

# The 'Right to the City', limits to Rights Talk and the need for rights to

## *the Commons:*

### Beyond Ostrom, urban injustice and imperfect justice in South Africa

OUR OBJECTIVE IS TO ADVANCE SOCIO-ECONOMIC AND ENVIRONMENTAL JUSTICE BY DEVELOPING CRITICAL KNOWLEDGE ABOUT, FOR AND IN DIALOGUE WITH CIVIL SOCIETY THROUGH TEACHING, RESEARCH AND PUBLISHING.

South Africa's 'Social Movements United' march from Alexandra Township to the World Summit on Sustainable Development in Sandton, 31 August 2002.

CENTRE FOR  
CIVIL SOCIETY

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presented to the  
**Rosa Luxemburg Stiftung  
Economics Workshop,  
'Beyond Ostrom'**

Berlin, Germany

8 November 2013

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# *Debt, uneven and combined development, financialized nature & climate justice politics*

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*Is it Possible to Have Another Economics  
for Another Economic Policy?  
The Debt Issue as a Challenge  
for Dealing with Mainstream Economics*

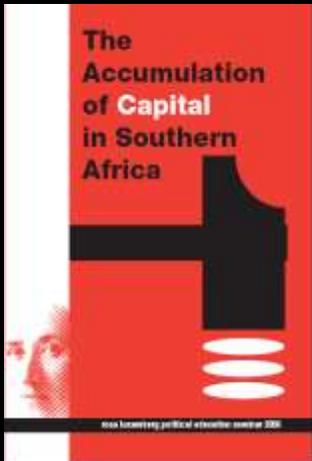
1 December

2012 workshop  
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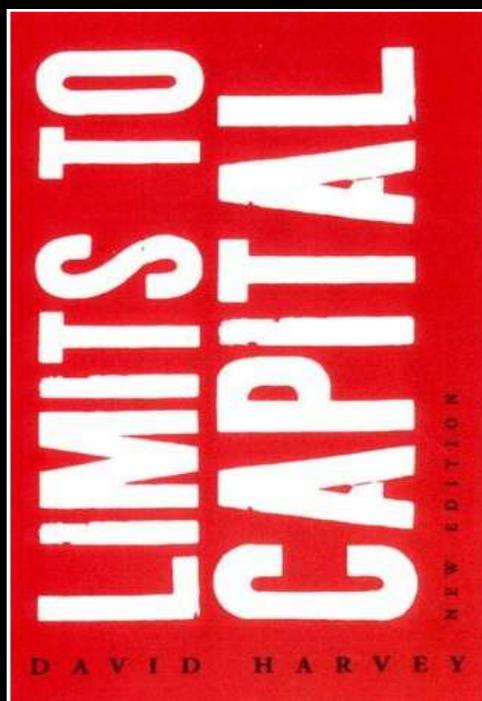
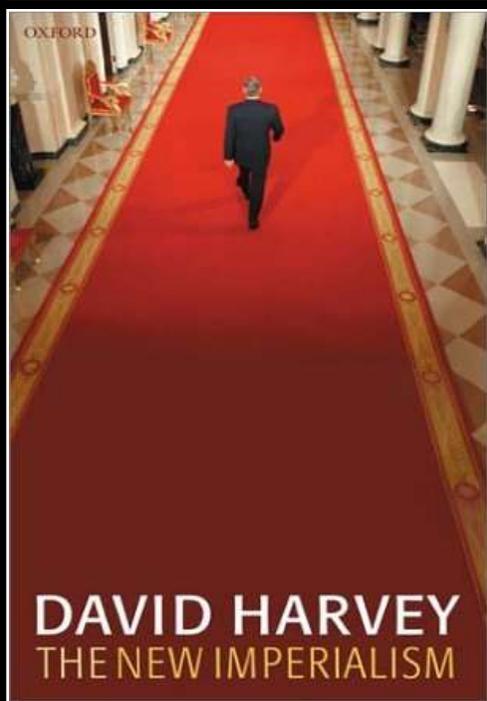
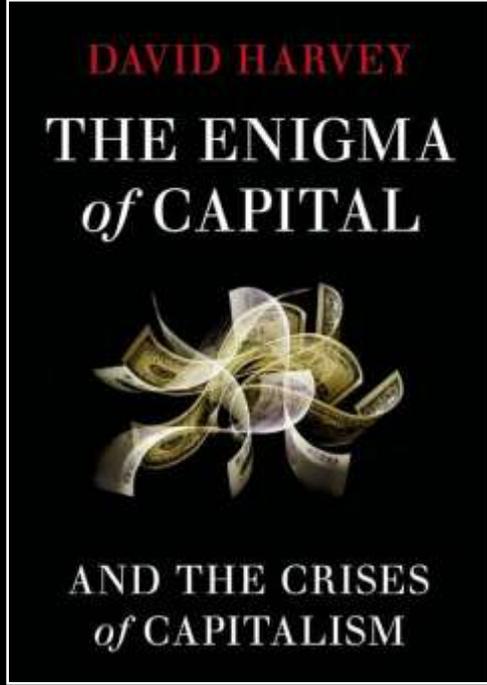
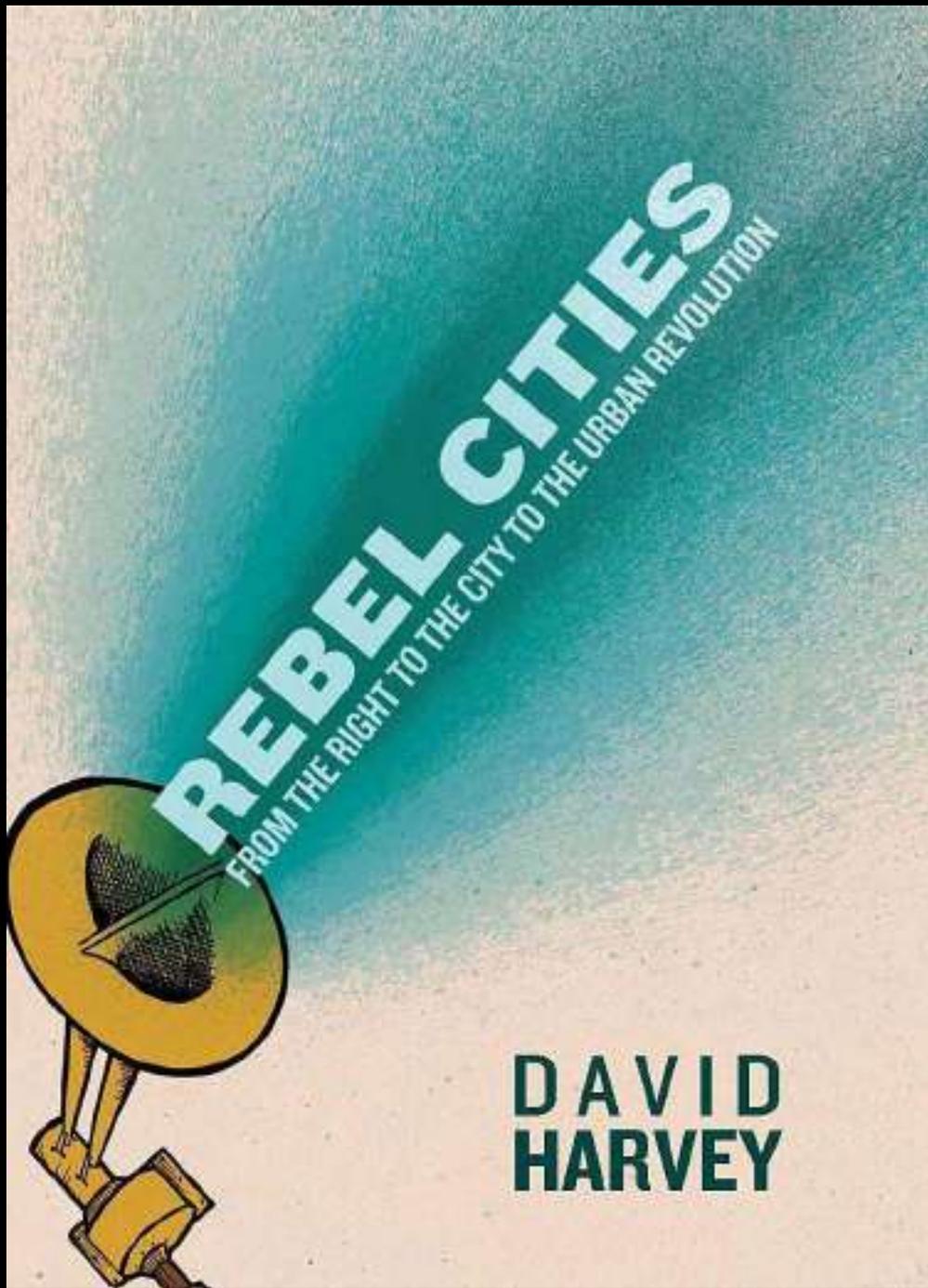
cartoons



*superexploitation through  
capitalist/non-capitalist relations*  
**Luxemburg on imperialism**



‘Accumulation of capital periodically bursts out in *crises* and spurs capital on to a continual extension of the market. Capital cannot accumulate without the aid of non-capitalist organisations, nor ... can it tolerate their continued existence side by side with itself. Only the continuous and progressive disintegration of non-capitalist organisations makes accumulation of capital possible.’

