

ARTICLE

Realising the Human Right to Water in Costa Rica through Social Movements

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This article examines human rights from the perspective of social constructions and as the result of historical processes. This means that human rights, as we know them today, are the result of dynamic and historical struggles. This is no different with regard to the human right to water. In particular, this article addresses the following research question: how interwoven are social movements with the realisation of the human right to water? While answering this question the article brings to the discussion some relations between the human right to water and the idea of sustainable development. This article focuses on Costa Rica because it is a country that has long been celebrated as a leader in sustainable development, environmental policy, and protection of natural resources. Recently, however, Costa Rica became the world's number one exporter of pineapple. The shocking growth of pineapple plantations in recent years has caused innumerable socio-environmental problems including that of water pollution. The article concludes that demanding the realisation of the human right to water through social struggles, and especially through social organisation and pressuring the government, is the way forward to accomplish this right and the ultimate goal of sustainable development.

Keywords: social movements; right to water; Costa Rica; social organisation; pineapple monoculture

Utopia lies on the horizon. When I draw nearer by two steps closer; it retreats two steps. If I proceed ten steps forward, it swiftly slips ten steps ahead. No matter how far I go I can never reach it. What then is the point of utopia? It is to cause us to advance.¹

1. Introduction

Despite the fact that the global population that uses a basic drinking water service increased from 81% to 89% between 2000 and 2015,² the human right to water continues to be a utopia for millions of people worldwide. This article aims to bring an innovative approach to the legal analysis of the human right to water. It does this by incorporating the legal and formal recognition of the human right to water into the perspective of social constructions and historical processes. Moreover, it connects the challenges of the human right to water with those of (un)sustainable development and ideas such as business as usual.

In particular this article answers the following question: how interwoven are social movements with the realisation of the human right to water? In order to answer this question a combination of research methods were used. First, it draws on a desktop analysis by examining the literature on sustainable development, social movements and human rights, particularly the human right to water. A content analysis of domestic water and environmental laws is then completed. Second, an empirical component using the case study of Costa Rica is then undertaken. Primary data was collected in the North, South and Caribbean of the country,

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¹ Eduardo Galeano (1940–2015).

² World Water Assessment Programme (WWAP), The United Nations World Water Development Report 2019, *Leaving No One Behind* (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2019).

where numerous violations to the right to water and environmental degradation were evident. The empirical component of this research was collected during a span of two years from 2017 to 2019. It includes a combination of 45 in-depth interviews – with government officials, human rights defenders, local residents, CBOs and NGOs- and participant observations during a number of communities' activities, such as demonstrations and meetings. In terms of participant selection, those involved in the interview process were identified, and study participants selected, based on a purposive approach as well as a mix of the following: (i) criterion sampling, which involves choosing interviewees that meet predetermined criteria (e.g. government agencies and human rights defenders) and; (ii) stratified purposeful sampling, which means choosing interviewees on the basis that they illustrate characteristics of particular sub-groups of interest (e.g., human rights defenders). The validity of case study analysis and its conclusions were checked through a process of respondent evaluation,³ which consisted of going back to participants with tentative results and refining them in light of the participants' reactions. In order to fulfil confidentiality responsibilities, when transcribing the interviews, a system of identifiers was used, for example: Human Right Defender, No. 1, December 15, 2017.

Costa Rica is the focus of this research because it illustrates contradictory situations, where government discourses engage with the promotion of the human right to water, and the goal of sustainable development, but where recently there has been an evident annihilation of forest, wildlife, soil, rivers and aquifers due to the expansion of the monoculture of pineapple. Moreover, Costa Rica has long been renowned as an environmental leader – mainly due to the creation of national parks and other natural reserves, – promoter of sustainable development, and the overall protection of natural resources. A country that functions through a democratic system that seeks to respect the rule of law and implement international obligations.

To develop the argument and to respond to the research question, this article is structured as follows. Section 2 discusses the theoretical considerations that inspired the article. Section 3 introduces the international recognition of the human right to water internationally and domestically, examining Costa Rica in detail. Section 4 provides an analysis of a social movement, happening in Costa Rica, whose goal is the fulfilment and safeguarding of nature and the human right to water. Section 5 presents, as a way of concluding thoughts, the relations that exist between social movements, protection of nature and the consolidation of the human right to water.

2. Theoretical considerations – Sustainable development and human rights as social constructions

2.1 Sustainable development – What does it mean?

There is no universally agreed definition of the term sustainable development and serious debate continues as to its normativity. As most commonly used today, the concept has its origins in the work of the World Commission on Environment and Development (WCED), which reads as follows: '[d]evelopment that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.'⁴ Sustainable development is perhaps best understood as an ultimate goal, or objective, of human activities,⁵ a goal which is to be pursued through the implementation of the various distinct principles, policies, laws and institutions. There are a number of international instruments that call for the achievement of sustainable development such as the 1992 Rio Declaration and the 2002 World Summit on Sustainable Development Plan of Implementation.

Nevertheless, despite the general acceptance of the concept of sustainability and the acknowledgement that it is necessary to use natural resources in a sustainable or rational manner, the concept has been bent to suit other interests, such as profitability and economic development, by many governments and businesses worldwide. For example, some scholars argue that sustainable development is nothing more than a palliative concept embedded in a political and neo-liberal capitalist rhetoric usually used to legitimise socio-economic growth at the expense of ecological concerns.⁶ Moreover, other scholars argue that the concept is too vague or ill-defined to be of any use in practical decision-making and real-life policy implementation.

³ David Silverman, *Doing Qualitative Research: A Practical Handbook* (3rd edn, SAGE 2010), 225.

⁴ United Nations General Assembly, Report of the World Commission on Environment and Development: *Our Common Future*, [1987] UN Doc A/42427.

⁵ Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Hague Academy of International Law 2008).

⁶ LJ Kotzé and AA Du Plessis, 'A Gold Rush to Nowhere? The Rights-based Approach to Environmental Governance in South Africa's Mining Sector in Question' (2014) 4 *Verfassung und Recht in Übersee* 447.

Inspired by such critiques, this article illustrates how the government of Costa Rica embraces the sustainable development discourse and manifests that it is committed to use natural resources in a sustainable manner, to guarantee environmental protection, and to become carbon neutral by 2100.⁷ However, it is currently allowing the destruction of its natural environment and pollution of its water, mainly through the continued expansion of the monoculture of pineapples.

