Commonification of food as an approach for the achievement of food security and the realisation of the right to food for all

*Nicholas Wasonga Orago**

Abstract

The commodification of food is one of the many causes of food insecurity as it occasions the inability of poor households to access the available food because of high prices and dysfunctional markets. A change of approach from commodification to commonification to deal with food insecurity at the national, regional and global level is the way to go. As commodification of food is a social construct adopted as a result of deliberate societal policy-making, commonification can similarly be adopted through legal and institutional design at the local, national and international levels; creating polycentric systems for the management of food-producing resources for the local communities. With commonification, decisions relating to the use of local resources for the production, processing, distribution and consumption of food are made at the local level, to ensure that other socio-economic and cultural aspects of food are considered in the decision-making processes. The integrated aspects of the right to food and food democracy are critical components of the commonification approach to food security.

* LLB (Nairobi), LLM (Pretoria), LLD (UWC). Lecturer, University of Nairobi, School of Law. This article was elaborated as part of the project 'Towards Food Sustainability: Reshaping the Coexistence of different Food Systems in South America and Africa' and was financed through the R4D research programme of the Swiss National Science Foundation and the Swiss Agency for Development and Cooperation.

Introduction

Food is fundamental to human survival and well-being.[1] However, increasingly, many people in the world are unable to access adequate food to meet their basic nutritional, dietary and lifestyle needs. Data indicates that globally, about 795 million people do not have access to adequate food to lead healthy and active lives, which translates to about 1 in 9 people in the world.[2] The situation is especially dire for children who are the face of world hunger, with over 3.1 million child deaths annually resulting from hunger-related stunting, wasting and micro-nutrient deficiencies.[3] This situation was exacerbated by the world food and economic crises of 2007-2008 that pushed approximately 153 million people into destitution and food insecurity, with the result that over 948 million people were undernourished in 2008.[4]

The majority of the undernourished people live in developing countries (mainly in Asia and Sub-Saharan Africa (SSA)),[5] with data indicating the number as 780 million, representing 1 in 8 people; with 11 million under-nourished children.[6] The dire food poverty and hunger situation in SSA are affirmed by data indicating that at least 1 in 4 people is perennially undernourished.[7] Data further indicates that more than a quarter of the world's chronically undernourished live in SSA (220 million people in 2016 from 175.7 in 1992),[8] with the number of

1 Vivero documents food as a basic human need, a fundamental human right as well as a foundational pillar of culture and civilization. See Vivero L, 'Food as a commons: Reframing the narrative of the food system' *Catholic University of Louvain*, 2013.

2 FAO, IFAD and WFP, *The state of food insecurity in the world 2014: Strengthening the enabling environment for food security and nutrition*, Food and Agriculture Organisation of the United Nations, Rome, 2014, 4 and 8.

3 Hunger Notes, '2016 World Hunger And Poverty Facts and Statistics.' The data states that globally in 2013, 161 million under-five year olds were estimated to be stunted, with over a third of these being in SSA; 51 million under-five year olds were wasted and 17 million were severely wasted, with SSA similarly accounting for a third of this population.

4 Vivero L, 'Food as a commons: Reframing the narrative of the food system', 3.

5 FAO, IFAD and WFP, *The state of food insecurity in the world 2014: Strengthening the enabling environment for food security and nutrition*, 9.

6 Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics.'

7 FAO, IFAD and WFP, *The state of food insecurity in the world 2014: Strengthening the enabling environment for food security and nutrition*, 9. Hunger Notes Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics', confirms that hunger prevalence in SSA is the highest as compared to any other region of the world.

8 Mahon states that SSA has approximately 265 million undernourished people, which is about 32percent of the entire population of SSA. She states that this is the highest level of undernourishment in a region relative to population size. See Mahon C 'The right to food: A right for everyone' in Rosin C, Stock P and Campbell H (eds), *Food systems failure: The global food crisis and the future of agriculture*, Earterscan, London and New York, 2011, 83.

hungry people increasing by over 44.3 million people since 1990 - 1992.[9] The food security situation in this region has scarcely improved over the years; with data indicating that the total number of chronically underfed has consistently increased from 176.0 million in 1990 - 1992, 202.5 million in 2000 - 2002, 205.3 million in 2005 - 2007, 211.2 million in 2008 - 2010 and 220.0 million in 2012 - 2014.[10] The result of this is that SSA failed to meet the two world hunger targets by the stated date of 2015 – the Millennium Development Goal to halve the proportion of hungry people by 2015; and the 1996 World Food Summit target to halve the proportion of undernourished people by 2015.[11]

Kenya has not been spared the dire food insecurity situation that is experienced by the other SSA countries, with the Food and Agricultural Organisation (FAO) marking it as a country vulnerable to food insecurity.[12] In 2007/2008, approximately 51% of Kenyans lacked access to adequate food.[13] This is congruent with the poverty levels in the country, with the number of people living below the poverty line of US$1 a day increasing from 11 million (48% of the population) in 1990 to 17 million people (57% of the population) in 2001.[14] In this period, over 10 million people were suffering from chronic food insecurity and poor nutrition, with between 2 - 4 million people needing emergency food assistance.[15] Children were heavily affected, with 30% of children nationally (approximately 1.8 million children) being classified as chronically undernourished.[16] The period between 2008/2009 and 2016/2017 has seen increasing and volatile food prices in Kenya, dragging more households into food poverty, as majority of Kenyans are net food buyers for whom between 60 - 80% of consumer spending is on food.[17] A rise of 40% in food prices means that the food vulnerable population in Kenya has to spend almost their entire income on food acquisition or engage in unhealthy coping practices, generating multi-dimensional poverty.

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9 FAO, IFAD and WFP, *The state of food insecurity in the world 2014*, 12. Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics', para 5.

10 FAO, IFAD & WFP, *The state of food insecurity in the world 2014*, 8. Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics'.

11 Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics'.

12 Mahon C, 'The right to food: A right for everyone', 84.

13 Bahemuka J, 'Food Security in Kenya: Presentation on food situation in Kenya and measures the government is pursuing to address the problem and achieve food security for the country both in the short and long term', 7-8.

14 Emongor R, 'Food price crisis and food insecurity in Kenya', Kenya Agricultural Research Institute, 9.

15 Emongor R, 'Food price crisis and food insecurity in Kenya', 6.

16 Emongor R, 'Food price crisis and food insecurity in Kenya', 6.

17 Mahon C, 'The right to food: A right for everyone', 84.

The meteoric rise of basic food prices is exemplified by the rise in the price of maize flour, Kenya's staple food, which doubled from the price of around Kshs 100 to around Kshs 200 in less than five months. In the context of rising maize flour prices, maize millers have been recording increased profits of upwards of 30%, a clear reflection of market manipulation by businessmen to the detriment of ordinary Kenyans.[18] Evidence of market manipulation for profits is further exemplified by the maize flour scarcity that resulted from Government's subsidy effort to reduce the prices of maize flour to Kshs 90, with Kenyan supermarket shelves lacking the staple commodity. This reflects the dangers of current commoditisation of food to the achievement of household food security, with unscrupulous businesspersons manipulating the food market for personal or corporate profits to the detriment of vulnerable households and populations.

Though the food insecurity situation has many causes, the major one is the inability of poor households to access the available food because of high prices and dysfunctional markets. The high food prices has mainly resulted from the treatment of food as a commodity to be bought and sold in the open market, with food traders and corporations hiking food prices to maximise on profits. [19] The commoditisation of food and its impact on access to food is the main focus of this article, which suggests a change of approach from commodification to commonification to deal with food insecurity at the national, regional and global level. The paper is divided into six interrelated sections. After this introduction, section two looks at the challenges of commoditisation of food and proposes commonification as an alternative system of food dealing that responds to the problem of world hunger. Section three delves deeper into commoditisation and the adverse impacts it has on access to food for all. Section four then elaborates on the different aspects of commonification as an alternative to the commodification of food, teasing out the integrated aspects of the right to food and food democracy as critical components of commonification. Section five analyses food as a common pool resource, detailing the nature and characteristics of common pool resources and the management systems that have to be put in place to ensure that they work effectively. Section six entails a short conclusion of the article.

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[18] Peralta E, 'Price of corn, a Kenyan staple, soars', National Public Radio (npr), 4 June 2017 -<http://www.npr.org/2017/06/04/531444392/price-of-corn-a-kenyan-staple-soars> on 17 March 2020.

[19] The view of food as a commodity has basically entrenched privatisation of ownership and management of national and international food systems on the basis that privatisation increases efficiency and delivery of food to those who are most in need, the poor, vulnerable, marginalised and excluded populations.

Commoditisation as a contributing factor to world hunger and commonification as a response

In the context of this huge hunger challenge, it has been acknowledged that hunger is not a result of inadequate production of food, as research indicates that food production has outpaced demand globally.[20] Data indicates that per capita food availability had risen from about 2220 kcal/person/day in the early 1960s to 2790 kcal/person/day in 2006 - 08, with developing countries recording a leap from 1850 kcal/person/day to over 2640 kcal/person/day.[21] This per capita food production has further increased to edible food harvest of 4600 kcal/person/day by 2013, enough to feed a global population of 12 - 14 billion.[22] Food consumption is, however, skewed in favour of the wealthy, with the billion richest people in the world consuming 72% of the produced food, while the 1.2 billion poorest people in the world consume a paltry 1% of the world food.[23] The bane of world hunger and undernourishment is thus a challenge of access (affordability), as the majority of the undernourished are unable to access the available food because of entrenched poverty, inequality and destitution.[24]

The poverty and inequality challenge to food access is exacerbated by harmful global economic and political systems that concentrate the control of production resources in the hands of a few political and socio-economic elite to the detriment of the majority populations that are left in destitution.[25] This skewed global economic system is exemplified by the problem of privatisation and commoditisation of food, with food being considered 'as a private good that

[20] In 2010, Shattuck and Holt-Giménez, wrote that food production had risen steadily at 2 percent annually in the last 20 years and that food production had outpaced food demand globally, but there were still over a billion people in the world who did not have access to adequate food. See Shattuck A and Holt- Giménez E, 'Moving from food crisis to food sovereignty' 13(2) *Yale Human Rights and Development Law Journal*, 2010, 422.

[21] Hunger Notes, '2016 World Hunger and Poverty Facts and Statistics'.

[22] Vivero L, 'Transition towards a food commons regime: Re-commoning food to crowd-feed the world' *Catholic University of Louvain*, 2015, 4. Most of this was, however, wasted or converted to animal feeds or for the production of bio-fuels.

