

How Do Legal Strategies Advance Social Accountability? Evaluating Mechanisms in Colombia

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Abstract: While prior studies have suggested that legal strategies offer promising tools for social accountability, the existing literature has not yet identified the underlying *mechanisms* that link legal strategies to accountability improvements. In this theory-building paper, we argue that there are four mechanisms by which legal strategies can enhance accountability. First, the courts can help those affected by policy failures to overcome the collective action problem. Second, courts can provide civil society with access to information about rights violations, malfeasance, and poor policy performance. Third, legal strategies can set in motion court-backed reforms that redress immediate rights violations and strengthen state capacity for more accountable governance. Fourth, court recognition can increase the symbolic and discursive resources of claimants, making their demands for accountability more effective. We illustrate these mechanisms through a comparative analysis of two policy arenas in Colombia, environment and healthcare—two areas in which civil society engagement with the judiciary opened up new routes for social accountability. By bridging the previously disconnected literatures on legal mobilization and social accountability, this paper creates an analytical framework to understand the menu of options that citizens face about where and how to seek accountability from the state.

Keywords: Social accountability, legal mobilization, health, water, community participation

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Political accountability involves holding public officials accountable for their obligations to meet policy targets, guarantee rights, and comply with legal and ethical standards as delineated in law. In many developing countries, traditional venues for accountability—such as voting or institutional checks and balances—are often insufficient or inaccessible (Mainwaring, 2003, pp. 4–5; O’Donnell, 1998, pp. 112–113; Przeworski, Stokes, & Manin, 1999, pp. 35–39). In settings where representative government is unresponsive or weak, civil society can play an important role in enhancing accountability via social accountability. Social accountability is an umbrella term that refers to the role for civil society in improving accountability through strategies such as participatory institutions, oversight committees, protest, and media campaigns.¹

In this paper we focus on social accountability strategies that work through the judiciary. While prior studies have suggested that the judiciary can offer promising tools for social accountability (Peruzzotti & Smulovitz, 2006, pp. 19–20; Smulovitz, 2006), the existing literature has not yet identified the mechanisms through which legal strategies can enhance social accountability. In this theory-building paper, we argue that there are four principle mechanisms by which legal strategies can enhance accountability. First, the courts can help those affected by policy failures to overcome the collective action problem. Second, courts can provide civil society with more access to information about rights violations, malfeasance, and poor policy performance. Third, legal strategies can set in motion court-backed reforms that redress immediate rights violations and strengthen state capacity for more accountable governance in the future. Fourth, recognition by the courts can increase the symbolic and discursive resources and visibility of claimants, making their demands for accountability more effective. We trace these mechanisms through a comparative analysis of two policy arenas in Colombia, environment and

healthcare—two areas in which civil society engagement with the judiciary opened up new routes for social accountability.

To identify these mechanisms, we build on a rich literature on legal mobilization that has analyzed citizen engagement with the judiciary to change public policy (Gauri & Brinks, 2008; McCann, 1994; Rosser, 2017; Zemans, 1983). By bridging the previously disconnected literatures on legal mobilization and social accountability, this paper creates an analytical framework to understand the menu of options that citizens face about where and how to seek accountability from the state. Thus, we follow the recent call to explore strategies to leverage social accountability across multiple arenas, rather than analyzing the impacts of isolated tactics (Fox, 2015, pp. 346–350; Joshi & Houtzager, 2012, pp. 155–156).

The article begins by laying out a theoretical framework that conceptualizes accountability, identifies the four mechanisms by which legal strategies by civil society can advance social accountability, and outlines the conditions that enable accountability improvements. Next, we review the study’s case selection and methodology. The paper then presents a comparative case analysis of environmental policy and health policy in Colombia, tracing the four mechanisms and their salutary effect on social accountability. We conclude by discussing implications for the literatures on state-society relations and accountability.

Advancing Social Accountability through Legal Strategies

Conceptualizing “Accountability”

Following Schedler (1999), we conceive of accountability as consisting of answerability and enforcement. Answerability is “the obligation of public officials to inform about and to explain what they are doing” (Schedler, 1999, p. 14). Answerability means that you must

respond to tough questions to account for your decisions and requires transparency of information about performance. Enforcement involves the imposition of sanctions for bad behavior, and remediation for wrongdoing. Sanctions can be either formal and legal (such as fines and jail time), or informal (such as bad publicity and public shaming).

Political accountability entails holding public officials to an ethical or legal standard of behavior, and to their legally ascribed obligations to meet policy targets or guarantee rights.² This focus on *obligation* is at the core of accountability. Accountability and responsive governance are distinct from one another; the latter involves a political choice that is at the discretion of a public official, not a formal obligation (Fox, 2007a, p. 28). Furthermore, claims that seek to advance a group interest are within the purview of responsive governance and also are distinct from demands for accountability, which are about seeking compliance with public officials' obligations (Olvera Rivera, 2006, p. 180). Weak accountability also is distinct from poor institutional or policy performance. While disappointing, poor performance is not necessarily an accountability failure, as long as public officials can be made to answer for it and can face potential sanctions.

Scholars of democracy differentiate between vertical and horizontal accountability. Free and fair elections, freedom of speech, press, and association provides a means of vertical accountability, while a network of state agencies working to uphold the rule of law and check executive power provides a means of horizontal accountability. Because elections occur infrequently, horizontal accountability is critical to accountability. Yet, horizontal accountability is difficult to achieve in young democracies, which are often characterized by “delegative” horizontal institutions that fail to provide real checks on executive power (O'Donnell, 1998, pp.

117–119). When both vertical and horizontal accountability mechanisms fall short, civil society can play a major role in promoting accountability.

The Role of Civil Society in Advancing Accountability

As Peruzzotti and Smulovitz (2006, p. 10) explain, social accountability is a “mechanism of control of political authorities that rests on the actions of an array of citizens’ associations and movements, and the media. The actions of these groups monitor public officials, expose governmental wrongdoing, and can activate the operation of horizontal agencies.” Social accountability can take diverse forms. Through participatory institutions, citizens and associations monitor policy implementation and activate horizontal accountability institutions in case of malfeasance (Herrera, 2017, pp. 481–482; Mayka, 2019b, p. 97). Civil society can work with the media to bring to light poor performance or abuses of power (e.g. Peruzzotti, 2006; Waisbord, 2006). Civil society also can engage in social mobilization to pressure governments to fulfill their commitments (Gallagher, 2017, pp. 1668–1669; Rich, 2019, pp. 39, 177–184). Finally, civil society can adopt legal strategies to demand sanctions and remediation in case of rights violations (e.g. Arrington, 2016, pp. 84–88, 120–127; Gallagher, 2017, pp. 1678–1687; Smulovitz, 2006, pp. 59–69). Scholars have developed ample literature on other strategies to further social accountability, but legal strategies for social accountability have received comparatively less attention.

Legal strategies for social accountability can take two forms.³ First, individuals and civil society organizations can engage in public interest litigation. Public interest litigation relies on citizen participation to identify a policy failure or rights violation, thereby triggering courts’ horizontal-accountability functions. Second, citizens can participate in what Botero (2018, pp. 169–170) calls “collaborative oversight committees,” which are state-sanctioned spaces for civil

society and courts to work together after a ruling has been issued. Through collaborative oversight committees, civil society can monitor public officials' progress in complying with court orders, request additional information from public officials to assess their compliance, and demand answerability through court-backed public hearings. Collaborative oversight committees bring together civil society's ability to generate information from the grassroots, engage in monitoring, and maintain social pressure for compliance, as well as the courts' ability to impose formal legal sanctions.

