


## Article

# Channeling Water Conflicts through the Legislative Branch in Colombia

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**Abstract:** This paper answers the question: has the Colombian Congress been effective at addressing relevant water conflicts and making them visible? While courts and social movements have been key for the advancement of social rights in Latin America, the role of legislators remains unclear. We conduct content analysis of all water-related bills, proposed bills, and constitutional amendments filed in Colombia from 1991 to 2020; we also analyzed Congress hearings of political control related to water; and the statutes of political parties who hold majority of seats in Congress. We also and conducted interviews with key actors on water governance in Colombia. We find that only three bills have passed in the 30-year time frame and that relevant water conflicts have not been addressed by Colombian legislators. We find that water conflicts are not reaching the political agenda of Congress, yet through political control hearings, it has given some late visibility to critical territorial conflicts in which water is a key element. We analyze our data in light of literature on legislative politics and legal mobilization in Latin America. This study adds to global research on the role of legislators in advancing the human right to water, particularly in Latin America.



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**Keywords:** right to water in Colombia; water conflicts; Congress; Latin American legislative dynamics

## 1. Introduction

Recent trends toward rights' protections have focused on the role of courts and social movements, but it is not clear what the role of political organs like Congresses is in this context. In the Colombian case, during the framing of the 1991 Constitution the Colombian Congress (hereafter the Congress) received criticism due to corruption and its lack of effectiveness in addressing peoples' needs [1]. Furthermore, key water conflicts have been discussed at courts, and social movements do not seem to choose to focus their activism on Congress to advance their cause. Despite this skepticism, the Congress still holds the "power of the purse," which is essential in ensuring rights' protection, particularly when it pertains to water rights. In this paper we determine whether the Congress has been effective at addressing relevant water conflicts and making them visible in Colombia. When it comes to unequal access to water in Latin America, governments have followed a model of privatization and deregulation that has deepened the gap between national governments and local communities [2–5]. Rural and indigenous communities have particularly suffered from this disconnect and a growing skepticism towards the government has grown among them [2,3,5]. Colombia is an example of these patterns where local dynamics and needs in terms of water have not been addressed by national policy [6]. Thus, our paper provides a case study of the Colombian context that will shed light on legislative dynamics in the protection of the right to water with the goal of exploring narratives and avenues for other Latin American countries who face similar challenges.

We focus on relevant water conflicts in Colombia, particularly inequities in water distribution, threats of water pollution posed by economic activities like mining and

agriculture, and the lack of clarity on what the right to water entails [6–8]. We analyze bills and proposed constitutional reforms that the Congress has discussed starting in 1991, as well as debates of political control promoted by Congress.

In Colombia there is not a free-standing right to water in the constitution, but the Constitutional Court has upheld the right to water, based on its connection to other constitutional rights [7,9–11]. The Constitutional Court has given rise to significant case law on the right to water via tutela and it has relied heavily on the jurisprudence of the Inter American Court of Human Rights and the General Comment No. 15 of the Committee on Economic, Social, and Cultural rights [9].

Despite the jurisprudence by the Constitutional Court, the Office of the Ombudsperson in Colombia has highlighted the absence of a body of legislation that unifies criteria on the access to water and quality of water in the country; existing norms (laws and administrative regulations) address these issues from the perspective of water as a utility, based on a market logic that differs from a rights protection approach. The Ombudsperson has argued that new legislation is required to solve this [6]. In addition to a dispersed body of norms, the lack of budget to protect water rights and address people's needs has also posed serious challenges for the protection of the right to water.

While courts have been able to satisfy individual needs, it is necessary to design an articulated and comprehensive water policy, with the budget to support it, and this is an essential task that belongs to Congress. Furthermore, in Colombia it is unclear what the content of the right is: merely having access to water or a right to potable water and its distribution to all people in the country [7]. This lack of clarity requires the political will of Congress to be clarified.

There have been several attempts to pass water rights' bills and constitutional reforms to enshrine the right to water. All these attempts have been unsuccessful because of tensions between political actors. The government has weighed-in in these debates, arguing that there are serious difficulties for it to implement a future right to water. The Ministry for Environmental Affairs has argued that the government cannot commit to a legal obligation to develop the necessary infrastructure to bring access to water to populations in rural areas and small peripheral municipalities because it would be too costly (Interviewee # 1). Legislators from political parties like Centro Democrático have also argued that although they support the enshrinement of a right to water in the Constitution, financial sustainability is essential. Sen. Paloma Valencia (from Centro Democrático) argued that bringing water to all areas of the country will be very expensive and thus approving a minimum amount of free water for rural areas is not feasible. Legislative debate: <https://www.youtube.com/watch?v=9lm1oiUMEq8>, accessed on 2 March 2021. Minute 2:03. Amid these tensions, inequities in water distribution, low coverage for rural areas, and the threats posed to water sources by economic activities show the relevance of a legislative solution.

In this paper, we use qualitative content analysis of legislative documents from 1991 to 2018 that refer to the right to water. Our goal with this analysis is to explore whether Congress as a key political organ has been focusing on relevant issues that could improve people's access to drinking water or if relevant water conflicts have not made it to the political agenda. We identified key narratives and issues in these documents and compared them with relevant water conflicts in Colombia that have been described in the literature. We also explored the role of political parties by looking into the statutes of the main political parties in Congress.

In addition to the legislative process, Congress also has a key role in political control and has the power to exert pressure over the executive toward the implementation of water policies. With this in mind, we also analyze hearings held in both chambers of the Congress (*Senado* and *Cámara de Representantes*) on political control related to the right to water. Content analysis has been largely used by legal scholars to systematically analyze judicial rulings [12]. Scholars interested in legislatures have also used it to examine legislative documents and study features such as party ideology, polarization, government positioning

in legislative debates, and parliamentary scrutiny. For examples of the use of this method for legislative studies see [13]. Our study follows recent advances in the use of this methodology involving the use of legislative databases to examine parliamentary behavior. Finally, we conducted nine interviews with relevant actors: leaders in environmental non-profits in Colombia, advisers to Congress members, members of political parties, leaders who manage local water plants, and academics.

## 2. Literature Review

### 2.1. Water Rights' Protection in Latin America and Colombia

The human right to access “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” has recently been recognized at the universal level. In 2002, by the General Comment No. 15 of the UN committee on Economic, Social, and Cultural Rights (CESCR), and in 2010 by General Assembly Resolution 64/292. General Comment No. 15 provides that States “have to adopt effective measures to realize, without discrimination, the right to water” [9]. Despite these normative developments at the international level, adequate and effective access to water continues to find many obstacles both in developing and developed countries [9].

Brinks, Gauri, and Shen [14] claim that social rights are recognized at the international level and further constitutionalized for use in domestic contexts, thus undergoing a process of vernacularization through which they are adapted to the local context and get transformed by it, which can have diverse results. Whether social rights enshrined in national constitutions improve the actual living conditions of disadvantaged groups, or serve as a reinforcement of the status quo, “depends on the outcome of this vernacularization process, rather than on any *a priori* features of social rights language or social constitutionalism” [14] p. 289.

In the Latin American context several countries like Mexico, Costa Rica, Colombia, and Argentina have used constitutional reforms as mechanisms to strengthen rights protection and strengthen democratic citizenship [15]. Since the 1970s, Latin America has undergone three separate yet interrelated transformative processes: the wave of democratization, an economic transition, and constitutional reforms to incorporate several social and economic rights into their fundamental laws [16,17]. The latter is seen as “a bridge between the greater participation in public life implied by democratization, and the diminished participation in public goods implied by neoliberal reform” [16] p. 1948. As a consequence of the Washington consensus, adopted by most of the countries of the region, national governments enacted neoliberal market reforms that cut back on state-provided services including utilities, public institutions, and welfare, and eased import restrictions [16]. A consequence of these reforms was the growth in inequality and social crises that motivated a new trend of constitutional strengthening rights' protection [17].

These constitutional changes impacted legal practices and conceptions of the law in the region with characteristics such as: (i) constitutions grant high courts greater powers; (ii) constitutions entrench longer catalogs of social, economic, and cultural rights; and (iii) international treaties have been granted constitutional status within the hierarchy of norms at the national level [18] p. 3. Consequently, courts in many Latin American countries gained prominent political roles as defenders of constitutional rights and mediators of social policy conflicts [18].

Yet, even if some constitutions have stronger chapters on social and economic rights, like Brazil's 1998 and Colombia's 1991 constitutions, considered as “typical social rights constitutions” [19] p. 39, in general, Latin American constitutions have showed the limits of constitutions to achieve social and economic transformation. Latin America is still the most unequal region in the world [20], pointing to the shortfalls of constitutions rooted in individual liberal human rights principles to challenge power structures and achieve resource redistribution [17,20].

It is within this historical context of constitutionalism in the region that we place our analysis in the role of the legislative in rights' protection. For the analysis, we focus on two elements: the legal framework and the political opportunities. The selection of these

elements is embedded in the understanding of a constitutional amendment as a process of 'legislative regulative lawfare' [21], meaning a process of social political struggle, where actors in the political society use the national parliament as an arena to advance or block a contested political goal.