[23] Vivero L, 'Transition towards a food commons regime: Re-commoning food to crowd-feed the world', 5.

[24] Vivero noted that the food system in 2015 failed to fulfill its objective, which was feeding the entire world populace in a sustainable way and eliminating hunger. He called for the re-invention of food security approaches to enhance access to food for all. See Vivero L, 'Food as a commons: Reframing the narrative of the food system', 3.

[25] See Vivero L, 'Transition towards a food commons regime', 9-10, where he documents the advent of the enclosure of the commons, a process that was started by political elites, to the detriment of the common citizens. This process was introduced into colonies by Western colonialists, with the justification that communal ownership of means of production was an obstacle to economic growth.

is produced by private means and traded in the market.'[26] Charles Pouncy elaborates on the commoditisation of food as follows:[27]

> The processes of food production, distribution and consumption have become market processes and as a result, the ability to meet one's nutritional needs is a function of the ability to pay the price that the globalized food market has established for the commodities we consume as food.

The consequence of commoditisation has been the monopolisation of international and national food systems by a few for-profit agri-business corporations and businesses as well as the subordination of peoples and societies.[28] The subordination has been attained through the employment of economic policies based on neoclassical economic theories and instrumentalities that have been used to perpetuate the hegemonic powers of the food multinationals.[29] As a result, market rules and purchasing power have become the main forces in determining access to food, with the exclusion mechanisms of property rights, patents and profit-based market pricing being the determinants of access.[30] This has been achieved despite the presence of laws governing unfair competition, restraint on trade, monopolies, anti-dumping and countervailing measures,[31] among others. [32] The scrupulous enforcement of these measures would have been expected to cushion communities in developing States against the adverse impacts of commoditisation, but they have not been enforced, especially in developing countries due to the hegemonic power of the international food corporations and the support they receive from their developed mother States. As a result, commoditisation continues unabated, entrenching world hunger and destitution for smallholder farmers, farm labourers and the rural-urban migrating

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26 Vivero L, 'Food as a commons: Reframing the narrative of the food system', 5.

27 Pouncy C, 'Food, globalism and theory: Marxian and institutionalist insights into the global food systems' 43(1) *University of Miami Inter-American Law Review*, 2011, 89-90.

28 Pouncy C, 'Food, globalism and theory: Marxian and institutionalist insights into the global food systems', 90. See also *General Comment No 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, para 5, which affirms that the fundamental roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia, because of poverty by large segments of the world's population.

29 Pouncy C, 'Food, globalism and theory', 90.

30 Vivero L, 'Food as a commons: Reframing the narrative of the food system', 5. Pouncy C, 'Food, globalism and theory', 90.

31 See Article 3, *Agreement on Subsidies and Countervailing Measures* (1994) that subjects the prohibition of subsidies on the agreement on agriculture, giving developed countries a lot of leeway to maintain forms of agricultural production and export subsidies that have led to dumping of subsidised agricultural products in the liberalised markets of developing countries, to the detriment of smallholder farmers and farm labourers.

32 Pouncy C, 'Food, globalism and theory', 112.

informal urban dwellers. The challenge of commoditisation in entrenching world hunger is affirmed by Action against Hunger who states that 'many poor people around the world do not get enough to eat because food production is geared to cash payment.'[33] The truth of this statement was further acknowledged and simplified by the first Special Rapporteur on the Right to Food, Jean Zeigler, as follows: 'those who have money eat, and those without suffer from hunger and the ensuing disabilities, and often die'.[34]

The challenge of commoditisation of food has conspired to out-price the poor from access to the available food stocks. How can this challenge be dealt with effectively to ensure that the hungry have access to food at the household level and that food security and the right to food is realised at the national and international levels? Any response to world hunger, especially in SSA countries like Kenya, must be based on the characteristics of hunger as a problem of access due to the lack of purchasing power of the poor and destitute in these parts of the world. Research indicates that these hungry people with no purchasing power to access food mostly live in the rural areas, where 80% of the households depend on smallholder agriculture or wage labour in agricultural value chains for their livelihoods.[35] The destitution in the rural areas has led to rural-urban migration in search of employment opportunities for survival, a factor that has exacerbated urban hunger, especially in informal urban settlements. Efforts to respond to hunger and food insecurity must thus concentrate on building the purchasing power of these food insecure populations, especially the smallholder farmers and urban informal dwellers. This can be done by empowering these vulnerable groups and building their capacity to democratically govern food production, processing and consumption in their local food systems. Further, efforts should be made to increase opportunities for alternative employment, and improved terms of employment, for agricultural labourers and other food insecure groups.[36] According to Olivier de Schutter, the Second Special Rapporteur on the Right to Food, in reforming the current food systems to realise the right to food,

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33 *Report by the Special Rapporteur on the right to food, Mr Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10*, E/CN.4/2001/53, para 6.

34 *Report by the Special Rapporteur on the right to food, Mr Jean Ziegler*, para 6.

35 *Report of the special rapporteur on the right to food, De Schutter O*, 8 September 2008, A/HRC/9/23, para 5. See also, Vivero who affirmed that in 2015, 70 percent of the hungry in the world were smallholder farmers or farm labourers. Vivero L, 'Transition towards a food commons regime', 3.

36 *Report of the special rapporteur on the right to food, De Schutter O*, para 5. The report states that, at that time, there were over 500 million smallholder households totalling to around 1.5 billion people as well as over 450 million people informally employed in agriculture. Both groups were food insecure. De Schutter proposes that any efforts at dealing with hunger and malnutrition must respond to the situation of these categories of food insecure people.

the question should not only be how to produce more, but also who should be the main beneficiary of the increased production.[37] He contends that conscious decisions have to be made on how to invest in improving agricultural production so as to direct funding and investments for food production to smallholder farmers who are most in need of the support; and where the impact on poverty reduction and the promotion of sustainable agriculture will be greatest.[38]

Any alternative approach for achieving food security and realising the right to food must take these concerns into account. It must be geared towards enhancing the livelihoods of the most food insecure, especially rural smallholder farmers, those informally employed in the agricultural sector and those in informal urban settlements.[39] On this basis, the paper proposes that a possible solution to the conundrum of hunger globally can be the categorisation of food as a common-pool resource ('commonification'), similar to resources such as inshore fisheries, forests, water and knowledge.[40] The categorisation of food as a common-pool resource would entail its declassification as a commodity to be bought and sold in a liberal market system and its subsequent recognition as an asset to humankind that should be managed sustainably for the common good of all.[41]

But is this possible? It has been argued that property rights, the excludability tool that has been used to categorise food as a private commodity to be bought/sold in liberalised open markets, is a social construct reflective of the deliberate choices of the political and socio-economic elite in relation to food resources.[42] Further, from being a social construct, commoditisation of food,

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37 *Report of the special rapporteur on the right to food, De Schutter O*, para 8.

38 *Report of the special rapporteur on the right to food, De Schutter O*, para 8. The need to radically transform agricultural production to achieve food, social and environmental sustainability through investment in smallholder agriculture and the establishment of localised food systems was affirmed by the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), which concluded that 'the way the world grows its food will have to change radically to better serve the poor and hungry if the world is to cope with a growing population and climate change while avoiding social breakdown and environmental collapse.' See *Report of the special rapporteur on the right to food, De Schutter O*, para 9.

39 See Pouncy C, 'Food, globalism and theory', 112. Pouncy argues that food production, processing and consumption institutions must be re-centred at the local levels where access to food is based on nutritional needs and cultural understandings of a community and not the profit focus of the modernist industrial agri-food institutions.

40 The idea of food being categorised as a common-pool resource or 'commonification of food' was introduced by Jose Luis Vivero Pol. His aspiration for commonification is the transition to a more sustainable, fairer and farmer-centered food system. See Vivero L, 'Food as a commons: Reframing the narrative of the food system'. See also Vivero L, 'Transition towards a food commons regime'.

41 Vivero L, 'Transition towards a food commons regime', 5.

42 Vivero L, 'Transition towards a food commons regime',10.

as we know it today - with dominant industrial corporate food systems - is not antiquated, but a recent construct gaining currency in the 20th Century.[43] The categorisation of food as a commodity is thus not immutable, but can be changed by society to enhance the common good of the majority in society, a process that can be achieved through the re-classification of food as a common-pool resource. Vivero Pol affirms this as follows:[44]

> Features of food as a private good are merely social constructs that can be de-constructed and re-constructed in a different way provided there is a common agreement within our societies. The commodification process can be reversed and a re-commonification of food and water is deemed an essential paradigm shift in light of the global fight against hunger and malnutrition.

How can this be achieved? It is argued here that this can be done through deliberate societal policy choices of adopting a commonified approach to food production and consumption that prioritises local level democratic governance and control of the food production resources. This can be seen in the ideology behind the creation of the Toronto Food Policy Council (TFPC), which is stated by Neva Hassanein as follows:[45]

> Formed in 1990, the TFPC challenged the traditional assumption that hunger, poor nutrition, and environmental problems associated with agriculture can be adequately addressed without significant redesign of the food system. The TFPC recognized that long-lasting, local solutions necessitate moving beyond the limiting notions of food as commodity, people as consumers, and society as marketplace.

Commonification, as a system calling for a significant redesign of the current food system, thus requires the restructuring of international food systems through the development of polycentric and interlinked systems of food governance at the international, regional, national and local levels. This restructuring should ensure that local communities have the democratic right to manage the food producing resources in their locations in a way that sustainably meets the food needs of their current populations as well as ensure intergenerational equity in the utilisation of food producing resources, as is discussed in sections 4 and 5 below. Commonification, as a strategy for enhancing food and nutrition security internationally, is in line with the proposal of de Schutter, who advocated for the establishment of a new global partnership for agriculture and food which is

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43 Vivero L, 'Food as a commons: Reframing the narrative of the food system', 11.