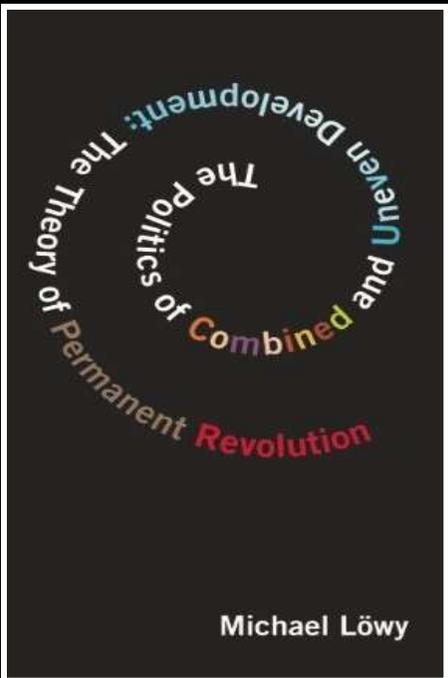


Scale is of great importance here, for the limitations of around 15,000 people served by a Commons (Ostrom's highest level of collaboration) is obviously inadequate for the required societal-scale changes that will be required for the next mode of production, after capitalism is fully exhausted. David Harvey sets out the problem in this way:

*As we 'jump scales' (as geographers like to put it), so the whole nature of the commons problem and the prospects of finding a solution change dramatically. **What looks like a good way to resolve problems at one scale does not hold at another scale.** Even worse, patently good solutions at one scale (the 'local,' say) do not necessarily aggregate up (or cascade down) to make for good solutions at another scale (the global, for example).*

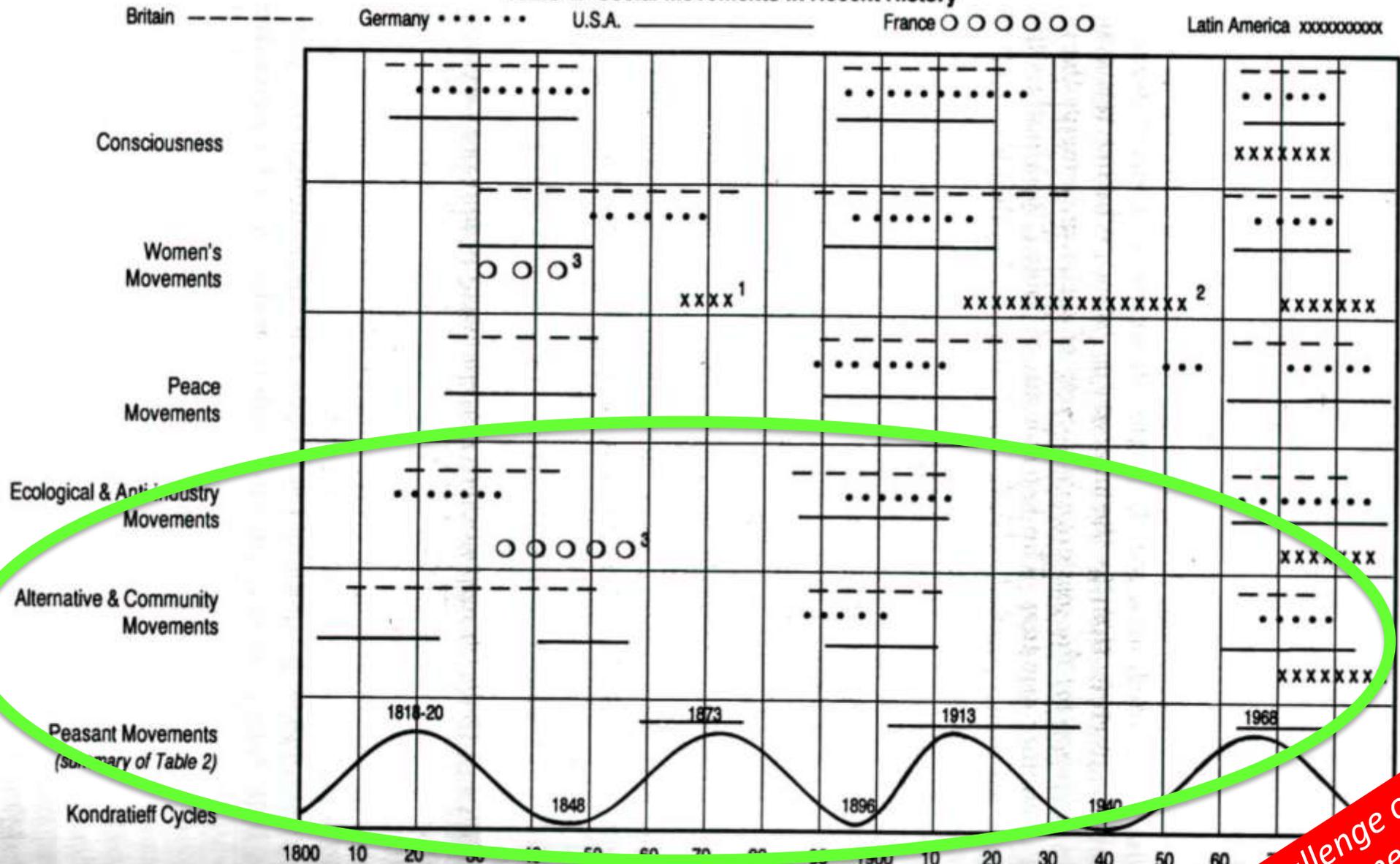
**might mega-cities (e.g. Johannesburg, Durban) become 'rebel cities' via commoning campaigns? medicines, water**

**Michael Lowy's 2010 update of 'combined & uneven development' concludes with these sentences:**



**'The key ecological issues – such as the catastrophic process of global warming – are intimately linked with the logic of the capitalist system. The expansion of capital, and the destruction of the environment, are 'combined', and inseparable. Therefore, a struggle to save the climate has to become an anticapitalist combat, otherwise it is doomed to failure.'**

# social movements in 19<sup>th</sup> & 20<sup>th</sup> century history



Adapted by the author from Brand (1988) with additional information from Huber (1987) and others.