Advancing Social Accountability through Legal Strategies: Four Mechanisms

At the heart of accountability is the power to “sanction, compensate or remediate” (Fox, 2007b, p. 669). Most strategies for social accountability lack the legal authority to impose formal sanctions, and instead rely on the mobilization of shame through bad publicity (Smulovitz & Peruzzotti, 2006, p. 16). Through media campaigns, protests, or other activities, civil society groups can bring wrongdoing to light, and place calls for change on the public agenda. Yet many social accountability initiatives hit a roadblock when the government lacks the will to improve, or when it cannot be shamed (Fox, 2007b, pp. 664–665). In contrast, legal strategies for social accountability access the formal authority of the courts to compel public officials to share information, explain why actions were taken (or not taken), and remedy past shortcomings.

Below, we identify four mechanisms by which citizen participation in the judiciary can yield greater accountability, stemming from the courts' power to impose sanctions. Following Falleti and Lynch (2009, p. 1143), we define mechanisms as “portable concepts that explain how and why a hypothesized cause, in a given context, contributes to a particular outcome.” Mechanisms will not *always* produce an outcome of interest—in our case, greater accountability—because mechanisms always interact with context to result in outcomes. Yet

identifying mechanisms is crucial to understand the routes through which legal strategies can enhance social accountability.

Mechanism #1: Overcoming the Collective Action Problem

One barrier to social accountability stems from the collective action problem. Often, the groups that are most affected by accountability shortfalls—including the poor and other marginalized groups—face obstacles to coordination. These individuals may be geographically dispersed, may lack a shared identity, often have few resources, and may not know that remedies are even possible. Other times, citizen voices are lost in a cacophony of claims, making it difficult to coordinate collective action (Fox, 2015, pp. 352–353).

Courts can provide institutional mechanisms to reduce collective action problems by aggregating citizen demands through litigation, even in the absence of prior citizen coordination. Litigation is an individual act of citizen participation that does not necessitate the intervention of a group or representative (Zemans, 1983, p. 701). Courts can detect accountability shortfalls based on multiple, individual litigation, leading to “explicit coordination efforts” among otherwise-disconnected citizens (Rodríguez-Garavito & Rodríguez-Franco, 2015, pp. 37–40, 187; Rosser, 2017, pp. 17–22). Framing grievances as rights violations can sometimes even foster the development of a collective identity among claimants (Arrington, 2019, pp. 18–19; Smulovitz, 2006, p. 70), enabling future mobilization—both within and outside of the courts.

Mechanism #2: Increased Access to Information

Access to reliable information is essential for civil society to detect malfeasance or policy failures, and to target advocacy campaigns (Fox, 2007a, p. 51). Yet in many contexts, governments can withhold information about the extent of public problems, expenditures, and policy outputs (Fox, 2007b, pp. 666–667). Alternatively, governments may fail to collect the data

needed to assess policy performance (Abers & Keck, 2009, p. 310). Information asymmetries often persist in policy areas that involve high levels of technical complexity, which makes it difficult for non-experts to identify state failures and develop demands for change.

Citizen participation can activate the judicially enforced right to information, which is a crucial tool in enhancing accountability (Gauri & Brinks, 2008, p. 7). The process of discovery, subpoenas, and enforcement of freedom-of-information requests can reveal information that executive agencies or private-sector actors have kept hidden (Stern, 2014, pp. 56–60). Courts can generate new information by funding scientific investigations and by hiring expert witnesses. The accumulation of individual lawsuits can itself expose government malfeasance and regulatory failures (Hoffmann & Bentes, 2008, pp. 137–140). Furthermore, information revealed through legal proceedings serves as a resource *outside* of the courts—for example, sparking media coverage of poor policy performance, or triggering social mobilization following bombshell discoveries about corruption (Arrington, 2019, pp. 22–24).

Mechanism #3: Propel New Policy Interventions that Strengthen State Capacity

Social accountability through the judiciary can propel new policy interventions that make accountable governance more likely. In the long term, breaking free of weak accountability requires proactive processes of institutional change to bolster state capacity (Fox, 2015, p. 353; Joshi & Houtzager, 2012, p. 153). Courts can mandate strategic planning across territories, sectors, or fiscal expenditures, thereby improving the capacity of the state to achieve policy targets and to guarantee rights. Alternatively, courts may create new regulatory institutions, models of service delivery, or regulations for private-sector actors. Finally, courts can generate orders that improve coordination across diverse levels of government, jurisdictions, and policy

arenas, leading to better functioning horizontal-accountability institutions and improved policy performance.

Mechanism #4: New Symbolic and Discursive Resources

Pursuing legal strategies can amplify the symbolic and discursive resources available to civil society in advancing demands for accountability. Accountability can be difficult to achieve when those most harmed by rights violations or policy failures lack power or legitimacy. Even when citizens overcome the collective action problem, there is no guarantee that anyone will listen to their demands for accountability. Yet legal strategies can bolster the position of otherwise resource-poor groups. Engaging in public interest litigation pushes claimants to frame grievances as violations of fundamental rights, rather than as individual harms. Using a rights frame amplifies the gravity of their demands and can attract greater public attention (Arrington, 2019, pp. 21–22; McCann, 1994, pp. 279–280). The legal reasoning and arguments deployed by lawyers and judges in their rulings can shape public opinion (Mather, 1998, pp. 919–920). Moreover, courts can boost the credibility of claimants by granting them standing, and/or by ruling in their favor (Holzmeyer, 2009, p. 293). Thus, legal strategies can boost the capacity of pro-accountability groups *outside* of the courts (Arrington, 2019, p. 22).

Case Selection and Methodology

Colombia is a fitting case to examine how legal strategies contribute to social accountability. Like many middle-income countries, Colombia has the level of resources seen as a prerequisite to deliver on promises for social rights (Rodríguez-Garavito, 2014, pp. 246–247), while also facing common challenges that impede accountability, including persistent dynamics of clientelism and corruption. Yet Colombia's legal institutions make it unusual. Colombian

courts have high levels of capacity and judicial autonomy. Moreover, Colombia's legal institutions are characterized by an "open legal opportunity structure" with low barriers to citizen engagement (Rodríguez-Garavito & Rodríguez-Franco, 2015, pp. 12–13; Taylor, 2018, pp. 338–339; Wilson, 2009, p. 61). Colombians can use two innovative mechanisms for litigation to advance accountability. The first is the *tutela*, which is a writ of protection to guarantee citizens' "fundamental constitutional rights" (Article 86 of the 1991 Constitution). The second is the *acción popular* (popular action), a legal petition claiming the violation of a collective right. Moreover, the Colombian legal framework permits judges to assemble collaborative oversight committees to oversee compliance with rulings. By selecting a country with an unusually open legal opportunity structure, we utilize the extreme-case selection method. The extreme case method selects a case because of its extreme value on the independent or dependent variable of interest; it is not meant to be representative of a population. Instead, extreme cases are useful in theory building because they enable careful analysis of the key phenomenon under study and allow one to "define concepts by their extremes, or their ideal types" (Gerring, 2007, p. 101).

Comparing across two policy arenas—the environment and healthcare—provides more observations to identify causal mechanisms than if only one policy arena were examined, and also reveals how mechanisms operate in distinct settings. Scholars argue that strong civil society is crucial to the success of social-accountability strategies (Baiocchi, Heller, & Silva, 2008, p. 913; Wampler, 2007, p. 5). Yet in Colombia, the environment and healthcare are characterized by distinct civil society dynamics, with robust grassroots mobilization around environmental policy, compared to anemic collective action in health. Moreover, a clean environment is a common pool resource that is rival and non-excludable, and the harms of environmental contamination affect entire communities. In contrast, healthcare is a private good, both rival and

excludable, with individuals harmed through the denial of life-saving healthcare treatments and medications. The individual nature of harms makes collective action—and thus effective social accountability—particularly unlikely in health. Yet as this paper shows, citizen participation in the judiciary served as an accountability equalizer across the two sectors.

We combine comparative case analysis with process tracing to identify the mechanisms that enable legal strategies to yield improvements in accountability. Process tracing aids in identifying mechanisms via causal-process observations (Collier, 2011, p. 824). This method promotes careful conceptualization of the mediating process of interest and its component events, so they can be identified across analytically comparable contexts (Falleti, 2016, p. 6). Tracing the sequence of events across two cases illuminates how legal strategies triggered each of the four mechanisms, yielding greater answerability or sanctions.