44 Vivero L, 'Food as a commons: Reframing the narrative of the food system, 15.

45 Hassanein N, 'Practicing food democracy: A pragmatic politics of transformation' 19 *Journal of Rural Studies*, 2003, 79-80.

focused on those who are most food insecure and is aimed not only at increasing the control of food production resources at the local level, but also ensuring household food and nutrition security.[46]

Commoditisation of food and its impact on food security and the right to food

Understanding commoditisation of food as a modernist approach to food security

Globalisation and liberalisation have entrenched the general view of food as a commodity to be bought and sold on a willing-buyer-willing-seller basis, with the liberalised free markets becoming the main allocation mechanisms for the achievement of food security in many countries. The basis of this approach is for developing countries to focus on production of high-value agricultural products for export – which are basically non-food such as cut flowers – and then rely on the international markets for their food imports based on the earned foreign currencies.[47] The commoditisation of food has led to the growth of the modernist development agenda which states that the best way to achieve food security and realise the right to food for all is through increased food production internationally, with support being given to mechanised mass production, processing and distribution of food products.[48] This modernist system of dealing in food has generated speculation resulting in the privatisation, commercialisation and corporatisation of the global food networks with few for-profit agri-business corporations controlling the majority of the food systems internationally and nationally.[49] The modernist approach to food security has led to the annihilation of the traditional food systems and the creation of a new conceptual framework

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46 *Report of the special rapporteur on the right to food, De Schutter O*, paras. 48-52.

47 *Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler*. According to Jean Ziegler, this approach has not worked for the following reasons: many developing countries have struggled to get the necessary foreign currency from high value for export crops due to low international market prices; the international market has not developed automatic measures to help countries without sufficient currency to buy import foods from the international market; international trade regimes have not put in place measures to protect local smallholder farmers from competition from subsidised cheap food products from developed countries; and the international food system has been captured by unscrupulous for-profit agri-business corporations who buy cheaply from producers and sell at exorbitant prices to consumers, with adverse impact to food security.

48 Misselhorn A, Ericksen P, Gregory P and Aggarwal PK, 'A vision for attaining food security' 4(1) *Current Opinion in Environmental Sustainability*, 2012, 7.

49 Wittman H, 'Food sovereignty: A new rights framework for food and nature?' 2 *Environments and Society: Advances in Research*, 2011, 90.

for the liberalisation (neo-liberalisation) of the food sector. This has been done through the reform of food management institutions (laws, policies, norms and customs by which food resources are governed), organisations (collective social entities that govern food resource use) and governance structures (the processes through which organisations enact management institutions) as is elaborated on the table below.[50]

Category	Target of reform	Type of reform
Resource management institutions	Property rights	Privatisation (enclosure of the commons)
	Regulatory framework	De-regulation (cessation of direct State oversight over food systems – production, processing, distribution and quality)
Resource management organisations	Asset management	Private sector management (complete control of food systems by the private sector)
	Organisational structure	Corporatisation (conversion of food production models from State-supported smallholder farmers to private corporations with funding from private/public financial institutions)
Resource governance	Resource allocation	Marketisation (introduction of liberal food markets where access depends on purchasing power of individuals or households and not their needs)
	Performance incentives/sanctions	Commercialisation (introduction of commercial principles such as full cost recovery, monopolisation and profiteering)
	User participation	Users viewed as customers and not active citizens who have a right to participate in the collective governance of the food systems. Minimal participation (no opportunities for collective self-governance in relation to food system policies, food production choices, quality control etc.).

Resource management reforms under the modernist approach to food security, table adapted from Karen Baker – The 'commons' v the 'commodity'.[51]

[50] Baker K, 'The 'commons' v the 'commodity': After-globalisation, anti-privatisation and human rights to water in the Global South' in Newell P and Roberts T (eds), *The globalisation and environment reader*, John Wiley and Sons Ltd, Sussex, 2017, 434.

[51] Baker K, 'The 'commons' v the 'commodity': After-globalisation, anti-privatisation and human rights to water in the Global South', 435.

The basis for this reform of the food resource institutions, organisations and governance structures has been to achieve maximum economic efficiency in the production, processing, distribution and consumption of food. The undue focus on market efficiency has, however, detracted from other important functions of an optimum food system which should also take into account crucial social goals such as fairness, stability, social peace, voice and inclusivity, liberty, long-term resilience and adaptability.[52] Pol captures this as follows:[53]

> Under the combined effect of changing lifestyles and the concentration and liberalisation of the food industry, the mass industrial food model, which is becoming dominant, is increasingly failing to satisfy the sustainability criteria that should characterise the global food systems, namely producing food for all in an economically and socially fair way, while preserving the environment, promoting healthy diets and maintaining cultural diversity.

Due to the failure of the modernist approach to take into account these important social goals, it has constrained the ability of the international community to eliminate hunger, achieve food security and realise the right to food for all. This is especially so for the destitute, vulnerable and marginalised individuals and households in the Global South who do not have sufficient resources to access the food available in the liberalised international market. The challenges of the modernist approach to the achievement of food security and the realisation of the right to food are briefly discussed herein below.

The impact of commoditisation on food security and the realisation of the right to food

The first resulting effect of the modernist approach is the dumping of subsidised cheap food products from the Global North into the liberalised markets in the Global South.[54] The consequence of this phenomenon has been unfair

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[52] Ostrom E, Chang C, Penningon M and Tarko V, *The future of the commons: Beyond market failure and government regulation*, Institute of Economic Affairs, London, 2012, 50.

[53] Vivero L, 'Food as a commons', 5. See also Vivero L, 'Transition towards a food commons regime', 5-6.

[54] The agri-business corporation buy food products in the developed countries at below production costs (due to subsidisation and price support to farmers by the governments of developed countries), then transport the same to developing countries and sell it at a price cheaper than the cost of production in the developing country markets, undercutting the local farmers and thus driving the local farmers from the market, with adverse consequences to their livelihoods. A case in point is the importation of cheap sugar from Brazil and other countries that has seen the Kenyan sugar industry struggle to compete, with adverse consequences to sugarcane farmers and the sugar industries themselves. *The right to food – CHR Special Rapporteur (Ziegler) preliminary report under CHR/RES/2001/25*, paras. 79-80. Edelman M, Weis T, Baviskar A, Borras Jr SM, Holt-Giménez E, Kandiyoti D, Wolford W, 'Introduction: Critical perspectives on food sovereignty' 41(6) *Journal of Peasant Studies*, 2014, 915, 917.

competitive practices that have seriously distorted these markets, driving smallholder farmers in the Global South out of the food market. This has led to the destruction of the sources of livelihood for these smallholder farmers and, coupled with lack of alternative sources of livelihood, has deepened food poverty and destitution among the agriculture-dependent rural communities in the Global South. The effect of subsidisation on food production in the Global South has been exacerbated by the skewed (unfair) agricultural trade policies of the World Trade Organisation (WTO)[55] as well as the imbalanced Free Trade Agreements (FTAs) that developing countries in the Global South have been coerced to sign at the pains of missing out on official development assistance.[56] The unfair international trade regime has thus disadvantaged developing countries by allowing developed countries to subsidise agricultural production while stifling any such venture by governments of developing countries.[57]

Further, rules and directives from trade (WTO) and international financial institutions (World Bank and IMF)[58] have ensured that developing countries have, in the most instances, not been able to legally adopt trade-restricting food security measures to protect vulnerable local smallholder farmers from unfair competition by the dominant agri-business corporations.[59] In relation to the WTO, its Agreement on Agriculture and its proposed Draft Modalities in Agriculture that deal directly with food security are ambiguous, highly complex and are open to

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55 *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, para 3, details seven major obstacles to the realisation of the right to food, some of which are: Agricultural policies of developed countries sanctioned by the WTO which perpetuate hunger in the Global South; foreign debt which had been exacerbated by the IMF's structural adjustment programmes; development of bio-technology leading to patenting of seeds which has hampered access to food.

56 Shattuck A and Holt-Giménez E, 'Moving from food crisis to food sovereignty', 428.

57 Pouncy C, 'Food, globalism and theory', 97.

58 See Pouncy C, 'Food, globalism and theory', 98-99. Pouncy points to debt-restructuring macroeconomic policies adopted as conditionalities or structural adjustments by IMF and the World Bank respectively as part of the 'Washington Consensus.' The essence of these policies were promotion of savings through the reduction of social spending, adoption of policies to encourage foreign direct investments such as stringent protection of property rights, including intellectual property, free markets, unrestrained capital mobility, privatisation, currency devaluation and the adoption of austerity measures generally. These measures impacted negatively on most economies, entrenching poverty and reducing food production for domestic markets.

59 For an elaborate analysis of food subsidisation in developed countries and its adverse impact on development in developing countries, see Greed D and Griffith M, 'Dumping on the poor: The common agricultural policy, the WTO and international development' CAFOD, September 2002 -http://www.iatp.org/files/Dumping_on_the_Poor_The_Common_Agricultural_Po.htm. on 2 March 2020. Action Aid, *Farmgate: The developmental impact of agricultural subsidies*, 2002.

considerable interpretation.[60] This makes it difficult for low-income states with limited technical and legal knowledge and expertise of the multi-lateral trading system to harness their food security flexibilities to protect local food production from adverse competition from subsidised cheap food imports.[61] At the normative level in the context of food security, De Schutter contends that these WTO rules limit developing countries in the following five critical contexts: State reinvestment in agriculture and general support schemes to smallholder farmers; development of social safety-nets and the provision of income-insurance to rural and urban poor to combat food poverty; the establishment of food reserves at the national and regional levels to cushion nations from food price shocks; the establishment of mechanisms for orderly food market management to combat food market volatility; and the adoption of national production/supply mechanisms to limit reliance on international trade in the pursuit of food security.[62] He calls for the alignment of the WTO agricultural trade regime and the international regimes for the realisation of food security through the reformation of these WTO rules to achieve the above-stated objectives for the realisation of food security in developing countries.[63] The impact of the WTO rules on food security have been exacerbated by policies and practices of the international financial institutions that advocate production comparative advantages, liberalisation of markets, limited social spending as was envisaged in the structural adjustment programmes as well as intellectual property protections that have led to the growth of few food multinational corporations that have commoditised food to the detriment of the poor and vulnerable sections of society.[64] The debilitating effects of liberalisation, skewed international trade and dumping of subsidised products in the Global South has led to proposals by these countries for a review of the WTO Agreement on Agriculture to have a 'food security box'.[65] These would entail exemptions that recognise the Global South's food security situation and its link with national security; and which then allows these countries the necessary autonomy to put in place measures to protect the production of their

60 De Schutter O, *The World Trade Organisation and the post-global food crisis agenda: Putting food security first in the international trade system*, Activity Report-November 2011, 3.

61 De Schutter O*, The World Trade Organisation and the post-global food crisis agenda*, 3. De Schutter argues that due to the ambiguity and the risk averse nature of policy-makers, these countries are unlikely to undertake policy initiatives in the gray areas of WTO law for fear of punitive counter-measures resulting from litigation at the WTO Dispute Settlement Body.

