



# A Rights-Based Approach to Water Issues

current interpretation and  
experiences in application

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Bread for the World

„Lets justice roll down like water.  
Faith-Based Advocacy and Water for all“  
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22.04.2008 / Lesotho

# Overview

1. Introduction – Rights-based approach to water
2. Right to Water – legal analysis
3. How to use the right to water in national and international procedures
4. Experiences from rights based work
5. Role of development aid
6. Value added of a rights based approach
7. Special case: Water as a commodity
8. Current Civil society initiatives

# 1. Introduction – Rights based approach to water

- Agenda setting:
  - Recognition of the right to water **and** sanitation is still at the beginning
  - Conflictive issue: in countries / transboundary water use
  - Conflicts with huge infrastructure projects (World Commission on Dams)
  - Privatisation of water supply debate
  - Huge civil society mobilisation on water – increasingly focus on a rights-based approach
  - Rights-based / –needs based discussion
  - Does a rights-based approach discourage societal support to the needy

# 1. Introduction – Challenges

- „The oil of the 21st century“
- 1,1 Bio. people without access to water
- 2,6 Bio. people without access to sanitation
- 6.000 people are dying every day from water-related diseases



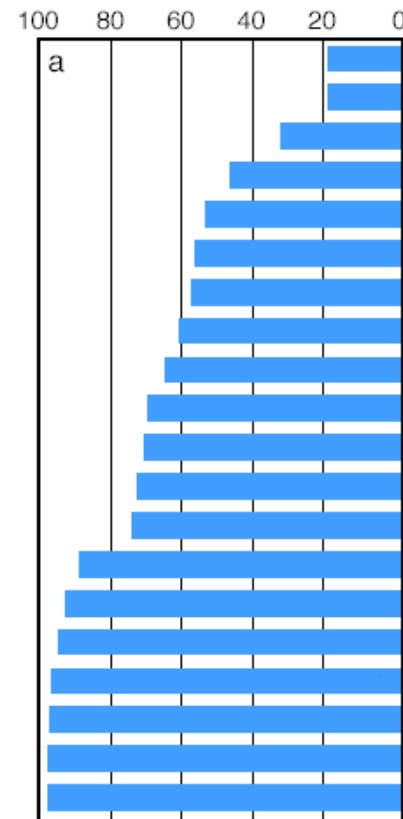
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# 1. Introduction – Water is a special good

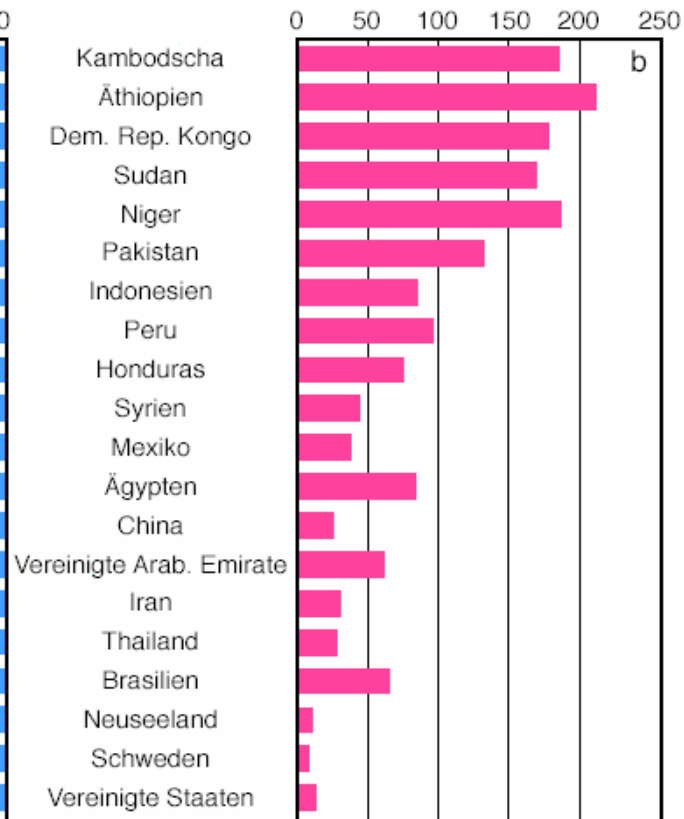
- We need it regularly
- It is a special „legal good“
  - It is a human right
  - Whose supply is to be guaranteed daily
- Water is a good which is increasingly scarce
- Water becomes a source of conflict
  - Interstate conflicts – still weak empirical evidence (depending on definition of conflict)
  - Conflict of usage in states.