The notion of expansive monocultures,⁸ e.g., pineapples as practiced in Costa Rica, is related to the idea of business-as-usual and the focus on growth of gross domestic product (GDP), which is intrinsically premised on the exploitation (depletion, pollution) of natural resources and the 'cheap' labour provided by poor people.^{9–10} As a way to address some of the problems that this business-as-usual brings to Costa Rica, many affected people are organising themselves, denouncing what is happening through (social) media, and pursuing environmental litigation against pineapple companies, thus pressuring the government to make changes. So far, this pressure has taken the shape of empowering communities, non-governmental organisations (NGOs), scholars, activists, human right defenders and others through voicing their concerns and demanding the Costa Rican government implement new policies and laws which recognise the importance of alternative ways of producing crops without destroying nature and exploiting poor people. Costa Rica mirrors a pattern of maximising economic growth through the promotion of production and trade, without taking into consideration sustainability or justice concerns.¹¹

2.2 Human rights from the perspective of social movements

This article conceives human rights as the result of historical dynamics and struggles against the violence that different manifestations of power have exercised against individuals and groups. However, they are not abstract processes addressed by some philosophy or historical dialectic pretending objectivity and absolutism; nor are they a mystified power in some transcendent instance from which social reality miraculously radiates.¹² It also does not take human rights as a 'given,' nor as an overarching legacy of the 1789 French Revolution or the 1948 Declaration of Human Rights.

This article reflects on social movements as the way to attain human rights. It particularly examines social movements around the human right to water in Costa Rica. The struggle processes which led to the consolidation of human rights have often been a response to different ways of injustice, exploitation and dispossession.¹³ Human rights history is complex and contradictory. In the Western context human rights were at the heart of the emancipatory development of modern law, from Roman and English law to rationalist natural law and theories of social contract and inclusion. Consequently, human rights conceptually symbolize the highest emancipatory consciousness of modern law and politics and are intrinsically utopian.¹⁴ The Western powers conceptualised the idea of human rights as something universal. From the mid 19th century the consolidation of the liberal States, with decolonization processes, gave a new power of conviction to the human rights' idea based on considering human rights as weapons against the States, whose function would be to keep the State under democratic control and prevent authoritarian temptation.¹⁵ The gradual incorporation of human rights policies into State actions was part of a broader political process of social inclusion. However, due to the conversion of modern law into a State monopoly, this process was rather ambivalent because rights against the State were granted by the same State.¹⁶ This reflects the division of powers of modern States between the Judicial (courts) and the Executive branch (government).

⁷ Executive Decree, No 41122-MINAE, May 28 2018. Carbon Neutral Country Program 2.0 (Programa País de Carbono Neutralidad 2.0). The predecessor of this Executive Decree – Agreement 36-2012 MINAET, June 19, 2012, claimed that Costa Rica was going to become Carbon Neutral by 2021. However, the government has recognised that that was an utopia.

⁸ There a number of monocultures e.g., bananas and coffee, causing socio-environmental problems in Costa Rica. However, in recent years the pineapple has been the dominant source of problems.

⁹ Gabriela Cuadrado-Quesada, 'Gobernanza de las aguas subterráneas, conflictos socio-ambientales y alternativas: experiencias de Costa Rica', [Groundwater Governance: Socio-environmental conflicts and alternatives: experiences from Costa Rica] (2017) Anuario de Estudios Centroamericanos 43 393.

¹⁰ Guillermo Acuña (2005) Los casos de la producción piñera en las regiones Atlántica y Pacífico Sur: Características, organización y condiciones laborales. Aseprola. Costa Rica; Didier Leitón, Inclemente trabajo en las pineras, (2008) 117 Ambientico 19.

¹¹ Gabriela Cuadrado-Quesada and Soledad Castro-Vargas, 'The expansion of the pineapple plantations against human rights' in Jennie Jonsen (eds) *Red sugar, green deserts* (FIAN International FIAN Sweden HIC-AL and SAL 2009).

¹² Helio Gallardo, *Derechos Humanos como movimiento social*, (1ra eds, Desde Abajo 2006).

¹³ Joaquín Herrera, *Los derechos humanos como productos culturales: Crítica del humanismo abstracto*. (Libros de la Catarata 2005).

¹⁴ Gallardo (n 13) 5–6.

¹⁵ Herrera (n 14) 219.

¹⁶ Boaventura De Sousa, *La globalización del derecho: Los nuevos caminos de la regulación y la emancipación*. (Denes 1990).

The main challenge posed by human rights is to shorten the distance between what is said at the political and legal arenas and what is done at the very ground level. It appears that ideas such as sustainable development as well as human rights are still waiting to 'happen' in many countries and for many people around the world. This is especially true when it comes to developing countries, and economic, social, and cultural rights such as the human right to water. These rights have historically been conditioned to the improvement of the economic situation of countries, i.e. to have economic resources in order to 'grant' the human right to access to water.¹⁷ Therefore, it is accepted that the attainment of such human rights is *progressive*. The points argued in this article can be used for many economic, social and cultural rights, such as education, health, and adequate standard of living. Noteworthy is to say that the human right to water plays an important role in realising many other human rights such as the right to food and livelihoods, right to adequate standard of living, as well as the idea of sustainable development.¹⁸

3. The declaration of the human right to water internationally and in Costa Rica

3.1 *The crafting of the international recognition of the human right to water*

Since 2002 the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 15 (GC15) which considers the legal basis of the right to water through Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The earlier ICESCR General Comments which addressed the right to an adequate standard of living under Article 11 of the ICESCR are General Comments 12 (1999) and 14 (2000) which respectively focused on the right to food and the right to the highest attainable standard of health. GC15 determined that the 'human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights.'¹⁹

GC15 mentions that the elements of the human right to water must be adequate to dignity, life and human health according to Article 11 and 12 of the ICESCR. The ICESCR should not be interpreted restrictively, just related with volumetric quantities and technologies. Water must be treated as a social and cultural good and not primarily as an economic good. The way in which the right to water is exercised must also be sustainable, so it can be exercised by present and future generations. The most 'appropriate' way to satisfy the human right of access to water may vary according to different conditions; however, the following factors should apply in any circumstance: (i) Availability, which means that each person's water supply must be continuous and sufficient for personal and domestic use (e.g., consumption, sanitation, laundry, food preparation and personal and household hygiene). The amount of water available to each individual should correspond to the World Health Organization (WHO) guidelines. Some individuals and groups may also need additional water resources because of health, climate and working conditions. (ii) Quality. This refers to safe water, which means that the water that people are drinking should neither contain micro-organisms nor chemical nor radioactive substances that may pose a threat to their health. Moreover, water should have an acceptable colour, smell and taste for each personal or household use. (iii) Accessibility. Water and water facilities and services must be accessible to all without discrimination within the jurisdiction of each country. Accessibility has four overlapping dimensions: 1. Physical accessibility, which includes that water and water facilities and services must be physically accessible to all sectors of the population. 2. Affordability. This dimension is directly related to the cost of water. Water and water services and facilities must be accessible to everybody. 3. Non-discrimination. Water and water services and facilities must be accessible to all in law and in fact, including the most vulnerable and marginalised sectors of the population, without discrimination on any grounds (e.g., race, colour, sex, age, language, religion). 4. Access to information. Accessibility includes the right to request, receive and disclose information on water issues.