62 De Schutter O, *The World Trade Organisation and the post-global food crisis agenda*, 4.

63 De Schutter O, *The World Trade Organisation and the post-global food crisis agenda*, 4.

64 Gonzalez C, 'Markets, monoculture and malnutrition: Agricultural trade policy through an environmental justice lens' 14 *Michigan State Journal of International Law*, 2006, 369-370.

65 *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, para 85.

staple foods.[66] The 'food security box' exemption proposal is aimed at achieving the following objectives:[67]

(a) To protect and enhance developing countries' domestic food production capacity, in particular in key staples;

(b) To increase food security and food accessibility for all, especially the poorest;

(c) To provide or at least sustain existing employment for the rural poor;

(d) To protect farmers who are already producing an adequate supply of key agricultural products from the onslaught of cheap imports;

(e) To ensure flexibility to provide the necessary supports to small farmers, especially in terms of increasing their production capacity and competitiveness; and,

(f) To stop the dumping of cheap subsidised imports on developing countries' markets.

Though these measures would have enhanced food security in developing countries and led to the realisation of the right to food for all in the Global South, they have been opposed by the developed world. As a result, many countries in the Global South continue to remain food insecure without any flexibility within the WTO that they can use to protect their markets from dumping; leading to increased hunger and starvation.

Secondly, the modernist focus on mechanisation/industrialisation of agriculture and the use of oil-based inputs (inorganic fertilizers and pesticides) have led to increased consumption of fossil fuels, with the result that more calories of fossil fuels are used to produce an equivalent calorie content of food products (10kcl of fossil fuel to produce 1kcl of food).[68] Fossil fuels are further expended in the distribution of produced foods over long distances from points of production, with the result that high oil prices increase the cost of production and distribution of food leading to higher food prices.[69] This has further had adverse consequences to the environment due to the emission of greenhouse gases that have led to global warming and its attendant erratic weather patterns.[70] This eventuality has further threatened the agricultural livelihoods of smallholder farmers in developing countries who rely on rain-fed agriculture that has been

66 *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, para 85.

67 *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, paras. 85 & 86.

68 Vivero L, 'Transition towards a food commons regime', 3-4.

69 Edelman M *et al*, 'Introduction: Critical perspectives on food sovereignty', 915. Mahon C, 'The right to food: A right for everyone', 90-91.

70 Vivero L, 'Transition towards a food commons regime', 5. According to Vivero, the modernist food production system has become the major driving force of environmental degradation, unsustainable freshwater use and bio-diversity loss and is further responsible for 30-35percent of the greenhouse gas emissions that cause global warming.

adversely affected by global-warming-induced droughts and other related natural disasters.[71]

The third challenge of the modernist approach, which entails mass production and transfer of food over long distances, is food wastage.[72] It is estimated that 1.6 Gtonnes of the 6 Gtonnes of food produced annually is wasted; with the economic costs of the wasted food estimated at $750 billion annually – equivalent to the GDP of Switzerland.[73] This wasted food is estimated to be sufficient to feed over 600 million of the 868 million hungry people in the world.[74] Research indicates that in the food life cycle, food wastage is experienced the most in the process of post-harvest handling and storage (54% of total wastage) and in transportation and distribution (46%).[75] This means that the more the need to process, store, transport and distribute food over long distances - a critical component of the modernist approach to food security - the more probable the food will be wasted.[76] Food wastage has adverse impacts on food security and the realisation of the right to food as it reduces the mass and quality of food available for consumption. It also has adverse consequences to other factors of food production such as high carbon[77] and water footprints,[78] nutrient degradation of lands

71 Edelman M *et al,* 'Introduction: Critical perspectives on food sovereignty', 915.

72 The term 'wastage' encompasses food loss in terms of decrease in mass or nutritional value as well as food waste which entails the discarding of food appropriate for human consumption after it has been left to spoil or beyond its expiry date. See FAO, *Food wastage footprint: Impacts on natural resources – Summary report*, 2013, 8-9.

73 FAO, *Food wastage footprint: Impacts on natural resources*, 6.

74 Vivero L, 'Food as a commons', 2-3.

75 See FAO, *Food wastage footprint*, 12. The report shows that agricultural production only accounts for 33percent of wastage. They further state that wastage in postharvest handling and storage, transportation and distribution is highest in high and middle-income countries, at 31-39percent as compared to low-income countries where food security is more precarious, where wastage is only between 4-16percent.

76 FAO, *Food wastage footprint*, 10.

77 Food wastage is the third highest greenhouse gas emitter in the world after the United States and China, with cereals contributing 34percent, meat at 21percent and vegetables at 21 percent. The high carbon footprint is majorly due to the use of fuel-based inputs such as fertilizers and pesticides as well as the use of fuel-based farm implements for agricultural production operations, processing, transportation and distribution – a system of production advocated by the modernist approach to food security. See FAO, *Food wastage footprint*, 17-20.

78 Food wastage accounts for about 250km^3 of irrigation water for food production, which is 38 times the water usage of United States' households or three times the volumes of Lake Geneva. Again, heavy usage of water for agricultural irrigation is most representative of the modernist approaches to food production. Cereals account for 52percent of water footprints while fruits account for 18percent. See FAO, 'Food wastage footprint', 27.

for food production[79] and loss of bio-diversity.[80] Experienced over time, these factors hinder the establishment of sustainable food systems locally, nationally and internationally; with adverse impact to intergenerational food security.

Fourthly, the modernist approach has led to the phenomenon of modern land grabbing.[81] This phenomenon has resulted in huge tracts of arable land in developing countries being acquired by foreign States and trans-national corporations (TNCs) for the production of agricultural products for export (coffee, tea, cut flowers) at the expense of food crops; the production of energy crops for the bio-fuels industry; as well as the production of food crops for export to feed the populace in developed investor countries.[82] The consequence of this foreign and corporate colonisation has been the loss of land by peasant farmers, with adverse consequences to their livelihoods and ability to access (afford) food for themselves and their families. This phenomenon has resulted in severe land and social inequalities for smallholder farmers and pastoralist communities who have adversely suffered from its effect as they have lost access to land and other means of food production and livelihood support.[83]

The fifth impact of the modernist approach has been the adverse health impacts that it has created through undernutrition and malnutrition. Research shows the catastrophic health impacts of undernutrition or malnutrition, with an estimated 2.3 billion people globally suffering from diet-related chronic diseas-

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79 When agricultural land (a limited natural resource) is used for food production that is then wasted, the nutrients from that land are equally lost through wastage (degradation of soil quality). According to FAO, in 2007, the total agricultural land area used to produce food that was wasted was around 1.4 billion hectares, which accounts for around 28 percent of the world's agricultural land area. See FAO, 'Food wastage footprint', 36-37.

80 Food wastage requires that even more food is then produced to meet the global food needs, a factor that has seen natural forest land and other environmentally sensitive land being cleared for agricultural production as well as the increased use of monocropping and other methods of agriculture that have adverse consequences to bio-diversity. Reduction of bio-diversity is majorly linked to industrial agriculture, which is the system of food production under the modernist approach to food security.

81 For a more elaborate analysis of this phenomenon, see Borras Jr SM, Hall R, Scoones I, White B and Wolford W, 'Towards a better understanding of global land grabbing: An editorial introduction' 38(2) *Journal of Peasant Studies*, 2011, 209. Klopp JM and Lumumba O, 'Kenya and the global land grab: A view from below' in Kaag M and Zoomers A (eds) *The global land grab: Beyond the* hype, University of Chicago Press, Chicago, 2014, 54-55. FIAN International, *Land grabbing in Kenya and Mozambique: A report on two research missions – and a human rights analysis of land grabbing*, 2010, 8. See also International Food Policy Research Institute (IFPRI), *Land grabbing by foreign investors in developing countries: Risks and opportunities*, 2009.

82 See data of foreign land grabs in developing countries at GRAIN, 'GRAIN releases data set with over 400 global land grabs' 2 February 2012 -<https://www.grain.org/article/entries/4479-grain-releases-data-set-with-over-400-global-land-grabs> on 2 March 2020.

83 Edelman M *et al,* 'Introduction', 915.

es.[84] Malnutrition has especially become a major food security challenge globally, with obesity and overweight causing an estimated 2.8 million deaths annually.[85] Projections indicate that this number is bound to increase, as 1 in 8 people in the world will be obese by 2030.[86] This dire situation is a consequence of the modernist approach to food security that has focused on profit maximisation through selling highly processed foods and drinks at the expense of maximising on the nutritional and health-related dimensions of food.[87] The prevailing global food security situation thus calls for food security interventions that are broad-based and effectively emphasises the maximisation of all dimensions of food – food safety, nutritional quality, cultural acceptability and other socio-cultural dimensions of food.

Finally, due to corporate focus on profits, the corporatisation of the food system has generated a shift in focus from production for food consumption to production for bio-fuels, with the result that the available land for food production is converted to food production for the bio-fuel industry.[88] The former Special Rapporteur of the right to food recognised the challenge of bio-fuels on food security as follows:[89]

> Food and fuel compete for scarce arable land: either the land available is increased by deforestation, as seen in Brazil or in Indonesia, or less food is produced in order to fill car tanks. 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, the stated objective being to arrive at 9 billion gallons on bioethanol in 2008 (34.02 billion liters) and 10 billion in 2009 (37.8 billion liters).

This shift in focus will have adverse consequences – in the long run – on food availability for domestic consumption, with the result that accessing food from the international food market will become more and more expensive.[90] As a result, developing countries that are reliant on the international food market

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84 See Vivero L, 'Food as a commons', 3.

85 Vivero L, 'Transition towards a food commons regime', 3.

86 Vivero L, 'Transition towards a food commons regime', 3.

87 Vivero L, 'Transition towards a food commons regime', 6.

88 See Vivero L, 'Food as a commons', 4. According to Vivero, the huge tracts of land that have been acquired by corporations in the Global South from the year 2000, only 40 percent has been put to agricultural production for human consumption, with the majority being used for energy crop production.

89 De Schutter O, 'Background Note: Analysis of the World Food Crisis by the UN Special Rapporteur on the Right to Food' 2 May 2008, 8-9 -<http://www2.ohchr.org/english/issues/food/docs/SRRTFnotefoodcrisis.pdf> on 17 March 2020.

90 Mahon C, 'The right to food: A right for everyone', 90-92.

for their food security will not be able to achieve food security, resulting in more hungry and undernourished people in the world.