# Access to water and child mortality

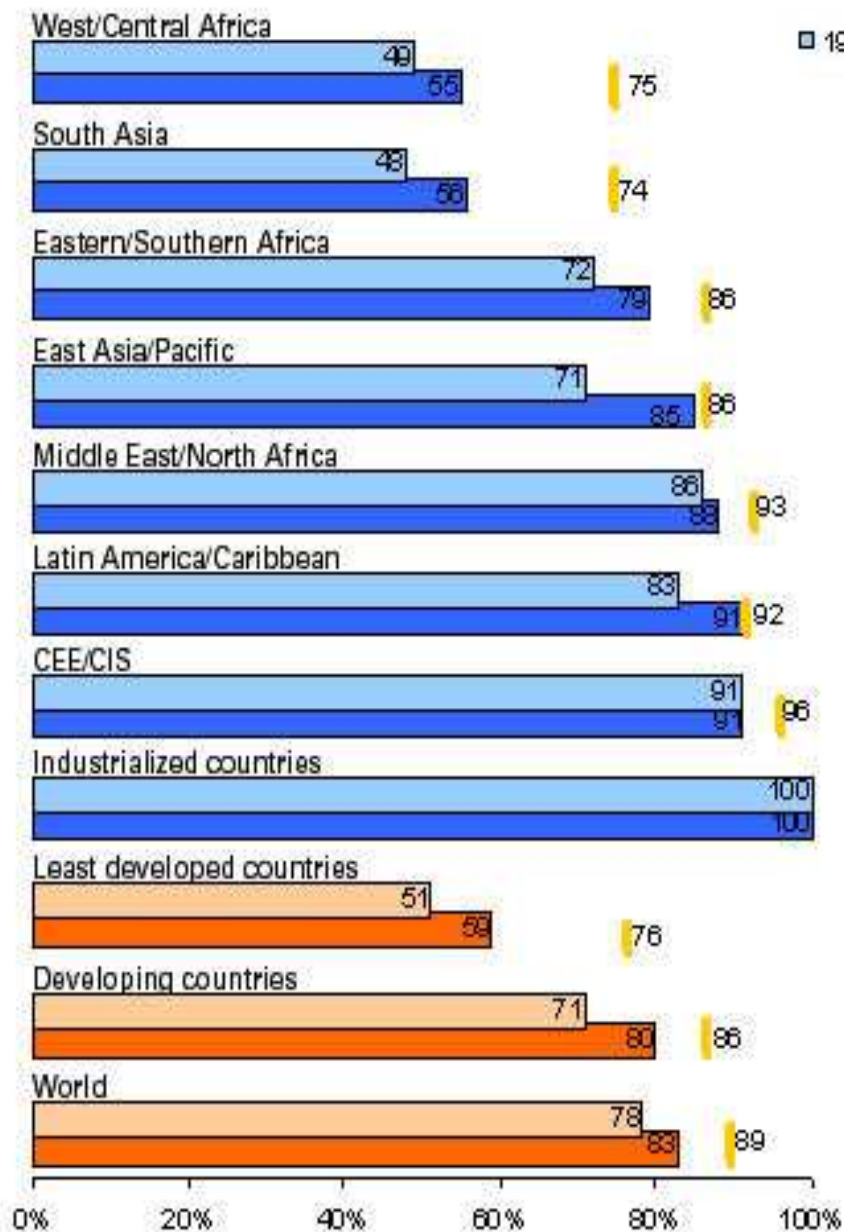
Bevölkerungsanteil mit Zugang zu Trinkwasser (Prozent)