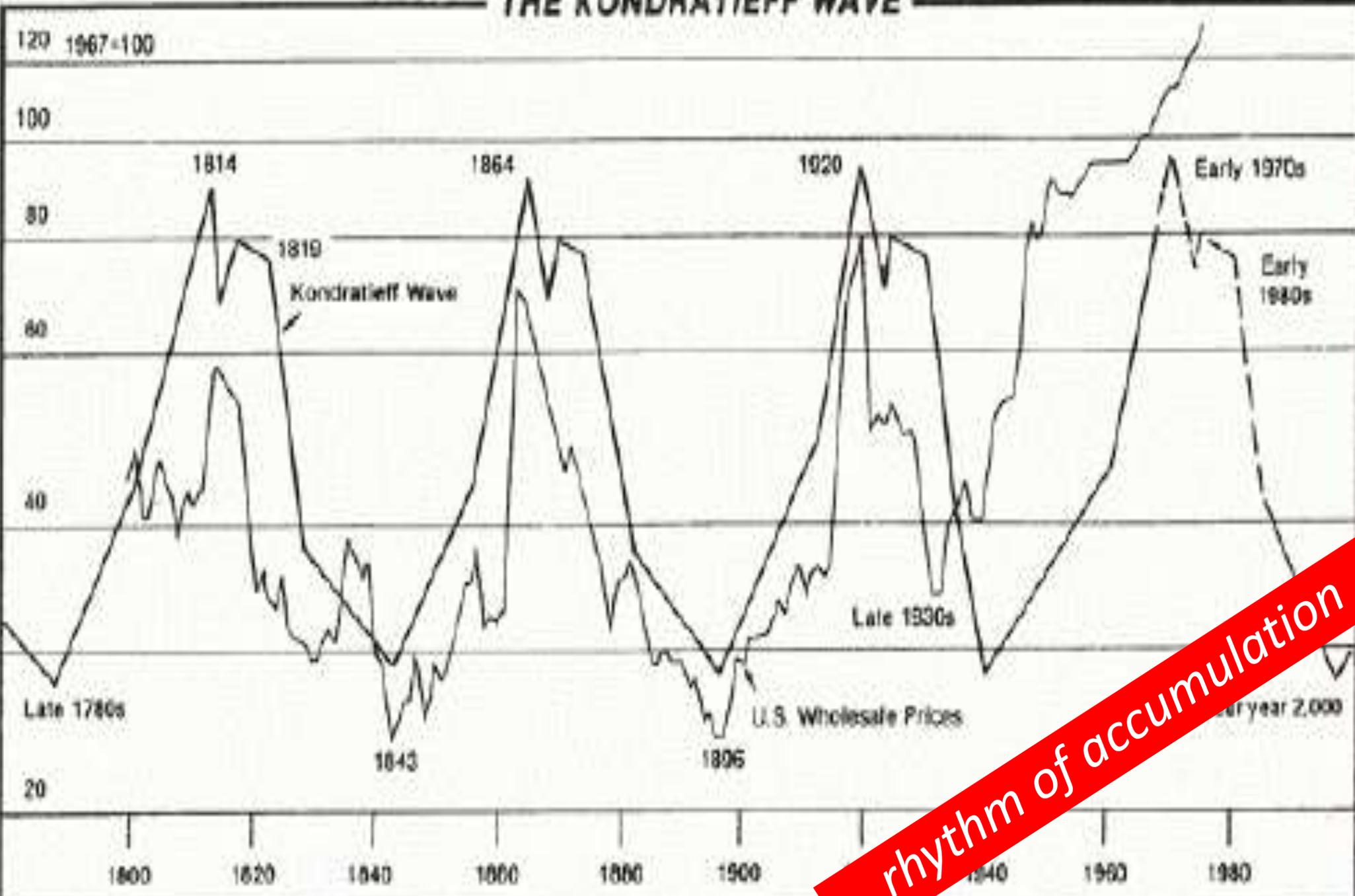
<sup>1</sup> Chile

<sup>2</sup> on and off in various Latin American countries

<sup>3</sup> incomplete data

challenge of movement building

# THE KONDRATIEFF WAVE

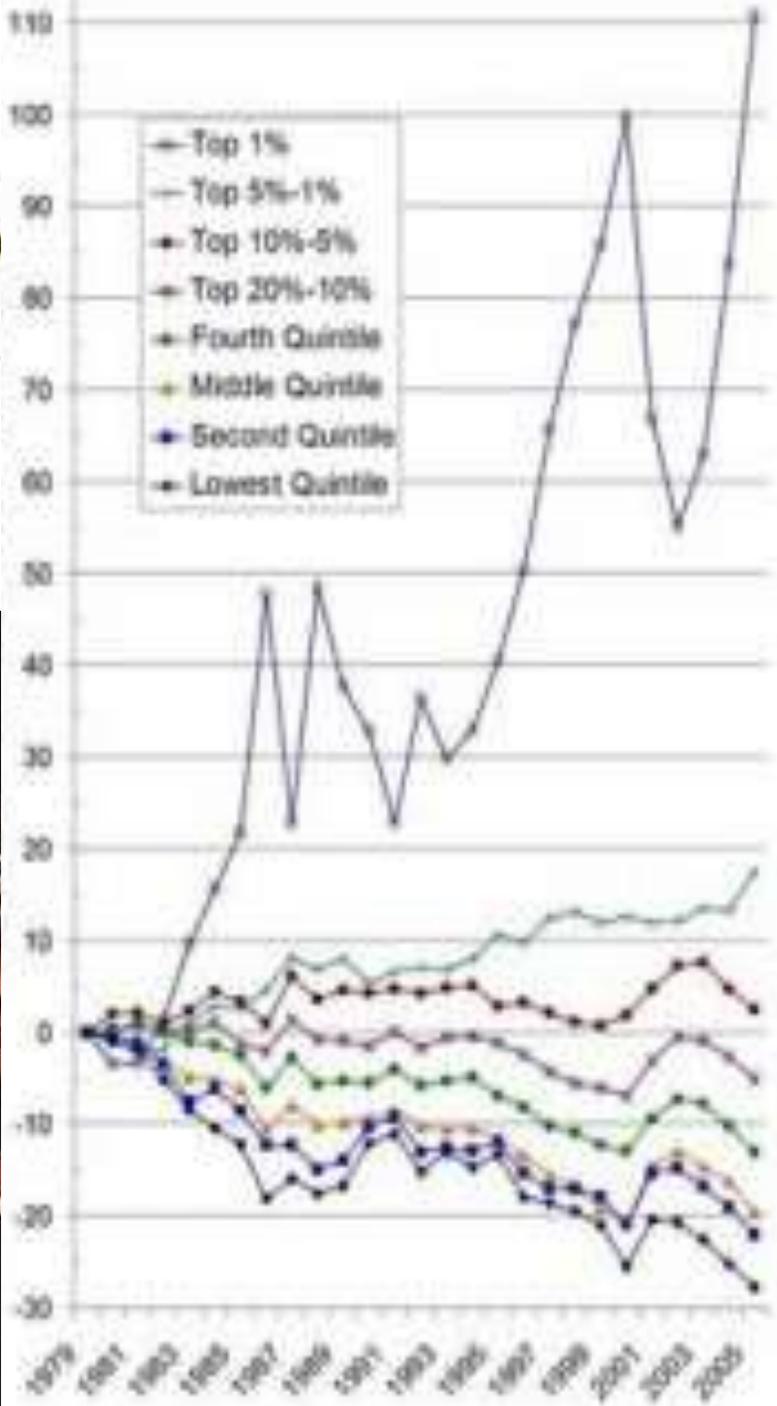
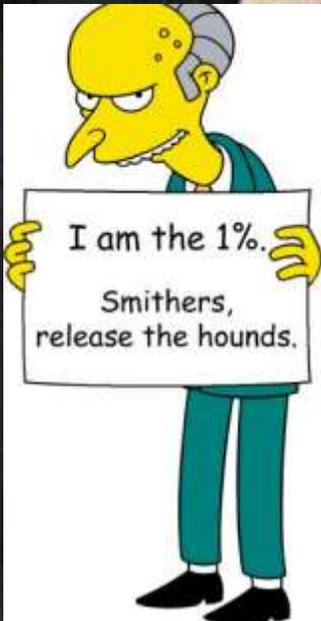