Furthermore, GC15 indicates that even when the human right to water applies to all, the States should pay particular attention to persons and groups who traditionally have had difficulties in exercising this right, primarily women, children, minority groups, indigenous people, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees.²⁰ It is highlighted that, in particular, the States must

¹⁷ Gabriela Cuadrado-Quesada, 'The recognition of the right to a healthy environment in International Treaties and in Costa Rica's Law'. (2009) CEJIL's Journals. Centre for Justice and International Law 7.

¹⁸ Catarina De Albuquerque, *On the Right Track, Good Practices in Realising the Rights to Water and Sanitation*, (Human Rights to Water and Sanitation, United Nations Special Rapporteur 2012).

¹⁹ International Covenant on Economic, Social and Cultural Rights 999 UNTS 171 (ICESCR, adopted 16 December 1966 entered into force 3 January 1976).

²⁰ This in accordance with the Rio Convention 1992.

adopt measures to ensure that women are not excluded from decision-making processes about resources and rights about water. It also emphasises the importance of alleviating the disproportionate burden on women to obtain water. GC15 also states that any person or group, victim to violation of the right to water, must have effective judicial or other remedies at both the national and international levels. This is in accordance with paragraph 4 of GC9 of 1998 on the domestic application of the Covenant and principle 10 on the right to participation of the Rio Declaration on Environment and Development.^{21–22} These instruments mandate that legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, enabling individuals to seek enforcement of their rights before national courts and an adequate reparation.

To summarise, the importance and influence of GC15 lies in the fact that this was the first instrument entirely dedicated to the recognition and development of the content of the human right to water, which was later used as a base of the formal recognition of the human right to water and sanitation. It took 8 years since GC15 to formally recognise the human right to water and sanitation. Scholars argue that this long period was attributed to several factors including a lack of political will and a dearth of resources invested in the water sector when compared to investment in other areas.²³

In 2010 the UN General Assembly, by Resolution 64/292, finally recognised ‘the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.’²⁴ The Resolution –put forward by Bolivia and co-sponsored by 35 States– passed overwhelmingly with 122 States voting in favour, Costa Rica being one of them. Unfortunately, there were also 41 states that decided to abstain voting including the United States of America and Australia. This resolution brings substantial international political weight behind the notion that access to clean and safe drinking water and sanitation is an independent human right. It is important to note that prior to the 2010 UN General Assembly’s formal recognition, the human rights to water and sanitation were implicitly recognised in other human rights such as the right to life.²⁵ Even though the right to water and the right to sanitation were firstly recognised together, later on they were split. Apparently, governments were giving more attention to the realisation of the right to water than to the right to sanitation; therefore, in 2015 the UN General Assembly explicitly recognised the ‘human right to sanitation’ as a distinct right of the right to water. For example, the UN General Assembly Resolution 70/169 on the human rights to safe drinking water and sanitation states that: ‘the world missed the sanitation component of the Millennium Development Goals (MDGs) 7 by almost 700 million people and that more than 2.4 billion people still do not have access to improved sanitation facilities.’²⁶ As the human right to sanitation poses particular complexities and concerns, which are outside the scope of this article, it will not be discussed.

After the formal recognition of the human right to water and sanitation in 2010 the UN Human Rights Council mandated that States should work towards ‘appropriate tools and mechanisms, which may encompass legislation, comprehensive plans and strategies for the sector, including financial ones, to achieve progressively the full realisation of human rights obligations related to access to safe drinking water and sanitation.’²⁷ Arguably, it is then since 2010 that there is an international obligation for all the States around the world to consolidate the human right to water. However, and despite the formal recognition and the mandate to develop appropriate mechanisms to satisfy these rights, globally about 2.1 billion people do not have access to a safely managed drinking water service and approximately 844 million people still lack a basic drinking water service.²⁸ Moreover, it is estimated that water-related diseases, including cholera, remain widespread across many developing countries, where only about 5% of domestic wastewater is treated prior to its release into the environment.²⁹

²¹ The domestic application of the Covenant 03/12/1998. E/C.12./1988/24 CESCR General Comment 9 (General Comments).

²² Rio Declaration on Environment and Development (Rio Declaration), Report of the United Nations Conference on Environment and Development, I (1992) UN Doc. A/CONF.151/26, (1992) 31 ILM 874.

²³ Takele Soboka Bulto, ‘The emergence of the Human right to Water in International Human Rights Law: Invention or Discovery?’ (2011) 12(2) *Melbourne Journal of International Law* 290.

²⁴ United Nations General Assembly (UNGA) Resolution 64/292 (28 July 2010) UN Doc A/RES/64/292.

²⁵ International Covenant on Economic, Social and Cultural Rights 999 UNTS 171 (ICESCR, adopted 16 December 1966 entered into force 3 January 1976).

²⁶ United Nations General Assembly (UNGA) Resolution 70/169 (17 December 2015) UN Doc A/RES/70/169.

²⁷ United Nations Human Rights Council (UNHRC) Resolution 15/9 (1 October 2010) A/HRC/RES/15/9.

²⁸ World Water Assessment Programme (WWAP), *The United Nations World Water Development Report 2019: Leaving No One Behind*. (United Nations Educational, Scientific and Cultural Organization [UNESCO] 2019), 18.

²⁹ *Ibid*, 15.