How might the mechanisms we identify in this paper travel to other empirical settings? As Falleti and Lynch (2009, pp. 1144–1145) explain, causal processes result from the interaction between mechanisms and context. Likewise, legal strategies only yield greater accountability under certain contextual conditions. First, the impact of legal strategies depends at least partially on an autonomous judiciary with the capacity to exercise control over other public officials (Ríos-Figueroa, 2016, pp. 24–28; Skaar, 2011, pp. 11–15). Moreover, judges must have the political will or develop legal preferences to push a pro-accountability agenda (Fox, 2007a, p. 38; González-Ocantos, 2016, pp. 27–38; Hilbink, 2012, pp. 589–590). Second, legal strategies are more fruitful in countries with open legal opportunity structures, which are defined by low barriers for individuals and/or civil society groups to pursue litigation (Wilson, 2009, p. 61; Wilson & Rodríguez Cordero, 2006, p. 326). Third, the adoption of legal strategies relies on whether citizens and civil society groups have the legal consciousness (Ewick & Silbey, 1998, p.

39; Merry, 1990, p. 5) and the resources to access legal institutions (Epp, 1998, pp. 17–20). Even under an open legal opportunity structure, citizens may have no idea how to initiate litigation or oversee court rulings. Fourth, legal strategies are likely to be appealing in policy systems characterized by information asymmetries. Citizens have a greater incentive to use the judiciary to compel information sharing when they lack reliable information about policy performance. Finally, the executive must have a core level of technical and organizational capacity to respond to directives by the judiciary (Gauri & Brinks, 2008, p. 19).

Although some of these conditions can be elusive in the Global South, studies have documented their existence in recent years. Courts in Argentina and Costa Rica, for example, have acted autonomously to draft jurisprudence that checks executive and legislative power (Sigal, Rossi, & Morales, 2017, pp. 145–152; Wilson & Rodríguez Cordero, 2006, p. 328). Costa Rica and India lowered barriers for filing individual claims which has increased legal mobilization around gay rights and food rights, respectively (Shankar & Mehta, 2008, pp. 149–150; Wilson & Rodríguez Cordero, 2006, pp. 332–340). Legal awareness raising is on the agenda of legal aid clinics and community-based paralegals in countries such as Macedonia, Guatemala, Uganda, and India (Joshi, 2017, pp. 164–166). Finally, although achieving policy change through the courts can be challenging, many middle-income countries have the requisite level of state capacity for implementation of court rulings (Rodríguez-Garavito, 2014, pp. 246–247). While Colombia offers an auspicious context for this analysis, the scope conditions we identify are found in diverse countries in the Global South.

Given their dependence on context, we do not argue that legal strategies are superior to other strategies that rely on social mobilization, the media, or participatory institutions to advance accountability. Instead, this paper analyzes citizen participation through the judiciary in

Colombia's environment and health policy sectors with the aim of illustrating the mechanisms by which legal strategies can spark improvements in social accountability. As we will see, legal strategies can serve as a powerful institutional route to accountability that can complement other social-accountability strategies.

This analysis is based on field research conducted in June 2017, July-August 2016, and September 2009-June 2010. We leverage evidence from 102 interviews: 61 for environmental policy and 47 for healthcare policy, as well as participant observation, newspaper archives, legal documents, policy documents, and secondary sources. See Appendix A for a methodological narrative and an interview summary. Our text-based sources are shared in Appendix B for newspaper articles and Appendices C.1-C.9 for court cases, policy reports, and documents from international financial institutions.

Legal Strategies for Social Accountability in Environmental Policy

The Bogotá river pollution case shows how four key mechanisms promoted legal social accountability for a common-pool resource with incipient collective action. After decades of failing to effectively regulate river basin pollution, public officials were mired in institutional paralysis, complicity, and denial, despite activists' periodic efforts to hold the state accountable. Legal strategies allowed the courts to create more effective venues for citizens to seek accountability. Legal strategies helped overcome the collective action problem by aggregating dispersed grievances and creating participatory structures that boosted access to information. Aided by citizen participation, court rulings prompted policy interventions backed by the courts' sanctioning authority by bolstering institutional coordination among government agencies and activating horizontal-accountability institutions. Finally, the historic ruling provided new

symbolic and discursive resources that amplified the right to a clean environment beyond the judiciary.

The Policy Problem

The Bogotá River is 233 miles long, traversing forty-six municipalities in the department of Cundinamarca and the capital city. The river is deeply polluted by residential, industrial, and mining wastewater; only 20 percent of wastewater discharge receives treatment (Contraloría de Bogotá, 2014, pp. 4, 14–15). Low-income neighborhoods in adjacent municipalities are most vulnerable to pollution (World Bank, 2010, p. 4). Toxic exposure is widespread, but particularly severe in Sibaté. There, the Muña Hydroelectric Dam uses contaminated water to generate electricity, emitting sulfuric gas and toxins that sicken livestock and communities. Patients in Cundinamarca hospitals have historically been treated for skin and respiratory infections, as one nurse noted, “the lives of our patients are jeopardized...the rat and mosquito plagues are uncontrollable” (El Tiempo, 1996).

Despite constitutional protections that protect citizens’ right to a clean environment,⁴ increasing accountability for the pollution crisis would require increasing state ownership of the problem and a level of institutional coordination that historically proved elusive. Efforts to construct sanitation treatment plants and infrastructure to connect them across multiple jurisdictions had been stalled by corruption, a lack of political will, and failed technical solutions that cost millions (Lamprea, 2016, p. 295; World Bank, 2010, p. 2).⁵ The hydroelectric power company, owned by ever-changing concessionaires, denied involvement in the environmental crisis. The Bogotá water utility dumped untreated residential wastewater directly into the river. The Cundinamarca Environmental Regulatory Agency (CAR), charged with regulating unlawful discharge, historically was ineffective at fining illegal industrial effluents or controlling more

than 1,000 tons of garbage dumped daily from dozens of municipalities; little progress had been made by local authorities to do the same (El Espectador, 2012). The Comptroller's office summed up prior experiences by noting that, "investments and efforts have been so disperse and disconnected that prior projects have been partial and ineffective and have not solved the problem at its root" (Contraloría de Bogotá, 2014, p. 4).

Outside of the judiciary, citizens sought diverse channels to press officials to be answerable to their demands, but efforts had limited impact. For example, online observatories were created to bolster transparency, such as the Bogotá Environmental Observatory, an information-sharing portal that includes pollution metrics on the Bogotá River.⁶ This observatory is intended to "democratize information" and serve as a portal for environmental NGOs and grassroots organizations to identify environmental problems and share information. Yet officials evaded disseminating information that was damaging to them.⁷ Citizens, without sanctioning authority, could not force the government to share information needed for oversight.