While judicialization and social movements have been key for the advancement of social rights in Latin America through constitutionalism, the role of legislators remains unclear. Following Rodríguez-Garavito & Rodríguez, to be progressively realized, social rights need to be understood as fully enforceable rights before all state authorities, at all levels of government. And to fully develop the normative ability of social rights there needs to be progress in two important fronts: the semantic content and specific scopes of each social right, and its legal enforceability [22].

The determination of the semantic field of rights serves to determine the minimum obligations of public authorities in relation to each social right. Such a determination is a task that must first be carried out by the legislative branch, who through the creation of laws must determine specific content for each right. Legal scholarship is also needed, because as progress is made at the theoretical level, progress can be made on a practical level [22].

Luigi Ferrajoli [23] addressed the issue of the procedural enforceability of social rights, noting that it would be necessary for public service laws not only to establish the content and budgets of each social right, but also to identify public law subjects vested in the correlative functional obligations, so that in the case of omissions or violations, injured citizens can exercise their subjective rights [22] p. 69.

Although the role of Colombian constitutional judges has been key to advancing social rights such as the right to health [24], the rights of persons internally displaced by the armed conflict, environmental rights, and the social rights of inmates [25], regulating the semantic content and scope of each right, including the appointment of duties and budget to the administrative state, are structural reforms that correspond to the legislative branch; without those reforms, the gap between the aspirational constitution and the reality of many groups will become dangerously large.

## 2.2. Uses of Congress to Seek Legal Reform

Political representation is "the traditional concept of democracy for the nation-state" [26]. The *demos* is represented in a legislative body who makes laws and oversees the government via hearings and inquiries. Legislative bodies can be Parliaments or Congresses. Colombia has a congressional democracy where the executive branch is separate from the legislative and the head of government, the president of the republic, is not a member of the legislature [27] Arts. 113–115, 132–137. Ideally, the *demos* would be fairly represented in Congress and social conflicts would be peacefully channeled through law making and political control over the executive branch. In this paper we will explore whether the Congress is fulfilling this role when it comes to water conflicts.

Scholars have focused on how legislators represent constituents and the extent to which they should follow their mandate or face sanctions. Burke's classical study claimed that representatives served the constituency's interest, but not its will. Miller and Stokes [28] in their classic study called "Constituency Influence in Congress," paralleled the issue of representation with representative's responsiveness to constituent opinion. They identified two ways in which representation occurs: (i) electors assure that representatives will follow the constituents' will by electing someone with convictions like their own; and (ii) representatives legislate according to their perception of the constituents' opinion, moved by the incentive of re-election [29].

In subsequent decades scholars of congressional representation traced people's influence over their legislators using new methods. They found that constituents and public opinion strongly influence the behavior of legislators as changes in public opinion shape their choices. This pattern was called 'dynamic representation' by Stimson et al as cited in [29,30].

Another hypothesis is that politicians are unrepresentative as their choices may respond as well to the interest of other actors, not their constituents, and thus, there needs to be a distinction between representation and responsiveness. Donald Stokes called attention to the fact that electors change their evaluation of representatives from one election to the next, and thus a big part of what politicians do responds to their anticipation of public opinion [29]. In studies of Latin American Susan Stokes has claimed that politicians acting in the context of economic uncertainty and the risk of economic disaster during the 1990s responded to market rather than citizen actors, as they thought it was the way to be evaluated as successful by the end of their terms [29].

Dominant interest groups can influence the policy process via political parties and other already existing channels [31]. As McCann highlights, the law often offers greater support to prevailing social relations and does not present incentives or resources for other actors to challenge those relationships; virtually all scholars agree on this point [32]. When it comes to nonelite actors, their opportunities to influence policy reform are quite the contrary; they are scarce. In analyzing them, Hilson has discussed the openness or closedness of the political system as important factors to success.

Hilson looks at openness in terms of access to the institutions and mechanisms, not only in general terms, meaning how political systems are as a whole, but also specifically on the policy area and subarea concerned. For example, he says, “although the UK administration is relatively open to environmentalists, it does not necessarily follow that this will be true across all subareas of environmental policy” [33] p. 242. Further he points out that when systems are closed, more protests erupt, and even structurally open systems can be unreceptive to certain claims [32]. Besides the relative openness or closure of the institutionalized political system, the literature also stresses three other dimensions of political opportunity: “(1) the stability or instability of that broad set of elite alignments that typically undergird a polity; (2) the presence or absence of elite allies; and (3) the state’s capacity and propensity for repression” [34].

Following Tarrow, political opportunities are defined broadly as “consistent but not necessarily formal, permanent, or national signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements” [35] p. 54. In other words, they refer to what affects the possibilities that challenging groups have to mobilize effectively within a political system [36]. In this sense, opportunities are “options for collective action, with chances and risks attached to them, which depend on factors outside the mobilizing group” [37] p. 65. Tilly defined a social movement as a sustained series of interactions between powerholders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support [38] p. 306.

This definition has been criticized for being too general. Out of dissatisfactions over the definition of social movements, some leading scholars use the term ‘contentious politics’ instead, considering it broader and more inclusive [39]. Tilly conceptualized opportunities within a more comprehensive fivefold model that includes interests, organization, mobilization, collective action, and opportunity. Here opportunity refers to the “relationship between the population’s interests and the current state of the world around it” [40] p. 55, and “the extent to which power, repression (and facilitation), and opportunity (and threat) provide options for collective action” [36] p. 362. With this broad notion of political opportunity in mind, in the next section we address how it plays out in Latin American and Colombian legislative dynamics.

### *2.3. How Do Political Issues Reach Congress*

Steven Lukes disaggregates power in three angles: decision-making, agenda-setting, and ideological power. He suggests the use of these criteria for the analysis of the effectiveness of power in institutions. Decision-making power points out that those who can make decisions have power, and the others do not. Majorities in Congress and the ruling



party would be examples. For Lukes, this view fails to see how the political agenda is controlled. Thus, according to the second face, those who can influence the agenda of decision makers also have power. For example, interest groups, social movements, and market actors. However, non-decisions are also a result of power relations [41].

When a stakeholder refrains from voicing an issue, foreseeing an unpleasant reaction from other actors, 'non-decisions' consolidate the status quo of power relations. Furthermore, the exclusion of issues from the agenda can respond to the norms and biases of a society in a given time and space, due to the prevailing modes of thought. Based on this, Lukes suggests that power can have a deeper and more effective third dimension. This dimension requires an underlying ideology based on which the status quo gains general acceptance. He calls it the "supreme and most insidious exercise of power," as it shapes the preferences and perception of the masses according to the rulers' view, and "prevent them from having grievances" as they will "see or imagine no alternative" to the existing order [41] p. 23.

#### *2.4. The Role of Congress in the Protection to the Right of Water in Latin America*

One of the key challenges that Latin American countries face is the deep inequalities in access to resources. In this context, ensuring access to water of good quality to the entire population is a universal need in Latin American countries [4]. This challenge is particularly relevant due to its connection with human rights protection and other essential values like ensuring a sustainable development of these countries [4]. Although there is agreement on the need to protect the right to water, how to do it is far from being uncontested. Starting in the 90s Latin American governments adopted privatization and deregulation of water services with the goal of improving water governance; donors and international organizations (e.g., the World Bank and the International Monetary Fund) have fostered this model by setting conditions on countries toward privatizing their systems for water provision [4,42].

After years of experience, it has become clear that the model has led to increased inequalities in the access to potable water and has led to large environmental damages since accountability mechanisms are weaker on private contractors [4]. An example of this pattern is Chile where indigenous and farmers' movements have seen privatization and deregulation as threats to their water rights and their own management systems, leading to mixed results in terms of water governance [42]. More recent approaches to water governance are moving toward more participatory models of decision-making and management that involve different sectors of the population [42].

The role of Latin American Congresses in the protection of the right to water has two characteristics: disarticulation between policy makers (at the legislative and executive) at the national level and local communities, and the development of legislation that follows technocratic and privatization models.

The disarticulation between policymakers at the national level and local communities exist because water legislation in Latin America has been designed favoring general rules that do not take into consideration local water management contexts and experiences [42]. Given the limitations of infrastructure and access to governmental services in rural areas, communities have designed their own customary rules and management systems that often are not recognized by decision-makers at the national level [3]. This situation has led to the coexistence of official law and customary law in water management and thus to a situation of legal pluralism that limits the role of Congresses in legal reform and intervention strategies [42]. A good example of this disarticulation is found in Peru where leaders in the Peruvian highlands have seen the adoption of water licenses and tariffs as the start of water privatization, which they deem morally wrong; one possible reaction is for these communities to neglect the payment of the tariff or license, but not as an act of resistance to governmental intervention but just a prioritization of needs and scarce resources [3].