Having these facts in mind, it is interesting to reflect on the research question posed at the introduction of this article, how interwoven are social movements with the realisation of the human right to water? When it is known that millions of people do not have access to safe water, or that the water that millions of people are consuming is of such bad quality that people will die or get sick from drinking it, it is expected and actually desirable that someone will be outraged and will react, complain, organise and fight to defend the human right to water. Noteworthy is to mention that while international declarations were being discussed such as GC15 back in 2002, at the ground level there were also important social movements surrounding and coinciding with these developments.

One illustrious case occurred in Cochabamba, Bolivia, between 1999 and 2000, where the government in collaboration with the World Bank and the Inter-American Development Bank, placed the administration of the aqueduct that supplied drinking water to the city of Cochabamba into the hands of a private consortium called *Aguas de Tunari* (of which the main shareholder was the *Bechtel Corporation*).³⁰ Soon after the new consortium took over tariffs were raised by an average of 50 percent and ridiculous measures were put in place such as not using rainwater, which led to massive demonstrations, protests and subsequent repression. In the end a social movement arose from these actions which had national and international repercussions notably the importance of recognising the human right to water. Another important outcome of this social movement was to force the government to rescind the contract.³¹

3.2 A brief introduction to water and environmental issues in Costa Rica

As Costa Rica is located in Central America it has the characteristics of a tropical climate and abundant rainfall (See **Figure 1**. Map of Costa Rica). Costa Rica is a small country of only 51.100 km², which is divided into seven provinces: Alajuela, Cartago, Guanacaste, Heredia, Limón, Puntarenas and San José (capital city). There are enormous economic and social differences among the provinces with Puntarenas, Guanacaste and Limón being the poorest. The provinces are subdivided into 82 cantons. Each canton has its own local



Figure 1: Map of Costa Rica.

³⁰ Ibid.

³¹ For further discussion see Tomas Kruse, 'La "Guerra del Agua" en Cochabamba Bolivia: Terrenos Complejos, Convergencias Nuevas' en E de la Garza Toledo (compilador), *Sindicatos y Nuevos Movimientos Sociales en América Latina* [CLACSO 2005].

government, which is the municipality. Many environmental and water concerns in Costa Rica are handled at the municipality level. Regarding the national level, environmental issues are managed by the Ministry of Environment and Energy (MINAEC). This Ministry is the lead public agency governing water issues.

Costa Rica is internationally known as an advocate of sustainable development and as a country that has made huge advances in accomplishing the human right to water and sanitation for its population by providing access to water and basic sanitation facilities. It has made meaningful progress regarding the expansion of water services and sanitation over the past decades. According to official estimates, approximately 96 percent of the population has access to water; and around 76.6 percent has access to sanitation, mainly through septic tanks.³² Recently, however, the State is being confronted with growing tensions that threaten sustainable development and water and sanitation access achievements, partly because equity and solidarity in recent policies have been eroded by growing marketisation and partly due to weakened State capacities.³³

Inequality in the entire country has worsened, in contrast to some improvements in several other Latin American countries.³⁴ Unequal outcomes of economic development driven by agro-industry, high-tech industry, tourism and financial services, as well as fiscal constraints on public social spending have led to many socio-environmental tensions. Furthermore, the problem has augmented due to the adoption of neo-liberal policies that have progressively abandoned protection of small and mid-sized farmers. These policies stimulate the import of food before national production, thereby consolidating an agro-export model that favours non-traditional agricultural activities, in turn generating the abandonment of *campesina/campesino* and family agriculture.^{35–36} Hence, many *campesinas/campesinos* have been forced to work in labour intensive jobs such as those provided by the pineapple plantations. It is in this scenario where social-environmental movements that seek to claim and defend nature and the human right to water have emerged.

3.3 Recognising the human right to water in Costa Rica

In Costa Rica the current water law does not recognise the human right to water. Moreover, there is a lack of incorporation of key internationally recognised principles (such as sustainable use, participation, river basin approach and the role of women in decision-making) into the current Costa Rican water law. Although Costa Rica has made several attempts to design and implement a holistic water law, to date no such law has been passed. These efforts have not succeeded mainly due to economic interests of powerful sectors, e.g., business chambers (*cámaras empresariales*) that have been able to manipulate (at best) the Congress into not passing new legislation with more restrictions to big water users and creating participatory mechanisms.³⁷ While the business chambers have successfully influenced decisions in the Congress, other groups have tried this as well (albeit with limited scope). An example of this effort is the Integrated Management Water Law Draft (*Proyecto de Ley para el Manejo Integrado del Recurso Hídrico No. 17742*), which was presented to the Congress in 2010 and was discussed for over seven years. This draft was presented via the mechanism of popular initiative (*iniciativa popular*), which means that it was presented by civil society with the support of approximately 180,000 signatures of citizens. This project was even approved in 2014 (in first debate),³⁸ however, it never became a law. Among the virtues of this law draft was the recognition of the human right to water.

The present national Water Law (*Ley de Aguas*) was enacted in 1942 when the reality of Costa Rica was completely different to the present. For example, back then, the entire population was only 500,000 people whereas currently it is more than 5,000,000.³⁹ Therefore, it is now widely regarded as an outdated piece of legislation that does not respond to the economic and social situation of the country, and it needs

³² Joaquín Herrera-Murillo, 'Uso y estado de los recursos hídricos'. Informe Estado de la Nación en Desarrollo Humano Sostenible 2017 (Programa Estado de la Nación 2017).

³³ Juliana Martínez Franzoni, and Diego Sánchez-Ancochea *Good Jobs and Social Services: How Costa Rica Achieved the Elusive Double Incorporation* (Palgrave Macmillan/UNRISD 2013).

³⁴ Ibid.

³⁵ Campesina/campesino means traditional small-holder farmer. For more context, Fernando Larrea, defines campesina/campesino as: 'people who live and work in rural areas and everything associated with that way of life'. Larrea also highlights that they are rural producers who often do not own land and work small plots, with the family constituting most or all of the labour, and they have specific values and cultural elements of rural areas, such as reciprocity and the redistribution of production in community relations.

³⁶ Cuadrado-Quesada and Castro-Vargas (n 12).

³⁷ Gabriela Cuadrado-Quesada, Cameron Holley and Joyeeta Gupta, 'Groundwater governance in the Anthropocene: a close look at Costa Rica', (2018) 20 *Water Policy* 475.

³⁸ In Costa Rica the Congress has to approve new laws in two different debates. If a law project does not pass the second debate it does not become a law.