Citizens have also been involved in participatory institutions, such as fiscal watchdog groups (*veedurías*), which are charged with monitoring the use of public funds and public services. *Veedurías* monitor the progress of construction for publicly financed infrastructure projects related to the river's contamination and investigate delays in construction and illegal dumping of solid waste and effluents. They suffer from numerous problems, such as information asymmetries due to limited access to accurate government data, elite capture,⁸ as well as threats to their lives given the context of high social violence against activists in Colombia (El Herald, 2013). As local activists in the *veedurías* of Mesita de Colegio noted, "we participate, and document, but...the authorities...they don't listen to us."⁹

How Legal Strategies Improved Accountability in Environmental Policy

In the early 2000s, the courts emerged as a critical site for social accountability for environmental rights violations. Legal strategies helped to overcome the collective action problem by uniting diverse impacted actors. Citizens began using legal strategies such as *acciones populares* to sue for the protection of collective rights in diverse jurisdictions across the riverbasin. These processes began in 1992, when Gustavo Moya Ángel filed an *acción popular* (01-479) in the second civil circuit court against the energy company EMGESA for the contamination of the Muña dam. This petition stalled in the courts for over a decade, despite the issuance of implementation pacts, which were legally binding orders generated by lower courts obligating public officials to respond to the *acción popular*. In 2001, presiding Judge Nelly Villamizar summoned public officials to measure progress towards completing the implementation pacts and found that public officials had taken no action. Villamizar recalled that she had to “read all the agencies what the law said was their responsibility...[because everyone argued] ‘it’s not me.’”¹⁰

After 2002, the Court began to gather information about the pollution crisis and exercise its unique resources to overcome the collective action problem and effectively aggregate grievances. Court determined that building a sewage treatment plant to decontaminate the lower basin, as the first *acción popular* from Sibaté requested, would do little to address the underlying problem. Instead, the Court grouped four separate *acciones populares* along the river into one ruling, thereby increasing the impacted territory from Sibaté to all 46 municipalities. The ruling aggregated numerous and previously separate policy issues into one single platform for adjudication, including deforestation, industrial regulation, hydroelectric dam management, wastewater and flooding management, and agricultural production (Tribunal Administrativo de

Cundinamarca, 2004). By combining diverse policy issues into one jurisprudence-building process, the Court united disparate communities in their accountability-seeking mission.

Between 2002-2004, the Court increased access to information by creating citizen working groups (*mesas de trabajo*) to help the presiding judge understand the scope of the policy problem. Citizens were convened in the territories to provide their perspective on pollution issues associated with industries such as dairy, floriculture, slaughterhouses, and agriculture.¹¹ The Court held public hearings (*audiencias públicas*) in which diverse citizens and NGOs shared information about pollution problems in their communities, and developed potential policy interventions to address the root problem. For example, one NGO leader noted “we were the first to introduce the concept of “green manufacturing” to the Court, which ended up in the ruling. We also connected the judge to Dutch engineers who came to the Court to discuss their river remediation experiences.” Another grassroots group representing people whose homes and wetlands were polluted by the dumping of construction debris became the wetlands expert for the Court. This group provided documented evidence they gathered on the connection between pollution and wetlands deterioration along the river basin.¹²

Legal strategies broke through policy impasses and initiated new policy interventions that enhanced capacity for accountable governance. In 2004, the Cundinamarca Administrative Court issued an historic ruling that provided a comprehensive policy response to the four *acciones populares*. In 2014, the Colombian Administrative High Court (Consejo del Estado) upheld the lower-court ruling with a final, unappealable verdict (Consejo del Estado, 2014).¹³ The Court’s sentence held over 70 state agencies and 20 industries accountable for pollution as actors with fault of omission (Lamprea, 2016, p. 297). The Sentence mandated multiple policy actions for each of the over 70 state agencies found responsible, including the Ministries of the

Environment, Mines, Housing, Energy, Hydrology, Social Protection, and Agriculture, CAR, EMGESA, the Bogotá water utility, and 46 municipalities. Orders included reforestation, greener production, industrial and mining pollution sanctioning, increased sanitation provision, and recuperation of the oxygen content of the river (Tribunal Administrativo de Cundinamarca, 2004, pp. 158–159, 470–496). The Court set tight timetables for further information sharing, public hearings, and completion of implementation pacts. The ambitious ruling would not be easy to implement. Nevertheless, the sanctioning authority of the Court increased the possibility of attending to this complex policy problem.

After 2004, the Court further increased access to information by creating a citizen oversight committee (*comité de verificación*), enabling citizens to monitor compliance with the ruling. This participatory institution was composed of NGOs active in the region, representatives from horizontal-accountability agencies such as the Public Prosecutor, Ombudsman, and Comptroller, and the *veedurías* (Consejo del Estado, 2014, p. 1246). Judge Villamizar noted that granting this important role to civil society and key state allies “enlarged” the issue and gave it more importance.¹⁴

Since the citizen oversight committee was backed by the judiciary, it was able to access information more effectively than prior efforts of citizen watchdog groups or online observatories. The oversight committee was organized into subcommittees to “plan, coordinate, and verify” diverse orders mandating policy changes for different government agencies in the sentence, and report back to the judge (Tribunal Administrativo de Cundinamarca, 2004). Each subcommittee played an active role in leading auditing sessions with government agencies, with varied levels of compliance and participation from those being held to account.¹⁵ Although not without its challenges, interviews with six members of the oversight committee revealed a

committed group that regularly attended sessions and gathered, organized, and shared information about the progress made towards river cleanup. During interviews, *veeduría* members noted that they enjoyed better access to information—such as data about progress made towards reforestation in the upper basin, or wastewater infrastructure development—through the judicial oversight committee than they had experienced when asking for this information on their own, without court backing.¹⁶

Following decades of policy paralysis, legal strategies generated new policy interventions that increased state capacity to address the policy problem. The rulings yielded progress on issues that previously were mired in institutional conflict, such as decisions about where to site infrastructure, and the establishment of a program for fining and shutting down polluting industries.¹⁷ Gains include securing World Bank funds for new sanitation treatment plants and residential sewage connections, closing of 23 leather tanneries in the upper basin 2018, and using new technologies, such as drones to regulate discharges (El Tiempo, 2018, 2019b, 2019c). In 2017, 8 million tons of solid waste was removed from the middle basin, and CAR reports that 60-65% of the proposed infrastructure upgrades have been completed (Conexión Capital, 2019). These advancements would have been impossible without the ruling's timetables and the sanctioning authority of the Court. In explaining the shutting down of polluting industries in Bogotá in 2016, a mayor's aide notes, "these types of actions... are focused on complying with the Sentence from the Consejo del Estado that ordered the recuperation of the river" (El Espectador, 2016).

Legal strategies also increased state capacity for accountable governance by activating horizontal-accountability institutions and forcing inter-agency cooperation. For example, the ruling and the work of the oversight committee has prompted coordination between CAR and the

Bogota water utility to upgrade public works infrastructure. In addition, the Environmental Ministry worked with the Mining and Energy Ministry to limit the impact of mining pollution on aquifers, and municipalities and CAR began to coordinate land-use plans as they impact the riverbasin.¹⁸ Finally, the Comptroller's office created a Bogotá River working group that works closely with the *veedurías* and the Public Prosecutor's office to monitor the use of municipal funds for infrastructure development and guard against corruption or reallocation of funds towards other projects.¹⁹

Finally, the Courts recognized the environment as a fundamental right, strengthening symbolic and discursive resources for activists working on Bogotá River pollution. Framing pollution as a rights violation (Tribunal Administrativo de Cundinamarca, 2004, pp. 157–158) amplified the valence of environmental rights on a national level, since the river basin houses 20% of the Colombian population and generates 28% of the country's economic activity. The Sentence further reinforce the idea of environmental rights by blaming not only industry but the state as a duty-bearer: “notwithstanding environmental laws that protect this ecosystem, it has been degraded through an inefficient management by those obligated to ensure its protection...” (Tribunal Administrativo de Cundinamarca, 2004, p. 154). The Sentence expanded the role of the state in environmental protection, citing Article 80 of the Constitution which held that “it is the state that is responsible for managing and use of natural resources, to guarantee sustainable development, its conservation, restoration...” (Tribunal Administrativo de Cundinamarca, 2004, p. 149).

The courts' recognition of environmental rights brought in more NGOs and activists to the policy problem. Media coverage following the 2014 Consejo del Estado Ruling shone a spotlight on the right to a clean environment. For example, *El Tiempo* and *El Espectador* created

dedicated blogs for the river, which focuses on reporting updates to compliance with the ruling from different government agencies (El Espectador, n.d.; El Tiempo, n.d.). Subsequent events have followed, such as artists and musicians creating benefit concerts, annual river navigations, and the city declaring May 12 the annual day of the river, signaling that the problem was no longer in the shadows.²⁰

Legal Strategies for Social Accountability in Healthcare

The Colombian healthcare case illustrates how four key mechanisms advanced legal social accountability in a policy sector that delivers private goods and thus where collective action is otherwise virtually non-existent. Historically, Colombia's healthcare sector was plagued by ineffective regulation of private-sector actors, information asymmetries, and anemic civil society. Legal strategies helped overcome the collective action problem by uniting the grievances of previously disconnected claimants to detect structural problems in the health system. Legal institutions improved citizen access to information, enhancing the transparency needed for accountability. Pro-accountability forces in the courts and civil society joined forces to propel policy interventions that redressed rights violations and strengthened state capacity. Lastly, court recognition of the right to health strengthened the symbolic and discursive resources of civil society, making it easier to demand greater accountability in the future.

