to be a misalignment between the policies adopted in the health sector and other sectoral policies that could help curb obesity, particularly child obesity. This could include land zoning: people living in low-income communities often depend on grocery stores that provide a limited range of fresh foods or only sell such foods at high prices, squeezing the poorest households to purchase processed foods high in saturated fats, sugars and sodium that are often more affordable.⁴⁴ Fiscal tools are also available to implement the Federal, Provincial and Territorial Curbing Childhood Obesity Strategy, as recommended by public health specialists.⁴⁵ The Weight Coalition of Québec estimates that a Can\$0.01 tax per litre on sugary drinks could raise Can\$8 million annually in Québec and Can\$35 million nationwide. These sums could be reinvested in preventive health care and in supporting access to fresh and nutritious foods in underserved, low-income communities.⁴⁶

VII. Food aid and development cooperation

48. The Special Rapporteur applauds the contribution of Canada to global food security. Canada has substantially exceeded its minimum food aid commitments under the Food Aid Convention in the past few years. It has led by example by ruling out monetization and untying its food aid. Canada also played a major role in the negotiation of the Food Assistance Convention in 2010-2012.

49. In October 2009, the Canadian International Development Agency (CIDA) launched its Food Security Strategy, focusing on food aid and nutrition, sustainable agricultural development (including agroecological approaches) and research and development. The strategy focuses on small-scale farmers living in rural areas, in particular the role that women farmers play in agricultural production. In Canada's development cooperation programmes, contributions towards agriculture have grown. As of April 2011, Canada had fully disbursed its Can\$1.18 billion commitment to sustainable agricultural development under the L'Aquila Food Security Initiative, the first G8 country to do so; this includes Can\$600 million in additional resources.

50. However, the Special Rapporteur has concerns about recent developments in this area. Canada made substantial cuts in its 2012 budget to official development assistance (ODA). The funding envelope will reportedly decrease by 7.6 per cent by the 2014-15 financial year. It appears that the cuts will disproportionately affect CIDA and the International Development Research Centre, as well as negatively impact several country programmes. It is troubling that 10 of the 13 countries to be affected lie in the bottom quartile of the Human Development Index. The Special Rapporteur is also concerned that the criteria for selecting recipient countries might not comply with the ODA Accountability Act.⁴⁷

51. In accordance with Canada's international obligations, the 2008 ODA Accountability Act specifies that ODA should be consistent with international human rights, consider the perspectives of the poor and contribute to poverty reduction, among others. Government ministers responsible for administering ODA are required to report annually on compliance

⁴⁴ Institute for Competitiveness & Prosperity/Open Policy Ontario, *The poor still pay more: Challenges low income families face in consuming a nutritious diet*, December 2010, p. 13.

⁴⁵ B. Von Tigerstrom, "Tax and Subsidy Measures for Obesity Prevention", Background paper submitted to the Public Health Agency of Canada (2009); and Public Health Agency of Canada, "Obesity in Canada", 2011 (see footnote 35), p. 33.

⁴⁶ See also A/HRC/19/59, paras. 39 and 50 (d).

⁴⁷ Information provided to the Special Rapporteur by the Canadian Council for International Cooperation (CCIC).

with the Act. Nevertheless, the Government reportedly has failed to apply human rights criteria in its reports as required by the Act.⁴⁸

52. While CIDA seeks to ensure that its projects will not result in human rights violations, it does not apply human rights norms and standards in determining aid priorities and implementing programmes. The contribution of Canadian development cooperation to the realization of the right to food could be improved by grounding its duties under the ODA Accountability Act on well-established international human rights norms and standards. In this context, the Special Rapporteur recalls the Maastricht Principles on the extraterritorial obligations of States in the area of economic, social and cultural rights, which clearly describe the duties international human rights law imposes on States, to ensure not only that they respect human rights outside their national territory, but also that they protect human rights and contribute to fulfilling human rights.