³⁹ Instituto Nacional de Estadística y Censos (National Institute of Statistics and Census) 2020. 'Proyección de Población al 30 de junio de 2020' <<https://www.inec.cr>> accessed on 20 May 2020.

to be urgently revised.⁴⁰ In order to try to fill up the existing legal gaps and to try to guarantee the basic factors to the fulfilment of the human right to water as established in GC15 adopted by the UN ICESCR in 2002 (discussed in Section 2.1), there are a number of laws and executive decrees which deal in one way or another with such factors. Some of these legal instruments are detailed below. The Organic Environmental Law (*Ley Organica del Ambiente*) establishes the character of the public domain of water resources (Article 2),⁴¹ which implies that everyone should have continuous and sufficient availability of water for domestic use. It also means that water is a heritage that needs to be protected by the government in order to guarantee its availability. In addition, it establishes in Article 6 that the State and the municipalities are responsible for 'encouraging the active participation of the inhabitants of Costa Rica in decision-making related to the protection of the environment.'⁴² This includes the condition of access to information. The General Health Law (*Ley General de Salud*) regulates all matters related to water quality and pollution. In addition, it says that water is a good of public utility, which means that everybody can use it for different activities (drinking, food production, industry).⁴³ This law is related to the Criminal Code (*Código Penal*), which sets up a punishment from three to ten years imprisonment for those who pollute the water and endanger human health.⁴⁴

Despite the lack of recognition of the human right to water in the Costa Rican Water Law or any other environmental law, the Constitutional Tribunal, in reiterated jurisprudence, has stated that there is a human right to water enshrined in Articles 21 (right to life) of the Political Constitution.^{45–46} The Constitutional Tribunal has also mentioned that the human right to water derives from international instruments (e.g. Declaration of the Human Right to Water), thus it is granted to people, even when there is no express mention of it in the Constitution or in any other national law.⁴⁷

This discussion is interesting because it shows how many different actors are trying to influence the law and the recognition of the human right to water. Noticeably, the legal/formal recognition of a human right can bring a myriad of implications for many actors. For a government an implication could be that it has to guarantee access to clean water for everyone, therefore if there are people who do not have access to clean water, the government *should immediately* intervene and make access possible. For private companies, an implication could be to start dealing with water differently; not only as a mere commodity that facilities profits but as a shared resource that everyone needs in order to fulfil their most basic needs.

Noteworthy is to mention that during the publication process of this article the Constitutional reform of Article 50 that aims to include the recognition of the human right to water was finally – after 20 years of discussion – approved in the congress. This reform came in a crucial moment when the country – as the rest of the world – is dealing with the corona-virus pandemic, which is making the access to safe water even more urgent. The new paragraph of Article 50 reads: 'Every person has the basic and inalienable human right to access safe drinking water, as an essential good for life... the supply of drinking water for consumption by individuals and populations will have priority.'⁴⁸

4. Social movements – A response to the annihilation of nature

4.1 The sweet poison of pineapple – An overview

In recent years Costa Rica has become one of the world's leading pineapple producers and the world's number one exporter of this fruit. Recent satellite maps revealed that the pineapple expansion in the country continues to grow.⁴⁹ For example, there were approximately 57,327 hectares of the national territory

⁴⁰ United Nations General Assembly, Human Rights Council, 'Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation on Her Mission to Costa Rica (19–27 March 2009) Catarina de Albuquerque' A/HRC/12/24/Add.1 para 61; Cuadrado-Quesada, Holley and Gupta (n 38).

⁴¹ Organic Environmental Law 1995, art 2.

⁴² Organic Environmental Law 1995, art 6.

⁴³ General Health Law 1973, art 237.

⁴⁴ Criminal Code 1970, art 261.

⁴⁵ See for example, Constitutional Tribunal, Resolution 2000-02755, 24 March 2000 and Resolution 2002–10776, 14 November 2002.

⁴⁶ Constituency Assembly, Costa Rica, 1949.

⁴⁷ See for example, Constitutional Tribunal Resolution 4654-2003, 27 May 2003.

⁴⁸ Legislative File [Expediente Legislativo] 21.382, Constitutional Reform to Recognise and Guarantee the Human Right to Water [Reforma Constitucional para Reconocer y Garantizar el Derecho Humano de Acceso al Agua].

⁴⁹ National System of Territorial Information (*Sistema Nacional de Información Territorial*) (SNIT). <<http://www.snitcr.go.cr/Visor/index?p=cHJveWVjdG86OnBhaXNhamVzcHJvZHVjdGl2b3M=>> accessed 20 May 2020.

covered by pineapples in 2016. By 2017 there were about 66,266 hectares. Hence, from 2016 to 2017, the pineapple industry increased the cultivated area by 9,000 hectares, which represents an expansion of 15.7% in only one year. Maps 2 illustrates the expansion of pineapple cultivation area by 2017.

This crop is exported primarily to Europe and the United States. Most of the pineapple companies are subsidiaries of transnational companies such as Del Monte, Chiquita Banacol, and Fytfes.⁵⁰ The alarming growth of pineapple plantations in the past years has been a growing concern for the communities located near to them as they have experienced many problems since the arrival of the pineapple plantations. Currently pineapple plantations present a major socio-environmental problem, which has expanded to large parts of the country. In the 1980s, when the agro-industry started the main environmental devastation was happening only in the South Zone affecting the province of Puntarenas (particularly the canton of Buenos Aires). Then in the late 1990s the ecological destruction also started in the Caribbean, affecting Limón province (particularly the cantons of Pococí, Guácimo and Siquirres). Currently the annihilation of nature is also occurring in the North Zone affecting the province of Alajuela (particularly the cantons of Guatuso, Upala and Los Chiles). Note that the devastation still continues in the South Zone and in the Caribbean (See **Figure 2**). Most of these cantons are among the poorest in the country.⁵¹

