

THE RIGHT TO FOOD IN THE ANTHROPOCENE:

EQUALITY AND SUSTAINABILITY IN THE SOUTH

AFRICAN FOOD SYSTEM

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The Right to Food

- The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations. (Committee on Economic, Social and Cultural Rights).
- For the 160 countries that have ratified the International Covenant on Economic, Social, and Cultural Rights, the right to food is a legally binding right.
- As of 2010, Right to Food recognised in 23 countries with India added in 2013.



Diagnosis of a broken food system

-Olivier de Schutter

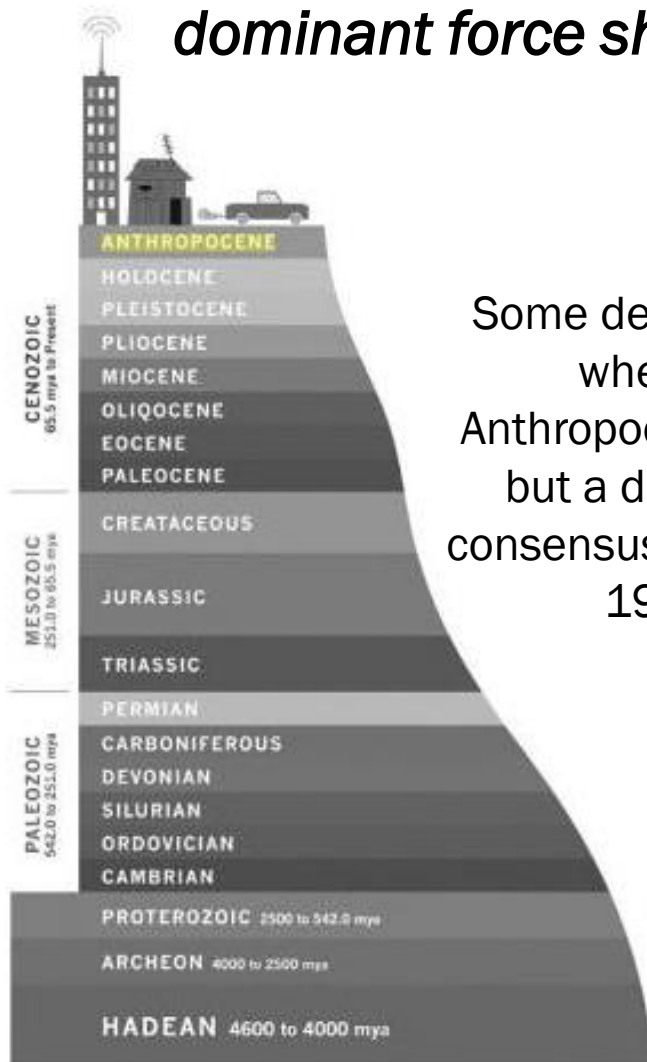
- “Measured against the requirement that they should contribute to the realization of the right to food, the food systems we have inherited from the twentieth century have failed”.
- “Too little has been done to ensure adequate **nutrition**”
- “Global food systems have been shaped to maximize efficiency gains and produce large volumes of commodities, they have failed to take **distributional concerns** into account.”
- “Any prescription to increase yields that ignores the need to transition to **sustainable production and consumption**, and to **reduce rural poverty**, will not only be incomplete; it may also have damaging impacts, worsening the **ecological crisis** and widening the gap between different categories of food producers. “

Sustainable Development Goals



What is the “Anthropocene”?

A new geological era where human activity is a dominant force shaping ecosystems at global scales