Due to these challenges, it is imperative that the international community comes up with alternative methods for the realisation of the right to food for all without discrimination on any ground. One such alternative, proposed in sections 4 and 5 below, is the commonification of food. This alternative approach calls for the reformation of food institutions, organisations and governance structures to create systems of food governance at the local level. The essence of commonification is thus to allow the democratic management of food systems at the local levels with the objective of stabilising livelihoods and enhancing the realisation of the right to food for all.

Understanding commonification in relation to access to food for all

But what does commonification entail and what would be the basis for the reclassification of food as a common pool resource? It entails the re-affirmation of the importance of the localised food systems in the realisation of the right to food and the decentralisation of food production, processing, distribution and consumption systems. The categorisation of food as a common-pool resource is intended to return the control and management of the food resources from the few agri-business corporations which have monopolised food production, processing, distribution and consumption to the local smallholder farmer communities. The ability of localised smallholder agriculture to contribute to food security locally and nationally has been affirmed by both FAO and the Special Rapporteur on the Right to Food as it not only increases the availability of food locally, but also bolsters the livelihoods of local smallholder farmers and farm labourers.[91] The Special Rapporteur elaborates on this as follows:[92]

[91] *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, paras. 76, 87 & 121. FAO, *State of Food and Agriculture Report 2000: Lessons from the past 50 years*, 2000 -<http://www.fao.org/docrep/017/x4400e/x4400e.pdf> on 17 March 2020. According to the report, these smallholders are not backward, unproductive or ineffective, but with the requisite support and fair trade can be more efficient, productive and contribute effectively to economic development than large-scale industrialised agriculture.

[92] *The right to food – CHR Special Rapporteur (Ziegler) preliminary report*, para 104-109. The report suggests that localised food security can be achieved through agrarian reforms to allow households to access land and other important agricultural input for food production; enforcing minimum wage legislation that ensures that households are capable of purchasing adequate food for their family consumption; putting in place social assistance measures to bolster vulnerable livelihoods and to ensure access to adequate food for those in peril and are unable to provide for themselves; and the creation of local seed banks as well as encouragement of use of local knowledge to enhance agro-ecology and protect bio-diversity for long-term and sustainable food production.

> The most important thing that can be done to eliminate hunger and malnutrition is to put more emphasis on local food security and nutritional programmes. International trade is not necessarily the answer, nor is raising aggregate food production. The problem in the modern world is not the lack of a sufficient quantity of food, but rather the disparities in food availability and growing inequalities across the world. The remarkable developments in agriculture and nutrition science over the last 20 years have clearly so far failed to reduce malnourishment and malnutrition for the poorest populations. A different model is needed, one that is focused on local-level food security (footnotes omitted).

The categorisation of food as a common-pool resource, and the prioritisation of smallholder production of food within democratically governed local food systems, is thus one of the ways in which local food security can be bolstered and the realisation of the right to food for all be ensured. As contradistinguished from commoditisation, commonification has the following characteristics:[93]

Characteristic	Commoditisation	Commonification
Definition	Economic/private good	Public good
Pricing	Full-cost pricing	Subsidisation depending on needs
Regulation	Market-based/private regulation	Government regulation – command and control
Goals	Efficiency and profiteering	Social equity and livelihoods
Manager	Market/private corporations	Local communities through the support of the state.

The basis of commonification is the importance of food as a non-substitutable resource that is essential for human life, survival, dignity and the realisation of the full potential of each human person. Further justification for commonification are the high levels of hunger and malnutrition globally despite the availability of sufficient food to feed the entire world population as well as the failure of the modernist approach to food security to end world hunger and enhance the realisation of the right to food. Commonification is anchored on two important components: the recognition of food as a right, and the concept of food democracy. These are discussed more elaborately below.

[93] Baker K, 'The 'commons' v the 'commodity': After-globalisation, anti-privatisation and human rights to water in the Global south', 441.

The right to food as an anchor to commonification

A right is a guarantee or entitlement that inheres in each and every human person without distinction in relation to their race, nationality, sex, religion, social status or other categorisation. Due to the critical role of food in human survival, growth, development and wellbeing, it has been recognised as a human right. In the context of this recognition, the right to food has been defined as:[94]

> A human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.

The right to food encompasses the right of access to and control of food production resources that include land, water, seeds, credit, technology and markets.[95] This is critical to commonification, which calls for the democratic management of these means of production for the benefit of the most food insecure sectors of society, as elaborated in section 5 below.

Further, the recognition of food as a right does not only entail a people's entitlement to biologically feed themselves and their families, but also their entitlement to participate in decision-making on how they feed themselves in a dignified manner.[96] The affirming power of a right empowers individuals and communities to participate equally and effectively in the shaping of their common destinies, and to have accountability and remedial systems to resort to when they are unfairly denied their fundamental food entitlements or means of food procurement.[97] The recognition of food as a right does not only empower a people to demand its realisation, it also creates vertical and horizontal obligations for states and other societal actors to respect, protect, promote and fulfil.[98] It, thus, calls for responsible action to enhance access to food for all not only

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94 -<https://www.ohchr.org/en/issues/food/pages/foodindex.aspx> on 17 March 2020.

95 Mahon C, 'The right to food: A right for everyone', 85. The essence of commonification is the control of these food production resources, as discussed elaborately in section 5 below.

96 Kent G, *Food is a human right*, 2004, 2,-<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.554.4765&rep=rep1&type=pdf> on 17 March 2020.

97 Kent G, *Food is a human right*, 2.

98 See De Schutter O, *Building resilience: A human rights framework for world food and nutrition security – A report of the Special Rapporteur on the Right to Food to the Human Rights Council*, A/HRC/9/23 (2008), para 12. The report asserts that any initiative for the transformation of the global food system to enhance the eradication of world hunger and malnutrition must adopt a human rights framework and recognise the right to food as an important tool that will enhance targeting, prioritisation, coordination, accountability and participation.

by governments, but also private actors like agri-business and food corporations that have been at the forefront in the commoditisation of food to the detriment of food poor populations of the world. A rights-based approach to food security is thus supportive of the treatment of food production resources as common-pool resources; with all societal actors participating actively in collective decision-making on the utilisation of these resources for the production, processing and consumption of food to meet the food needs of all.

The right to food has been entrenched in several international, regional and national legal instruments that are binding on states internationally. The starting point in the international recognition of the right to food was the Universal Declaration of Human Rights (UDHR), which recognises the right as a critical component of the right to adequate standard of living.[99] The right to food has been elaborated in the International Covenant on Economic, Social and Cultural Rights (ICESCR),[100] the Convention on the Rights of the Child (CRC),[101] the Convention on the Elimination of Discrimination against Women (CEDAW),[102] and the Convention on the Rights of Persons with Disability (UNCRPD),[103] subsequently, among others.

The recognition of food as a human right generates the obligations of states to respect, protect, promote and fulfil the right at the national and international levels.[104] More specifically, the recognition of access to adequate food as a

[99] See Article 25 (1), *Universal Declaration of Human Rights* which provides: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

[100] Article 11 (1), *ICESCR* recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions; and Article 11(2) recognises the fundamental right to freedom from hunger and malnutrition.

[101] Article 24(2)(c), *CRC* requires the state to take appropriate measures to 'combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution'. See also Article 27(3), which requires states to provide material assistance and support programmes with regard to nutrition in instances of need.

[102] Articles 12(2), *CEDAW*, requires the state to ensure to women adequate nutrition during pregnancy and lactation.

[103] Article 28, *UNCRPD*, that recognises the rights of persons with disability to an adequate standard of living including adequate food, clothing and housing; and further guarantees the right to social protection and access to poverty reduction programmes for persons with disability.

[104] For an elaboration of these obligations in the context of the right to food see *General Comment No 12: The Right to Adequate Food (Art. 11 of the Covenant)*, para 15.

right requires states to take necessary action to mitigate and alleviate hunger even in times of natural or other disasters,[105] and to do so in a way that is free from any forms of unfair discrimination.[106] Failure of a state to ensure, at the very least, the minimum essential levels of food required to be free from hunger, especially if the state has the resources to do so, is a violation of the right to food entrenched in international legal instruments.[107] States have an obligation to ensure that all essential food products are available[108] in adequate[109] and sustainable[110] proportions, are accessible physically[111] and in relation to their affordability[112] and are safe and culturally acceptable to the population.[113]

Despite the entrenchment of the right to food as a fundamental human right at the national, regional and international level, this right has been subjected to widespread, systematic and comprehensive violation as is reflected in the data in section 1 above. One of the reasons for this widespread violation of the food entitlements of the poor and vulnerable populations of the world is the treatment of food as a commodity to be subjected to the vicissitudes of the liberal

105 *General Comment No 12: The Right to Adequate Food*, para 6.

106 *General Comment No 12: The Right to Adequate Food*, para 18.

107 *General Comment No 12: The Right to Adequate Food*, para 17. Should a state argue lack of resources as the reason for the realisation of the right to food, it has the obligation to show that it has used all the resources at its disposal to satisfy, as a priority, the minimum obligations of the right to food (alleviate hunger).

108 Availability relates to the ability of individuals and households being able to feed themselves either directly from their farms or the availability of well-functioning distribution networks that move the food from the points of production to points of demand. See *General Comment No 12: The Right to Adequate Food*, para 12.

109 Adequacy demands that the available food products meets the dietary needs of the population and are capable of supporting the physical and mental growth, development and maintenance as well as the physical activities of human beings at all stages through their life cycle, gender and occupation. See *General Comment No 12: The Right to Adequate Food*, para 9.

110 Sustainability is intrinsically linked with security, meaning that the means of production, storage and consumption of food must take the needs of the present generation as well as those of future generations (long term availability and sustainability of food). See *General Comment No 12: The Right to Adequate Food*, para 7.

111 Physical accessibility requires adequate food to be available to all, including vulnerable individuals, households and communities. See *General Comment No 12: The Right to Adequate Food*, para 13.

112 Affordability or economic accessibility requires that personal or household expenditure in relation to food acquisition does not compromise the attainment and satisfaction of other basic needs. It, thus, means that in instances of vulnerability of disasters, the state must put in place programmes to enhance people's access to food through subsidisation or provision of food aid.

113 Safety requires the food products to be free from adverse substances and the prevention of contamination throughout the food chain; while cultural acceptability requires the consideration of the perceived non-nutrient-based values attached to food by consumers. See *General Comment No 12: The Right to Adequate Food*, paras. 10 & 11.

market. Pol documents this contradictory treatment of food as a commodity and as a right in the following manner:[114]

> Therefore, food is subject to trading, stocking and, increasingly, oligopoly control and this social construct (food as a pure commodity) opposes radically to the consideration of food as a human right that should be guaranteed to all.