The second characteristic is that legislation related to water has embraced a technocratic and top-down approach that has excluded social participation from water management [2]. At the same time, the participation of private parties in water service provision has increased the perception of corruption and has brought evidence that this policy protects the interests of transnational corporations at the cost of people's needs, social protests, and sometimes violence [2]. An example of these laws is the Water Resources Law in Peru that limited the role of the government in economic and social politics and opened up a wider space for private companies to intervene and invest in water policy [3].

These characteristics of the role of Congresses have particularly affected indigenous communities and populations in rural areas, given that their participation in policy design has been minimal [2]. In countries like Bolivia, Peru, Ecuador, and Chile the role of national governments in water governance has not been effective at protecting people's access to water in rural areas and in indigenous territories [42]. Despite the challenge, more recent trends have shown indigenous movements strengthening their participation in national organs of decision-making [42]. Also, successful social mobilizations in countries like Bolivia (the Cochabamba Water War, 1999–2000) and Uruguay (the Constitutional reform of 2004) have ignited similar movements in countries like Colombia, where social actors like farmers, Afro-Colombians, youth, and women's and indigenous groups mobilized to advance initiatives like a water referendum in 2007 [2].

### *2.5. The Right to Water in Colombia and Its Challenges*

Despite the lack of a free-standing constitutional right to water in the 1991 Constitution of Colombia [27], by relying on regional and international norms and jurisprudence the Constitutional Court has upheld the right to water, based on its connection to the constitutional right to a healthy environment (Art. 79), the constitutional right to life (Art. 11), and the collective right to public health (Art. 88) [7,9–11]. According to the Court, the observations and recommendations of institutions authorized to interpret ratified human rights treaties are relevant to interpret constitutional rights in Colombia [9].

According to the Court, what goes beyond the essential content of the right to water (e.g., availability, accessibility, and quality) depends on its implementation via public policies, but constitutional judges can analyze whether there has been negligence in resource management and should foster citizen engagement [9]. Some principles applied by the Court regarding the right to water are the principles of solidarity and humility. The principle of solidarity applies to the environment, so economic development should follow sustainable development models (Art. 80) [9]. The principle of humility should be applied to the extent that human beings depend on nature and thus nature should be considered beyond the notion of exploitable resource [9].

The Court has used the right to water to protect ecosystems and water sources. For example, in Decision C-035/16 [43], the Court struck down provisions of Law 1450 of 2011 and of Law 1753 of 2015 about mining permits in high-altitude ecosystems called paramos. The court noted several key features of paramo ecosystems, including their role in supplying Colombia with around 70% of its drinking water. In Decision T-622/2016 (Atrato river case) [44], the Court declared the violation of the right to water (among other rights), of ethnic minorities affected by the pollution of the Atrato river due to uncontrolled mining. Finally, the Court has protected the right to water of individuals in conditions of vulnerability due to illness or scarcity, for instance by ordering water service reconnections despite lack of tariffs payments, fraudulent connections, and illegal reconnections. Despite their individual nature these cases contribute to the development and understanding of a right to water for the rest of the population [8].

The "criteria of interpretation of the content and scope of the right to water have relied primarily on the jurisprudence of the Inter American Court of Human Rights and the General Comment No. 15 of the CESCR" [9] p. 345. "Since decision T-760/2008 [45], there are minimum contents that make up the right to water, corresponding with the core obligations set out in General Comment Number 15, as in Decisions T-207/95 [46] and

SU-1116/01 [47]" in [9]. The constitutional jurisprudence has mainly protected the right to access water of people with unpaid water supply bills, in which cases it has ordered reconnections. In response to collective litigation (*acciones populares*) the Colombian Council of State (*Consejo de Estado*) has ordered the construction of sewage and sanitation systems in low-income villages [48].

The literature has documented key water conflicts in Colombia. Despite Colombia's rich water resources, it faces serious problems when it comes to water availability and water quality. The first challenge is coverage and the deep inequalities in water access, particularly between urban and rural areas. According to the Ombudsperson's Office of Colombia, 69% of Colombian municipalities lack water without risk for human consumption and the poorest municipalities have less access to potable water without any level of risk [7,10,49]. An important determinant of water quality is the purchasing power of its inhabitants, which allows them to pay the maintenance fees of the infrastructure and generate profits [49]. There is also evidence of "environmental racism" in Colombia where the non-white population and racial minorities face worse environmental conditions. Empirical data show that a main predictor for environmental racism in individuals is their income, rather than race [49].

Private providers have filled in the gap, bringing water to those areas of the country where the government does not reach. Particularly, community-managed water plants have been key in ensuring access to water for rural communities or lower-income groups in the outskirts of urban areas. According to the Ministry for Environmental Affairs there is not an accurate count on how many people have access to water from these providers, but there is an estimate that 11,200 community water plants (*acueductos comunitarios*) exist in Colombia [10]. Around three quarters of the Colombian population live in urban areas while one quarter lives in rural areas (76% urban population and 24% rural) [50].

The second water challenge in Colombia relates to water conservation in what pertains to economic activities like agriculture and mining. Sustainable agriculture is a key point in the economic agenda for Colombia in a way that protects the interests of communities now and in the future [7]. "Water is critical for agricultural production. Irrigated agriculture represents 20% of the total cultivated land and contributes 40% of the total food produced worldwide. Irrigated agriculture is at least twice as productive" [51]. Currently, agriculture accounts for around 70% of all freshwater withdrawals globally [51].

Coal and gold mining have caused serious negative impacts on the environment, especially on water resources [52]. Favorable economic conditions in international markets of minerals have encouraged legal and illegal exploitation in Colombia and these activities have increased significantly [52]. Another factor that has fostered illegal mining is the weak structure and articulation of administrative and financial authorities that could enforce environmental regulations or safety standards, posing serious challenges on human rights like water, a healthy environment, ecological balance, sustainable development, food security, and ecosystem conservation, among some other rights [4].

Current regulations on the right to water and its protection are not supplying an effective framework to address these challenges. There is not an autonomous and concentrated body of norms that protect water quality and availability for the population. What refers to water quality and distribution has been mainly regulated from the perspective of public utilities with an emphasis on neoliberal models that have shaped the relationship between the people (the consumers of this public utility) and the water companies. The Ombudsperson has called on Congress and the executive trying to convey the need for a legislative solution to these issues [5]. Recent initiatives like the *referendo por el agua* (water referendum) tried to solve this issue and proposed an approach to water which treats it as more than just a utility. This Referendum contemplated an obligation for the government to protect water in all its dimensions, including its cultural and sacred dimension that is particularly relevant for indigenous communities [7]. This Referendum also tried to clarify the content of the right to water in terms of water quality and its distribution [7].



Unfortunately, the Referendum drowned during its course through the Congress [53]. We will expand on this issue in the analysis section.

### 3. Materials and Methods

In this paper we explore whether the Congress has been effective at making water conflicts visible and whether it has addressed those conflicts. To answer this question, we conducted a qualitative content analysis of all the bills, proposed bills, and constitutional reforms related to “water” and that were analyzed by the Congress between 1991 and 2020. Content analysis has been widely used to analyze court cases [12] and legislative documents. The role of legislators in implementing human rights with a focus on environmental issues has been broadly studied, especially in the US. We use a qualitative approach to better understand the role of legislators in advancing the human right to water in highly unequal and politically divided regions [2], where budget allocation for advancing social rights is often prevented by unclear mechanisms. We use Colombia as a case study and offer a thick description in structural connection with regional dynamics. This study contributes to the aggregated analysis of progress and problems in the implementation of water rights in the globe.

We used the search terms: ‘*agua*’ (water), ‘*derecho al agua*’ (right to water), ‘*derecho humano al agua*’ (human right to water). We identified 29 proposed bills, 5 proposed constitutional reforms, and 3 bills by using the search engine of the *Senado* and *Cámara*. <https://www.Senado.gov.co/index.php/az-legislativo/proyectos-de-ley> and <http://www.Camara.gov.co/buscador-legislativo> (accessed on 24 March 2021). We identified 2 more documents (1 proposed constitutional reform and 1 proposed bill) in publications of professional associations and the website of one Congress member. <https://icpcolombia.org/>, <https://angelicalozano.co/wp-content/uploads/2017/06/La-Ley-del-Agua-en-Colombia.pdf?x66374> (accessed on 24 March 2021). In total, we identified 39 documents (we describe these data in the analysis section). We analyzed these data and identified key actors in these discussions (either because they supported or opposed the bills), and whether the issues addressed in these bills matched substantial water issues that have been documented in the literature.

We also analyzed the role of political parties in the discussions of these bills by analyzing the statutes of the main political parties that have representation in Congress. Currently, 13 political parties have representation in Congress. We analyzed the statutes of the five largest represented political parties in each chamber. In addition to this, we included in our analysis the *Partido Verde* (Green Party) because it is the only political party that was founded with the goal of protecting the environment. In total we analyzed the statutes of seven political parties (*Centro Democrático*, *Partido Cambio Radical*, *Partido Conservador Colombiano*, *Partido Liberal Colombiano*, *Partido de la U*, *Alianza Verde*, and *Partido Social de la Unidad*).