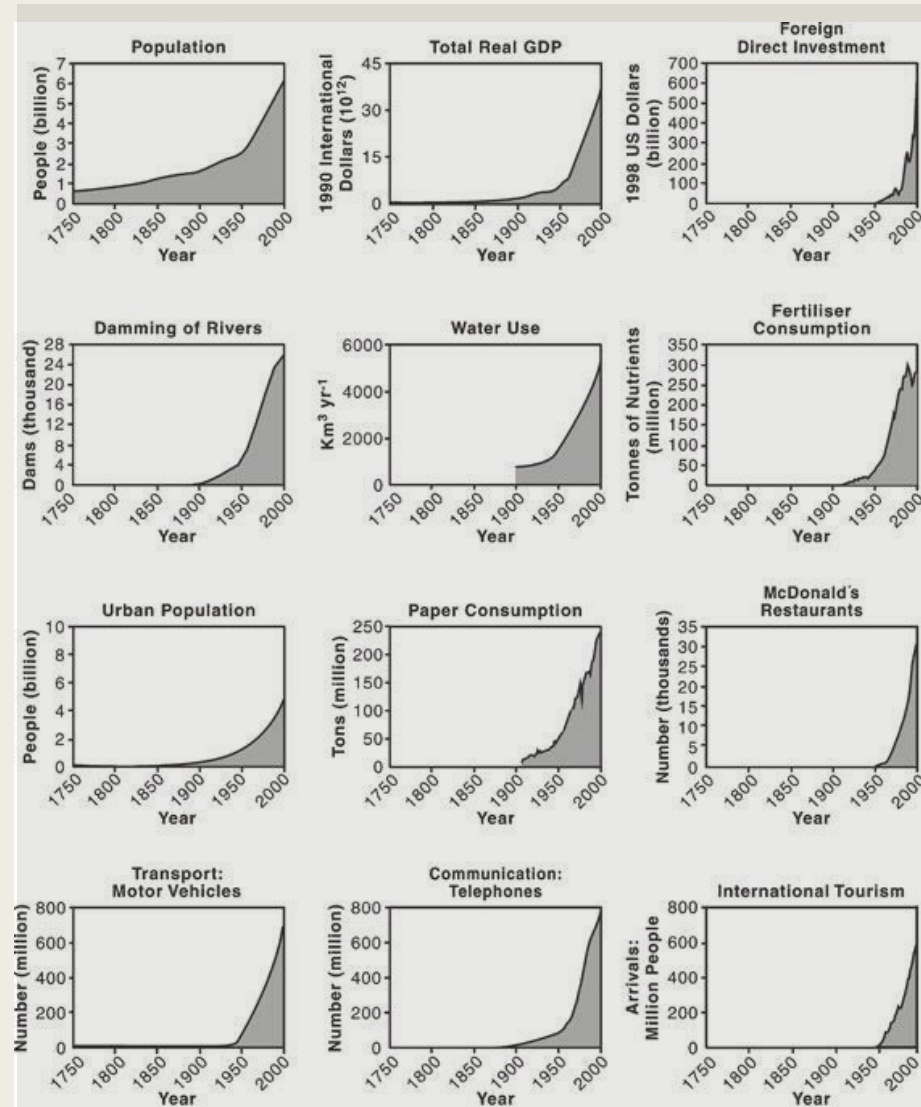


Some debate about when the Anthropocene starts, but a developing consensus around the 1950s