Kindersterblichkeit (pro Tausend)



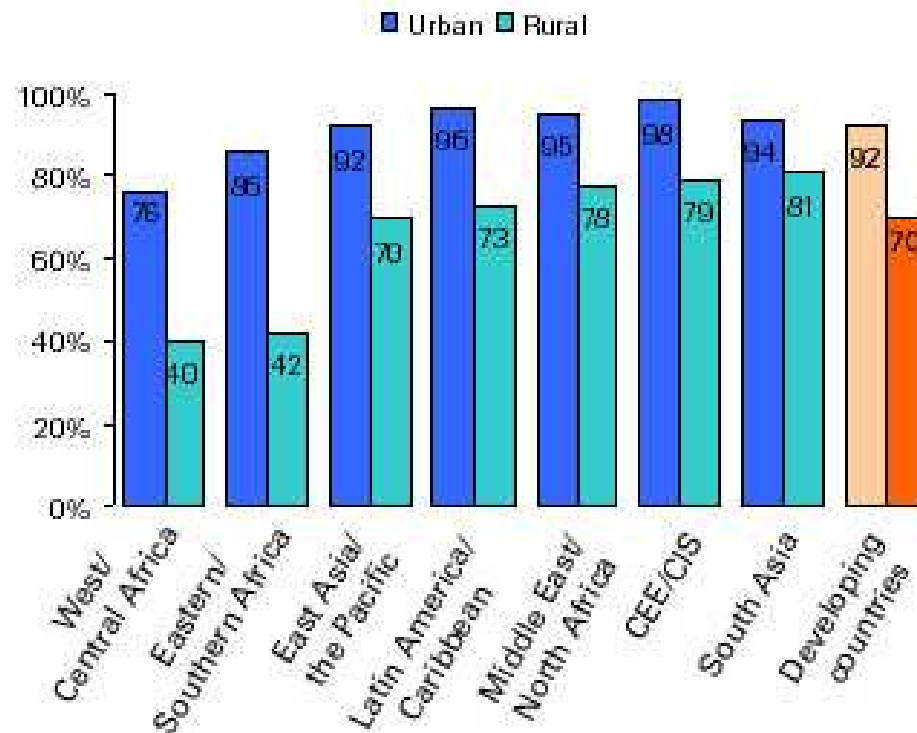
Coverage with Improved drinking water sources, 1990, 2004 and 2015 MDG target, %



Source: WHO/UNICEF Joint Monitoring Program for Water Supply and Sanitation, June 2006

# Water supply worldwide

## Urban/rural disparities in improved drinking water coverage, 2004



Source: WHO/UNICEF Joint Monitoring Program for Water Supply and Sanitation, June 2006

# 1. Reasons for the water crises

- Overuse of Water
  - Ineffective irrigation methods in agriculture
  - Lackage in water supply (tubes etc.)
  - Tourism Industry
  - Luxury use (golf courses, gardens etc.)
  - Old production methods in industry
- Pollution
  - No treatment of waste-water
  - Pesticides
  - Industry waste water
  - Saltwater intrusion to ground water sources

# 1. Reasons for water crises (2)

- Destruction of ecosystems
  - Deforestation
  - Soil erosion
  - Climate change
- Population growth
- Increasing mega cities
- Industrial development



Quelle: DSE

# 1. Climate change

- Glacier water supply: 1/6 of all people
- Increase of temperature (IPCC 2007):
  - Up to 1,5 °Celsius ca. 600 Mio. extra.
  - Up to 2 °C ca 1,5 Bio. People
  - From 2,5 °C 2,4 to 3,1 Mrd. Menschen will be affected with increasing shortage
  - Increasing water temperatures
  - Southern Africa – Percipiation - 30 Prozent up to 2050
- Tipping points
  - Summer Monsun (South and Southeast Asia)
  - Amazon