rhythm of accumulation

*economic resistance from below?*



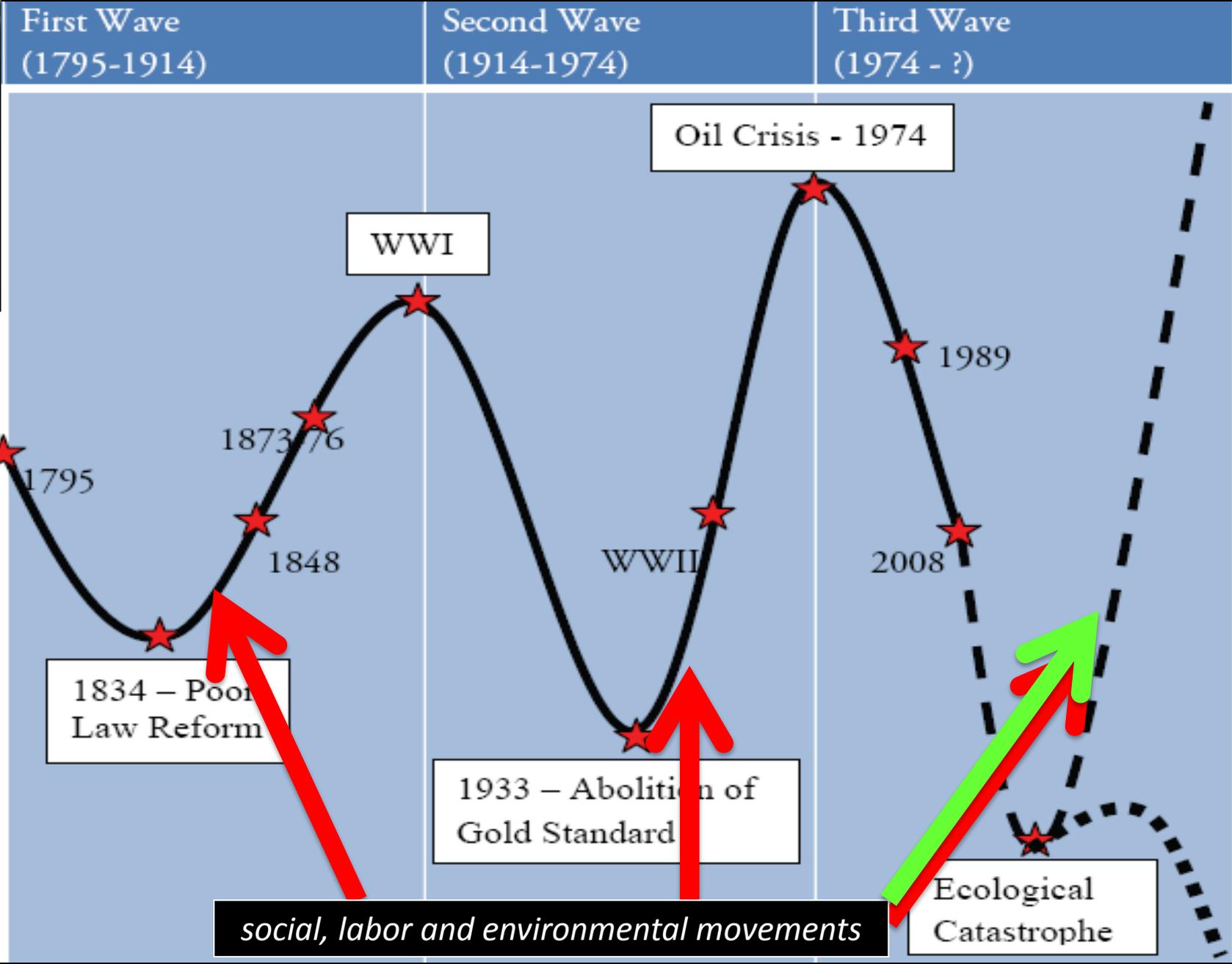
# AVERAGE HOUSEHOLD INCOME before taxes



# *Polanyi's double movement: waves of market power*



# Polanyi's double movement: waves of market power



Source: Michael Burawoy

# Durban's COP17 *'Conference of Polluters'*



# The Bill - short film - Germanwatch

germanwatch



Subscribe

31 videos

*rich countries owe ecological debt*



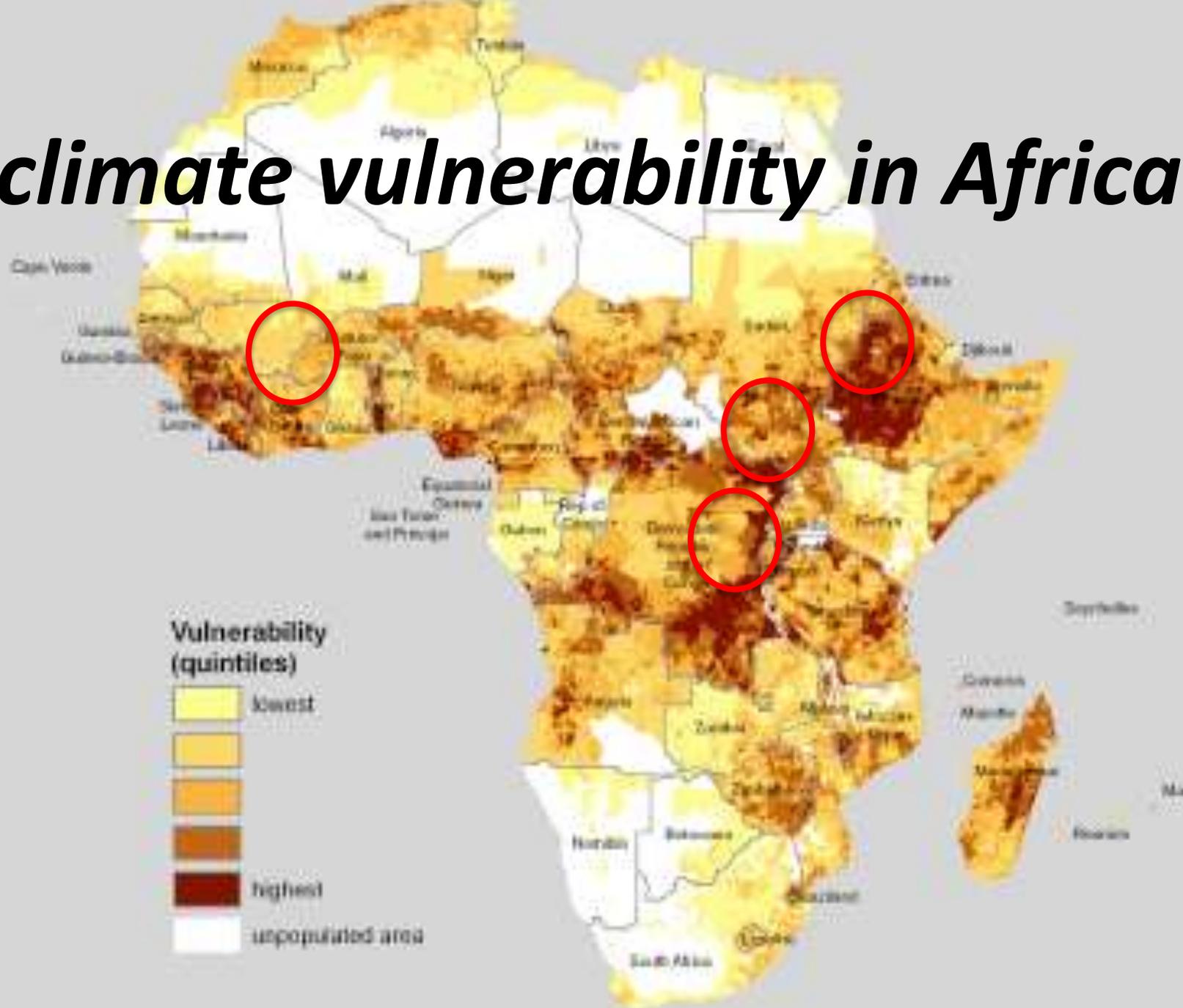
I was in Namibia.  
We did a kind of tour. Sort of like fly and drive.



1:22 / 4:22

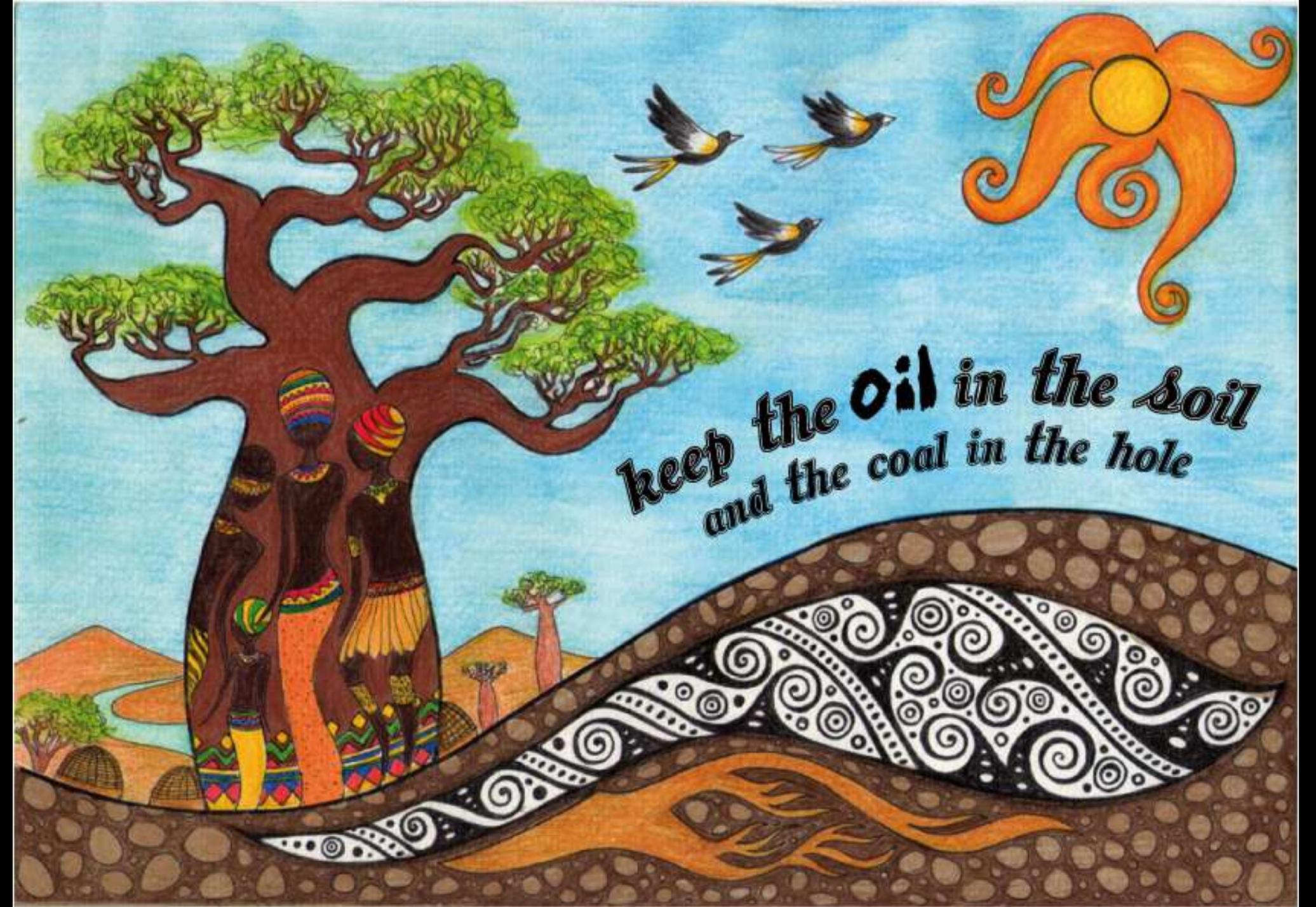


# *climate vulnerability in Africa*



source: Strauss Center, Univ of Texas





*keep the oil in the soil  
and the coal in the hole*

# Germany to pull out of Ecuador Yasuni initiative?

By Chris Lang, 22nd September 2010



Ecuador plans to leave almost a billion barrels of oil in the Yasuni National Park, in return for US\$3.6 billion of market value of the oil. It's been hailed as "The world's oil deal". In 2008, the German Parliament agreed to support the initiative. But now Germany's Minister for Economic Development and Cooperation, Dirk Niebel, says Germany "will not consider payment into the trust fund".



The Yasuni initiative applies to an area of 175,000 hectares of some of the most biodiverse rainforest on the planet, home to two of the world's last remaining uncontacted indigenous groups: the Tagaeri and the Taromenane. Others, the Shuar, Waorani, and Kichwa, only recently came into contact with the modern world. Under the initiative, 846 million barrels of oil would be kept permanently underground, avoiding the emission of 407 million metric tons of CO2.

The UN Development Programme signed an agreement with the Ecuadorian government. Under the agreement, UNDP would be an independent administrator of the trust fund. An analysis of the details of the agreement signed is available in this article from the UN: "A look at Ecuador's agreement to leave 846 million barrels of oil in the ground".

**Dirk Niebel helped kill Yasuni**

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Last updated: December 11, 2011 6:19 pm