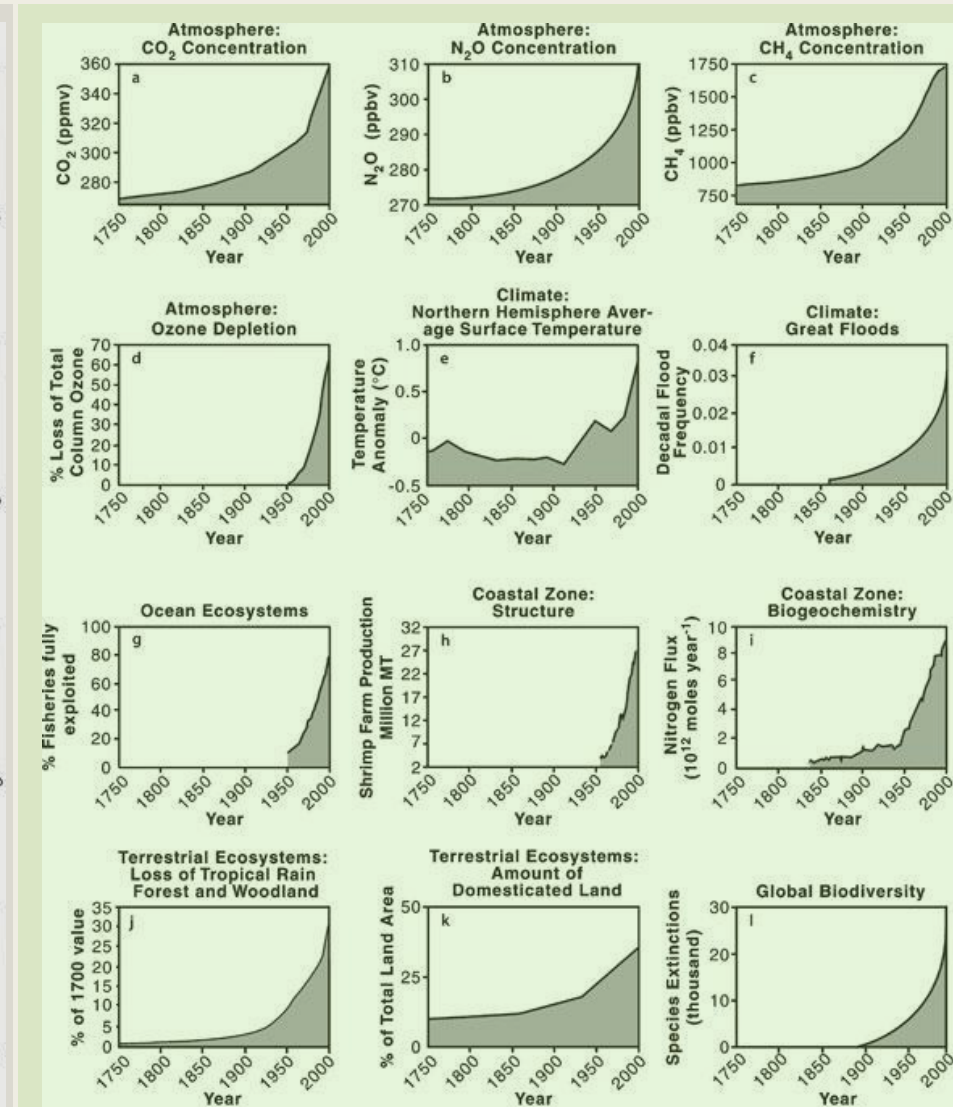


“Great Acceleration” since 1950s

Social & Economic Change



Ecological Change



The Anthropocene: Equality and fairness

These changes have greatly increased the material well-being of very many people (1900: 1.6 billion people -> 2014: 7.2 billion people)

Through use of **ecosystem services** eg fresh water, food production, timber



BUT growing evidence that current trajectory unsustainable

- Many **ecosystem services** are degrading or insufficient for projected future demand eg climate regulation, fresh water
- Massive **inequalities** : wealthiest 20% account for 77% of private consumption; poorest 20% account for 1.5% of private consumption

The Food System

- Over **165 million children are stunted** and 2 billion people globally lack vitamins and minerals essential for good health.
- The prevalence of obesity doubled between 1980 and 2008. By 2008, **1.4 billion adults were overweight**, including 400 million who were obese and therefore at heightened risk of type 2 diabetes, heart disease or gastrointestinal cancers.
- In 2006, livestock production accounted for **30 per cent of the land surface** of the planet, and the expansion of pastures and feed crops is a major source of **deforestation**, especially in Latin America.
- **Field-level practices** represent approximately **15 per cent of total human-made GHG emissions**. **Livestock production** is responsible for **18 per cent of GHG emissions**– a larger share than transport
- The overuse of **chemical fertilizers** polluted fresh water, leading to a flow of phosphorus to the oceans that is estimated to have risen to approximately **10 million tons annually**. Phosphate and nitrogen water pollution is the main cause of **eutrophication**, which spurs algae growth that absorbs the dissolved oxygen required to sustain fish stocks.

Why a rights-based framework?

- Food poverty and insecurity are not the result of supply failures, but caused by diminished or failed entitlements to access food (Drèze and Sen, 1989).
- Structural and institutional impediments to realising food security, a rights-based framework requires States to engage with these.
- A wide range of important considerations and **principles**, including equality and non-discrimination, participation and inclusion, accountability and rule of law, and the principle that all human rights are universal, indivisible, interrelated and interdependent.
- FAO: “Legal instruments have been elaborated, political commitments made and practical guidelines - the Right to Food Guidelines - elaborated. What we need now is a shift from charity to human rights, from rhetoric to action and results. It is time to make hunger history and the right to food a reality for all.”