# 1. Violations of right to water and sanitation - central cause

- Beside all physical shortages and crises phenomena – access issues are defined by political decisions
- Illustrative examples
  - New Delhi (non-registered slums)
  - Ghana – Western Region (water pollution + deviation of streams through mining projects)
  - Manila, Managua (price increase 400 %)
  - Colombia (Water use for horticulture)
  - South Africa and other countries (Pre-Paid Water-Meters)



## 2. Right to Water – legal analysis (1)

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
  - Right to an adequate standard of living, including food, clothing, housing.... (Art. 11)
  - Right to Health (Art. 12)
- No mentioning of the word „water“ in those texts
- A „Self-Standing Right“?
- On the way to a full recognition
  - General Comment No. 15
  - Study of the Office of the High-Commissioner for Human Rights (September 2007)
  - Resolution / Decision of the Human Rights Council (March 2008)
    - Independent Expert
    - Human rights obligations to access to water and sanitation

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## 2. Right to Water – legal analysis (2)

- Other special Rapporteurs work
  - Right to Housing (Kothari),
  - Right to Food (Ziegler)
  - Right to Health (Hunt)
  - Sub-commission → Hadji Guissé
- Documentation of violations by civil society organisations
  - Bread for the world / FIAN
  - COHRE
  - More groups are following at the national level

## 2. Right to Water (3)

### Content of the right to water

- Content elements (GC 15)
  - is both part of the right to adequate food and the right to health (irrigation water is part of right to food)
  - For personal / domestic use (more than drinking water because of health and sanitation aspects)
  - Access
    - Physical
    - Economic / affordability
    - Non-discriminatory
    - Information must be available

## 2. Right to Water – legal analysis (4)

- Soft law
  - Agenda 21
  - Millennium Development Goals
  - Johannesburg 2002
  - Universal Declaration of Human Rights
  - etc.
- Hard law
  - International Covenant on Economic, Social and Cultural Rights
    - General Comment 15 (GC15) on the right to water (November 2002)

## 2. Right to Water (5) National obligations

- Para 17-29: national obligations (GC 15)
  - Respect: no interference with the enjoyment of the right to water
  - Protect: control of third parties (even in situations of privatisation (para 24))
  - Fulfill (use the maximum of the available resources)
    - Facilitate: individuals or groups access to water resources
    - Promote: knowledge on sanitation etc.
    - Provide: direct provision, if „facilitation“ does not work

## 2. Right to Water (6) International Obligations

- Para 30-35: International Obligations (GC 15)
  - New quality in General comments in being quite detailed
  - Negative obligations:
    - no violation by a state party in other countries
    - make sure that IGOs do not contribute to violations
    - No embargo
    - Make sure that state parties respect the obligations when signing and ratifying new international treaties
  - Positive obligations:
    - Support other countries in implementing
    - Control third parties (private actors) from your country working abroad
    - Use your role in IGO to support the fulfillment

## 2. Right to Water (7) Special issues

- Specific issues in the General Comment that needs to be highlighted:
  - Para 13-16: Detailed regulation to avoid discrimination (all reasons)
  - Para 37: Core obligation (provision of a minimum essential amount of water is of immediate nature)
  - Para 39-44: Examples of violations (acts of commission, acts of omission)
  - Para 24: Privatisation needs adequate regulation (affordable supply of water)
  - National Strategies needed

## 2. Right to Water (8)

### National strategy

- (1) Identification of vulnerable groups
- (2) Check legislation
- (3) Check current policy framework and policies
- (4) Monitoring
- (5) Accessible recourse procedures are needed



### 3. How to use the right to water in national and international procedures (1)

- National action opportunities for CSO:
  - Education (knowing your rights)
  - Participation in public planning procedures
  - Public pressure and awareness raising
  - Documenting cases
  - Quasi legal procedures (National human rights commissions)
  - Legal procedures (litigation)
- Differentiation:
  - Rights holder oriented
  - Duty bearer oriented