This recognition thus calls for alternative systems of handling food resources that can enhance the realisation of the right to food for all. One such approach is the commonification of food that seeks to empower local communities to manage their food resources in democratic collective-action institutions that are designed to ensure access to food for all. Clair Mahon affirmed the need for a rights-based approach to respond to world hunger and food insecurity as follows:[115]

> A human rights approach to the global food situation requires a number of considerations to be taken into account. It requires the reframing of agricultural plans and policies around principles of participation (particularly of small-scale farmers), accountability, non-discrimination, transparency, empowerment, rule of law, and above all else, a focus on human dignity. Systemic changes are needed to realize this human rights-based approach.

These are the strategies that commonification of food proposes, as is elaborated in section 5 below. The recognition of the right to food is thus a critical component/anchor for commonification, which seeks to categorise food production resources as common-pool resources to be managed democratically for the benefit of all.

Food democracy as an anchor to commonification

Commonification advocates the adoption of the concept of 'food democracy', which is a contrast to the current highly centralised, industrial and corporate food system that treats food strictly as a commodity, with major food system decisions being made by few multi-national and national food corporations.[116] Food democracy entrenches the requirement for active local citizen participation to determine values that underpin their food system; and ensure greater access and common benefit for all from the food system (ensure all people eat

[114] Vivero L, 'Food as a commons', 5.

[115] Mahon C, 'The right to food: A right for everyone', 95.

[116] Carlson J & Chappell J, *Deepening food democracy: The tools to create a sustainable, food secure and food sovereign future are already here—deep democratic approaches can show us how*, Institute for Agriculture and Trade Policy, January 2015, 6 -<https://www.iatp.org/files/2015_01_06_Agrodemocracy_JC_JC_f_0.pdf> on 17 March 2020.

adequately, affordably, safely, humanely and in ways that are civil and culturally appropriate).[117] It is a rights-based approach to food governance that entails the decentralised/localised, community-based and democratic management of food systems in a manner that is politically, socio-economically, environmentally and culturally inspired rather than purely economically motivated.[118] Food democracy has been described as follows:[119]

> Simply put, food democracy emphasizes fulfillment of the human right to safe, nutritious food that has been justly produced. It means ordinary people getting together to establish rules that encourage safeguarding the soil, water, and wildlife on which we all depend. It is also pragmatic politics built around the difficult lesson that food is too important to leave to market forces - that we all have a right and responsibility to participate in decisions that determine our access to safe, nutritious food.

It aims to challenge the current corporate food industry in order to create local food systems that produce nutritious and safe foods; are socially just in enhancing access to local food production resources; are economically fair; and are environmentally sustainable.[120]

The adoption of a localised food democracy approach is key due to the nature of resources for food production - land, water, seeds, the environment, ecology and bio-diversity - that are better conserved through communal networks if communities are mobilised and enabled to govern their own resources democratically. Localised food democracy is also crucial in fulfilling the important cultural and spiritual values and dimensions of food that are closely articulated by place-based cultural and religious practices and are thus easier to meet if food systems are localised.[121] Further, food democracy shatters the public/private binary that has been the prism through which food security and the realisation of the right to food has been discussed. It introduces a third important actor, the local communities, who are the right-holders in relation to the right to food and

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117 Hassanein N, 'Practicing food democracy', 79. Instead of remaining passive spectators, all citizens must participate in actively shaping that underpin their food systems so as to shatter the firm control of the agricultural and food corporations on the current national, regional and international food systems.

118 Baker K, 'The 'commons' v the 'commodity': After-globalisation, anti-privatisation and human rights to water in the Global South', 442.

119 Norwood F, 'Understanding the food democracy movement' 30(4) *Choices Magazine*, 2015, 1.

120 Perrett A & Jackson C, 'Local food, food democracy and food hubs' *Journal of Agriculture, Food Systems, and Community Development*, 2015, 2 and 4 -<http://asapconnections.org/downloads/jafscd-local-food-food-democracy-and-food-hubs.pdf> on 17 March 2020.

121 Baker K, 'The 'commons' v the 'commodity': After-globalisation, anti-privatisation and human rights to water in the Global South', 441. Baker asserts that conservation is more effective if based on the ethics of collective solidarity that encourages users to refrain from wasteful behaviour.

who have the democratic right to determine the institutional, organisational and governance structures for the achievement of food security and the realisation of the right to food. When the local communities are active in determining the means and methods of production, processing and consumption of food democratically, they are better able to determine how to produce food in a way that enhances food access to all households within the community. This then ensures individual and household food security at the local level, especially for the most food insecure populations – peasant farmers, agricultural workers, women, children and persons with disability.

Taking into account the localised nature of food production resources and the existential nature of food to the human being, it is proposed here that commonification can be an alternative approach to achieve food security and enhance the realisation of the right to food. The basis of commonification, as has been stated above, is the recognition of access to adequate food as a right, and the need to engender democratic food governance in local communities. Commonification entails a better way of managing food resources as these resources have the relevant characteristics to be managed efficiently and sustainably as localised commons. Commonification aims to empower the local communities to exercise food governance powers over the production resources in their locality as well as the food processing, distribution and consumption systems within the locality in order to enhance access to food for all the community members.

Food as a common-pool resource – analysing its nature and characterisation

Understanding the concept of commons-pool resources

The commons are important institutional spaces where human beings can enjoy freedom (from want and fear) and democracy unconstrained by the general preconditions of markets (where property rights constrain access to existential goods such as food and water).[122] They are a system of institutional, organisational and governance structures for the management and use of important resources in a way that no one individual has the exclusive control over access,

[122] Benkler Y, 'The political economy of the commons' 4(3) *Upgrade: The European Journal for the Informatics Professional*, 2003, 6 and 8. In a market system, property rights determine whether we are able to access food and other important necessities to live a productive dignified life free of want and fear.

use and disposition of the resource.[123] The common-pool resources are instead managed by a well-defined community of interests under well-articulated formal and social-conventional regulatory rules that are effectively enforced in relation to access, use, disposition and sustainability of the resources.[124] The classification of a resource as a common-pool resource creates possibilities for radically decentralised and democratic systems of management of resources unconstrained by market forces. This acts as a counterforce to the industrial food production and management economy under the tight control of agri-business corporations, whose adverse livelihood consequences have been discussed in section 3 above.[125]

Commons can be open access commons or limited access commons, depending on the physical nature and characteristics of the commons.[126] Localised food systems, which the commonification of food resources advocates for, can be defined better as limited access commons. This is because access to the food governance structures within a particular locality or region is limited to the members of the local community who jointly manage the food production resources as well as the processing and distribution infrastructure for the food produced within their local community.

One of the major challenges to the classification of a product as a commons is the issue of sustainability, captured in the popular phrase by Garrett Hardin as the 'tragedy of the commons'.[127] The essence of the phrase has generally been understood as stating that private property rights are a precondition for the effective and sustainable management of resources; and that common properties are often subjected to overuse, resulting in their unsustainable management.[128] Alternative research, however, indicates that the tragedy of the commons results as a consequence of the failure to put in place effective institutional and governance structures and mechanisms for the use, control and management

123 Benkler Y, 'The political economy of the commons', 6.

124 Benkler Y, 'The political economy of the commons', 6.

125 Benkler Y, 'The political economy of the commons', 8. Decentralisation of control of food systems allows citizens at the local level to transition from being passive consumers buying food at exploitative prices controlled by a few for-profit agri-business corporations to being the democratic policymakers on the functioning of their local food systems.

126 For a discussion of these two concepts of commons, see Box 2 in Vivero L, 'Food as a commons', 8.

127 See generally Hardin G, 'The tragedy of the commons' 162 *Science*, 1968, 1243-1248.

128 Benkler Y, 'The political economy of the commons', 7. There were two common responses to the tragedy of the commons: central government regulation, or adoption of private property rights which entrenches a system of exclusion in the management of resources, see Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition' in Ostrom E *et al*, *The future of the commons: Beyond market failure and government regulation*, Institute of Economic Affairs, London, 2012, 23.

of the common-pool resources.[129] This new understanding sees the challenge understood conventionally as a 'tragedy of the commons' as being a 'tragedy of the unregulated open access commons'.[130] It thus has no adverse sustainability effect to the management of the commons if effective rules are developed and enforced to enhance the sustainable management of the common-pool resources.[131]

The possibility of effective regulation of common-pool resources through effective rules-in-use has been affirmed by both laboratory and field experiments. These experiments have shown that in contexts where appropriators of common-pool resources are alienated from each other and have no channels of communication, joint decision-making and joint enforcement of rules; the conventional theory of the tragedy of the commons obtains and there is over-appropriation of the commons.[132] However, in settings where there is effective communication, systems of joint decision-making and joint rule-enforcement mechanisms; common-pool resources are used and managed in a sustainable manner achieving optimum results for the appropriators of the commons.[133]

Eleanor Ostrom affirms this from the myriad laboratory and field experiments she conducted using different variables, which produced the following results: where appropriators are not allowed to communicate at all and are entitled to make independent decisions, they obtain optimum net yield of 21%; where they are allowed to communicate only once, but then make independent decisions, their optimum net yield is 55%; appropriators with repeated opportunities to communicate, but make independent decisions achieve optimum yield of 73%; and appropriators with repeated opportunities to communicate and joint enforcement and sanctioning mechanisms achieve an average net yield of 93%.[134] This indicates that when appropriators are allowed to communicate on issues of resource use and management, they are more capable of achieving higher returns on the common-pool resource and enhancing its sustainable use overtime. Ostrom indicates that communication plays three important roles in these

[129] Ostrom E, 'Common-pool resources and institutions: Towards a revised theory' in Gardner B & Rausser G (eds) *Handbook of agricultural economics*, 2002, volume 2A,1317.

[130] Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition', 23.

[131] Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition',23.

[132] See Ostrom E, 'Common-pool resources and institutions: Towards a revised theory', 1318-1324. In this context, the appropriator only takes into account his own marginal costs and revenues while ignoring the fact that his increased appropriation affects the returns of the other appropriators as well as the long-term sustainability of the common-pool resource, at 1319.

[133] See Ostrom E, 'Common-pool resources and institutions', 1318-1324.