# Climate deal boost for carbon markets

By Pilita Clark in Durban

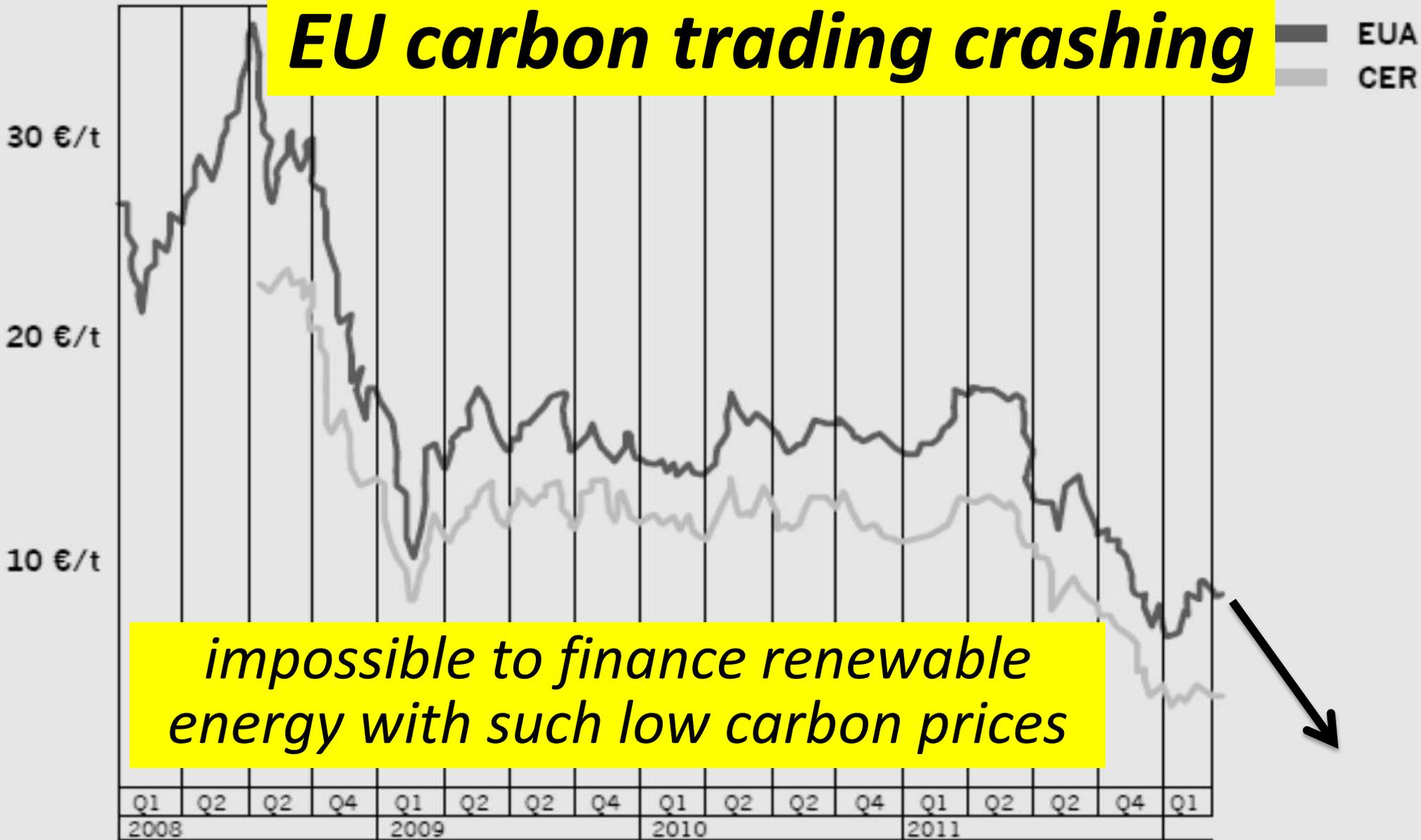
***‘Viagra Shot’ for Carbon Markets*** -- *Financial Times*, p. 1, 12 December 2011

*A global climate deal to extend the life of the Kyoto treaty and establish the parameters for negotiating a new pact by 2015 will provide a fresh stimulus to the world’s floundering carbon markets, according to bankers and analysts. “The deal provides a significant boost for investors in low-carbon technology,” said Abyd Karmali, global head of carbon markets at Bank of America Merrill Lynch, adding this was an achievement amid the woes of the eurozone crisis. In one of the more bullish business assessments of the new pact, which also includes a separate agreement to negotiate a new process aimed at legally obliging all countries to commit to cut their carbon emissions, he said **the deal was “like a Viagra shot for the flailing carbon markets”**. Carbon prices have plunged to record lows in recent weeks as Europe’s emissions trading scheme, the world’s largest, has been hit by eurozone uncertainties and fears of an oversupply of carbon credits.*

# *emissions market crashes, 2008-13*

*2009 VAT fraud, 2010 resale fraud, 2011 theft-closure*

***EU carbon trading crashing***



*impossible to finance renewable energy with such low carbon prices*

THE STORY OF STUFF PROJECT PRESENTS

# THE STORY OF CAP & TRADE

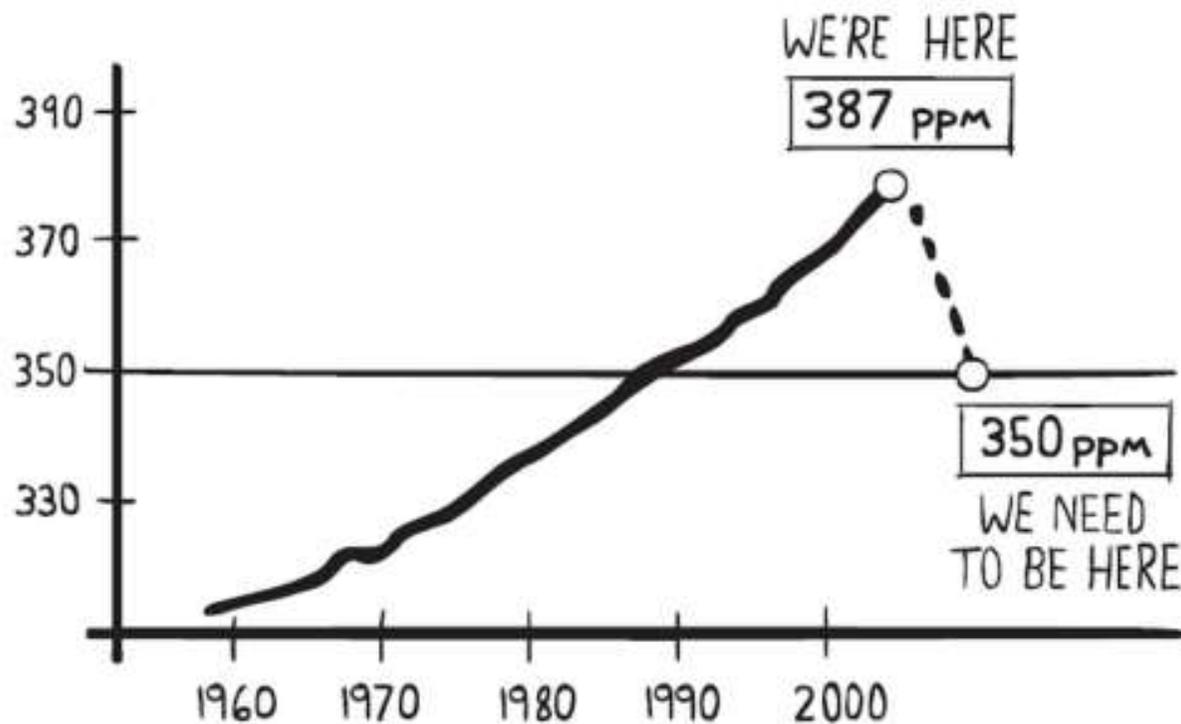
WHY YOU CAN'T SOLVE A PROBLEM WITH THE THINKING THAT CREATED IT

[storyofcapandtrade.org](http://storyofcapandtrade.org)

# THE STORY OF STUFF



ATMOSPHERIC CO<sub>2</sub> CONCENTRATION (PPM)



CLIMATE JUSTICE NOW!



# WHAT ARE 'THE COMMONS'?

*On the one hand, the common refers to the **earth and all of its ecosystems**, including the atmosphere, the oceans and rivers, and the forests, as well as all the forms of life that interact with them. **The common, on the other hand, also refers to the products of human labor and creativity that we share, such as ideas, knowledges, images, codes, affects, social relationships, and the like.***

- Michael Hardt, Duke University

# examples: digital information commons

commons-sense copyright - Mozilla Firefox

File Edit View Go Bookmarks Tools Help

http://za.creativecommons.org/commons-sense/index.htm

# Commons-sense

Copyright that makes commons-sense

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Edition 2, April 2005

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The Creative Commons South Africa website was recently nominated for the prestigious 'Prix Ars Electronica - International Competition for CyberArts' in the Digital Communities section. Find out about this and other accolades for Creative Commons in southern Africa in Heather Ford's Commons-sense newsletter editorial.
- [Letter from America: 'The world's largest encyclopedia in the world - and its free!'](#)

Andrew Jankowich talks about the 'wisdom of crowds' and the 'Wikipedia project which, with 500,000 articles in English since its 2001 debut and about 1.5 million articles in other languages (including Afrikaans), is fast becoming the largest, most comprehensive and up-to-date encyclopedia in the world - all free to copy and share under the GNU-Free Documentation Licence.
- [How to use the Creative Commons licence: A guide for all of us Version 1.0](#)

During the first months of Creative Commons awareness-raising in southern Africa, we've had a number of questions from people about how to correctly use the Creative Commons licence. Problem is that if you don't use the licence correctly, it could be unenforceable. Follow these steps to ensure that you're using the licence in a way that ensures maximum legal and marketing impact.

Done

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digital technologies & electronic networks  
intellectual property with a difference  
a creative commons  
technological innovation  
local learning  
media  
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alternative copyright

## Commons-Sense

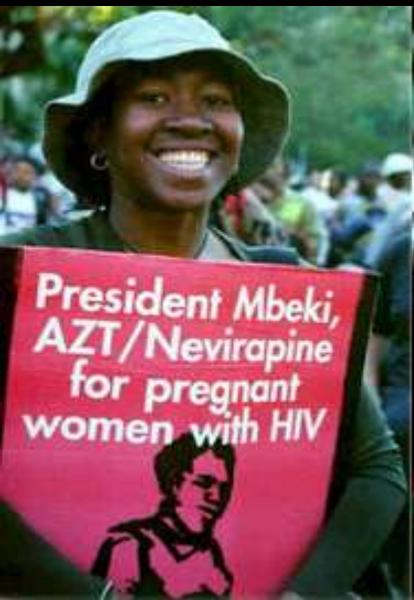
Towards an African Digital Information Commons  
www.commonssense.org

IDRC \* CRDI | creative commons | LINK

# ***commoning intellectual property: Treatment Action Campaign***



- ***1990s – US promotes Intellectual Property above all; monopoly-patented AIDS ('AntiRetroViral') (ARV) drugs cost \$15000/person/year***
- ***1997 – SA's Medicines Act allows 'compulsory licensing'***
- ***1998 – US State Dept counters with 'full court press'; TAC formed after stigmatisation/death of Durban activist Dlamini***
- ***1999-2003 – struggles against Al Gore, Big Pharma, WTO, Thabo Mbeki***
- ***2004 – battle won, generics finally produced in SA, life expectancy soars***
- ***2010-13– with 1.5 mn on ARVs, fiscal austerity & Obama's Pefpar cuts***