### **3. How to use the right to water in national and international procedures (2)**

- International procedures
  - Treaty bodies: CESCR
    - Standard setting
    - Parallel reports
    - Individual cases → Optional Protocol
  - Human Rights Council
    - Support work of Independent Expert
    - Support to General Comment No. 15
    - Discuss open issues (privatisation)
  - Public pressure (Int. Human Rights Organisations) on IGOs (e.g. World Bank)

## 4. Experiences from the rights based work (1)

- Method 1: Case related work
  - Case related approach
  - Violations and threats of violations
  - Consent of victims
  - Activities:
    - Letter writing campaigns,
    - public awareness and media work,
    - fact finding missions,
    - Litigation
  - Core of any rights based approach
  - Can / should be done by specialized organisations (human rights organisations)

## 4. Experiences from right based work (2)

- Case experiences FIAN:
  - 1) Access conflicts (Pastoralists, Tanzania)
  - 2) Access problems through pollution and impact on the quality of the resources (Ecuador, Oil,
  - 3) Access problems through huge changes in natural endowment: Dams (Brasil) surface mining, (Ghana Gold mining) India (coal mining) etc.)
  - 4) Privatisation of water supply (Ghana, India)
  - 5) Privatisation of water sources – upstream (India)

## 4. Experiences from right based work (3)

- Method 2: policy check (national strategy)
  - Vulnerability checks
  - Discuss policy alternatives based on impact assessments,
  - Monitoring state obligations / Parallel report
- Method 3: Budgeting rights
  - Check budget allocation
- Method 4: Education and awareness raising – knowing your rights
  - Informal education work
  - Check formal education work
- Method 5: Training of legal personal
- Method 6: more is possible.....

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## 5. Role of development policy

- Support a rights based approach
  - Value added in creating political will
  - Criteria for good governance
  - Reliable participation etc. (interdependence of all human rights)
- negative
  - no violations of the right to water through own projects
  - no violation through project of IGOs, where the governments is member of
  - no embargo, sanctions etc.
  - Respect the right to water, when negotiating new international agreements
- Positive
  - Support developing countries in implementing the right to water
  - Control of private actors working abroad

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## 6. Value added of a rights based approach

- Accountability of governmental actors
- Accountability and responsibilities of private actors
- Human Rights principles for processes:
  - Transparency
  - Participation
  - Non-discrimination etc.
- Focus on vulnerable
- Claiming / litigation
- Clear definition of the role of the state
- Clear definition of the role of other actors
  - Church / NGO roles in supplying
- Strengthening of civil society actors – first step knowing your rights

## 7. Special case: Water as a commodity



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## 7. Special Case: Water as a commodity (2)

- Water as a commodity is offered as way out of the Water crises by different actors
- Hope to get more private investments
- Hope to increase efficiency and modernization of services
- Cost recovery in order to save a scarce resource
- Opening / Liberalisation of water markets (GATS)