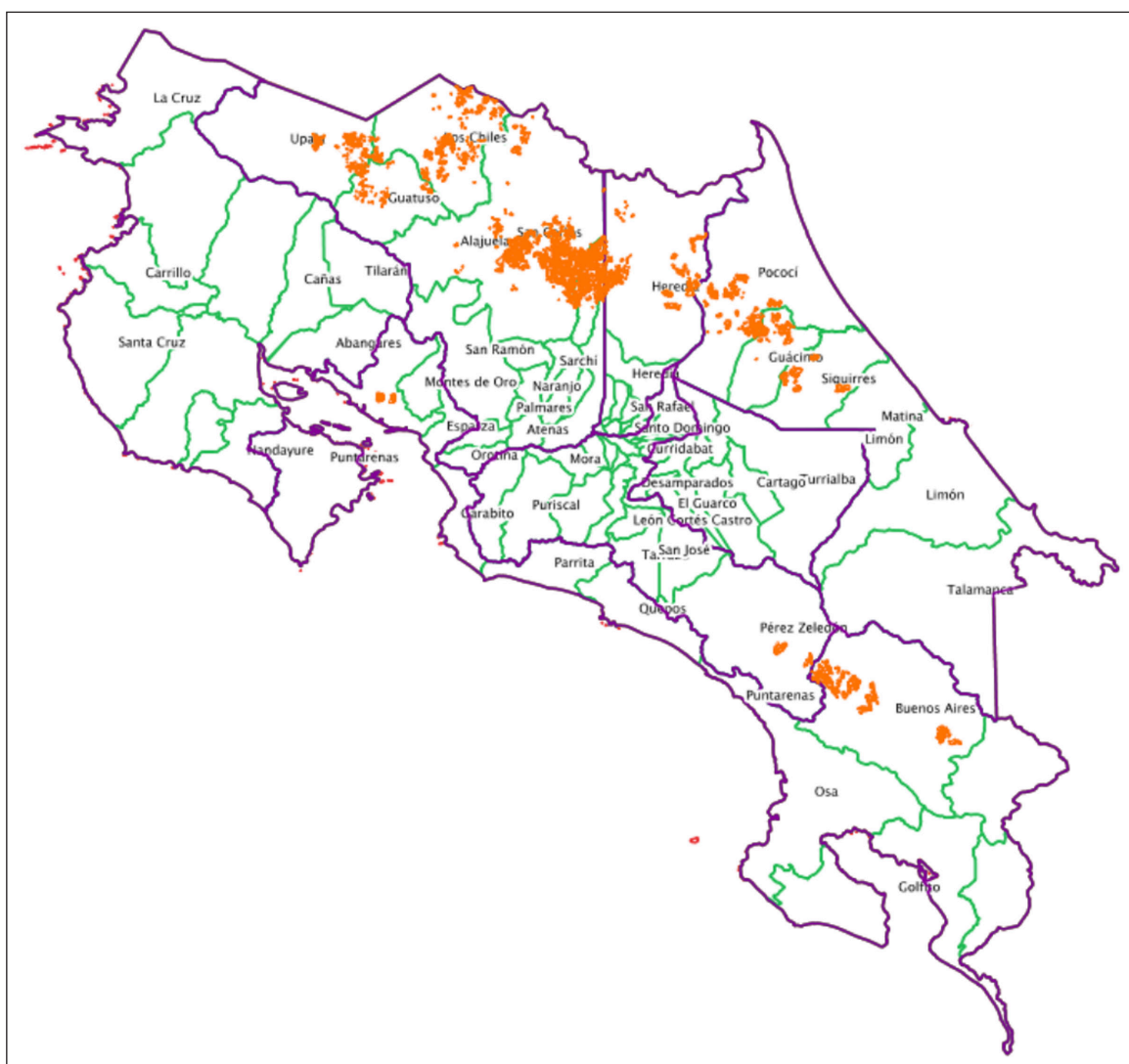


Figure 2: Map of Costa Rica showing the expansion of the pineapple crops by 2017. (Source: SNIT 2017).

⁵⁰ Gabriela Cuadrado-Quesada, 'Legalización de la contaminación de las agua para consumo humano: the case of diuron and bromacil. (2008) 177 *Ambientico* 11.

⁵¹ Leitón (n 9).

The main documented socio-environmental problems caused by the pineapple plantations include: change of land use of large amounts of hectares that were previously used for forest, other crops (e.g. rice and beans) and livestock; devastation of soil; soil erosion;⁵² loss of land previously in the hands of *campesino/campesina* and indigenous farmers; devaluation of lands and homes neighbouring pineapple plantations; propagation of stable flies (*Stomoxys calcitrans*) due to inadequate disposal of pineapple waste products; health problems affecting workers and entire communities such as respiratory problems, allergies and asthma caused by the exposure to agrochemicals;⁵³ and the most relevant one for this article's discussion, the pollution of rivers and aquifers due to the intensive use of agrochemicals.⁵⁴ As summarised by an interviewee,

Our water for human consumption has been polluted...this is because of the intensive use of agrochemicals by the pineapple companies... and they have destroyed our forest, the wildlife has disappeared...the rivers are polluted...and the population has been left without access to safe water.⁵⁵

As aforementioned, the pineapple expansion started in Costa Rica in the 1980s in the South Zone -with a few hectares- and it has grown exponentially throughout the country since. According to all of the interviewees, including government officials, the socio-environmental problems have increased considerably since the pineapple plantations came to these places, even when they thought at the beginning that it would be good to have pineapple companies because they would generate employment. After a while, many in the communities realised that poverty was getting worse as they could not access clean water anymore. Furthermore, some of the people employed in the plantations are not from the neighbouring communities but immigrants from Nicaragua, who are normally not even paid the legally established minimum salary.⁵⁶

4.2 The rise of a social movement – local and national organisation to defend nature and the human right to water

Before the arrival of the pineapple companies in the Caribbean, North and South of Costa Rica, many communities had sufficient and good quality water to satisfy their needs. They were not rich, but their socio-environmental conditions were better (e.g., the rivers were healthy and most *campesino* families had some land which was dedicated to small farming).⁵⁷ However, this situation has changed with the establishment of the pineapple plantations. The pineapple companies have progressively transformed areas occupied by forests and springs dedicated to aquifer recharge into pineapple plantations, incorporating a large diversity and quantity of agrochemicals. The land use change has also caused various springs to dry out, and many of the neighbouring communities have been left without access to water, in particular during the dry season. The companies have expanded their crops to the high and mountainous regions and illegally invaded aquifer recharge areas.⁵⁸ They have also turned lands that were owned by *campesino* families and used for other crops such as beans, *yuca* and livestock into a pineapple monoculture. They have managed to do this while manipulating (at best) many *campesino* families to sell their lands.⁵⁹ As many people found themselves surrounded by pineapple plantations and suffering a number of problems, e.g., water pollution, they have decided to sell.