The Policy Problem

Law 100 of 1993 established a universal health system that gave private-sector insurance companies (EPSs—*Entidades Promotoras de Salud*) and healthcare providers responsibility for delivering coverage.²¹ This health system was divided into two parts: a generous contributory

system for those who could pay, and a subsidized system for those who could not. Under Law 100, the state's obligations included 1) financing the health system; 2) establishing which treatments and medicines must be covered by EPSs, including those covered by the minimum health benefit plan (POS—*Plan Obligatorio de Salud*); and 3) regulating EPSs and healthcare providers to guarantee universal access to high-quality healthcare.

By the mid-2000s, Colombia's health sector reached a state of paralysis. Despite generous coverage on paper, EPSs systematically denied their members treatments and medications guaranteed under the POS, such as MRIs and anti-hemophilia medications (Lamprea, 2015, pp. 140–141). The health system faced a fiscal crisis due in part to overbilling and outright theft by EPSs, service providers, and public officials (Procuraduría General de la Nación, 2008, pp. 121–122). The National Superintendent of Health, the primary state entity responsible for regulation, was chronically underfunded (Lamprea, 2015, pp. 95–96). Cozy relationships among regulators and the private sector further reduced the state's capacity and willingness to impose sanctions on EPSs and service providers that failed to meet their obligations.²² Moreover, persistent inequalities remained: coverage for the subsidized health system was far weaker than for the contributory system, despite Law 100's mandate to equalize the two systems by 2001. Politicians were unwilling to accept the political ramifications associated with merging the subsidized and contributory systems, which would impose costs on middle-class Colombians.

There were few effective channels for civil society to press for accountability. Compared to the environment, few people mobilized collectively around healthcare—a limitation acknowledged by experts and activists alike.²³ The market-based design of the Colombian health sector treats individuals as consumers, rather than as citizens, which hinders grassroots collective

action (Mayka, 2019a, pp. 234–236). Elite-led monitoring efforts encountered the same information asymmetries seen with the Bogotá River observatories. In one initiative, *Así Vamos en Salud*, Bogotá’s Chamber of Commerce, the newspaper *El Tiempo*, and NGOs joined forces to aggregate, analyze, and disseminate information on health policy outputs and outcomes. While *Así Vamos en Salud* has increased public awareness of health policy through greater media coverage, it relies on incomplete information provided by the state, hampering its ability to diagnose policy problems related to corruption and advocate effective policy change.²⁴

Participatory institutions also failed to enhance accountability in healthcare. The National Health Council became captured by the very insurance companies and service providers that it was charged with regulating (Gómez Vélez & Sánchez Gómez, 2005).²⁵ This participatory institution was shuttered in 2007 in an attempt to root out corruption.²⁶ Nationally mandated health councils at the local level are either not implemented at all (Mayka, 2019a, p. 226), or are coopted as service providers and insurance companies buy off participants.²⁷ The former Chief of Participation in Bogotá’s Secretariat of Health summed it up: “In health policy, I believe that there truly is no real participation of the community in the formulation of public policy.”²⁸

How Legal Strategies Improved Accountability in Healthcare

In the face of collective action problems, the *tutela* became a valuable tool for individuals to demand redress for rights violations, a tool that the courts would use to aggregate dispersed grievances from claimants. Between 1999 and 2014, 1,323,292 *tutelas* were filed in the area of health (Defensoría del Pueblo, 2015, p. 86). Health *tutelas* typically are filed by individuals against their EPSs after being inappropriately denied medications or treatments covered in minimum health benefit plan (POS).²⁹ Health *tutelas* have a remarkably high level of

effectiveness: between 2006-2008, 86% of health *tutelas* succeeded in the first round (Defensoría del Pueblo, 2009, p. 35).

The *tutela* produced new information to both the Court and citizens about poor performance in the health sector, reducing information asymmetries and aiding the Court in crafting jurisprudence. Each *tutela* serves as a data point documenting abusive practices by EPSs—information that otherwise would be hidden, given regulatory failures. Indeed, rates of *tutela* usage became the main symptom of systemic failures in the health sector, a theme echoed during interviews with politicians, bureaucrats, and activists.³⁰ One Ombudsman official explained: “If the number of *tutelas* increases, this is the clearest indicator that the system is not working properly.”³¹

Colombians’ use of the *tutela* aggregated interests in a way that mitigated the collective action problem. The Constitutional Court interpreted the millions of health *tutelas* as signal from Colombian society of a crisis in the health system—in effect, analyzing this avalanche of individual participation *as if* it were collective mobilization. In 2004, the Constitutional Court created a special commission that focused solely on health *tutelas* to develop an integrated response to the problem. In 2008, the Court brought together 21 *tutelas* to issue a structural case: Sentence T-760.³² The Court selected the 21 *tutelas* to reflect common systemic complaints, including the grievances of poorer citizens that were less represented in the flood of *tutelas*. This step partially ameliorated the overrepresentation of wealthier voices in the legal system.³³ Thus, the Court aggregated and scaled up grievances from disconnected individuals, thereby reducing the collective action problem.

Sentence T-760 mandated policy interventions to redress rights violations in healthcare and build institutional capacity for more accountable governance. The sentence issued 16 judicial

orders requiring EPSs to provide petitioners with inappropriately denied treatments and medications. It also issued 16 orders directed towards the Ministry of Health, the National Superintendent of Health, and other state entities that introduced new policy interventions to address the roots of poor policy performance. These orders mandated updating of the POS to cover essential treatments and medications, merging of the contributory and subsidized regimes, performance audits to give health-system users information about the quality of care offered by different EPSs and healthcare providers, and reforms to bolster state regulation of EPSs.

The Constitutional Court relied on a participatory process of civil-society oversight to ensure the implementation of Sentence T-760. The Court authorized a collaborative oversight committee, the CSR (Comisión de Seguimiento de la T-760 y Reforma al Sistema de Salud), composed of university affiliates and right-to-health NGOs.³⁴ The Court charged the CSR with monitoring government compliance with the Sentence and developing proposals to deepen health reform, combining civil society's access to information and expertise with the Court's ability to impose legal sanctions to secure compliance.³⁵ The CSR collaborated with horizontal-accountability agencies, including the Ombudsman, Comptroller General, and Public Prosecutor, to launch investigations into corruption and the misuse of public funds in the health sector (Botero, 2015, p. 98).

The CSR leveraged the Constitutional Court's formal authority to compel information sharing. As of June 2019, the Court had issued nearly 600 orders (*autos*) to compel state actors to provide information to citizens, mandate the sharing of documentation and technical studies to assess compliance with Sentence T-760, and issue warnings about the legal consequences of non-compliance to prevent foot-dragging.³⁶ These orders provided information that the Court and the CSR needed to monitor progress in implementing reform. For instance, one *auto* ordered the

National Superintendent of Health to share a list of services denied by all EPSs between January and April 2010.³⁷ The orders also forced the government to respond to civil-society criticisms³⁸—thereby securing answerability, a core element of accountability. In contrast, *Así Vamos en Salud* and the Bogotá River observatories could only work with information offered voluntarily by the executive.