VIII. Indigenous peoples

53. In Canada, indigenous peoples (the term used in international law) are referred to as Aboriginal peoples, and include all original inhabitants of Canada as recognized by section 35 of the Constitution Act (1982) and comprise First Nations,⁴⁹ Inuit and Métis. The 2006 Census numbers indicate that there are about 1.1 million Aboriginal people in Canada: 750,000 First Nations, of which over 600,000 are Registered Indians, about 50,000 Inuit across 53 communities, and over 350,000 Métis. In this context, the Special Rapporteur recalls that in human rights terms, indigenous existence and identity do not depend on State recognition or acknowledgment.

54. Like others, the Special Rapporteur welcomes the decision by Canada in November 2010⁵⁰ to support the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration affirms fundamental human rights in relation to the particular historical and contemporary circumstances of indigenous peoples.

55. A long history of political and economic marginalization has left many indigenous peoples living in poverty with considerably lower levels of access to adequate food relative to the general population. Though the percentage of low income among Aboriginals living off-reserve declined in recent years, 21.7 per cent of Aboriginals fall below the low income cut-off after tax as defined by Statistics Canada, compared to 11.1 per cent for the non-Aboriginal population.⁵¹ Despite programmes such as the Canada Prenatal Nutrition Program (including a First Nations and Inuit component); Aboriginal Head Start (includes on-reserve and urban and northern component); the Aboriginal Diabetes Initiative; and Nutrition North Canada, discussed in greater detail below, research conducted by the University of Manitoba noted that in 2008-2009, nearly 60 per cent of First Nations

⁴⁸ Canadian Council for International Cooperation, "The Report to Parliament on the ODA Accountability Act: Third time lucky? A Review of the Third Report to Parliament on the Government of Canada's Official Development Assistance, 2010-2011," October 2011.

⁴⁹ The term First Nations in this context is used to refer to the Aboriginal peoples of Canada, both status and non-status.

⁵⁰ Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples, 12 November 2010, available from www.aadnc-aandc.gc.ca/eng/1309374239861

⁵¹ A. Noel and F. Larocque, "Aboriginal Peoples and Poverty in Canada: Can Provincial Governments Make a Difference?" Paper prepared for the Annual Meeting of the International Sociological Association Research Committee 19, Montréal, 20 August 2009, p. 5, http://www.cccg.umontreal.ca/RC19/PDF/Noel-A_Rc192009.pdf.

children in northern Manitoba households were food insecure.⁵² The Inuit Health Survey reported that 70 per cent of adults living in Nunavut were food insecure. This is six times higher than the national average and represents the highest documented food insecurity rate for any aboriginal population in a developed country.⁵³ Among off-reserve aboriginal households, approximately one in five households was food insecure, including 8.4 per cent severely food insecure.⁵⁴ These rates are three times higher than among non-aboriginal households, where 7.7 per cent were food insecure, including 2.5 per cent with severe food insecurity.⁵⁵ In March 2011, one in ten of the 851,014 who relied on food banks across Canada self-identified as an aboriginal person.⁵⁶

A. Nutrition North Canada

56. Families in remote and isolated indigenous communities frequently lack access to affordable nutritious foods, particularly perishables such as fruits, vegetables and meats, due to limited food selections, high food prices and poor quality of fresh produce. Expensive transport costs and difficult logistics (e.g. airfreight charges, and uncertainty of travel on winter roads, where they exist, or air travel subject to weather conditions), high poverty rates and a continuing decline in the use of traditional foods result in few healthy food choices.

57. Recognizing the importance of access to nutritious food in isolated communities in the North, the Government launched the Food Mail Program in the 1960s, providing federal subsidies to Canada Post for its direct costs of supplying food and other necessities through the mail service to Northern communities without year-round surface transportation. Concerns regarding the escalating costs of the Food Mail Program, as well as the programme's lack of transparency and the absence of any incentive for efficiency and innovation along the supply chain in the North, led to a series of reviews that resulted in its replacement with a programme called Nutrition North Canada in April 2011.