## ***lessons for social resistance:***

- ***commoning intellectual property***
- ***decommodification***
- ***destratification***
- ***deglobalisation of capital***
- ***globalisation of solidarity***



*Zackie Ahmat,  
Nelson Mandela*

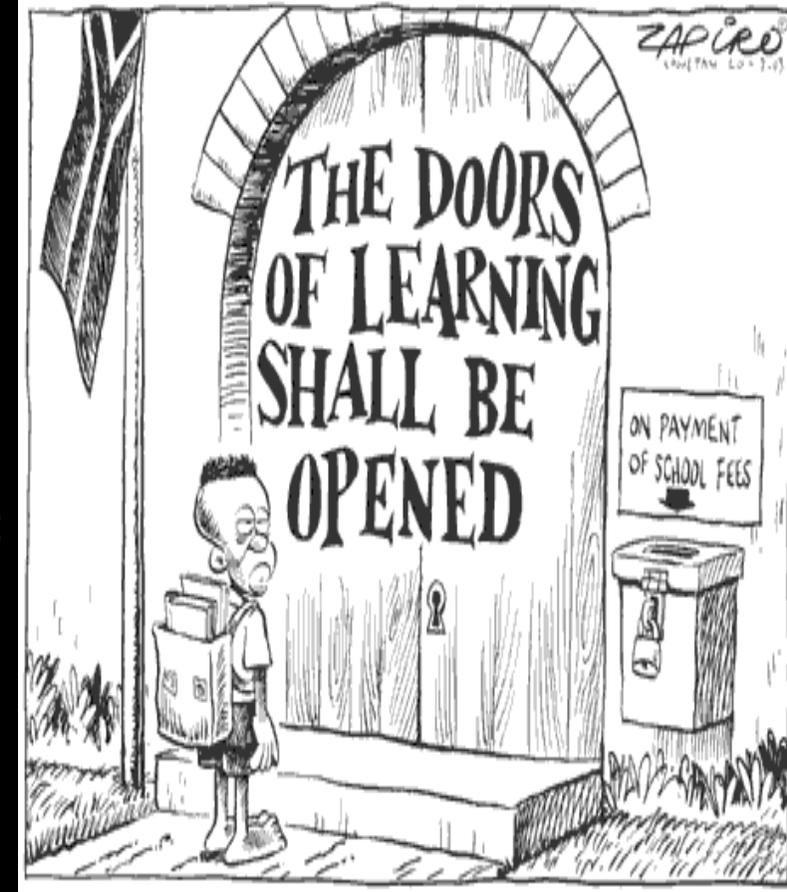
# **South African campaigns for decommodification, destratification and the deglobalization of capital**

- SA activists turning several ongoing struggles to turn basic needs into *human rights*:

- *free antiretroviral medicines*;
- *National Health Insurance*;
- *free water (50 liters/person/day)*;
- *free electricity (at least 1 kWh/c/d)*;
- *thorough-going land/housing reform*;
- *free basic education*;
- *renationalisation of Telkom for lifeline phone services*;
- *prohibition on services disconnections and evictions*;
- *a 'Basic Income Grant' ; and*
- *the right to a job!*

- as 'non-reformist reforms', all such services should be *universal*, partly financed by *penalizing luxury consumption*.

- interlocking/overlapping campaigns – but so far not unified due to macropolitical conjuncture (especially sustained Zuma faction within ANC)



The Crises and the Commons The Crises and the Commons: Durban debates on politics, economics and environment, 4-7 November 2009

Durban debates on politics, economics and environment  
4-7 November 2009

Join us for a Durban Reality Tour and discussions at the University of  
KwaZulu-Natal Centre for Civil Society  
cohosted by Amandla! Magazine and iKwezi Institute  
School of Development Studies, Memorial Tower Building, Howard  
College

Welcome from Dennis Brutus, with special guests Immanuel Wallerstein,  
Dani Nabudere, Michael Hardt, Hazel Henderson, Eunice Sahle and  
others

The world is in turmoil; so are Durban and South/Southern Africa! How do we make sense of it? Do we continue allowing the powerful to offer only 'false solutions' to our vast political, economic, social and environmental problems? If not, what can ordinary people do, working through institutions of civil society? Will the state continue to block our aspirations, and will capital continue to run wild? Can we beat back xenophobia, ethnicity, patriarchy and class conflict within society? *Will crises persist, or instead can a 'commons' strategy joining humanitarian and ecological values across national boundaries arise, imposing on the state and capital new values and politics, transcending profit as the core rationale for economic activity?*



UBUNTU AND THE NATURE OF

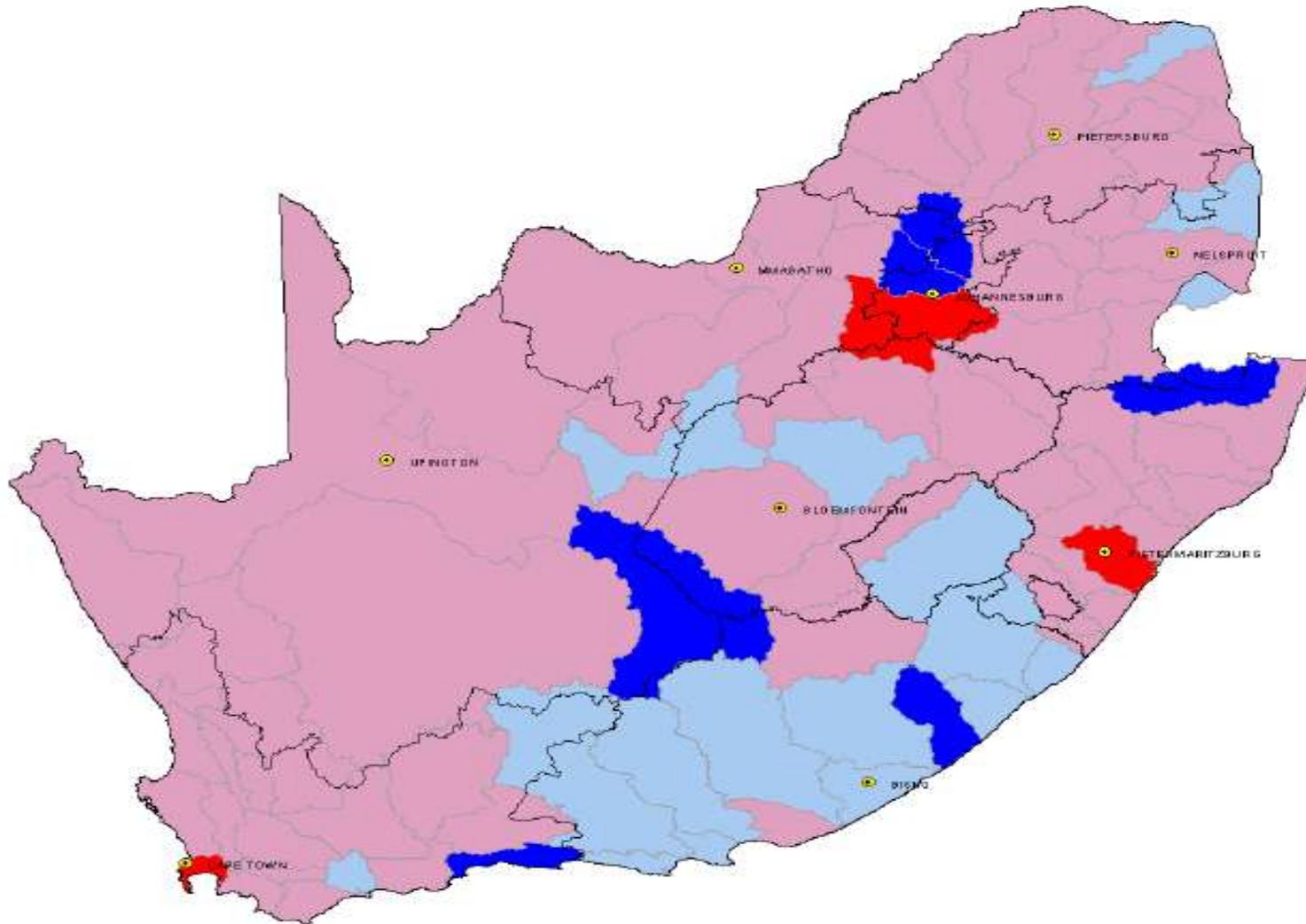
**COMMONS**

**PRE TO POST-COLONIAL WORLD  
IN THE CONTEXT OF  
SOUTHERN AFRICA**



# Context: water shortages anticipated (scarcity is not merely a social construct)

MAP 17b: Water balance (2025) per water management sub-area (NWRS) - High growth scenario



NATIONAL SPATIAL  
DEVELOPMENT PERSPECTIVE

Projection: Albers Equal Area  
Scale: 1 : 13538056



Map produced with ArcView GIS 3.2 software

### LEGEND

- Major towns
- Province boundaries
- Balance 2025 (HG) million m<sup>3</sup>/a
  - 1225 - -531
  - 530 - 0
  - 1 - 92
  - 93 - 272

Source:  
DWA  
NWRs (2002)