We also gathered data on the debates of political control that have been held either in the *Senado* or *Cámara*. There is not a database that centralizes the information on these debates, so we used interview data to identify key debates that have been held in the last three years.

Finally, we conducted nine interviews with relevant actors: leaders in environmental non-profits in Colombia, advisers to Congress members, members of political parties, leaders who manage local water plants, and academics. IRB Protocols #HS-2018-416 and HS2021-4570 Tennessee State University We analyzed these data and identified key narratives that we used to interpret other data described in this section.

## 4. Results

### 4.1. Legal and Regulatory Framework

When the 1991 Colombian Constitution was approved, there were deep doubts among key actors about whether Congress could lead the institutional change that the Constitutional Assembly was calling for, mostly due to rampant corruption, clientelism, and

'old politics' practices that Congress embodied [11]. Thus, Congress was one of the key problems of the 1991 Constitutional reform, and one that was addressed by trying to replace the role of Congress with direct participation (i.e., referendums), regulatory (nonpolitical) agencies, and the courts that could push change as an alternative to Congress [11]. Despite this skepticism, Congress holds a key role when it comes to approving public budgets and the four-year plan that governments follow. When it comes to water Congress has debated initiatives proposed by Congress members, the people, and the government. In this section we will describe the legal and regulatory framework of the right to water and the initiatives that have been proposed to address water conflicts in the country.

In the case of the Colombian Constitution, the right to water is not stated as an individual right. Yet, since 2008 the constitutional case-law has protected the right to water to individuals in particular situations, such as: cases of supply interruption due to debts to the company supplying the public service, fraudulent connections, and illegal reconnections, among others [8]. There are two tendencies in the judicial recognition of the right to water as a right. One is its guarantee by the connection theory (the right to water is protected when connected to other fundamental rights such life and health), and the other is its designation "as an autonomous fundamental right restricted to the minimum amount necessary to survive" [8]. In sum, judicial protection has been granted in cases of proved lack of access by individuals considered subjects of special protection due to socioeconomic vulnerability or illness.

The water legal framework is provided in three laws: (1) Decree-Law 2811 of 1974 (The National Code of Renewable Natural Resources and Environmental Protection); (2) Law 99 of 1993 (created the National Environmental System-SINA for its acronym in Spanish), assigning functions to central and decentralized administrative institutions, and (3) Law 142 of 1994 (*Ley de Servicios Públicos Domiciliarios*/Public Housing Services Law). While there is a Regulatory Agency for Water and Sanitation (CRA, for its acronym in Spanish) attached to the Ministry of Housing, there is no national agency devoted integrally to all aspects of water protection and use. Currently several public organizations engage in water governance. Examples of these organizations are the Ministry of Health, the Ministry of Housing (with a specific office for water and sanitation), the Ministry of Environment, and the Ministry of Agriculture.

Law 142 of 1994 (*Ley de Servicios Públicos Domiciliarios*/Public Housing Services Law) assigns roles both to the state and to the private sector and allows public-private partnerships for water provision and management. Besides, the Superintendence for Public Housing Services (*Superintendencia de Servicios Públicos Domiciliarios*) oversees the performance of the public services providers and their compliance with regulations issued by CRA [7,54].

Apart from state institutions and private providers, Colombian organized rural communities have also provided potable water as a public utility and managed it as a common-pool resource [48,55]. User-run community aqueducts have been described as place-based, not-for-profit, culturally attuned alternatives to the binary State or Corporate model of water supply [2].

Finally, at the national level there is an administrative decree (*Decreto* 475 of 1998) that regulates water quality and states that the % age of acceptability ranges between 95% and 100%; in this range water is acceptable for human consumption; the national government also created the System for protection and Control of Water Quality (Decree 1575/2007 and Resolution 2115/2007 [49].

#### 4.2. Political Parties' Statutes

We analyzed whether parties with seats in Congress prioritized water and included them in their statutes in the period 2018–2022. We analyzed statutes of the following political parties: Partido Liberal, Partido de la U, MIRA (acronym for Independent Movement of Absolute Renewal), Partido Conservador, Mais, Farc, Polo Democrático, Cambio Radical, Alianza Verde, and Centro Democrático.

In our analysis of 10 statutes of political parties with representation in Congress we found that only one party—MIRA—mentions the term “water.” The political party MIRA is a Colombian confessional party founded in the year 2000. Its statutes outline a declaration of program principles in four programmatic axes, one of which is called “adequate habitat and environment” [56]. It says that the party pursues a safe environment through mitigating climate change, moving toward sustainable development, improving economic conditions, and reducing morbidity and mortality rates, which depend on the conservation of natural resources, in particular on improving air quality, the availability of drinking water, increasing the availability of arable soils and the conservation of biodiversity.

The other nine statutes focus on the political values and ideologies that guide them, but none of them explicitly refer to environmental matters or water rights. This shows that most of the political parties with representation in Congress do not see water as relevant to be included in their statutes or as a priority to guide their role. In interviews with three congressional advisers (Interviewees # 7, 8 and 9), they confirmed this finding by saying that environmental damage and specifically the contamination of water sources is not interpreted as a fact of severe political importance by majorities nor by institutions. One of our interviewees said, “one of our problems is that people associate environmental harm and even environmental crimes with ‘that is not a big deal’, ‘that is normal’. Environmental sanctions in Colombia are laughable, there is a high rate of impunity for environmental harm” (Interviewee # 8).

Another interviewee said “The issue of how environmental harm is perceived is fundamental to how we deal with environmental conflicts in Colombia. That perception here is so precarious, so vague, that basically conflicts are not resolved through institutions, but the general understanding is that paying attention to an environmental conflict is a favor done to someone. To congresspersons, or anyone supporting a community, it is as if communities are begging them “please help us protect this wetland,” or “please help us, the swamp (*ciénaga*) where our water comes from is being contaminated by the state-owned Ecopetrol (Spanish acronym for Colombian Oil Corporation) refinery” (Interviewee # 8).

This finding relates to Hilson’s [33] observation of the possible openness of political systems, but nonetheless a lack of receptivity to certain issues that do not make it to the political agenda. Colombia’s legislative system is designed in such a way that it is accessible to the discussion of water-related legal reform because potentially Congress members could propose bills about it, but this issue is not the flag of any political party, not even of the parties with a tendency toward environmental defense (Interviewees # 7, # 8 and # 9).

Lukes [41] points out, for his part, that not all issues reach the agenda of the elites in power, because even if certain issues are important, as water is, parties do not necessarily defend them due to an ideological distance from those discourses and causes. Although some legislators may have an invested interest in water rights, the ideological environment of rejection or evasion of water as a political issue leads to the non-discussion of water rights and key water conflicts in Congress. This was supported by one of our interviewees, who said: “Apart from problems with water access there is a huge problem with water pollution, which does not get enough attention, because no one in Congress is particularly interested in saying that water is contaminated and that we need more treatment plants. I think the reason for this is that this is not a selling issue. It is very difficult to find a congressperson who speaks about water and says, ‘this is a key problem in Colombia’, there is no one. No congressperson is weaving that flag, the flag of care for water or of decontamination of water sources” (Interviewee # 7). These data show that water rights are not at the core of political parties’ priorities.

#### 4.3. Bills and Proposed Constitutional Amendments

There have been a series of legal reform attempts and social mobilization since 2002, seeking a wider protection of water and the right to access drinking water, including a minimum amount of water for all.

Bills and proposed amendments of the constitution on water focus on different issues (Table 1). Table 1 shows that of a total of 39 legislative documents related to water since 1991 only three bills have passed. Table 2 shows a total of 36 documents, rather than 39. The reason for this difference is that three proposed bills turned into bills (they were approved by Congress) and in this table we counted these three proposed bills and approved bills in the same row. Information on the proposed bills is available in column six, "status." These three bills are Bill 1176 of 2007, Bill 373 of 1997, and Bill 1977 of 2019. Bill 373 of 1997 created an obligation for departments and cities to adopt a program toward the effective use of water and reduction of consumption. This program will be part of the environmental plan for each region and city, and it will be designed for 5-year periods every time. Interestingly, this Bill requires departments and cities to include education campaigns to engage communities in the goal of reducing water waste and they should designate the necessary budget to fund these activities. Bill 1176 of 2007 regulates the general budgetary division system which is a fund toward public services and utilities that the government should provide (Constitutional Art. 356).

**Table 1.** Summary of bills (B), proposed bills (PB) and proposed constitutional reforms (PCR) per issue. Designed by the authors. Data from <http://www.secretariaSenado.gov.co/> and <http://www.Camara.gov.co/buscador-legislativo>, accessed on 24 March 2021.