The legitimacy conferred to the CSR by the Constitutional Court served as an important symbolic resource to advance policy change. The Court mandated two public hearings in 2011 and 2012 in which state officials, the CSR, and other civil society groups presented updates on progress towards Sentence T-760 compliance (El Tiempo, 2011, 2012). Facing the threat of legal sanctions, state actors had to participate. Before the first public hearing in July 2011, the government insisted that health reform was advancing smoothly. However, the public hearings provided an opening for activists to undermine this message, shedding light on the government's poor progress in updating the POS and in controlling escalating drug prices (Semana, 2011a, 2011b). Responding to pressure raised during public hearings, the government updated the POS in 2011 (Semana, 2011c), and the Ministry of Health revised procedures to regulate pharmaceutical sector in 2012 (Lamprea, 2014, p. 147). Pressure from the CSR was key in pushing the government to unify the contributory and subsidized POSs in 2012—finally complying with the mandate established 19 years earlier through Law 100 (Semana, 2012a, 2012b).

Through Sentence T-760, the Constitutional Court explicitly recognized the right to health, which created key discursive resources for pro-accountability activists. The Sentence states:

To the extent that the Constitution guarantees every person access to the health services that they require, everyone also has the right to access the examinations

and diagnostic tests necessary to establish, precisely, if the person suffers from a health condition that requires a specific health service... Thus, not guaranteeing access to the diagnostic examination fails to protect the right to health. (Sentence T-760, Numeral 4.4.2)

This language signaled that problems in the health system went beyond unsatisfactory policy performance—they were an abrogation of Colombians’ fundamental citizenship rights. This recognition of the right to health reverberated outside the courts as well. The main slogan used by activists during February 2010 protests about health reform was “Health is not a favor, it’s a right,” directly invoking the language used by the Constitutional Court (Yamin & Parra-Vera, 2010, p. 124). Moreover, the threat of intervention by the courts was key in forcing a 2015 legislative reform that restructured the health sector and further consecrated the right to health (Semana, 2015). According to an aide working on health in the Defensoría del Pueblo, “The [2015] law is the child of Sentence T-760—this never would have been possible if not for the fact that the Sentence declares health to be a fundamental constitutional right. And now the law has also declared [health] to be a fundamental right. That is all due to the results of the Sentence.”³⁹

Nevertheless, the Colombian health case reveals the limitations of legal strategies in tackling entrenched policy problems. As seen in the analysis above, legal strategies resulted in greater answerability and imposed sanctions—the two core dimensions of accountability. Yet, the health system continues to be plagued by corruption and uneven access to basic health services (Semana, 2018). Legal strategies yielded important policy changes, even as the policy problem adapted to the new institutional framework. Colombians continue to turn to the *tutela* to secure their right to health, filing over 200,000 *tutelas* in 2018—an average of 539 a day (El Tiempo, 2019a). The heavy reliance on the *tutela* in health has overwhelmed the judicial system, exacerbating accountability shortfalls in other policy areas. The Colombian health case offers a

warning: legal strategies can strengthen accountability without necessarily expanding rights, a tension we address further in the conclusion.

Conclusion

Citizens face diverse options about how to seek accountability from the state. Through an analysis of the Colombian environmental and health policy sectors, we examine how citizen participation through the judiciary can advance social accountability. In both the environment and healthcare, spaces for participation within the judiciary, such as litigation, territorial working groups, public hearings, and collaborative oversight arenas enabled citizens to better coordinate claims and gained access to information from the state. Court rulings mandated policy coordination among state agencies and pressed officials to meet policy targets under the threat of legal sanctions. These rulings provided greater visibility and legitimacy for claimants, triggered more media coverage, and generated subsequent social mobilization.

This paper adds to the social-accountability literature by delineating four previously unexplored mechanisms by which legal strategies can boost accountability. First, we argue that legal strategies enhance social accountability by helping overcome the collective action problem. In the Bogotá River case, the judge brought together disparate communities throughout the region by uniting their claims and *acciones populares* under one ruling, and by forming working groups. In healthcare, the Constitutional Court aggregated *tutelas* into one structural ruling, Sentence T-760, that mandated an overhaul of the health system, taking steps to amplify the demands made by poorer claimants. Second, legal strategies can increase citizens' access to information needed for social accountability. For the Bogotá River, courts forced government officials and industry to share information with citizens about the degree and extent of contamination, and to provide routine updates about compliance with the legal rulings. In

healthcare, the avalanche of *tutelas* itself served as an indicator of the policy crisis. Moreover, after issuing Sentence T-760, the Constitutional Court issued hundreds of follow-up orders that mandated information sharing with citizens, and sponsored two public hearings that required state officials to explain their progress in implementing reforms. Third, engaging the courts can propel new policy interventions that strengthen state capacity for accountable governance. In the environment, court rulings triggered the adoption of new policy initiatives to fine and shut down polluting industries, as well as greater inter-agency coordination to upgrade infrastructure, coordinate strategic planning, and guard against corruption. Likewise, in healthcare, the Constitutional Court issued 16 orders to address systemic problems in the health system. The Court and civil society worked together to monitor compliance, with court warnings reducing foot-dragging. Finally, mobilization through the courts can amplify citizens' symbolic and discursive resources. The courts recognized the environment and healthcare as fundamental rights, and framed long-standing failures in these sectors not only as policy problems, but as rights violations. This recognition granted greater legitimacy and visibility to civil society demands, strengthening citizen capacity for social accountability in these policy areas.

This paper adds to a growing literature in law and society that explores how civil society engagement can improve courts' capacity to protect social-citizenship rights and hold other public officials accountable (Botero, 2018; Langford, Rodríguez-Garavito, & Rossi, 2017; Rodríguez-Garavito & Rodríguez-Franco, 2015). Legal strategies aided civil society by tapping into the sanctioning authority and symbolic authority of the judiciary—but citizen participation also benefited courts. As our cases show, litigation initiated by citizens provided crucial information to judges about the scope and depth of policy failures. After rulings had been issued, civil society monitored progress in sentence implementation and developing policy proposals to

address ongoing policy shortfalls. Thus, this study contributes to scholarship on state-society relations and co-production that examines the ways that civil society and state actors work together to provide public services (Abers & Keck, 2013; Gallagher, 2017; O'Rourke, 2003; Rich, 2019).

While this article highlights the advantages of legal social-accountability strategies, it is important to note their limitations. Legal strategies open up new avenues for accountability when others are less viable. Yet these strategies are less effective in creating environments for deliberation among societal actors, and between civil society and the state. Sometimes accountability shortfalls arise due to weak state capacity, not a lack of political will to respond. Bureaucrats and service providers may be interested in improving public performance but lack the information or strategic-planning tools to respond to citizen demands (Abers & Keck, 2009; Rich, 2019). In these contexts, a collaborative relationship between civil society and public officials can lead to valuable synergies (Ackerman, 2004; Evans, 1996). In other contexts, the state may prove resistant to change, making legal strategies more appropriate (Kosack & Fung, 2014, p. 77). Legal strategies are not a panacea, but rather are part of a broader social-accountability toolkit that can be leveraged in conjunction with other strategies. More studies outside of Colombia are needed to assess the conditions under which legal strategies can trigger the four mechanisms seen in the Colombian environment and health cases.

Finally, this paper reveals the unsettling finding that greater accountability does not necessarily yield improved policy outcomes. Accountability entails answerability and the ability to impose sanctions for past performance. For both the environment and health cases, legal strategies clearly resulted in greater answerability among public officials and private-sector actors, and the imposition of legal sanctions to compel policy changes. In both cases, greater

accountability has yet to resolve fully the underlying policy problem. To explain this disconnect, we point to three moments in the chain linking citizen participation to improved policy outcomes: 1) courts mandate policy change, 2) government agencies initiate a coordinated response that changes policy outputs, and 3) policy outputs yield improved public performance. Our cases illustrate how legal strategies advanced accountability during the first two moments, but have fallen short in the third moment. Overhauling complex policy arenas is a long-term and non-linear process where public performance gains are likely to occur more readily in some facets of the mandate than others. Future social-accountability scholarship is needed to investigate the conditions that link greater accountability to improved policy outcomes in some situations, but not in others. Nevertheless, despite their limitations, legal strategies for social accountability can serve as a crucial component in enabling better public performance.