Map created by  
A Pretorius  
CSIR  
Aug 2002

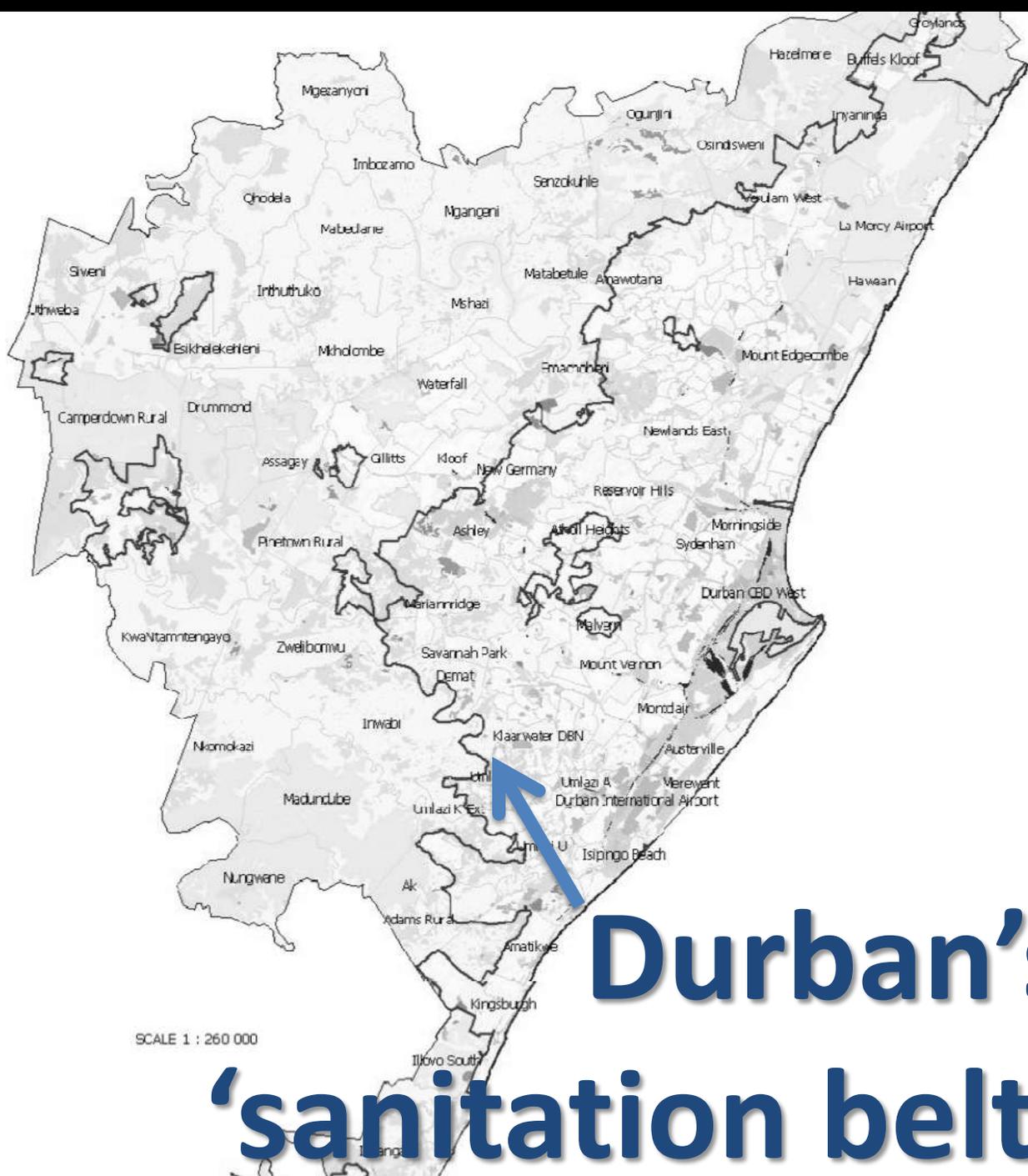


***rich South Africans'  
water hedonism***



***townships:  
world-famous  
site of struggle***





# Durban's 'sanitation belt'



bad memories: equal access to water?



# South Africa's **right to water?**

- *'everyone has the right to an environment that is not harmful to their health or well-being... everyone has the right to have access to... sufficient water'*

– Bill of Rights, Constitution of the Republic of SA, 1996 – subject to 'progressive realisation of rights' and budget constraints clauses

## ***can this right be made justiciable?***

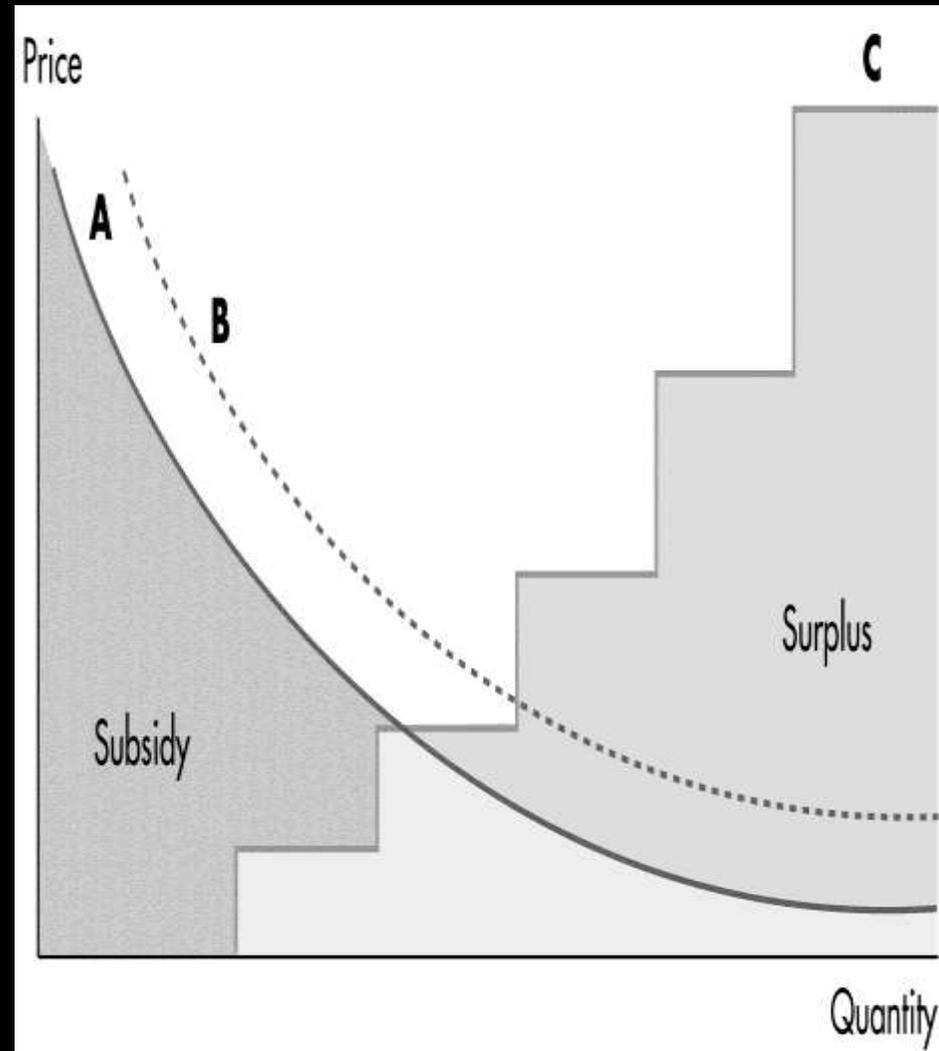
- *2003-09 lawsuit by Soweto activists and Coalition Against Water Privatisation (CAWP) against Johannesburg government (and Paris-based Suez): <http://www.law.wits.ac.za/cals>*

*activists v State & Capital:  
lawsuit filed by Soweto  
activists and SA Coalition  
Against Water Privatisation  
against Johannesburg  
government (and by  
implication, Suez):*

*<http://www.law.wits.ac.za/cals>*

# what choices do we have when pricing water?

- **Curve A is 'short-run marginal cost curve' for a utility ('commodification');**
- **Curve B is a typical 'cost-plus markup' tariff which aims to 'get the prices right' (avoid distorting the market) so as to attract privatisation investment;**
- **Curve C is the 'eco-social justice tariff' which combines a free lifeline, redistribution from high- to low-volume users, and an incentive to conserve (i.e., the ANC promise): in short, 'decommodification'.**