The above context explained how the companies have managed to grow and cause many socio-environmental and water problems. The key authorities responsible, who should not have allowed this situation to get to this point, was the government and its institutions such as the Ministry of Environment and Energy (MINAE), Ministry of Agriculture and Livestock (MAG), Ministry of Health (MINSa) and the Costa Rican Institute for Water and Sewage (AyA). However, the government and its institutions have clearly failed in imposing proper controls on the pineapple agro-industry. This is more than a lack of adequate legislation, as mentioned in section 3.3 there is legislation to protect forests and water sources, it is related to a failure of enforcement of existing legislation and a proper monitoring of the pineapple expansion. Of course, the harmful consequences have been suffered mainly by the environment and the local communities.

⁵² Cuadrado-Quesada, Holley and Gupta (n 38).

⁵³ Acuña (n 11).

⁵⁴ Clemens Ruepert, 'Groundwater vulnerability to pesticide contamination in Costa Rica' (IRET 2005).

⁵⁵ Interview with human rights defender, No 2 (Guácimo, 15 December 2017).

⁵⁶ Leitón (n 9).

⁵⁷ Acuña (n 11).

⁵⁸ Cuadrado-Quesada (n 10).

⁵⁹ Cuadrado-Quesada and Castro-Vargas (n 12).

This situation of despair gave rise to a national social movement, first against the pineapple plantations but then also against the negligence of the government and its institutions. Several communities around the country, including communities in the North, South and the Caribbean decided that if governmental agencies were not fulfilling their obligations such as preventing water pollution (as discussed in Section 3.3) they would mobilise themselves. Among the main strategies and actions taken are: (i) organising themselves at the local level (e.g., creating local environmental associations) and also at the national level, bringing together all the local groups and national non-governmental organisations (NGOs), and creating the National Front of Sectors Affected by the Pineapple Production (*Frente Nacional de Sectores Afectados por la Expansión Piñera*), known as FRENASAPP, (ii) peaceful demonstrations on public streets (e.g., blocking the streets and traffic) and in front of their respective municipalities and Ministries and; (iii) legal actions against a number of pineapple companies and government institutions for violations to the human right to water. These strategies and actions are explained in detail in the next section.

4.3 A social movement paving the way to the human right to water and the protection of nature

One of the first strategies used in order to consolidate the emerging social movement was the creation of FRENASAPP. The key aims of FRENASAPP are: to strengthen community organisation to denounce the negative effects of the pineapple companies expansion; to call attention to the fact that this is a problem of national scope that demands urgent attention; and to denounce all of the existing violations of national and international law committed by the pineapple companies, such as the human right to water. It was created in 2007 during a community gathering held in the community of *La Perla*, Guácimo and continues to exist today. As highlighted by one interviewee,

From my perspective, the key role played by this social movement to defend the human right to water, that is being violated by the pineapple plantations and by the government, is of organisation... I believe that our greatest achievements in the defence of water has been social organisation of the communities and the support and solidarity of many people around the country.⁶⁰

Together with the social cohesion and organisation at the local and national level, peaceful demonstrations on public streets and outside government buildings, e.g., municipalities, have been valuable. Many communities have gone to the streets to pressure their local government and other public offices, as a way to force them to better regulate the pineapple plantations and start enforcing environmental laws and fulfilling the human right to water. This was the main reason why some municipalities got involved and took action to better address water problems and avoid further socio-environmental devastation. In this regard, it is worth noting the outstanding role taken by the municipality of Guácimo. The municipality of Guácimo (of course due to the pressure of the communities) established a moratorium to control the future expansion of pineapple crops in the south of the canton, where most of the recharge areas of the aquifers are located. The moratorium entered into force in 2008 and helped to stop further environmental destruction, water pollution and also contributed to the protection of vulnerable zones such as the recharge areas of the aquifers.⁶¹ As argued by an interviewee:

We needed actions, from the municipality and we knew that many other communities in Limón and in Puntarenas and in Alajuela were having their water polluted by agrochemicals used in pineapple plantations... and their forests destroyed... we had to avoid that in Guácimo.⁶²

Even though the moratorium represented an essential planning tool, and indeed helped the canton to protect their aquifers from detrimental impacts of pineapple plantations, it is no longer in force. The National Chamber of Pineapple Producers and Exporters (*Cámara Nacional de Productores y Exportadores de Piña*), known as CANAPEP, successfully presented legal action (*Amparo*) against the municipality of Guácimo arguing that they were violating their right to free trade and private property. They won the case on the 18th of October 2013.

⁶⁰ Interview with human rights defender, No 5 (Guácimo, 16 December 2017).

⁶¹ Act No 34-2007, Ordinary Session No 27-2007, held by the Municipal Council of Guácimo on 3 July 2007.

⁶² Interview with representative of the Municipality of Guácimo, No 20 (Guácimo, 12 December 2018).

This resolution argued that:

[A]n evident infraction was found regarding the reasonable motivation of this administrative action [moratorium]... the technical studies that support the municipal agreement resorted to, were elaborated in 2006 and 2010, for different purposes than those that are the object of this claim... Such circumstances determine the violation of fundamental rights... given that, it is not a sufficient, suitable, necessary and reasonable motivation, since the suspension of business and productive activity was based on technical reports elaborated years ago with a different purpose. On the other hand, *it is a limitation of the fundamental right of exercise of freedom of trade and agro-industry...imposed on through a simple municipal agreement that flagrantly violates the principle of the reservation of law on restrictions on fundamental rights...*⁶³

This ruling has several logical fallacies and misunderstandings. The fact that the technical reports were done for different purposes is completely irrelevant, as the technical studies were providing evidence of where the recharge areas are located and how vulnerable such areas are. Furthermore, the right of freedom of trade and agro-industry is not absolute and can and should be limited when it is violating human rights such as the access to a healthy environment and access to safe water. As one interviewee from Guácimo stated:

The moratorium was the most robust protection that we had... unfortunately the Constitutional Tribunal does not have sympathy for poor communities, the environment or water resources...but they are deeply committed to the companies and the growth of GDP.⁶⁴

Regarding the legal actions there have been many presented in different jurisdictions, e.g., administrative and judicial. A landmark was a public hearing at the Inter-American Commission on Human Rights (CIDH), in Washington D.C. on March 20, 2015, on the violation of the human right to water in Costa Rica. In this public hearing, at the CIDH, some of the affected communities in Costa Rica presented their allegations and explained the terrible situation that they are living in due to the growth of pineapple production. The communities including Cairo, Francia, Louisiana and Milan (from Siquirres' canton), whose aquifers were contaminated by different pineapple companies, demanded that the government of Costa Rica stops this deplorable situation, makes the companies accountable and provides clean and safe water to the communities. The commission recommended the government of Costa Rica to better regulate and control the pineapple agro-industry, to decrease the use of agrochemicals and to guarantee the human right to access to water to all the communities that have been affected.⁶⁵