[134] Ostrom E, 'Common-pool resources and institutions', 1318-1324.

common-pool resource use experiments, it: allows appropriators to adopt joint strategies for achieving optimum returns (coordination role); enables appropriators to determine overtly what each person should do (determining obligations and building trust); and, enables appropriators to sanction other members for violation of joint strategies or non-fulfilment of obligations (monitoring and enforcement).[135]

The better management of limited access commons in practice is affirmed by Edella Schlager in relation to fish stocks: in New England, fishing has become economically unviable due to lack of access and conservation rules, leading to overharvesting; while in the Southern Coast of Australia, fishing is still economically viable due to availability of effective access (licensing of fishermen) and conservation (limitation of fishing duration and substantive catches) rules developed through enforced community norms as well as Government regulation.[136] Further, Schlager's analysis of 44 groups of coastal fishers reveals that 33 of them were able to develop effective localised rules-in-use, monitoring and enforcement institutions to limit access and determine fishing methods so as to enhance conservation of the fish resources.[137] It is thus clear from Schlager's research that fishers who adopted more democratic and elaborate rules of access and harvesting in the control of their fishing grounds were better off and experienced less conflicts than those who had no rules or had less cooperative and communal control of their fishing grounds.[138] Schlager affirmed further these findings in relation to another common-pool resource, irrigation systems, which are only sustainable in the long-term if water is managed effectively through localised rules-in-use that determine access, control and joint maintenance of the irrigation infrastructure as well as water allocation (fairness) and the duration of use of the scarce water resources.[139]

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135 Ostrom E, 'Common-pool resources and institutions', 1318-1324.

136 Schlager E, 'Common-pool resource theory' in Durant RF, Fiorino D and O'Leary R (eds) *Environmental governance reconsidered: Challenges, choices and opportunities*, MIT Press, Massachusetts, 2004,145-146. In the enforcement of the rules, South Australian fishermen limit themselves to sixty traps of lobsters each, while in New England, the fishermen take as much as 800 traps of lobsters each. Further, in New England, fishermen can fish for 240 days a year, while in Southern Australia; fishing duration is limited to a maximum of 187 days per year.

137 Schlager E, 'Common-pool resource theory', 155-157. Access rules included: residency, licensing, membership of the local fish cooperative, use of lottery to allocate fishing spots, use of particular fishing technologies and equipment, among others.

138 Schlager E, 'Common-pool resource theory', 157.

139 Schlager E, 'Common-pool resource theory', 157-158.

Based on these experiments and practical examples, Ostrom contended that in order to be effective, institutional and governance mechanisms for the management of common-pool resources must be democratic and must address and adequately regulate the following issues:[140]

- Determination of the boundaries of the resource and the persons who are allowed to appropriate resource units (boundaries as well as individuals and households with rights to draw resource units from the common-pool resource are clearly defined);[141]
- The timing, quantity, location and technology of appropriation;
- Who is obligated to contribute resources to provide or maintain the resource system itself (distribution of costs and benefits must be fair, legitimate and proportionate);
- How appropriation and obligation activities are to be monitored and enforced, and the types of sanctions to be imposed on violators (these are better done through democratic, collective choice arrangements);[142]
- How conflicts over appropriation and obligation activities are to be resolved (efficient, low-cost and easy-access mechanisms for conflict resolution desirable);[143] and,
- How the rules affecting the above will be changed overtime to respond to the changes in the performance of the resource system and the strategies of the participants (these are better done through democratic, collective-choice arrangements).[144]

She argued that common-pool resources are more sustainable if self-governed. This entails the major appropriators of the common-pool resource being involved overtime in making and adapting rules-in-use within a collective-choice

[140] Ostrom E, 'Common-pool resources and institutions', 1317. The need for effective rules and institutions to coordinate use of common-pool resources, enhance the commitment of all actors to these rules, and to ensure the enforcement of the rules to avoid free riding, see Schlager E, 'Common-pool resource theory', 150-151.

[141] Clear definition of boundaries and rules of exclusion prevents free-riding and opportunistic behaviour, see Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition', 25.

[142] Monitoring ensures conformance with the rules thus enhancing the sustainability of the resource-management system. Enforcement mechanisms then complement the monitoring mechanisms to punish those who have violated the rules, with graduated sanctions that make rule-breaking an unattractive option. See Ostrom E, 'Common-pool resources and institutions', 1332. Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition', 27.

[143] See Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition', 28. According to Pennington, even in close-knit homogenous communities, conflicts in relation to the interpretation of rules-in-use may arise, and there is thus the need for effective conflict resolution mechanisms to resolve disputes.

[144] See Ostrom E, 'Common-pool resources and institutions', 1332. Ostrom asserts that if appropriators do not have an opportunity to contribute freely and make proposals for the better management of the common-pool resource, they will cheat on the system, with mass cheating requiring costly enforcement actions which may lead to the failure of the entire system of the management of the common-pool resource.

(democratic) arena regarding the inclusion and exclusion of participants, appropriation strategies, obligations of participants, monitoring and sanctioning as well as conflict resolution.[145] These rules are then supplemented by the laws and policies adopted by states and intergovernmental institutions at the local, national, regional and international level with the aim of regulating the effective functioning of the self-governed common-pool resource systems as well as ensuring their sustainable use overtime.[146] Ostrom supports the creation of polycentric systems of governance of important resources like food resources, with the localised units enjoying the necessary autonomy to make rules-in-use on the basis of local knowledge, expertise and experience.[147] These rules-in-use are then supported by national and international governance structures (states and intergovernmental institutions) that are then able to provide better scientific information; provide relevant conflict resolution mechanisms; provide technical, technological and financial assistance to the localised units; as well as provide mechanisms for strengthening monitoring and sanctioning efforts within the localised units.[148] Collective action and self-government of common-pool resources for food production as discussed here dovetails closely with food democracy discussed in the context of commonification of food in section 4 above. It thus clearly shows that alternative systems of management of food resources in an inclusive and democratic manner is possible, with the possibilities of better outcomes for all in accessing adequate, accessible, affordable, safe, nutritious and culturally acceptable food.

Factors guiding the classification of food as a common-pool resource

What types of resources can be considered as common-pool resources and can food production resources be adequately classified as common-pool resources? The framework for determining whether a resource can be considered a common-pool resource depends on the following factors:[149]

145 Ostrom E, 'Common-pool resources and institutions', 1317 & 1332.

146 Ostrom E, 'Common-pool resources and institutions', 1317 & 1332-1333.

147 Ostrom E, 'The future of the commons', 81-82.

148 Ostrom E, 'The future of the commons', 81-82.

149 Hess C & Ostrom E, 'A framework for analysing the knowledge commons: A chapter from understanding knowledge as a commons: from theory to practice' *Library and Librarians' Publications Paper 21*, 2005, 6.

- The bio-physical and technological characteristics of the resource which determines the possibilities for its characterisation as a common-pool resource;
- The attributes of the participating community in relation to the common-pool resource; and
- The rules-in-use for the common-pool resource.

Bio-physical and technological characteristics of food resource as factors for commonification

The bio-physical characteristics (location, capacity and abundance) and technological attributes (abilities to produce or appropriate) of a resource are important as they determine the shaping of the community of use as well as the rules, policies and management structures that the community will develop to manage the resource.[150] Before the development of technology and the commencement of globalisation as a phenomenon, food systems were basically localised with the relevant communities retaining the power to determine systems of production, processing and consumption of food.[151] Pol affirms this tradition of common management of food production resources as follows:[152]

> Nevertheless, nowadays, several types of food (wild fruits, fish stocks) are yet legally owned in common, as they belong to state-owned lands or internationally managed oceans. And over 2.5 billion people live in and actively use the Earth's forests and dry lands; most of them classified as public lands. Grazing and fishing grounds in most traditional societies have often been commonly held and managed quite sustainably for centuries. This was achieved by means of informal social restraints and traditions that prevented overexploitation.

Food was, thus, produced by smallholder farmers in community-owned farms, which were then processed within the communities and traded in the local markets. The localised food structures developed a system of social security where the landless, the destitute and travellers could access adequate food and nutrition. This was a classic case of a commonified food system, where the production resources were controlled at the local level, the types of food to be grown and how to grow it was determined by the cultural and spiritual needs of the localised community, and food for consumption was accessed from the lo-

[150] Hess C & Ostrom E, 'A framework for analysing the knowledge commons', 7. If a resource is scarce, but there is sufficient information and knowledge about its characteristics as well as agreement between the communities of participants that it can effectively be managed to improve the optimum returns for all, then chances of collective action for the sustainable management of that resource are high. See Ostrom E, 'Common-pool resources and institutions', 1325.

[151] See Vivero L, 'Food as a commons', 1. See also, Vivero L, 'Transition towards a food commons regime', 7-8.

[152] Vivero L, 'Food as a commons', 6.

cal markets, which functioned without distortion or interference from products from foreign markets. Through this commonified system of food production, processing and consumption; local communities were able to effectively achieve food security and realise the right to food of each and every person in the community either through self-production or through trade in the localised market or through localised social security structures.

However, with the advent of globalisation and the development of technology, there has been a transformation of food systems from local to global with food being viewed as a commodity and not a common resource; leading to the privatisation and commercialisation of food through the control of these global food systems by a few agri-business corporations. This has resulted in the adoption of the modernist approach to food security and the realisation of the right to food, with its attendant challenges as discussed in section 3 above.[153] Taking the above example of a localised food system, the nature and characteristic of food itself thus makes it amenable to classification as a common-pool resource produced, processed, distributed and consumed under a localised system. These localised food systems can then be managed by the local communities through proper institutions, organisations and systems of governance that are controlled by local communities under the concept of food governance, and supported by the polycentric national and international governance structures as elaborated in section 5.1 above.

Resource community attributes as factors for the commonification of food

The second factor that determines the classification of a resource as a common resource is the attributes of the resource community, meaning the providers, users, policy-makers and managers.[154] It is more likely that a resource community will organise collectively to control the use and management of a resource as a common-pool resource in the following context: if they are dependent on the resource as a major portion of their livelihood; if they share a common understanding about the nature of the resource and how their actions affect each other as well as the resource; if lack of a system of common manage-

[153] The transformation of food systems has led to change in systems of production, processing, distribution and consumption of food, creating new producer communities – agri-business corporations – who are interested in the monopolisation of the food systems and profiteering from exploitative food systems.