58. The objective of Nutrition North Canada is to improve access to perishable healthy foods in isolated Northern communities, which the Special Rapporteur welcomes. Yet, based on his observation of and information received about the programme, the Special Rapporteur also has concerns about its design and implementation. The Special Rapporteur visited God's River, Manto Sipi Cree and Wasagamack First Nations in Manitoba. He had the opportunity to visit a Northern Store (operated by the North West Company) to see first-hand the Nutrition North Canada programme in action.

59. Nutrition North Canada provides subsidies to retailers operating in NNC-eligible communities and to food suppliers operating in southern Canada. The subsidies are intended to be passed on to consumers through lower retail prices for eligible items. However, in the absence of adequate monitoring by those it is intended to benefit, it is

⁵² Children's Food Insecurity poster, http://home.cc.umanitoba.ca/~thompso4/Poster_CHILDRENfinalagconference.ppt.pdf.

⁵³ R. Rosol et al., "Prevalence of affirmative responses to questions for food insecurity: International Polar Year Inuit Health Survey, 2007-2008" and *International Journal of Circumpolar Health*, vol. 70, No. 5 (2011), pp. 488-497; G.M. Egeland, IPY Inuit Health Survey speaks to need to address inadequate housing, food insecurity and nutrition transition. *International Journal of Circumpolar Health*, vol. 70, No. 5 (2011), pp. 444-446.

⁵⁴ Health Canada, "Household Food Insecurity in Canada in 2007-2008: Key Statistics and Graphics", <http://www.hc-sc.gc.ca/fn-an/surveill/nutrition/commun/insecurit/key-stats-cles-2007-2008-eng.php#fn-np8>.

⁵⁵ Ibid.

⁵⁶ Food Banks Canada, "Hungercount 2011," p. 7, www.foodbankscanada.ca/hungercount.

unclear whether the programme is achieving its desired outcome.⁵⁷ The Government of Nunavut is currently taking measures to address this deficiency by designing a monitoring programme that should be operational in 2013, and involving Nunavummiut. The Special Rapporteur welcomes this development, as he considers the current arrangements inadequate. Nutrition North Canada currently publishes the subsidy per kilogram for each eligible community, but it does not require retailers to inform Aboriginal Affairs and Northern Development Canada or the public of their airfreight costs. As such, the federal Government has no way of verifying if the subsidy is being passed on, despite the obligation imposed on subsidy recipients to attest that they have complied with this requirement every time that they submit a subsidy claim, and the compliance reviews performed by independent auditors.

60. Questions were also raised regarding the eligibility criteria on which communities fall within the scope of the programme and which items are subsidized. Under Nutrition North Canada, 31 isolated northern communities that had been eligible under the Food Mail Program, allegedly became ineligible though they had not been relying on the programme in recent years. The Special Rapporteur is concerned that Nutrition North Canada was designed and is being implemented without an inclusive and transparent process that provides Northern communities with an opportunity to exercise their right to active and meaningful participation.

61. The Special Rapporteur recognizes that neither Nutrition North Canada nor the Food Mail Program could address other factors responsible for the high food costs in northern communities, such as the high cost of energy for heating and refrigeration, electricity generation, building construction, equipment maintenance, etc. Food costs remain higher in the North than elsewhere in Canada for legitimate reasons, but more needs to be done to improve the effectiveness of Nutrition North Canada. The Special Rapporteur welcomes the progress made in this direction. Aboriginal Affairs and Northern Development Canada recently released information showing that, on average, in communities eligible for a full subsidy, the cost of a healthy diet for a family of four was 8 percent lower in March 2012 under NNC than one year prior to the launch of the programme; on average, in communities eligible for the partial subsidy, the cost decreased by 2 per cent (in comparison, food prices elsewhere in Canada increased 2.2 per cent between March 2011 and March 2012).