Topic	n per Issue	Reference No.	Year	Document Type	Status
To recognize and regulate the human right to water in the Constitution	9	Docket No. 15 November 2007 N° Senado: 197/07 (Defensoría)	2007	PB	Not Passed
		Docket No. N° Cámara: 047/08	2008	PB	Not Passed
		Docket No. 14 October 2008 N° Cámara: 171/08	2008	PB	Not Passed
		Docket No. Cámara: 054/2008	2008	PCR	Not Passed
		Docket No. 8 August 2012 Senado: 066/12	2012	PCR	Not Passed
		Docket No. 16 March 2016 Senado: 011 / 201, Cámara: 260/16	2016	PCR	Not Passed
		Docket No. 25 July 2018 Senado: 06 / 2018, Cámara: 234/18	2018	PCR	Not Passed
		Docket No. 22 March 2017 Senado: 14/2017 Cámara: 282/17	2017	PCR	Not Passed
		Docket No. 20 July 2018 Cámara: 009/2018	2018	PCR	Not Passed
Sustainable use of water (Recycling, treatment, rainwater collection and rational use of potable water)	2	Docket No. 26 July 2017 N° Senado: 048/17	2017	PB	Not Passed
		Docket No. 28 August 2018 N° Senado: 116/18	2018	PB	Not Passed
Free minimum access to drinking water	5	Docket No. 06 December 2012 N° Senado: 174/12	2012	PB	Not Passed
		Docket No. 20 July 2013 N° Senado: 009/13	2013	PB	Not Passed
		Docket No. 27 July 2018 N° Senado: 057/18	2018	PB	Not Passed
		Docket No. 27 July 2020 N° Senado: 168/20	2020	PB	Pending for first debate in Senado
		Docket No. 09 October 2020 N° Senado: 321/20	2020	PB	Pending for first debate in Senado

Table 1. Cont.

Topic	n per Issue	Reference No.	Year	Document Type	Status
Subsidies and funds for equitable water provision among regions	4	Bill No. 373 of 1997	1997	B	Passed (PB Docket No. 23 August 1995)
		Docket No. 16 October 2003 N° Senado: 029/04 N° Cámara: 150/03	2003	PB	Not Passed
		Bill No. 1176 of 2007	2007	B	Passed (PB Docket No. 24 March 2007)
		Docket No. 25 September 2008 N° Cámara: 150/08	2008	PB	Not Passed
Ecotourism and protection of hot springs	4	Docket No. 14 August 2014 N° Senado: 065/14	2014	PB	Not Passed
		Docket No. 19 August 2015 N° Senado: 062/15	2015	PB	Not Passed
		Docket No. 26 July 2017 N° Senado: 037/17	2017	PB	Not Passed
		Docket No. 20 March 2019 N° Senado: 241/19	2019	PB	Not Passed
Integral and sustainable fishing and aquaculture in water sources	3	Docket No. 28 September 2010 N° Senado: 159/10	2010	PB	Not Passed
		Docket No. 25 August 2010 N° Senado: 126/10	2010	PB	Not Passed
		Docket No. 21 July 2014 N° Senado: 025/14 N° Cámara: 183/15	2014	PB	Not Passed
Protection of groundwater and aquifers	2	Docket No. 1 August 2012 N° Senado: 057/12	2012	PB	Not Passed
		Docket No. 16 October 2013 N° Senado: 126/13 N° Cámara: 20 June 2014	2013	PB	Not Passed
Provision of drinking water through community-based systems	1	Docket No. 20 July 2013 N° Senado: 018/13	2013	PB	Not Passed
Water as a public utility	3	Docket No. 28 August 2002 N° Senado: 063/02	2002	PB	Not Passed
		Docket No. 01 August 2012 N° Senado: 061/12	2012	PB	Not Passed
		Bill No. 1977 of 2019	2017	B	Passed (PB Docket No. 8 November 2017)
Mining and water protection	3	Docket No. 22 April 2008 N° Senado: 278/08	2008	PB	Not Passed
		Docket No. 5 August 2019 N° Senado: 094/19	2019	PB	Not Passed
		Docket No. 20 July 2020 N° Senado: 082/20	2020	PB	Pending for first debate in Senado
Total	36				

This fund accounts for resource inequalities among cities and departments (administrative units conformed by a group of municipalities) and allows the national government to distribute resources among them with specific goals. Bill 1176 states that funds in the system will go to four item lines: education, healthcare, water, and sewage, and a general fund (Art. 1, Bill 1176). Funds toward water and sewage will be distributed among cities and departments based on five criteria: deficit in coverage of water and sewage services, population who was access to water services, efforts by the local or department government to expand water coverage, and fiscal efficiency (art. 7, Bill 1176). Finally, Bill 1977 modifies Bill 1176 and creates a unified system to report information about water service and coverage in the country.



**Table 2.** Water bills, proposed bills and proposed constitutional reforms per quadrennium. Designed by the authors. Data from <http://www.secretariaSenado.gov.co/> and <http://www.Camara.gov.co/buscador-legislativo>, accessed on 24 March 2021.

Quadrennium	Proposed Bill (n)	Proposed Constitutional Reform (n)	Bill (n)	Total Quadrennium (n)
1994–1998	0	0	1	1
1998–2002	1	0	0	1
2002–2006	1	0	0	1
2006–2010	5	1	1	7
2010–2014	8	1	0	9
2014–2018	6	2	0	8
2018–2022	6	2	1	9
Total	27	6	3	36

These bills highlight the responsibility of departments and cities in the protection of the right to water, and they aim to articulate this responsibility with the necessary funds to achieve this goal. Despite these policy efforts, legislation has not addressed key water conflicts described in the literature review like pollution, threats posed by mining and agriculture, and water coverage. There is little that city and department governments can achieve just depending on resources of the *Sistema General de Participaciones* (SGP), which is a national system for budget transfers [57], particularly due to the necessary infrastructure to grant effective access to water for populations in rural areas. This system is constituted by the resources that the Nation transfers to the territorial entities (departments, districts and municipalities) by mandate of articles 356 and 357 of the Constitution., for the financing of the services under their charge, such as health, education and those defined in Article 76 of Law 715 of 2001.

One proposed bill that is highly relevant is Docket No. *Cámara* 171 of 2008 “*por medio de la cual se convoca a un Referendo Constitucional para consagrar el derecho al agua potable como fundamental*” (that calls for a constitutional referendum to enshrine the right to water). This proposed bill was filed after 2,039,000 citizens (over 5% of the registered voters in Colombia at the time) signed to express their support to this bill that would call on a referendum to reform the constitution (Congress Gazette No. 717, 2008). According to the Colombian Constitution, Congress should pass a bill approving the referendum that has been supported by the people. Although Docket 171 relied on the required popular support, it drowned in Congress due to procedural reasons: it was not approved by *Senado* and *Cámara* within the legislature.

One interviewee argued that despite all efforts, as the end of the year approached the Docket did not gather the necessary support from Congress members and, just like that, it drowned (Interviewee # 1). Another reason why this initiative was not successful in Congress is due to the existence of several other referendum initiatives that saturated the attention of the legislators, including the referendum call for a third re-election of ex-president Alvaro Uribe. 2008 was a year in which issues around security and the armed conflict were protagonists, leaving no space for the debate of other polemic and anti-private corporations involved in the water sector, such as the water referendum. This is a dramatic example of a proposed bill supported by legal mobilization that was filtered by Congress; in this case the filter did not come as loud voices against the right to water, but rather by the lack of engagement by Congress members in this issue.

All the proposed amendments to the constitution have focused on enshrining the right to water ( $n = 6$ ), but none of them has passed. Interview data suggest that it will be costly to constitutionalize the right to water in Colombia because of the role of courts in rights’ protection (Interviewee # 8 and Interviewee # 9). The government has been open about the limited financial resources that the country has to expand water coverage and that the constitutionalization of the right to water will put the country on the spot with an

obligation that it cannot fulfill. Also, interest groups, particularly private businesses with an interest in economic activities like mining, have exerted strong lobbies in Congress to push water rights out of the political agenda (Interviewee # 8 and Interviewee # 9).

Table 1 summarizes broad categories of topics in the bills, proposed bills, and proposed constitutional reforms we found. The majority of these documents focus on recognizing and regulating the human right to water ( $n = 9$ ); discussions on free minimum access to drinking water is the second topic with five proposed bills in our data. So far none of these initiatives has been approved and two are pending for debates in *Senado*. This table includes summarized information on bills, proposed bills, and proposed constitutional reforms.

Table 2 shows when proposed bills, and proposed amendments to the constitution were filed. Congress members are elected for four years in terms that match the presidential term. It is noticeable that in only two years of the most recent legislature, Congress has discussed nine documents related to water; this matches the number of documents debated in the 2010–2014 term. In 2010 the President elected was Juan Manuel Santos (from Partido de la U); this same political party held the majority of seats in both *Senado* and *Cámara*. It is worth noting that in 2010 the UN passed Resolution 64/292 recognizing access to clean water and sanitation as an independent human right. Our data show a pattern of growth starting in 2006, before the UN was approved.