Other legal action includes an environmental litigation presented by the community of *La Perla* located in Guácimo. This lawsuit argued that the pineapple plantation was, among other things, changing land use, eroding the soil, invading the protected areas of the rivers and polluting water. The lawsuit was successfully won in February 2013. The judges ordered the pineapple plantation to: 'remove the pineapples that where invading the protected areas of the springs'⁶⁶ which put the company in a dire situation as that represented nearly the entire plantation. As commented by an interviewee:

Lawsuits have contributed to our social movement against pineapple companies that are destroying the environment and polluting water...we think that if the government has some laws in place which are meant to protect natural resources the least that they can do is to enforce them.⁶⁷

Summarising, the social movement created in Costa Rica around the unacceptable situation of the exponential growth of pineapple plantations, in a supposedly environmentally friendly country like Costa Rica, demonstrates why social movements are fundamental to pursue utopias such as the human right to water and sustainable development. Social movements provide the way, shape and form in which people can keep moving towards their utopia even if never reaching it. The communities of Upala, Los Chiles, Guácimo,

⁶³ Constitutional Tribunal Resolution No. 2013-0013939 '(emphasis added)'.

⁶⁴ Interview with community based organisation (CBO), No 29 (Guácimo, 14 December 2018).

⁶⁵ Costa Rica: Access to Water to Rural Communities, (Public Hearing of the 154 Period of Sessions of the Inter-American Commission on Human Rights (CIDH), 20 March 2015). <<https://www.youtube.com/watch?v=32yxFaJHil0>>

⁶⁶ Environmental Prosecutor Resolution No. 24536, 2013.

⁶⁷ Interview with community based organisation (CBO) No 40 (Guácimo, 15 November 2019).

Siquirres, Buenos Aires and many others still face the threat of the irrational expansion of the pineapple crops and all its related socio-environmental problems. However, since the social movement started in 2007 some improvements (albeit limited) have been made such as communal organisation, condemnation of the situation – in the (social)media and international institutions e.g., CIDH, involvement of NGOs and public universities in the social movement, and more vigilance on behalf of some municipalities, e.g., Guácimo. The communities continue to be observant and they are currently working on new lawsuits against several pineapple plantations, several government institutions and the option of proposing a nationwide pineapple moratorium. As discussed by an interviewee:

The only way to defend our human right to water and protect mother nature is through social organisation, protests and lawsuits...we need civil disobedience to pressure the government to do something... we cannot pressure them with money as the big corporations do.⁶⁸

5. Conclusions

This article has examined how interwoven social movements are with the realisation of the human right to water. This examination included on one hand the struggles and the articulation processes that have arisen in the last years in Costa Rica with the aim to defend the access to safe drinking water for many people, and on the other hand, the legal recognition of the human right to water internationally and domestically. It was discussed that at the international level there is a vast development of instruments that seek to sustainably use water resources and guarantee the human right to water and sanitation. It is on the basis of international instruments, as well as domestic policy and legislation, that these are aimed to stop pollution and depletion of water resources and to start using and governing water resources in a sustainable manner. However, these instruments have had a minimal scope and have not been able to respond or to satisfy the many current socio-environmental needs e.g., the consequences of agro-industry models such as expansive monoculture, which are widely spread around the world. In spite of this, it cannot be said that the development of international instruments and national policies and legislation have been entirely fruitless, since it has served to raise awareness of the global socio-environmental problems and start a discussion about it. Moreover, it is important to mention the relevance of international instruments on sustainable development, and on the human right to water and sanitation. Thanks to these instruments, bodies of laws and public policies in Costa Rica and elsewhere have been developed. These instruments have made an important contribution. For example, before 1992 the environmental legislation in Costa Rica was almost non-existent. However, what has been done until now, has not been enough to guarantee protection of water resources, sustainable development or the realisation of the human right to water for many people.

This research also corroborated that Costa Rica does not have an adequate harmonisation of domestic environmental and water laws, since international instruments contain important principles e.g., the human right to water which is not included in such laws. Moreover, the current situation of the country has dramatically changed from 1942 (when the current water law was approved) forcing the promulgation of a new water law that contains mechanisms to address current socio-environmental problems. However, it is a positive development that Costa Rica finally approved the Constitutional Reform to Article 50. Now, at least formally, every person has the human right to water in Costa Rica. It will be interesting to see how this Constitutional reform will play a role in future discussions and struggles around the human right to water in Costa Rica.

Evidently, another problem faced by Costa Rica is the lack of enforcement of existing water and environmental legal instruments (e.g., water pollution is a crime, but the pineapple companies have not been sanctioned for that crime). Even though this research focuses on the water problems caused by the pineapple plantations, as currently they represent the major cause of water pollution, enforcement of environmental regulations in the agro-industry is broader than the pineapple production and the government needs to urgently better regulate, control and sanction all agro-industries that are prone to damage water resources and compromise the sustainable development of the country.

As was evidenced in this research, demanding the realisation of the human right to water through social movements, social struggles, and social organisation is the way forward. It is worthwhile to highlight that social movements will find support from governments if they invoke instruments that recognise human rights and sustainable development discourses, since the reason for the struggle could be more understood by some people when using the same discourse. In this regard it is important to note GC15 of the UN, which

⁶⁸ Interview with human rights defender, No 6 (Guácimo 16 December 2017).

as discussed (Section 3.1), states that any person or group victim to violation of the right to water must have effective judicial or other remedies at both the national and international levels. In the same manner that social movements will find support in legal instruments, legal instruments will be respected and enforced only if there is a social foundation that fights for their consolidation. It is social process, which might have different shapes and forms in different countries, but the ideals of equity, justice, and redistribution of power and wealth will always be present.

While the struggles are happening it is essential for communities at the local, national and international levels to be aware that they have at least *formal* human rights, even when they are not respected. This knowledge serves as a tool for organising, protesting, demanding and suing to realise human rights. It is essential to provide all people, regardless of their ethnicity, religion, race, economic status, sex or political affinity with the knowledge, content and discourse of human rights and sustainable development as a first step to accomplish them.

Competing Interests

The author has no competing interests to declare.

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