## 7. Special Case: Water as a commodity (3)

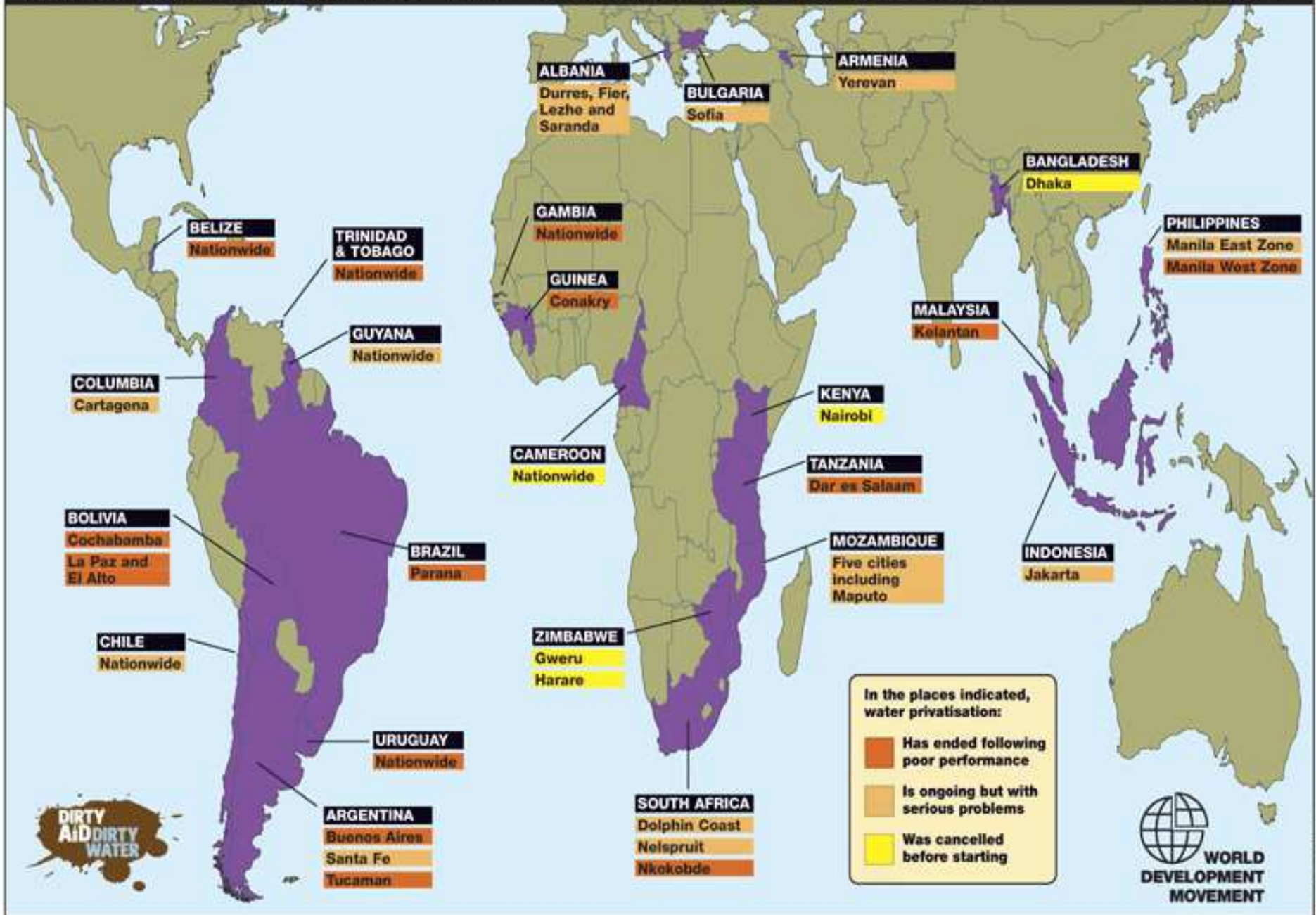
- World Bank
- IMF
- World Trade organisation (WTO)
- European Union
- Transnational corporations (Véolia, Suez, Nestlé etc.)
- Bilateral development aid

## 7. Special Case: Water as a commodity (4)

- Experiences:
  - Hardly any increase of quality in service
  - Higher prices
  - Few investments of private companies
  - Only cities are interesting area
  - Many problems in adequate regulation
  - Poor people stay as problem group in exculsion from affordable supply systems
  - Trend to privatise water sources