According to the Colombian legislation, individual Congress members or a group of them can propose a bill for discussion (Art. 140, Law 5, 1992) while to file a proposal for a constitutional amendment it is necessary to have the support of 10 members of Congress [27] in Art. 375. Proposed bills and constitutional amendments regulating water rights were filed by different political parties. See Table 3.

**Table 3.** Proposed water bills and constitutional amendments per political party. Designed by the authors.

Political Party	Proposed Bills and Constitutional Amendments
<i>Alianza Verde</i>	11
<i>Partido Liberal</i>	8
<i>Partido de la U</i>	7
<i>Polo Democrático</i>	7
<i>Partido Conservador</i>	7
<i>Partido MIRA</i>	5
<i>Decentes</i>	4
<i>Opción Ciudadana</i>	3
<i>Centro Democrático</i>	3
<i>Cambio Radical</i>	3
<i>Alianza Social Independiente (ASI)</i>	3
<i>Colombia Justa Libres</i>	2
<i>Sociedad civil—Comité de Promotores del Referendo Constitucional para consagrar el derecho al agua potable como fundamental</i>	1
<i>Movimiento Unidad Indígena y popular por Colombia—MUIPC</i>	1
<i>FARC</i>	1
<i>Autoridades Indígenas de Colombia (AICO)</i>	1

For example, a senator representing *Movimiento Social Indígena* (Indigenous Social Movement) filed three times, in three different years, a bill to regulate and protect the environmental sustainability of hot springs (*Senado* 062/15, Congress Gazette 605/15; *Senado*: 037/17, Congress Gazette 627/17; *Senado* 065/14, Congress Gazette 422/14). In these proposed bills the goal was to encourage a sustainable use of water springs that could bring ecotourism to country areas and protect water resources.

In Colombia there is no national law recognizing and regulating a minimum amount of water as a fundamental right. There have been unsuccessful initiatives and proposals for constitutional and legal reforms in this sense, including one proposed in 2018 by the Green Coalition. This bill seeks to present free access to 20 m<sup>3</sup> of water per month to the more

disadvantaged population (levels 1 and 2 of the Colombian socioeconomic stratification system). It also enshrines water as a human right and seeks to establish rainwater as a public good. Although some municipal governments have included the provision of a free amount of water in their programs, as has happened in Medellin (2008), Bogota (2012), and Bucaramanga (2013), these have not been permanently institutionalized. Four of the legal reform projects revised for this study have sought the provision of a minimum amount of free water for the most vulnerable population.

In 2012 and 2013 there were two legal reform proposals. The 2012 bill proposed by the Liberal and U parties, sought for municipalities to adopt a vital minimum of 50 to 100 L of water per day per person. The idea was for beneficiaries to have access to the same services they would have if they had accessed judicial instances. This minimum drinking water and sewerage program was to be financed by the municipalities or districts and serve a group of beneficiaries determined in a program adopted by the municipality. This project did not aspire to reform the 142, but to separate “the business scheme of provision of the service foreseen in Law 142, of the social policies on water provision as public service that correspond to the State” (project 16, *Senado*: 174/12, p. 3).

The 2013 MIRA party proposal sought an amount of 6 m<sup>3</sup>/month per consumption unit to be granted free of charge for people living in areas classified in levels one and two of the Colombian socioeconomic stratification system (low-income communities accessing higher subsidies to cover access to public services), including water for residential and mixed use. This proposal included a free minimum of water, electricity, sewerage system, and telephone access, as part of a “vital basket” (*canasta vital*). The proposal mentioned the vital minimum to be an application of the right to water, declared by Resolution 64/292 of 28 July 2010 of the General Assembly of the United Nations. This bill was grounded on the need to find a structural response to the growing number of users disconnected from water supply services for lack of payment. It sought to create a bottom-up solution in which the current subsidies were kept, but that in addition the State arbitrates sufficient resources to be able to meet the needs of users. See Table 4.

**Table 4.** Proposed bills and constitutional amendments to establish a minimum amount of free water. Designed by the authors.

Bill/Amendment	Purpose
P1. Senado 057/18 Party: Alianza Verde	Ensuring that the population with least resources (stratification 1 and 2) has access to a vital minimum of water (20 m <sup>3</sup> ). It also enshrines that water as a human right and rain as a public good.
P15. Senado: 009/13 Party: MIRA	Vital basket of energy, water, sewerage, home gas and telecommunications for low-income people.
P16 Senado: 174/12 Parties: Liberal and U.	Minimum vital amount of water “Program to be adopted by the municipality, within the range of 50 to 100 L per day per person.” It seeks to present beneficiaries with access to the same services they would have had if they had filed a suit.
PRC 1. Bill No. 171 2008 (water referendum) Proposed by civil society organizations	Declaring the right to water as fundamental, to establish a minimum amount of free water, and excluding private companies from drinking water provision, leaving the service only to state owned companies and to community-based water providers.

It is noticeable that despite the reality of inequality in the access to water between urban and rural areas, this issue is not being directly addressed by new legislation nor constitutional reforms. Furthermore, since the majority of these documents provide general protections that apply equally to both sectors, they could perpetuate the disparities in the

protection of the right to water by not acknowledging the specific challenges and needs that rural areas face.

Some general rules have addressed relevant issues, but these issues have been addressed by localities before. Congress intervention does not seem essential. For example, the granting of a minimum amount of free water. Although it is possible that these bills when approved give leverage to individuals both in rural and urban areas to advocate for their needs and advance the protection of water rights, given the different needs that they face it is likely that rural areas will continue being under-protected. Even more, community leaders in rural areas focus their efforts on designing and managing their own systems to have access to water, rather than using legal documents to push local and departmental authorities (Interviewees # 5 and 7) [55]. This shows the disconnect between the needs and realities of water management in rural areas and the political debates in Congress.

#### 4.4. Political Control

Congress exerts its role of political control by calling on debates or public hearings (in front of committees or the chamber) on issues that are affecting the country (Art. 135 numbers 3, 6, and 8). These debates are proposed by Congress members and need approval from the head of each committee or the chamber. Both the *Senado* and *Cámara* have permanent commissions that focus on environmental issues, agriculture, land rights, and the regulation of water sources (rivers and oceans) [58,59]. They are identified as Commission Fifth on each chamber.

In our interviews with advisers to Congress members they highlighted the relevance of this role of political control from the perspective that legislative changes take a long time to take place, while political control might stop permanent harm to the environment: Quite often, Congress is not the one that is going to make normative structural changes, but it is the one that can prevent imminent danger in the destruction of ecosystems, so in other words, Congress will not score the goals, but it will stop the goals from 'anti-environment' governments (Interviewee # 8).

In this quote, the statement that Congress is not the one to make structural changes refers to the slowness of legislative processes. One of the interviewees expressed their frustration because they might not be working with Congress by the time some of legislative changes they have been working toward are approved: "And so based on my experience a key role from Congress, regardless of whether the President is anti or pro-environment, is the role of political control and the role of environmental litigation." (Interviewee # 8). This interviewee mentioned environmental litigation as another strategic behavior from Congress members who have appeared as amicus in environmental litigation or specifically in cases to protect the right to water.

In this section we analyze examples of political control exerted by Congress in relation to the right to water with the goal of exploring whether relevant water conflicts have been addressed. There is not a centralized database of political control debates held in Congress which posed a challenge in the identification of relevant hearings or the analysis of how water issues have reached the floor. In our interviews with advisers to Congress members and a researcher in water issues we identified a common theme: water conflicts rarely make it to the floor as the main topic of a debate. Instead, water conflicts are addressed in connection to what seems like more salient topics, particularly land rights or economic activities (like tourism or agriculture) (Interviewees # 4, 7, 8, and 9).

An example of a debate that focused on land rights took place on 22 September 2020 when the Fifth Commission of *Senado* debated the application for an environmental license for the Quebradona copper-gold mining project by AngloGold Ashanti in Antioquia that would affect two municipalities (Támesis and Jericó). This debate was proposed by the senator Jorge Enrique Robledo (from the Polo Democrático party) and he requested the government deny the license for this project arguing that landowners are entitled to specific rights and one of them is to decide what they want to do with their territory: "Mining projects are not sustainable, they end, and when they do they generate a social and economic

catástrofe in the area” [60]. In this debate the Minister for Mining and Energy presented an opposed thesis arguing that mining is a key area for the economic re-activation of the country and that a very small portion of the land in the country (only 0.2%) is being used for mining [60]. This mining project, as many others, is posing serious threats on water sources in these municipalities and the National Agency for Environmental Licensing and Permitting (ANLA for its acronym in Spanish) is still analyzing the case.

In our interviews we identified a case that has been considered a success from the perspective of being one of the few cases related to the right to water that was debated by the *Senado* (Interviewee # 7, Interviewee # 8, Interviewee # 9). It is the case of a mining project in the Santurbán Paramo. What makes this case unique is that it is one of the few debates that was filed as a water case and it was approved in the agenda for the *Senado*. How did this case make it to the floor? In the next paragraphs we will describe aspects of this case.

