

## CSO CASE STUDY 9

**Title:** From local action to national water policies. The experience of elaboration of the water law in Costa Rica

**Country:** Costa Rica

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### Introduction to the case

This case study describes the process of participation and incidence of a civil society organization, Foundation for Urban Development (FUDEU) and other social actors, in the elaboration of a new water law in Costa Rica, based on their own local experiences in the 'Grande de Tarcoles River Basin Commission'.

Since 1994, there have been several attempts to achieve an integrated management of the water resources in the Grande De Tarcoles River Basin. A successful venture in this regard has been that of FUDEU. Since 1995, FUDEU has been leading the formation of the Grande de Tarcoles River Basin Commission, supported by the Costa Rican Ministry of Environment (MINAE) and the Municipality of San Jose (Costa Rica's capital).

FUDEU provided technical and financial resources, developed training programs for all the stakeholders, and organized meetings, seminars and national and international workshops, to facilitate the emergence of solutions to problems in the basin.

In 2000, FUDEU realized that the legal and institutional framework of Costa Rica made it difficult to achieve a consolidated agency to manage the river basin. The existing framework prevented the Commission from assuming the necessary competences and legal responsibilities to be a functioning river basin agency. FUDEU therefore modified its strategy, without compromising its support to the social actors and the Commission.

To create better institutional and legal conditions to this Commission, FUDEU decided to promote the elaboration of a new water law in Costa Rica. To achieve it, FUDEU created the 'Technical Group of Water' (GTA) with other social organizations, governmental institutions and international organisms. The GTA developed the widest process of dialogue and discussion ever made around a law in this country.

### Type and extent of policy change

After three years of consultation and multi stakeholder dialogues, the GTA and the Congress of Costa Rica finished a new water law project. This project was published in January 2004; in April 2005 the project was approved by the Environment Commission to be sent to the Plenary of the Congress.

This legal instrument is expected to radically change the existing system of water management in the country, making way for the creation of River Basin Agencies. Other aspects, such as rules for effluent discharges, environment services and social control are also included in the new law. The framework also provides for a new category of protected areas, especially river basins and water bodies, including a platform from which to address concerns of water management.

## Some thoughts on the explanation of the policy change

### a) The policy context

Over the last 50 years Costa Rica has achieved political stability. Political transitions are peaceful between the traditional parties, with a satisfactory system of social, electoral and individual guarantees. Since the 1980s, traditional political parties have succumbed to the models of the free-market and globalization, leading to a marked increase in poverty levels, affecting 20% of the population; and reducing the capacity of the State to fulfill its social functions. This situation has increased the social conflicts but it is still possible to develop participative processes of policy change. Public institutions, Congress and Government are respectful of the legal system of the country. In this context many actors have been involved in the process of elaboration of the new water law.

The GTA is integrated by NGOs (FUDEU, the Environmental and Natural Resources Law Center-CEDARENA-), Universities and Research Centers (University of Costa Rica, National University, and diverse institutes of those universities, like the International Institute of Economy Policy, the Observatory of Development), international agencies (IUCN, GWP, CATIE), members of public agencies (Ministries of Environment and Health and other institutions related with water) and advisors of the Environmental Commission of the National Congress. This group is the main facilitator and animator of the process. The Water Law project was designed, discussed and written in this framework.

The GTA was a very important space of consensus building and decision making that promoted a wider discussion of the water law proposal with communities, private sector and municipalities.

It is clear that NGOs (FUDEU, CEDARENA) and international agencies (IUCN, GWP) have been the main agents of change creating the GTA, involving the most relevant actors and stakeholders in the process, and taking the process down to the local levels (communities and municipalities).

Two different sets of actors hindered the process: At the beginning some public agencies and government officers were distrustful about the elaboration of a new water law with a decentralized structure for water management, a new water administration and civil society participation. None wanted a participative process of elaboration of the proposal but the GTA successfully showed them that people's participation, far from being a risk, is an effective mechanism to prevent conflicts and reduce unnecessary and unjustified fear of the population and their social organizations. The second relevant set of actors against the process has been some private sector organizations, specially agriculture chambers and porcine producers that didn't accept new regulation to their activities. They have exerted strong political and legal pressure on the process and even after the signing of the new law continue to oppose the process.