B. Access to traditional/country foods

62. Indigenous peoples are also uniquely positioned with respect to food by virtue of their relationship with traditional lands and the natural resources therein, which is a central component of their identity. Accordingly, indigenous peoples are generally recognized as having broader rights to natural resources under international human rights law. They have the right to use natural resources as a means of supporting their cultural integrity through traditional economic activities, such as subsistence agriculture, hunting and fishing, as well as religious or spiritual activities.⁵⁸

⁵⁷ See for example, *Legislators across Canada's North work together on the Nutrition North Canada Program*, news release, 20 February 2012.

⁵⁸ International Covenant on Civil and Political Rights, art. 1, para. 2; International Covenant on Economic, Social and Cultural Rights, art. 1; United Nations Declaration on the Rights of Indigenous Peoples, art. 31, para.1; ILO Convention No. 169 (1989), art. 2, para. 2 (b); Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, paras. 36-37; CCPR/C/21/Rev.1/Add.5, para. 7. See also Communication No. 671/1995, *Jouni E. Lämsmäen et al. v. Finland*

63. Historically, indigenous peoples have had their own food systems, relying on traditional knowledge of hunting, fishing, trapping and gathering. According to the Manitoba First Nations Regional Health Survey (2008), approximately 85 per cent of First Nations adults sometimes or often had someone who shared traditional food (also known as “country” food) with their household. In 2006, 65 per cent of Inuit residing in Northern Canada were reported to live in households where at least half of the meat and fish consumed was country foods. A study involving Inuit adults found that diets contained significantly more vitamins A, D, E and B6, riboflavin, iron zinc, potassium and selenium, among others, on days when country food was consumed. These findings highlight the important relationship between access to country foods and health.

64. Although communities can, and often do, pursue a diet based on traditional/country foods, obtaining this is not without cost. Issues with accessing traditional foods include the impacts of climate change on migratory patterns of animals and on the mobility of those hunting them; limited availability of food flora and fauna; environmental contamination of species; flooding and development of traditional hunting and trapping territories; lack of equipment and resourcing to purchase equipment or inputs necessary for hunting, fishing and harvesting; and lack of requisite skills and time.

65. Many Aboriginal communities expressed concerns regarding federal government policies that have disrupted and, in some cases, devastated the traditional practices of indigenous people, including through removing control over land and natural resources. Access to country foods represents more than increased nutrition and physical accessibility; it also has significant cultural importance.

C. Access to land

66. Aboriginal and treaty rights are protected by section 35 of the Constitution Act (1982). The expression of those rights is outlined in various treaties and other agreements so as to clarify rights and responsibilities. But concerns have been expressed that the Government has sought to extinguish existing titles through negotiations and terms of modern land claims and self-government agreements, as well as through a narrow and reductionist reading of historical treaties, agreements and other constructive arrangements. Ongoing land claims across the country have implications for the right to food and access to country foods among aboriginal Canadians. Yet, under international law, indigenous peoples have the right to possess and control their traditional lands and resources. The Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples have the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired (art. 26, para. 1); the right to develop priorities and strategies for the development or use of their lands or territories and other resources (art. 31, para. 1); the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories, water and coastal seas (art. 25).⁵⁹ It also provides for States to provide effective mechanisms “for prevention of, and redress for...[a]ny action which has the aim or effect of dispossessing them of their lands, territories or resources” (art.8, para. 2 (b)).

67. The Special Rapporteur notes the existence of the Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, a Government policy document on aboriginal consultation and accommodation. In this context, he recalls that the Declaration establishes that, in general, consultations with

(CCPR/C/58/D/671/1995).

⁵⁹ See also ILO Convention No. 169 (1989), arts. 13-19.

indigenous peoples are to be carried out in “good faith ... in order to obtain their free, prior and informed consent” (art. 19). He believes that continued and concerted measures are needed to develop new initiatives and reform existing ones, in consultation and in real partnership with indigenous peoples with the goal towards strengthening indigenous peoples’ own self-determination and decision-making over their affairs at all levels.