Santurbán Paramo is a ridge located between the departments of Santander and Norte de Santander, with an extension of 351 acres and an altitude between 9200 and 14,000 ft above sea level. Over 40 municipalities get their water from this paramo [61]. The national government has not provided for essential services in this area for a long time: poor road development, little infrastructure for schools, healthcare, and public health, as well as public health problems such as high levels of unemployment and alcoholism are some of the struggles in the area [61]. There have been two attempts to start mining exploitation in the area: one in 2009 and one 2019.

On 23 December 2009 Greystar applied to the Ministry of Environment to get a license of exploitation for gold and silver in this area. The director of the water company in Bucaramanga (the largest city in the area) reached out to the community and several organizations highlighting the risks that this license would pose for the community and for water sources. Later, unions joined efforts with nonprofit organizations in the area to attract stakeholders in the community [62] p. 120. People in the area organized themselves to oppose Greystar.

The peak of this social movement unfolded between 2011 and 2012 when several marches took place in different cities around the area, particularly Bucaramanga. In the most representative march, over 100,000 people marched to protect water resources [61]. A key aspect of this movement is the development of a narrative based on the symbology of water as a fragile, empathetic, and being in need of protection by the community [61]. In 2011 ANLA denied the license to Greystar (later called Eco Oro) to exploit the area. Later on in 2016 the World Bank withdrew its support to this firm, which led to the removal of all projects in the area [61].

In 2019 a second application for a license was filed and the community kept mobilizing to oppose this project. On 6 October 2020, *Senado* held a debate and requested the government to deny the license of this project [63]. This hearing was requested by 16 Senators from different political parties and all of them signed the position that the license should be denied. It is interesting that in their interventions only four senators (Richard Aguilar, Griselda Lobo, Milla Romero Soto, Guillermo García Realpe, and Gustavo Bolívar) referred to “water” or protecting water sources in the paramo. Romero Soto highlighted that 70% of water in the country comes from paramos, which highlights the importance of protecting them. Other arguments that were addressed by senators are summarized in Table 5.

It is noticeable that although the core of this case is the protection of the paramo the right to water was not mentioned. Also, key water challenges like equitable access to water or water quality were absent from the debate (*Relatoría Senado, Debate de control político en defensa del Páramo de Santurbán*, 6 October 2020).



**Table 5.** Summary of topics debated by the Fifth Commission of the Senate. Debate about the Santurbán Paramo, 6 October 2020. Designed by authors.

Topic	Description
Environmental protection	When Congress requests reports on the environmental impact of mining projects, the government answers that projects with licenses have passed the environmental checks but it is not clear what that really means.
Mining	<ul style="list-style-type: none"> <li>• Need to safeguard environmental sustainability.</li> <li>• Need to develop a comprehensive plan to protect paramos in Colombia.</li> <li>• Need to regulate it.</li> <li>• Negative impact against paramos.</li> <li>• Need to update the Code for Mining in Colombia.</li> <li>• Artisan miners are essential parties in these conversations.</li> </ul>
Sustainable development	<ul style="list-style-type: none"> <li>• It is essential to identify economic activities different from mining that could benefit the regions. Also, it is important to deny this license but what kind of support will the government offer to those people whose livelihood depends on mining?</li> <li>• Need to articulate efforts with the Ministry for Agriculture making sure that farmers are engaged in the protection of paramos.</li> </ul>
Delimitation of protected areas	<ul style="list-style-type: none"> <li>• It is necessary to set clear and fair boundaries in the protection of paramos.</li> <li>• Land rights.</li> </ul>
Litigation against the Colombian government	<ul style="list-style-type: none"> <li>• The Colombian government is facing 13 lawsuits (\$54 million USD approx. involved in these cases) in international courts. The government should not accept international litigation clauses in these contracts.</li> </ul>
COVID and social participation	Communities who would be affected by this project have been participating actively and pushing against mining projects. There is little availability of internet connection in these areas. During the COVID pandemic hearings are held online and the community will not have accessibility to engage.

## 5. Discussion

Whether Congress is an effective channel for water conflicts offers a mixed answer. The slowness of the legislative process as well as the shyness of Congress members to engage in deep water conflicts in Colombia depict a picture of a legislative that is not effectively addressing water conflicts. At the same time, addressing water conflicts in Colombia will require the articulation of efforts from the executive and the legislative branches around a comprehensive and incremental plan with the goal of ensuring that people in the country have access to water. Some efforts have been conducted along these lines, particularly via political control, but there is still a long way to go before Congress becomes an open forum that effectively addresses water conflicts. In this section we will unpack these findings and discuss them in light of relevant literature.

The role of Congress in water conflicts can be analyzed from the perspective of the issues that have made it to the floor either via a legislative debate (with the goal of passing a bill or constitutional reform) and those that have made it to the floor via political control. From the legislative perspective, the bills and constitutional reforms that have been discussed by the Congress in the last 30 years address some of the water conflicts that we noticed in the literature. For example, the regulation and protection of the human right to water has been the topic of discussion in nine proposed bills and constitutional reforms, yet they have not passed. A similar situation has occurred with the free minimum access to drinking water that has been discussed in five legislative documents, but none of these initiatives has been successful (two of them are pending for debate in the Senate). A key water conflict in Colombia is the negative impact of mining on water sources and communities' sustainable access to water. Only three proposed bills have been filed for debate; two of them drowned, while one is pending for debate.

Overall, only three bills have passed. One of them (Bill 1176 of 2007) addresses the key topic of the inequalities among regions when it comes to access to resources for water provision. This bill, along with Bill 1977 of 2019, focus on the SGP (national budget transfers

system) [57], and assume that the national government is an adequate arbiter for assigning resources from departments with more resources to those who have less. Although this is an attempt to address inequalities in the system of water provision in the country, it is not enough to safeguard that populations in rural areas or communities with less resources will have access to water. To this extent, legislative efforts in Congress have not been effective.

The case of the constitutional reform filed in 2016 that aimed to constitutionalize the right to water is one of the most noticeable ones because of the broad social support that it gathered and the negative legislative reaction that it faced. One of our interviewees described the legislative process in detail: “In 2016 it got filed and since this is a proposed constitutional reform, well it requires eight debates and it saw until the seventh debate. Really, it was approved by almost all Congress members, despite the Ministry [of Environment] that was not in agreement during the first debates on the seventh debate the text got published, it was at *Senado*. It went its course, really it takes a while to pass from *Senado* to *Cámara* so we were tight on time, and when the time came to schedule the eighth debate the president of the committee who was Telésforo Pedraza [from the Conservative Party] he called for the debate . . . well, he never called Congress members for that meeting. In other words, all Congress members showed up but since he did not formally schedule the meeting, well, the amendment drowned” (Interviewee # 1).

This quote describes in detail how agenda setting has been a key issue in Congress’ channeling and filtering water conflicts. Openly, Congress members do not express their disagreement with water conflicts, but procedural rules are not followed, or debates do not get scheduled, and initiatives drown.

Another factor described in this quote is the resistance of the government to these initiatives that contribute to the drowning of water bills. Another interviewee described how the government does not only oppose laws and constitutional reforms that protect the right to water, but they also mentioned that the government exerts other efforts that erode the legal environment for water protection (Interviewee # 7). This interviewee mentioned the example of recent efforts by the government to pass a bill protecting paramos, in connection to the social movement of Santurbán Paramo. A bill of paramos already exists so these efforts by the government rather than being effective mechanisms of protection are “populists attempts” to gain citizen support (Interviewee # 7).

Furthermore, an interviewee described how the government signals Congress when some bills or issues are of special interest of the executive, but not all these “signals” mean the same thing. Some of these signals are meant to be symbolic, to show the public that the government is paying attention to relevant issues, but that at the end of the day there is not a real commitment to solve them. Some others are real signals that the government has special interest in certain topics and that the executive wants to work with Congress on them. Water issues tend to be in the first category of signals (Interviewee # 9).

A key concern on the role of Congress is how slow the legislative process is and whether it is capable of formulating prompt solutions to serious and immediate problems that the population is facing, and water conflicts are a good example of this. One of our interviewees recognized that the Congress might not provide effective solutions to address these issues, but it can exert pressure to prevent other organs from harming the environment or the right to water (Interviewee # 9). This interviewee provided two examples of mechanisms that Congress uses in its role of “goalie” of environmental conflicts. The first mechanism is litigation when Congress members file *amicus curiae* to support relevant lawsuits against the government in environmental cases.

The second mechanism focuses on the opposition that Congress members can pose to bills presented by the government when they include articles that affect the right to water. In this case, Interviewee # 9 emphasized that some of these bills do not focus on water issues directly, but that they include topics that pose serious harm to water sources or to water distribution. For example, the law that regulates royalties caused by the exploitation of natural resources. The government presented this bill that included an article stating that if fracking projects were approved, these companies would not have been required to

pay the regular fees for royalties, but just 60% of these fees [64]. By reducing the royalties for these companies, the government aimed to offer an incentive for this economic activity, regardless of the negative impact that fracking causes on the environment, particularly water sources.