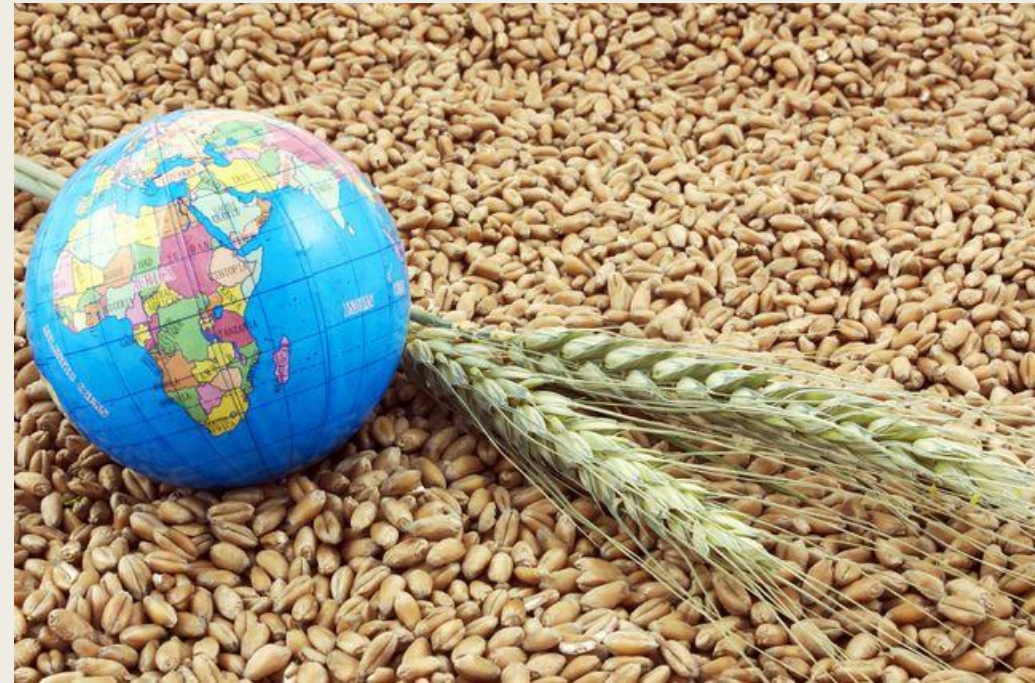


Socio-economic rights framework

- The obligations imposed on States under the right to food follow the standard tri-partite typology.
- The obligation **to respect** existing access to adequate food requires State parties not to take any measures that result in preventing such access.
- The obligation **to protect** requires measures by the State to ensure that enterprises or individuals do not deprive others of their access to adequate food
 - *The State is primary duty bearer, but such obligations should be extended to cover particularly powerful non-State public actors (such as the World Trade Organisation and private transnational corporations), given their key role in the contemporary food system.*
- The obligation **to fulfil** means the State must pro-actively engage in activities intended to strengthen people's access to, and utilisation of, resources and means to ensure their livelihood to enable food purchase.
 - *Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly (CESCR, 1999).*

Social-ecological rights

- How do we realise these rights without compromising the ability of the planet to provide services such as housing material, energy, food, water is a question of sustainable development law
- Socio-economic rights dependent on ecosystem goods and services ->
- Social-ecological rights
 - *Right of Access to Water*
 - *Right of Access to Food*



South African context

- *African Charter on Human and People's Rights*, which includes the right to "a generally satisfactory environment favourable to [people's] development."
- *Constitution of the Republic of South Africa, 1996*,
 - *s 24: Everyone has the right- to an environment that is not harmful to their health or well-being; and*
- National Environmental Management Act (NEMA 1998) defines sustainable development as "the integration of social, economic and environmental factors into planning, implementation, and decision-making so as to ensure that development serves present and future generations."



Equality

- Right to Equality enshrined in Section 9 of the South African Constitution
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged **by** unfair discrimination may be taken.
- A purposive reading of the equality clause in section 9 indicates an emphasis on **substantive equality** (rather than formal equality)



Substantive Equality

- Equality is “not regarded as gratuitously egalitarian, aiming at equal treatment for reasons of simplicity or tidiness, but **as affirming equality which is believed in some sense already to exist and to be obscured or neglected by actual social arrangements**” (Williams 1971).
- “the most fundamental point in the equality principle is that all human beings as persons have an equal value in themselves but, **this idea does not exclude different treatment of persons from the consideration of the differences of factual circumstances such as sex, age, economic conditions etc.** ... To treat different matters equally in a mechanical way would be as unjust as to treat equal matters differently” (Judge Tanaka: ICJ South West Africa case 1966)



Socio-economic rights

- Realizing socio-economic rights is an important step toward poverty alleviation. Socio-economic rights also play a part in incorporating sustainable development principles into a human rights discourse.
- Section 27 states that everyone has the right to have access to-
- a) Health care services, including reproductive healthcare;
- **b) Sufficient food and water; and**
- c) Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.