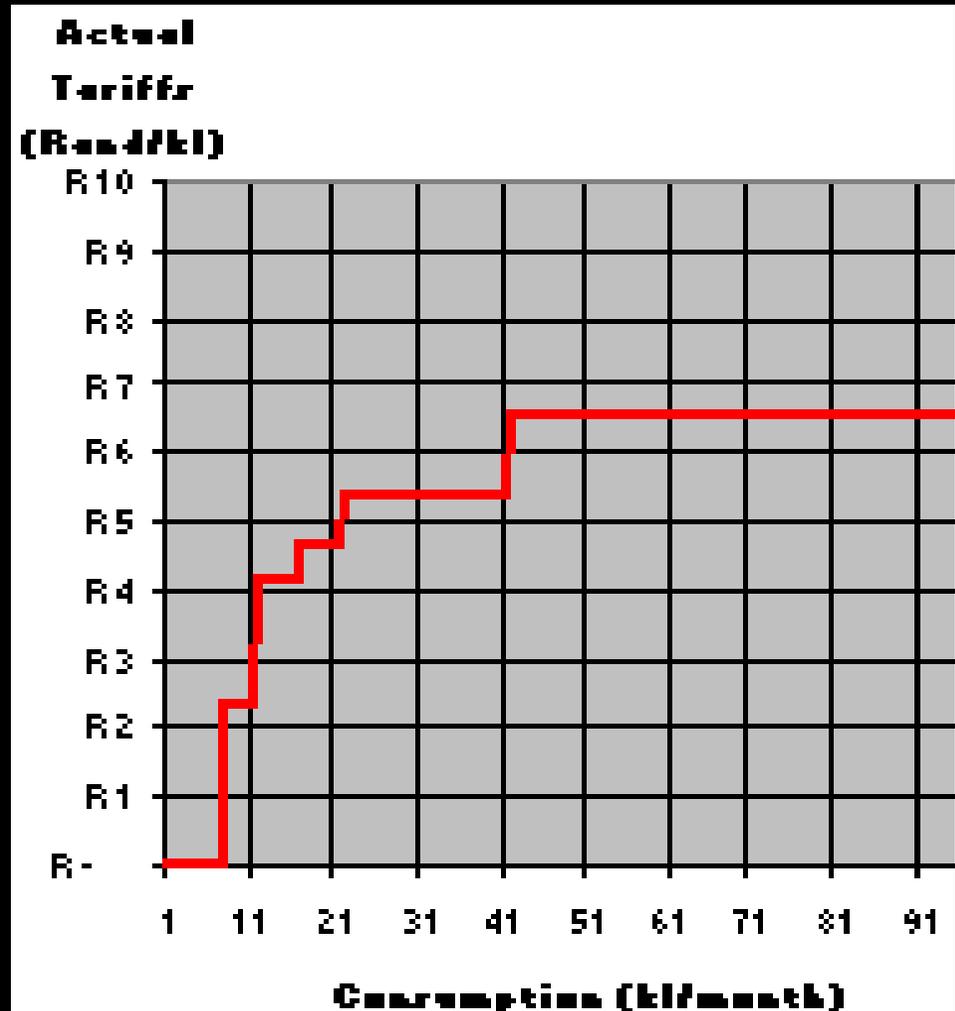


# In July 2001, Jo'burg adopted a 'convex' (not concave) tariff to reward big customers

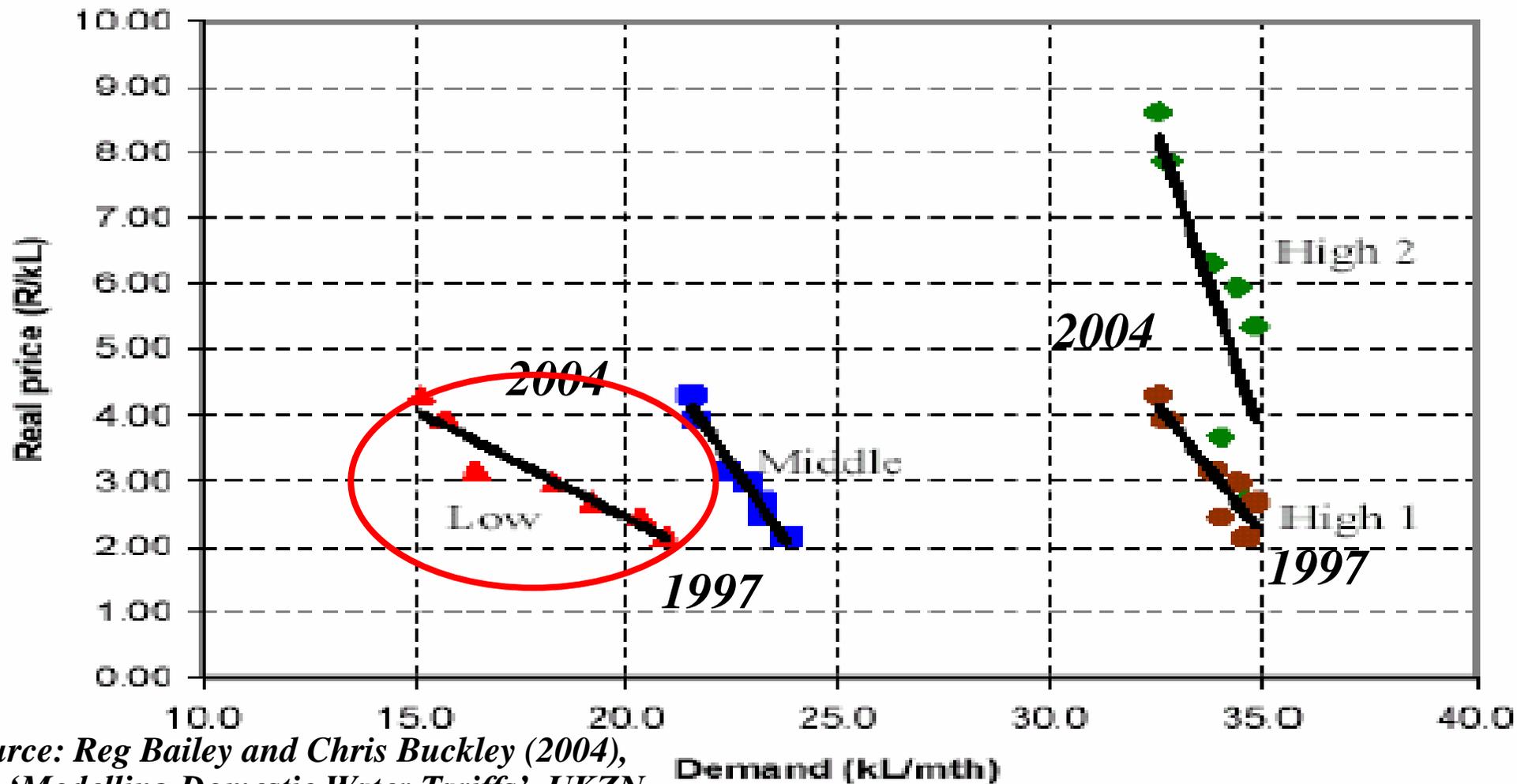
lowest consumption block is only 6,000 liters/month, which is meant for a whole household (including backyard shack dwellers);

most low-income families are larger, so bias favours wealthy, smaller families;

in July 2003, rates changed, with second block rising 32% and higher blocks up only 10%.



# Durban: lowest-income 1/3 cut back consumption dramatically as price doubled in real terms



# two core aspects of *Mazibuko v Johannesburg* case

- *How much water?*
  - *City of Joburg and Suez (2001): 25 litres/capita/day*
  - *Phiri activists, CAWP, CALS (2003): 50 lcd*
  - *High Court (Tsoka in April 2008): 50 lcd*
  - *Constitutional Court (Oct 2009): 'we don't DO policy'*
- *What delivery mechanism?*
  - *Joburg, Suez: pre-payment meters*
  - *Phiri et al: credit meters (as in white areas)*
  - *High Court: pre-payment meters are discriminatory*
  - *ConCourt: no problem with pre-payment meters*

# lessons from *Mazibuko*

## for activists, intellectuals, lawyers

- broader commons framing, including Rights of Nature
- use human rights narrative purely for defensive purposes (injunctions against disconnections), not to change policy (confirming Critical Legal Studies' 'contingency' theory)
- use rights narrative for social education and mobilisation (Treatment Action Campaign) but beware demobilisation potential
- for real relief: reconnection, turning meters into 'statues', 'commoning' and mutual aid, social mobilization and protest



# critiques of socio-economic 'rights talk'

(mostly from Critical Legal Scholars e.g. Roithmayr, Madlingozi, Pieterse, Brandt)

- *individualist: private/familial instead of public/political*
- **consumption-oriented, without linkages to production, ecology**
- *'framed not to resist but to legitimise neoliberalism' (Daria Roithmayr)*
- **leaves in place society's class structure, 'bleeds off any real move to dismantle these processes through redistribution and reparations' (DR)**
- *technicist discourse: alienates mass base and society in general*
- **mass-based organisations become the 'client', are 'domesticated' (Tshepo Madlingozi), are told to halt protests during litigation**
- *rights are 'watered down' with Constitutional clauses of 'progressive realisation', 'reasonable' measures and 'within available resources'*
- **legal alleyways distract from a more transformative route to politics**
- *for class reasons, judges are amongst society's most conservative elites*
- **capitalism won't deliver these goods!**

# is there an alternative narrative?

## 'commoning' <http://onthecommons.org/content.php?id=1467>

**Commons movement: A growing social and political movement that believes *the commons is a crucial sector of the economy and society and useful prism for talking about resources that should be shared...***

*A wider appreciation for the enduring importance of the commons has developed over the last eight years, especially among **people deeply involved in the politics of water issues, the internet, the over commercialization of culture and public spaces.***

*This world view is now reaching into many other arenas, including **economics, the environment, social justice and numerous citizens movements around the world.***

## difference in the two discourses (rights & commons)

- *water is demanded as **an individualized consumption norm** in one (rights) and is 'shared' in the other (commons);*
- *Bakker: rights advocates' 'widespread failure to adequately distinguish between **different elements of neoliberal reform processes**, an analytical sloppiness that diminishes our ability to **correctly characterize the aims and trajectories of neoliberal projects of resource management reform**'*

*in sum...*

**NEEDED:** *new ideas and strategies that can transcend consumption-based rights demands, along with coherent critiques of the full range of practices that undermine our ability to perceive and respect water and other aspects of nature as a commons.*

*These strategies may emerge through fusions of community, environmental and labour in the alliance-formation that necessarily occurs during eco-social justice struggles, as rights-talk meets its limits, and as the commons appears as a new frontier.*



service delivery protests at amongst world's highest rates



yet these can be termed  
'popcorn protests' — rising and  
falling quickly, and while  
up in the air...



if the wind blows rightward,  
protests quickly move onto  
xenophobic terrain







PROTEA ASSURANCE  
BUILDING







# Freedom of the Shitty



# steps towards systemic change:

*two contrary directions for framing our campaigns*

## 1) 'reformist reforms' (away from system change):

- strengthen the **internal logic of the system**, by smoothing rough edges
- allow the system to **relegitimise**
- give confidence to **status quo ideas and forces**
- leave activists **disempowered or coopted**
- confirm society's **fear of power, apathy and cynicism** about activism

## 2) 'non-reformist reforms' (towards system change):

- counteract the internal logic of the system, by **confronting core dynamics**
- continue **system delegitimation**
- give confidence to **critical ideas and social forces**
- leave **activists empowered with momentum** for next struggle
- replace social apathy with **confidence in activist integrity and leadership**

*(for these distinctions, thanks to Andre Gorz, John Saul, Boris Kagarlitsky, Gosta Esping-Andersen)*