[154] Hess C & Ostrom E, 'A framework for analysing the knowledge commons', 12.

ment affects all sectors of the resource community including those with higher economic and political assets; if effective norms of trust, reciprocity and punishment are created to deal with non-observance of the rules-in-use; if the resource community can autonomously and effectively determine the rules-in-use in a democratic collective-choice arrangements that are not countermanded by external authorities; and if the resource community has strong local leadership and prior organisational experience.[155]

Due to the existential nature of food, the user community is basically the entire world, as everyone needs sufficient amount of calories to function and undertake all the activities that a human being needs to undertake to be productive. Access to food is thus critical as it enables individuals and households to be productive, to live in dignity and to achieve their human potential. Food as a resource is thus sufficiently important to the community of users to warrant a classification as a common-pool resource, to be accessible to all without discrimination based on social status such as poverty, destitution, marginalisation or exclusion. The issue of shared understanding in relation to the food resource is still a challenge, for while some participants view food as a commodity to be traded in the liberalised markets, others view food as a right which is an entitlement of each individual human person without discrimination on any grounds, including social status. Commonification is basically aimed at bridging this common understanding gap by affirming access to food as a right and creating a democratised system of localised food production, processing and consumption that enhances access to food for all.

In relation to how the different sectors of the food resource community are affected by the lack of a commonified system of the control of food resources, it can be said that there is a community of economically and politically powerful constituency of agri-business corporations and their backers who have benefited from the commoditisation and commercialisation of food. This powerful constituency will likely oppose the creation of a new system that deprives them of the power, profits and benefits that they enjoy in the current system. This globalised system of control of food resources has not been beneficial to the majority of the food resource community, as it has destroyed the production capacity of smallholder farmers and diluted local markets with cheap subsidised foods. It has thus constrained the ability of local communities to control their food systems democratically. It has further reduced local communities to pas-

[155] Ostrom E, 'Common-pool resources and institutions', 1325. Schlager E, 'Common-pool resource theory', 152-153.

sive and disempowered customers; with no citizenship powers to actively participate in the policymaking processes in relation to the production, processing, distribution and consumption of food.[156] Further, it has increased world hunger and constrained the realisation of the right to food for all, a fact that has been acknowledged by several actors who have asserted that the problem of hunger in the world is not the lack of availability of food internationally, but the lack of access to available food due to lack of economic access (un-affordability) of food.[157] It can thus be argued that the lack of a common-pool system of managing access to food resources adversely affects more people in the food-resource community than it benefits. Therefore, if we are to realise the right to food for all, the food-resource community (users, producers and policy-makers) has to work together with the unified purpose and goal of creating conducive systems of production, processing, distribution and consumption of food. The best system that can bring the resource community together is the commonification of food, which entails the adoption of a food governance structure that empowers local communities to democratically determine the structures and systems of food production, processing, distribution and consumption.

The question then is, what would spur a resource community to choose to commonify food resources? For a resource community to change the rules-in-use of food resources from commoditisation to commonification, there has to be a critical majority of the community who feel that commonification is beneficial to the food community in the long-term. The food resource community has to compare the net benefits of continuing with the commoditisation rules versus the net benefits expected with the commonification of food. In this cost-benefit analysis, if the expected net benefits of commonification exceed the net benefits of commoditisation for a critical majority of food-resource community, there will be sufficient incentive to change the system of management of food resource from the modernist approach to a commonified approach.[158] However, if the critical majority of the food-resource community benefits more from commoditisation than they would expect to benefit from commonification, there will be no incentive to change the rules-in-use from modernist approach to

[156] The commoditisation of food under the modernist approach has thus concentrated the policymaking powers in the hands of a few multi-national corporations who do not account to the citizenry, basically leading to the disempowerment of the citizenry in the collective self-governance of the food systems.

[157] The fundamental roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia, because of poverty by large segments of the world's population, see *General Comment No 12: The Right to Adequate Food*, para 5.

[158] Ostrom E, 'Common-pool resources and institutions', 1326.

a commonified approach. Further, should the food-resource community agree that commonification approach is the way to go, they still have to consider three other important costs: the cost of time and effort in designing and operationalising new commonified food system rules-in-use; the short-term costs of adopting new appropriation strategies in the commonified food system; and, the long-term costs of monitoring and maintaining the localised food systems brought about by commonification.[159] If the incentive to transform food systems from modernist to commonified systems exceeds these costs, the food-resource community will change the rules-in-use into a commonified system, but if the costs exceed the benefits, there will be no incentive to transform the rules-in-use.[160] So would the benefits and incentives to commonify exceed the related costs of commonification? This is a question requiring more research and analysis that is beyond the scope of this paper.

The rule-in-use as a factor for the commonification of food

The rules-in-use are basically the guiding normative values and principles that govern the food-resource community and determine what a participant in the community can do or cannot do, backed by sanctioning ability for non-compliance.[161] These normative rules must not only be written in legal instruments, but must generally be known and enforced by the entire food-resource community, generating the necessary opportunities and constrains for all those interacting with a particular food resource.[162] These rules can be made at the global, regional, national or local levels and they must be flexible and adaptable in order to create effective institutional designs and ensure food-resource sustainability in the long term.[163] Creation of these rules-in-use requires multiple layers of coordination, cooperation and collective action from the entirety of the food-resource community, factors which are easy to achieve if there is homogeneity of purpose and objectives – which is the realisation of the right to food for all without discrimination on any grounds. The rules-in-use should create the requisite incentives for continued production of sufficient food to feed the global population, create democratic food systems and also create disincentives/sanctions for those who might want to misuse or free ride on the common-pool food

[159] Ostrom E, 'Common-pool resources and institutions', 1326. Schlager E, 'Common-pool resource theory', 154-155.

[160] Ostrom E, 'Common-pool resources and institutions', 1326-1327.

[161] Hess C & Ostrom E, 'A framework for analysing the knowledge commons', 14.

[162] Hess C & Ostrom E, 'A framework for analysing the knowledge commons', 14.

[163] Hess C & Ostrom E, 'A framework for analysing the knowledge commons', 19.

resources.[164] In order to be effective, these rules must be created in democratic collective-action arrangements and must effectively make provisions for all the elements that have been proposed by Ostrom as discussed in section 5.1 above.

Challenges to commonification of food resources

The process of commonification of food is not straightforward and will be beset with many challenges. Some of these include the large number of people involved in the different stages of production, processing, distribution and consumption of food; as well as the lack of homogeneity of interests in the context of the control, management and use of food production, processing, distribution and consumption resources. It is generally accepted that the smaller the size of participants in the use and management of a resource, the easier it is for them to effectively organise and create effective institutions and systems for the control, management and use of common-pool resources.[165] Participant sizes can thus be a problem in the development of self-governing systems. However, if these governing systems are localised, as has been proposed herein, it is argued that these localised systems of management of common-pool resources can effectively limit the challenge of size and ensure the effective and sustainable management and use of food production, processing and distribution resources.

Homogeneity that entails the commonality of interests and objectives of the participants can also be considered a challenge in relation to the commonification of food. There are many vested and conflicting interests, skills, power and endowments between the different participants in the global, regional and local food systems capable of derailing any good faith efforts to organise for the conservation, management and use of food resources as common-pool resources for the good of all. The most important concern in the context of the homogeneity challenge is whether common understanding, objectives and aims can be developed that is reflective of the different interests of the different groups. It is proposed here that a common understanding can be developed, which views

[164] See Gardner R, Ostrom E & Walker J, 'The nature of common-pool resource problems' 2(3) *Rationality and Society Journal*, 1990, 336. The authors write about the importance of clear disincentives for misuse and free riding due to the capacity of such adverse strategies to dominate participant choices and thus detract from the achievement of the desired goal of effective, sustainable and beneficial management of the common-pool resource for the good of all.

[165] In smaller, homogenous and relatively stable communities, it is easier to develop cooperative bottoms-up strategies for the management of common-pool resources as people have strong reputational and social ties that generate interpersonal trust and social capital. See Pennington M, 'Elinor Ostrom, common-pool resources and the classical liberal tradition', 25.

food as an existential human right that is critical to the achievement of the full potential of each human being. If such a common understanding can be developed, then, the main aim and objective of the management, control and use of food production resources would be to enhance the realisation of the right to food for all. This right is realised when all human beings regardless of social and economic status have access to adequate and culturally appropriate food products in sufficient quantity, quality and safety. It is easier to develop such homogeneity of understanding, aims and objectives of food resource management if commonification is undertaken at the local levels, as is proposed herein. Such a localised system of commonification of critical resources has been adopted with success in the management of common-pool water resources where local communities have formed water associations for the management of local water resources.[166] It can thus be argued that even though substantive, the challenges to the commonification of food can be transcended with sufficient dialogue and political will at the local, national, regional and global levels through the entrenchment of food democracy.

Conclusion

Food security and access to food at the household, national and global levels has become a major concern due to the continued existence of hunger, under-nutrition and malnutrition despite increased production of food globally. The food insecurity situation was exacerbated by the global food and economic crises of 2006-2008, which further increased the number of food poor people globally, but especially in developing countries in Asia and SSA. Global warming and climate change have further exacerbated the critical situation of food insecurity in several regions of the world. In spite of the dire food situation, data indicates that global agri-business corporations made high profits, calling into question the ethics of an international food system that prioritises profits in the face of massive human suffering. This has called into question the current global approach to the realisation of the right to food, which sees food as a commodity

[166] For examples of the common-pool management of water through Water Users Associations, see UNESCO, *Water users associations for sustainable water management: Experiences from the irrigation sector, Tamil Nadu, India,* 2002 -<http://unesdoc.unesco.org/images/0013/001356/135674eo.pdf> on 17 March 2020. See also McCornick P & Merrey D, 'Water users associations and their relevance to water governance in Sub-Saharan Africa' US Commission on Irrigation and Drainage, Conference on Water District Management and Governance, California, 29 March-2 April 2005 -<http://publications.iwmi.org/pdf/H038821.pdf> on 17 March 2020.

to be bought and sold based on market forces, without a proper consideration of food as an existential basic human need as well as a fundamental human right. As a result, the international community has come to a realisation that an alternative approach needs to be thought through and designed to respond to the real cause of global hunger – which is the lack of access to internationally available food (affordability) for households living in poverty and destitution.

This paper has proposed, following on the preliminary work done by Pol, that the international community should seriously consider reclassifying food as a common-pool resource, to be managed in democratic localised food systems. The paper contends that as commodification of food is a social construct adopted as a result of deliberate societal policy-making, commonification can similarly be adopted through legal and institutional design at the local, national and international levels; creating polycentric systems for the management of food producing resources for the local communities. This will ensure that decisions relating to the use of local resources for the production, processing, distribution and consumption of food are made at the local level, to ensure that other socio-economic and cultural aspects of food are taken into account in the decision-making processes.