¹ See Fox (Fox, 2015) for a discussion.

² The focus of political-accountability efforts is typically politicians or bureaucrats. However, political accountability can also focus on non-state actors, such as private companies or NGOs that are responsible for service delivery, or if their actions violate the rights of others.

³ Citizens can also participate in the judiciary by serving as jurors, which is not related to social accountability.

⁴ Article 80 of the 1991 Constitution.

⁵ Interview with Former Director, EAAB, August 3, 2016.

⁶ <http://oab2.ambientebogota.gov.co/es/sobre-el-observatorio> (Last accessed June 11, 2019.)

⁷ Multiple Interviews.

⁸ Interviews with Marta Luques, Coordinator of Citizen Participation, Contraloría General de la República, August 2, 2016 and Jorge Achury, Red de Veedurías, July 21, 2016.

⁹ Interviews with seven community leaders in Mesitas de Colegio, Cundinamarca, July 24, 2016.

¹⁰ Interview with Nelly Villamizar, Magistrate, Tribunal Administrativo de Cundinamarca, August 5, 2016.

¹¹ Ibid.

¹² Interview with Mónica Sanz, Activist, July 26, 2016 and Medardo Galindo, Fundación Humedal de la Conejera, July 19, 2016.

¹³ Interview with Marco Antonio Velilla Moreno, Magistrate, Consejo del Estado, July 28, 2016.

¹⁴ Interview with Nelly Villamizar, Magistrate, Tribunal Administrativo de Cundinamarca, August 5, 2016.

¹⁵ Participant Observation of Río Bogotá Judicial Oversight Committee, August 2, 2016.

¹⁶ Interviews on July 19, 21, 25, 26, 2016 and August 3, 2016.

¹⁷ Interviews with Nestor Franco, Director, CAR, August 1, 2016; Anibal Acosta, Director, Fondos para Inversiones Ambientales en Bogotá, CAR, August 2, 2016.

¹⁸ Interview with Nestor Franco, Director, CAR; August 1, 2016, Interview with Anonymous Bureaucrat, EAAB, July 27, 2016.

¹⁹ Interview with Jorge Castillo, Procurador Judicial, Procuraduría General de la Nación, July 29, 2016, Interview with Marta Luque, Coordinator of Citizen Participation, Contraloría General de la República, August 2, 2016.

²⁰ Ibid.

²¹ The system also includes public-sector insurance companies and service providers.

²² Interview with Enrique Peñaloza, Former Bogotá Secretary of Health, September 15, 2009.

²³ Interviews with José Vicente Pachón, Bogotá Comité de Participación Ciudadana en Salud, July 22, 2010; José Villamil, Veedor Nacional de Salud, October 22, 2009; Luz Dary Carmona, Former Executive Director, Movimiento Nacional por la Salud, April 21, 2010.

²⁴ Interview with María Luisa Latorre, Coordinator, Así Vamos en Salud, September 15, 2009.

²⁵ Interview with Conrado Gómez, Superintendent of Health, August 2, 2010.

²⁶ Interviews with Senator Dilian Toro Torres, July 27, 2010; Senator Jorge Ballesteros, July 27, 2010.

²⁷ Interviews with José Fernando Cardona, Former Bogotá Secretary of Health, October 20, 2009; Osvaldo Sierra, Advisor, Grupo de Apoyo Territorial, Ministerio de Protección Social, June 22, 2010; José Vicente Pachón, Bogotá Comité de Participación Ciudadana en Salud, July 22, 2010.

²⁸ Interview with Helena González, Former Chief of Participation, Bogotá Secretariat of Health, October 22, 2009.

²⁹ Between 2006-2008, 63% of all diagnostic exams and 75% of all surgeries that health-system users sought through *tutelas* already were covered by the POS (Defensoría del Pueblo, 2009, pp. 64–77).

³⁰ Interviews with Senator Roy Barreras, August 4, 2010; Conrado Gómez, Superintendent of Health, August 2, 2010; José Villamil, Veedor Nacional de Salud, October 22, 2009.

³¹ Interview with Jhon Rojas Cabrera, Defensor Delegada para la Salud, la Seguridad Social, y la Discapacidad, Defensoría del Pueblo, June 21, 2017.

³² The 21 *tutelas* included cases related to the inappropriate transfers of administrative costs to patients, failures to make access effective by ignoring transportation needs, restrictions on access to care such as denial of a cochlear implant and care for catastrophic conditions, freedom to choose among service providers, and the process for determining a service's inclusion in the POS (Corte Constitucional, 2008, *supra* note 44, section 2).

³³ Middle- and upper-class Colombians are more likely to file *tutelas* than lower-class Colombians, although problems of access and poor quality services are greater for the poor (Rodríguez-Garavito, 2014, pp. 263–264).

³⁴ For an overview of the CSR: <http://viva.org.co/lobbying/comision-de-salud/118-boletin-de-prensa-no-1-comision-de-seguimiento-a-la-sentencia-t-760> (last accessed October 1, 2019.) For documents produced by the CSR: <http://viva.org.co/lobbying/comision-de-salud> (last accessed August 14, 2017).

³⁵ On the benefits of collaborative oversight arenas in advancing compliance with structural cases, and how these arenas combine the comparative advantages of both the courts and civil society, see Botero (2018).

³⁶ For a list of all autos related to Sentence T-760, see:

<http://www.corteconstitucional.gov.co/relatoria/tematico.php?todos=%25&sql=salud&campo=%2Fautos&pg=0&vs=0> Last accessed June 12, 2019.

³⁷ See Auto 245 of 2010: <http://www.corteconstitucional.gov.co/relatoria/autos/2010/A245-10.htm> Last accessed June 13, 2019.

³⁸ Interview with Mariana González Lizarazo, Advisor, Defensoría Delegada para la Salud, la Seguridad Social, y la Discapacidad, Defensoría del Pueblo, June 21, 2017.

³⁹ Interview with Hilario Pardo Ariza, Advisor, Defensoría Delegada para la Salud, la Seguridad Social, y la Discapacidad, Defensoría del Pueblo, June 21, 2017.

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Appendix A: Methodological Narrative

Bogota River Case

The data for the Bogotá River case was gathered/generated by Veronica Herrera and included 61 interviews, six participant observations, two seminal court rulings, NGO-produced documents, international financial institution reports, newspaper articles and secondary sources. Interviews were conducted during July-August 2017, most were tape-recorded, although interviewees occasionally asked for the tape to be stopped to go off the record. Interviews were conducted with semi-structured questionnaires, with follow up questions and prompts. Interviews were transcribed, hand-written interview notes were taken, and summaries of interviews were generated within 24-48 hours of interviewing. Interviews were on average one hour, with a range between 15 minutes (with a resident) and 180 minutes. Interviewees were selected using snowball sampling techniques, with initial seeds from diverse professional circles within each category of respondent. See Table 1 below for more information. Interview audio files, summaries, and transcriptions are not available due to IRB protections. Participant observations included on site visits to contaminated areas of the river basin, observing the collaborative oversight arena as the committee held their oversight functions, cultural ceremonies increasing public awareness of the river, and participation in whatsapp messaging groups of the *veedurías*.

An archival database of newspaper articles was created for *El Tiempo* and *El Espectador*, two major newspapers in Colombia that are fairly centrist, the former which covers environmental issues extensively in recent years. Research assistants identified all newspaper articles with relevant content using search terms such as “contaminación,” “Rio Bogotá,” “Consejo del Estado,” “agua,” and “rio” for the time period 1990-2016, and a more general search for specific events from 2016-2019. The newspaper article analysis aided in the construction of a timeline of events, to triangulate between claims made in interview material, and to confirm and incorporate perspectives from actors interviewed in news reports that were unavailable to be interviewed in person. Government sources and NGO reports were provided by interview respondents and were further found in online government archives such as the websites of the *Defensoría del Pueblo* or the *Contraloría General de la República*, further augmenting the evidence base from which this paper draws claims. Wherever possible, we triangulated between interviews and text-based sources to strengthen the evidentiary basis of claims.