68. The broad range of indigenous rights to possess and use natural resources as stated in the Declaration, extend beyond the scope of the mandate of the Special Rapporteur. Nevertheless, these rights do provide a point of reference for evaluating questions related to the availability, accessibility and adequacy (including cultural appropriateness) of food as well as non-discrimination.⁶⁰

IX. Conclusions and recommendations

69. **By recognizing access to sufficient and adequate food as a legal entitlement, the right to food provides an important tool for combating hunger and malnutrition. It protects the rights of people to live with dignity and ensures that all have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market. It imposes obligations on the State, requiring that individuals and communities have access to recourse mechanisms when these obligations are not met. The right to food also requires that States identify the hungry and malnourished by adequate food insecurity and vulnerability mapping, and that they adopt policies that remove the obstacles to its enjoyment by each individual. Consistent with this understanding of the right to food as a human right, the Special Rapporteur offers the following recommendations:**

(a) **Formulate a comprehensive rights-based national food strategy clearly delineating the responsibilities of public officials at the federal, provincial/territorial, and municipal/local levels, identifying the measures to be adopted and the associated time frames, and ensuring that initiatives adopted at municipal and provincial levels, particularly for the rebuilding of local food systems, are adequately supported; as part of this strategy, create a nationally funded children and food strategy (including school-feeding food literacy and school garden programmes) to ensure that all children, at all times, have access to healthy and nutritious food; launch the process of adoption of a framework law on the right to food, for the regular updating of the Canadian food strategy;**

(b) **Revise social assistance levels to correspond to the costs of basic necessities required to enjoy the human right to an adequate standard of living, establishing the market basket measure (MBM) as a federal guideline for provincial and territorial social assistance schemes; revise the system of housing benefits to ensure that the poorest families are not obliged to sacrifice food in order to pay for the non-compressible and non-divisible costs of housing; re-establish a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need,⁶¹ seeking inspiration from the success of the Old Age Security programme;**

⁶⁰ Indigenous peoples cannot be discriminated against in the exercise of their rights, embodied in, inter alia, the Convention on the Elimination of All Forms of Racial Discrimination, art. 5, and the United Nations Declaration on the Rights of Indigenous Peoples, art. 2. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 18.

⁶¹ E/C.12/CAN/CO/4-5, para. 40.

(c) Set the minimum wage as a living wage, as required under the International Covenant on Economic, Social and Cultural Rights and consistent with ILO Conventions No. 99 (1951) and No. 131 (1970), particularly as regards the requirement that the minimum wage should be fixed taking into consideration, inter alia, “the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;”⁶²

(d) Accord status to those Aboriginal peoples unrecognized as such under the Indian Act in order to enable all Aboriginal peoples to have access to land and water rights to which they are entitled; encourage the federal, provincial and territorial governments to meet, in good faith, with indigenous groups to discuss arrangements to ensure access to land, natural resources, Nutrition North Canada and the right to food, among others; accept the request of the Special Rapporteur on the rights of indigenous peoples to undertake an official country visit;

(e) In the organization of marketing for agricultural products, institute limits on the allowable size of an operation established with provincial marketing boards and place caps on the value of quotas, as done in Ontario, Québec and the Maritime provinces; consider creative ways to de-capitalize the quotas in order to ensure that supply management can also benefit farmers employing non-conventional (organic) methods, such as establishing separate quotas for speciality products, creating an exemption for direct marketing, or targeting speciality markets in allocating processing; and favour the entry of new farmers;

(f) Apply human rights criteria in reporting as per the 2008 ODA Accountability Act, and human rights norms and standards in determining international cooperation priorities and implementing programmes; take steps to ensure that Canada’s international policies do not have a negative impact on the realization of the right to food.

⁶² ILO Convention No. 131 (1970), art. 3 (a).