Both from the perspective of the legislative function and the political control function, whether water conflicts receive attention from Congress varies depending on several factors. Based on interview data we identified the following factors (see Table 6).

**Table 6.** Factors that affect whether water conflicts are debated in Congress. Interview data. Designed by the authors.

Factor	Description
Number of people affected	The more people affected, the more likely it is for Congress to pay attention Electoral motivation for Congress members
Economic interests at stake	Electoral motivation for Congress members Economic activity Agriculture Mining Construction Livestock The higher the economic interests, the more likely it is for Congress to pay attention
Social conflicts of social movements in the area	Social mobilization Violence against social leaders The more intense social dynamics in the area

Conflicts that affect larger numbers of people are more likely to receive attention from Congress; this is the case of Santurbán Paramo. This case reached Congress via political control because Congress members noticed the social mobilization and campaign led by activists in the area. This could be a good example of legislative representation of issues of social relevance, but at the same time it has meant that some water issues that have not reached the same salience are more likely to be ignored by Congress members (Interviewee # 7, Interviewee # 8, and Interviewee # 9). It is possible that a serious case of water contamination affects water sources, but if there is not electoral capital involved this issue is not likely to reach the Congress' agenda (Interviewee # 9).

Another criterion is whether there are economic interests at stake. An example of this factor is the navigability of the most important river in Colombia, the Magdalena river. The clean-up process of the Magdalena river caught the attention of the Senate's committee on territory development. This debate held on 19 June 2020 focused on exerting political control over the contract subscribed for the clean-up, particularly because of the commercial implications of this process [65]. The focus of this debate was economic development and the need to improve navigability of the river.

Finally, the presence of social conflicts or social movements in relation to the water conflict increases the possibilities of Congress addressing the issue. An example of this category is the debate held by the Social Policy Committee of the Senate (29 April 2014) on the humanitarian crisis in la Guajira. La Guajira is a region in the north of Colombia with dramatic problems of access to public utilities, corruption, and lack of resources. This particular debate took place as a consequence of the death of almost 300 Wayuu children due to malnutrition, lack of healthcare, and access to clean water [66–68]. This dramatic social conflict has unfolded over time and is a key water conflict in Colombia that despite receiving the attention of Congress has yet to be solved.

These factors increase the likelihood for an issue to receive Congress' attention, but as the examples reveal, this does not necessarily mean that they will be effectively addressed. Although the legislative Colombian system has mechanisms in place so Congress members representing their constituents have the power to propose bills or call on debates for political control in any topic they deem relevant, Congress members have not taken the initiative to protect water rights. In terms of what Hilson [33] described as the openness of

the system, the Colombian legislative system is theoretically open but in reality there are broad elites that have been undermining the possibilities of water legislation to pass.

Our data show a limited role of Congress in the protection of the right to water in Colombia. In light of this pessimistic perspective, the question is whether Congress is the institution that should address water conflicts or whether there are other public organizations (e.g., courts, mayors, or governors) who would be more willing (or more effective) at addressing these issues. Furthermore, it is possible to argue that public agents such as mayors are closer to water conflicts and local needs, and consequently that they can provide more effective solutions. We disagree with this perspective. Taking into consideration that water inequalities and access to clean water are common and serious problems for Colombians (particularly for those living in rural and indigenous communities) it is essential to address these issues with an institutionalized solution in the body of general policy that prioritizes water rights.

In the Colombian context courts have had a pivotal role in rights protection and particularly in the protection of the right to water. They have provided remedies on a case to case basis and have also solved conflicts that affect particular communities via collective litigation. While these remedies have been highly relevant, the role of formulating policies and approving appropriate budget to support them belongs to Congress and to the executive. Courts like the Constitutional Court and the Council of State have opened up the door for citizens to get partial relief via tutela or collective litigation, but it is possible that this has fostered a comfortable position for Congress to keep water issues of the political agenda. While courts have operated as a release valve for social pressures, strong economic and political pressures have made it so that it is not attractive for the legislative to engage in water governance. Further research will be necessary to assess this hypothesis and to explore whether courts could spur more action from Congress.

## 6. Conclusions

In this paper we set out to answer the question: has the Colombian Congress been effective at addressing relevant water conflicts and making them visible? Congress is the institution that holds the 'power of the purse' and the structural reforms needed to assign responsibilities to state institutions and decide over budgetary changes to make access to water possible, including in small peripheral municipalities, need to be passed by the legislative branch. We find that despite social mobilization, those reforms have not taken place. Besides, framing the semantic field of the right to water is needed to determine the minimum obligations of public authorities and other actors, which is also a pending task that must be carried out by the legislative branch.

We studied legal and constitutional reform attempts debated by Congress since 1991. We studied these bills and constitutional amendments as part of a process of social political struggle, where actors in the political society use the national parliament as an arena to advance or block a contested political goal. They have not succeeded.

We find that the Colombian political system is structurally open to this type of legal reform for advancing water rights, but water does not make it easily to the political agenda because environmental harm is not central to the work of any political party, nor of Congress representatives, and because Colombian legislators respond not only to their constituents but also to the interests of market actors. Strong lobby to favor private contractors (particularly in mining) and concerns from the executive due to fear of litigation have triggered Congress' inaction when it comes to deep water conflicts in the country. National development plans have favored extractive economies, and this ideologically clashes with reform to enhance water protection for all.

Concerning the bills presented since 1991, some have addressed relevant water conflicts, such the regulation of infrastructure for sustainable water usage in all new buildings, or the creation of free minimum amount of water for the most vulnerable populations, but other bills (the bulk of the data set) only capture superficial water conflicts that do not reflect deep water problems and inequalities. Not even these have passed. Only three

water relevant bills have been passed by Congress since 1991. One of them imposed the obligation of developing plans for water conservation on mayors and governors, while the other two regulate budgetary issues pertaining to funds towards water and sewage.

For political parties we find that water is not reflected in their statutes as programmatic priorities. Yet, the recent Santurbán Paramo case shows that public opinion around big-scale mining in fragile ecosystems is becoming an influence in Congress people's choices, even of representatives who are members of parties that favor a vision of water as a commodity rather than as right. We see the notion of dynamic representation starting to play a role in legislative politics in Colombia.

Finally, in channeling water conflicts, we find that the Congress—as is the tendency in other Latin American legislative branches—has been 'reactive' more than 'proactive'. Only a few water bills have been proposed by legislators and the structural reforms needed to realize the water rights of all, and especially of marginalized groups, have not passed. Congress representatives have not 'scored goals' for water rights through their legislative function, but through the political control function have managed to stop some anti water-rights reforms. We conclude that the Colombian Congress has not been effective at addressing relevant water conflicts through legal and constitutional reform. Yet, it has given some late visibility to critical and over escalated territorial conflicts of which water is a key element.

Two questions arise from these findings. First, what factors affect Congress' action or inaction in water conflicts? We find that the answer is twofold. On the one hand, Congress is more likely to address water issues if they are brought to the floor and framed as "something else" (e.g., land issues, encouraging economic reactivation, etc.). This shows a strategic behavior from legislators to avoid water conflicts. On the other hand, when the issue is brought to Congress as a matter of water governance, there are three factors that increase their likelihood to make it to the political agenda: the number of people affected with the conflict, economic interests at stake, and whether social movements are involved.

The second question is whether these behaviors speak of the nature of Congress as an institution or the nature of the right to water. Our data show evidence that both types of factors are stake. The institutional dynamics between Congress, the executive, and the courts in rights' protection have led to a passive role of the legislative, allowing courts to take a lead role. Also, taking into consideration that most legislative changes take a full legislature to succeed, social actors have turned to the courts or to bureaucratic organizations to search for answers. At the same time, the nature of the right to water has allowed social actors to act strategically and look for remedies in other areas where governmental institutions are more receptive (e.g., public health, a healthy environment, land issues, or encouraging economic reactivation).

These dynamics are shared to Latin American countries and it is our hope that our findings open paths for future research in other countries and at the comparative level. One key aspect for future exploration is whether the role of courts in different countries encourages a more active role of the legislative. In the Colombian case of water protection, it would seem like an active role of courts has allowed for Congress to remain passive, but more research is needed to confirm this hypothesis. Another aspect for future research is whether more collaborative approaches of decision-making in water rights permeate water governance in Latin America. It remains to be seen if the increasing global mobilization for environmental protection in the context of the climate crisis will influence dynamic representation changes in the legislative branch. As 69% of Colombian municipalities lack water without risk for human consumption and the poorest municipalities have less access to potable water without any level of risk, social mobilization around water rights is increasing. Enough public opinion pressure could trigger modifications of the budgetary restrictions in place so far unchanged by the democratic institution holding the 'power of the purse.'



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