# FAILING THE POOR: THE RECORD OF WATER PRIVATISATION IN DEVELOPING COUNTRIES

OCTOBER 2005



## 8. Current Civil society initiatives

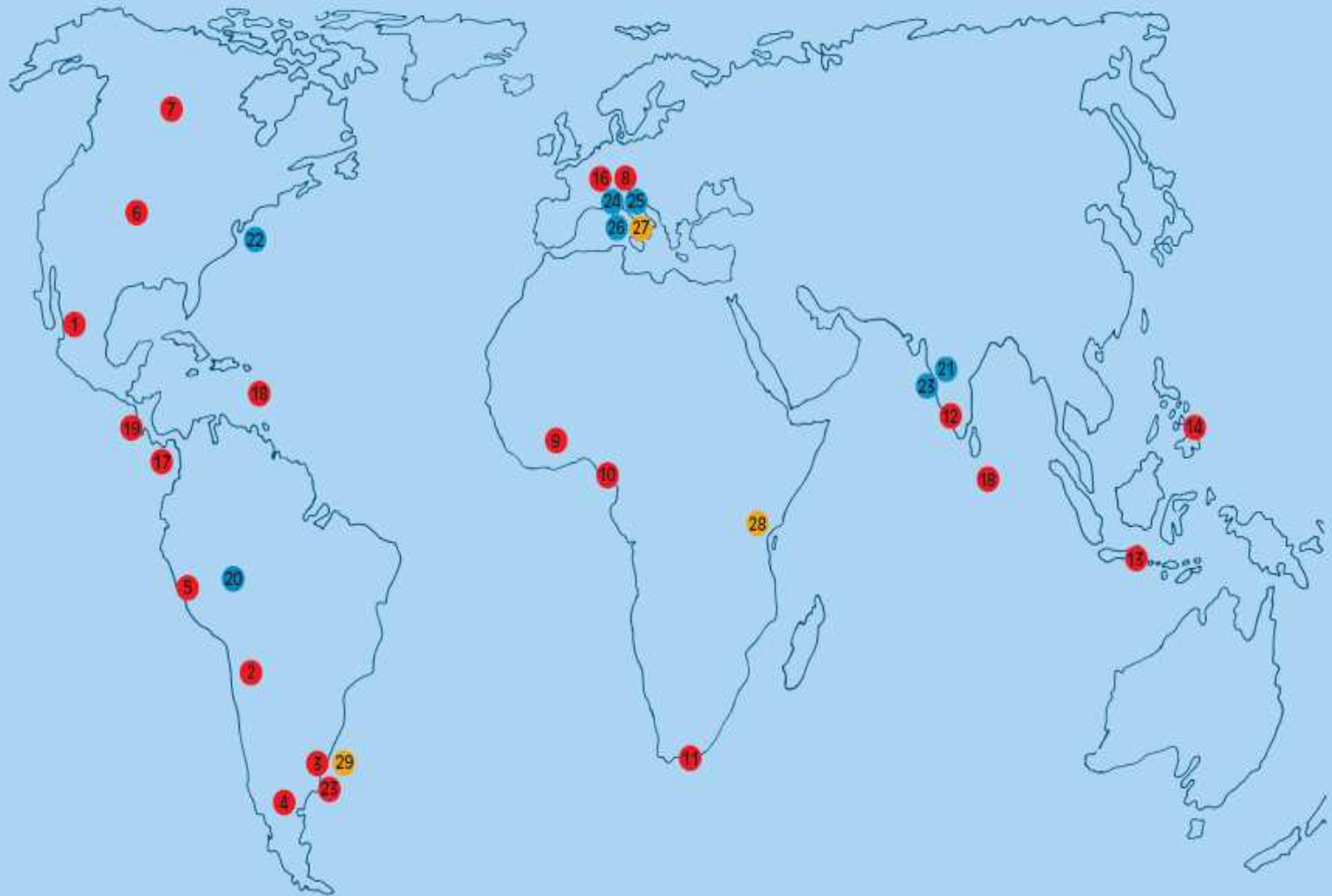
### National / local level

- Many national and local initiatives (Bolivia, Ghana, Uruguay, etc.) and water movements
- More and more ESC-organisations

### International networking

- Environmental groups (CSD)
- Ecumencial Water Network
- friends of the right to water
- African Water Network

# World Water Movement





Thank you for your attention

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Ecumenical Water Network

<http://www.oikoumene.org/>



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