Text-based sources (newspaper articles and key policy documents cited in the bibliography) are available as supplementary materials, labelled Appendix B and C. See pgs 4-5 of this document for itemized list of these documents.

Healthcare Case

The data for the healthcare case was gathered/generated by Lindsay Mayka. This data included semi-structured interviews, policy reports created by state agencies and NGOs, Constitutional Court rulings and orders, newspaper articles and secondary sources.

Fieldwork for the healthcare case took place during two periods: August 2009-July 2010, and a follow-up trip in June 2017. Fieldwork in 2009-2010 was conducted for a related research project that examined the origins and construction of nationally mandated participatory institutions in Brazil and Colombia, and which analyzed Colombia’s health committees as a

case.¹ For that project, the Colombian health sector served as a negative case, since the Colombian health committees failed to become institutionalized. Mayka faced a challenge in conducting interviews on the health committees: it was difficult to interview stakeholders about a participatory institution that only existed on parchment. Mayka addressed this challenge by conducting 38 less-structured interviews to explore the political dynamics behind reform in Colombia's health sector, and the nature of popular participation in healthcare. These interviews revealed that while the nationally mandated health committees had failed, citizen participation around healthcare was playing an important role in the judiciary. Interview respondents also highlighted the importance of the *tutela* and the Constitutional Court's rulings in driving health reform. Mayka returned to Bogotá to do three follow-up interviews for this paper in June 2017, yielding a total of 41 interviews.

Interviews were tape-recorded and transcribed, though interview respondents occasionally asked for the tape to be stopped to go off the record. Mayka used both open-ended interviews and semi-structured questionnaires, with follow up questions and prompts. Detailed summaries were written within 72 hours of interviewing, and most interviews were transcribed afterwards. Interviews lasted an average of 58 minutes, ranging between 12 minutes (with a politician) and 133 minutes. Interview respondents for the original project were selected using snowball sampling techniques with the aim of understanding opportunities for participation in the health sector and the dynamics of health-sector reform overall. Interview respondents in 2017 were selected based on news articles and policy reports to address gaps from the original interview record. See Table 1 below for more information. Interview audio files, summaries, and transcriptions are not available due to IRB protections.

Whereas little has been written on the Bogotá River case prior to this article, a richer secondary literature already exists on the role of Colombia's Constitutional Court in health reform and the use of the *tutela* in healthcare. Mayka drew on this secondary literature, interview material, newspaper articles, and policy documents to build a timeline of events and to identify evidence of the four mechanisms in operation for the healthcare case. We triangulated claims as much as possible—for example, finding news articles that corroborated accounts in interviews about public hearings, and finding the original court orders for information sharing mentioned in secondary sources.

Text-based sources (newspaper articles and key policy documents cited in the bibliography) are available in Appendix B and C. See pgs 4-5 of this document for itemized list of these documents.

¹ This research project culminated in Lindsay Mayka's book, *Building Participatory Institutions in Latin America: Reform Coalitions and Institutional Change* (Cambridge University Press, 2019).

Table 1: Interview Summary

Category	Number of Interviews	Number of Organizations
Environment Case		
Civil society actor	28	14
Bureaucrat	17	6
Private sector	5	5
Politician	4	2
Legal actor	4	3
Experts	3	3
Subtotal	61	33
Healthcare Case		
Civil society actor	11	9
Bureaucrat	18	7
Private sector	1	1
Politician	6	3
Legal actor	4	1
Experts	1	1
Subtotal	41	22
TOTAL	102	55

Categories of Actors*

- Civil society actor (civil society organization leader, civil-society activist)
- Bureaucrat (non-elected government official working in the executive branch; excludes Ombudsman and Attorney General)
- Politician (elected officials and their aides)
- Business (industry, industrial association, private sector)
- Legal Actor (judges, paralegals, lawyers, representatives from Ombudsman and Attorney General)
- Experts (journalists, academics)

*Several interviewees belong in multiple categories, for example, respondents who used to be a civil society leader and later served as a bureaucrat. In these cases, we chose whichever category was most central to the interview, although their multiple experiences informed our analysis. Thus, the number of organizations are underrepresented in the counts in Table 1, particularly for the healthcare case where many interviewees wore many hats.

Newspaper articles available in Appendix B as separate file

Conexión Capital. (2019, May 4). *El río Bogotá hoy ya es navegable.*

El Espectador. (2012, November 12). *La pelea por descontaminar el río Bogotá.*

El Espectador. (2016, October 16). *Sellan empresas que contaminan el agua en Bogotá.*

El Heraldo. (2013, August 11). *¿Quién ve por las veedurías ciudadanas?*

El Tiempo. (1996, January 15). *Embalse del Muña asfixia a Sibaté.*

El Tiempo. (2011, July 8). *Marchas frente a la Corte.*

El Tiempo. (2012, May 10). *Corte exige a Gobierno control sobre “mercaderes de la salud.”*

El Tiempo. (2018, November 18). *Por contaminar el río Bogotá, sellan 23 curtiembres.*

El Tiempo. (2019a, January 4). *10 años después, tutelas en salud siguen creciendo en vez de reducirse.*

El Tiempo. (2019b, March 31). *Banco Mundial destaca avances de obras en el río Bogotá.*

El Tiempo. (2019c, May 17). *Con drones y cámaras vigilan el río Bogotá las 24 horas.*

Semana. (2011a, July 7). *Medidas para enfrentar el problema del sector salud son paliativas: Corte Constitucional.*

Semana. (2011b, July 8). *Sector salud no pasó examen de la Corte Constitucional.*

Semana. (2011c, December 5). *Nuevo Plan Obligatorio de Salud regirá a partir de enero.*

Semana. (2012a, July 3). *Conozca los cambios en el Plan Obligatorio de Salud.*

Semana. (2012b, May 7). *Unificación del POS le pone fin a la discriminación en la salud, dice Santos.*

Semana. (2015, February 16). *Santos firma ley para garantizar acceso a servicios de salud.*

Semana. (2018, October 26). *Destapan cáncer de corrupción en la Superintendencia de Salud.*

Key documents available in Appendices C 1-9 as nine separate PDF files

1. Appendix C. 1
 - Consejo del Estado. (2014). Sala de lo Contencioso Administrativo, Sección Primera, acción popular. M.P. Marco Antonio Velilla.
2. Appendix C. 2
 - Contraloría de Bogotá. (2014). Evaluación del programa de saneamiento del Río Bogotá 2008-2013. Bogotá.
3. Appendix C.3
 - Corte Constitucional. (2008). Sentencia T-760 de 2008.
4. Appendix C.4
 - Corte Constitucional. (2010). Auto 245/10.
5. Appendix C.5
 - Defensoría del Pueblo. (2009). La tutela y el derecho a la salud: Período 2006-2008. Bogotá: Defensoría del Pueblo.
6. Appendix C.6
 - Defensoría del Pueblo. (2015). La tutela y los derechos a la salud y a la seguridad social 2014. Bogotá: Defensoría del Pueblo.
7. Appendix C.7
 - Procuraduría General de la Nación. (2008). El derecho a la salud en perspectiva de derechos humanos y el sistema de inspección, vigilancia y control del Estado Colombiano en material de quejas en salud. Bogotá: Procuraduría General de la Nación, Agència Catalana de Cooperació al Desenvolupament, and Dejusticia.
8. Appendix C.8
 - Tribunal Administrativo de Cundinamarca. (2004). Sección Cuarta, Subsección “B,” acción popular núm. 01-479. M.P.: Nelly Yolanda Villamizar.
9. Appendix C.9
 - World Bank. (2010, November 11). Informe No. 54311-CO: Proyecto de adecuación hidráulica y recuperación ambiental del Río Bogotá. Washington D.C., World Bank.