Right of Access to Water



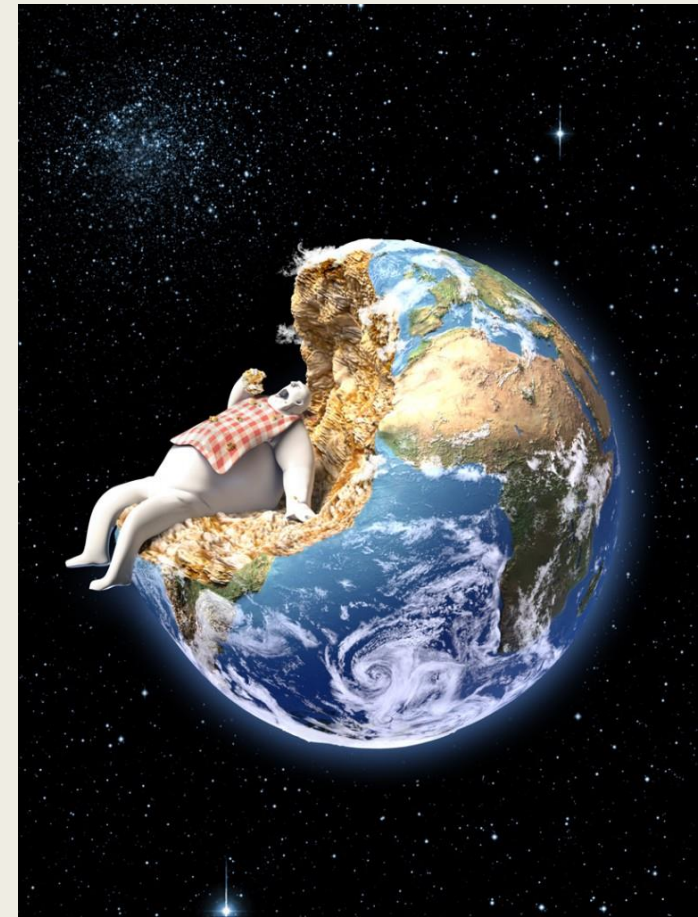
- UN Committee on Economic, Social and Cultural Rights (**CECSR**), there is a negative duty not to directly or indirectly interfere with a person's enjoyment of the right of access to water.
- However, in terms of the actual provisioning of water services as a basic human right, there is still much debate.
- 2 cases in South Africa:
 - *Mazibuko and Others v City of Johannesburg*,
 - The Constitutional Court overturned the decision of the previous courts, giving "weight to the government's arguments that the current policies reflected a need to conserve water and also ensure the utility's financial viability" and were therefore reasonable.
- *The Federation for Sustainable Environment v The Minister of Water Affairs or Carolina case*
- The High Court held that government officials from the Ministry of Water Affairs, the local municipality, and the mayor must make water readily available to the applicants, the residents of Carolina and Silobela in Mpumalanga whose water supply was contaminated by acid mine drainage from a nearby mine.

Equality and sustainability in South Africa

- "The achievement of equality, one of the founding values of our Constitution, will not be accomplished while water is abundantly available to the wealthy, but not to the poor."
(Judge O'Regan in Mazibuko)
 - *But, the principle of substantive equality was lost in a discussion of reasonableness.*
- Judge O'Regan refers to the scarcity of water resources in South Africa and the need to conserve water in *Mazibuko*, but the finding of the court was not affected **by** this scarcity.
 - *It was more concerned with the **mechanism of providing access to water** than with **the allocation of a limited amount of water**.*
- But under circumstances of population growth, urbanization, and climate change, South Africa faces a serious challenge in the allocation of water for particular uses-not least of which is for growing food, the right to which is also entrenched in the Constitution.
- Courts will have to deal with substantive equality issues in the context of resource scarcity.
 - *These socio-ecological rights are not only dependent on the goodwill or capacity of the state to deliver, but are also fundamentally linked to the existence of adequate environmental system from which they can be derived.*

The Right to Food in the Anthropocene

- In the Indian Right to Food Act 2013, the government commits to provide "five kilograms of foodgrains per person per month" at a subsidized rate.
- This forward-looking legislation, which takes into account notions of substantive equality through a lens of affordability of basic resources, could spark a paradigmatic shift through which to view the legal ramifications of ensuring human rights like the right of access to water and food
- However, in countries like South Africa, Brazil and India where the transformative potential of legislative tools is leveraged to rectify past injustices, continuing to deliver on these socio-ecological rights will become increasingly difficult in a future under exposure to global environmental change and globalization.



Implications of equality and sustainability discourses on the right to food

- Challenge of the reallocation of resources under conditions of scarcity.
- True substantive equality would allocate resources in such a way that the outcome is equal access to nutritious food, but how does that play out under conditions of scarcity?
- How will our legal and political institutions deal with these difficult decisions?
- More importantly, will they be able to pre-empt scenarios and implement responses that deal with wasteful behavior, thereby curtailing the escalation of scarcity in the future?