### b) The ways CSOs tried to affect policy change (strategy and activities) and impact

To achieve a social consensus and with the aim to involve all social sectors in the process of elaboration of the water law; FUDEU facilitated workshops and meetings with local communities, NGOs, academics, politicians and social groups, to arrive at a national consensus.

The objectives of that participative process were, first of all, to have a social consensus to reduce the conflicts and resistances against the law; secondly to incorporate the vision of all social sectors into the law; and third, to have a project with political viability, with the acceptance of the main political authorities and parties with presence in the Congress. This work included:

- Three national workshops (reuniting hundreds of specialists and representatives of diverse sectors).
- Six regional workshops with more than 500 participants of regional public agencies, communal organizations, municipalities, private sector, cooperatives, agricultures, environmentalists, groups of women and indigenous.
- 2 workshops with the regional commissions derived from those events.
- Diverse actors have organized panels, round tables and forums about the project.
- Tens of formal audiences have been made in the Environmental Commission of the Congress, in where all the sectors have had the opportunity to make their proposals around the project of law.

The majority of the proposals originated from all these processes were incorporated in the project of the law. This made it possible to obtain an extraordinary balance between the proposals of the different sectors, technical criteria and institutional requirements.

### **c) External influences**

One of the most important characteristics of the experience of elaboration of the water law in Costa Rica, that makes it different to other similar processes in Central America, is the relative absence of influences and pressures of international and financial institutions. The elaboration of the Costa Rican water law has the immediate origin in the real situation of the water resources in the country, specifically in the river basins such Tarcoles and in the obsolete legal and institutional framework that impeded to resolve that situation.

However, there was a favorable political environment that facilitated the interest of the government in the elaboration of a new water law, originated by the Johannesburg Summit, the Millennium Goals, and the international concerns about water resources.

### **d) The nature of research-based evidence and mechanisms used to get the evidence into the policy process**

One of the main aspects of the process was the production of the evidence necessary to determine the kind of reforms and proposals had to be introduced in of the water law project. Since the beginning of the process in the Tarcoles River Basin, FUDEU understood the importance of having a solid base of knowledge based on two main lines:

The elaboration of a strong theoretical and conceptual basis about the different elements of the water management sector and its adaptation to the Costa Rican reality: International seminars, congresses and workshops with national and foreign experts and specialists were organised. Those processes allowed the definition of a vision and a model for water management system that was applicable for Costa Rica. It also introduced new theoretical concepts such as: decentralization, river basin focus, integrated water resources management, the economic value of water, water as a public good, access as a fundamental human right, civil society participation, etc.

The research and analysis of successful experiences in other countries; that gave all participants a better understanding of the type of reforms that had to impel in Costa Rica: The experiences in the creation of non-repaying environmental taxes in Colombia; river basin organisms in Mexico and Brazil, but also in France and South Africa; as well as the new water laws in many of these countries were thoroughly studied. In addition research was done on the processes of privatization of the potable water supply systems in Argentina and Bolivia; and the social and environmental impacts of such processes; as well as the new tendencies towards the defence of water resources as of National strategic value.

## **Lessons Learned**

The process originated with the creation of the Grande de Tarcoles River basin Commission has derived in a series of very relevant lessons learned whose systematization and analyses have allowed for the modifications of the regulatory institutional and legal framework of water in the country, and even in the rest of Central America.

The systematization of the achievements, challenges, obstacles and difficulties of the Grande de Tarcoles Commission has provided evidence into how to achieve more effective political incidence on legislators and government authorities.

The process of research and learning developed around the experience of the Tárcoles (the comparative analysis of similar experiences in other countries, the constant revision of literature and documentation that experts of different countries made) highlighted the need for a policy change. Hence, the process it self was a source of evidence.

The Costa Rican Congress is currently discussing a new water law proposal (that already has been approved by the Environment Commission of the Parliament) that introduces a series of modifications to the water institutional framework. Its conceptualization and design are a direct product of the study, analysis and systematization process of the experience of the Grande de Tárcoles river basin Commission and of all the process of research and reflection that we developed around this case.

That situation allowed CSOs to gain credibility and being considered valid interlocutors and actors by the Congressmen and government authorities; and it has derived in a better acceptance to their visions and proposals.

## **Source of Documentation:**

FANCA's website: [www.freshwateraction.net/fan-ca](http://www.freshwateraction.net/fan-ca)