

# The International Review of Constitutional Reform

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# Colombia



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## I. INTRODUCTION

2024 was not a particularly successful year in terms of constitutional amendments. This could be seen as a triumph of Colombia's constitutional rigidity and stability; however, it also reflects the tense relationship between Parliament and the Executive. Additionally, the legislative blockade of government proposals also impacts constitutional amendments.

As this report will show, one of the constitutional amendments—the renaming of the Air Force—was the result of a Constitutional Court judgement. Ruling C-080 of 2024 had declared Article 5 of Law 2302 of 2024 unconstitutional, as it changed the name of the Air Force through ordinary legislation which the Court found in contradiction with Article 217 of the Constitution. One may debate whether this constitutional rigidity is merely arbitrary and formalistic or whether it reflects a proper respect for the Constitution's procedural integrity. The fact is that Congress complied with the Court's ruling, reaffirmed its political will, and changed the name of the Air Force through a constitutional amendment.

However, this seemingly unsuccessful outcome is only an illusion. Beyond reforming the name of the Air Force, two additional, highly significant amendments were approved. First, a substantial change was made to the way financial resources are distributed between the central government and territorial entities. This is a particularly interesting debate in Colombia, as federalism has long been a distant aspiration. At the same time, centralism has consistently prevailed, justified by the argument that the regions lack the capacity for self-management and that resources could be lost due to high levels of territorial corruption. This last argument thus implies the (equally false) notion that the central government is inherently more transparent in managing public funds.

The second reform, a reform was approved that expanded social and economic benefits for members of the armed forces. This was a well-deserved increase in a country where military personnel face high risks due to the ongoing armed conflict. However, the reform has also been criticized for widening the social gap between informal workers, formal workers, and those covered by the special regime of the armed forces.

With this context in mind, this report will also summarize the

constitutional reforms that were proposed but not approved, providing an overview of Colombia's constitutional debate. Although no constitutional amendment was declared unconstitutional in 2024, the report will detail the Constitutional Court's decision that upheld the rigidity of the Constitution regarding the name of the Air Force. Finally, it will outline what lies ahead in the constitutional debate and include a selection of recommended readings published in 2024.

## II. PROPOSED, FAILED, AND SUCCESSFUL CONSTITUTIONAL REFORMS

### A. FAILED CONSTITUTIONAL REFORMS PRESENTED IN THE CHAMBER OF REPRESENTATIVES OF THE COLOMBIAN CONGRESS IN 2024

The work of the Chamber of Representatives in exercising the function of constitutional amendment during 2024 was intense and, generally, unfruitful. The intensity manifested from the proposal of 42 projects during the two legislative periods that comprise the year. Ten projects were tabled between February and June 2024 (Legislature 2023-2024), and 32 between July and December of the same year (Legislature 2024-2025). The process was unfruitful as most projects did not pass the first debate of the eight required for constitutional amendments. The first ten projects discussed between February and June 2024 were shelved or withdrawn. However, they were reintroduced as parts of the projects presented in the second legislative period of the year.

The issues addressed by the constitutional proposals are diverse. In general, they represent specific modifications regarding rights or institutions. The political orientation of projects that concern constitutional rights include elements of liberal and social constitutionalism. Political rights, social rights, environmental rights. As for institutions, many projects seek to grant municipalities differentiated conditions in territorial planning. Other proposals are concerned with increasing the requirements for accessing high-ranking state positions equating these requirements with those necessary to become President of the Republic. And some others reiterate a constitutional mandate for control bodies that exercise disciplinary or fiscal power over all public authorities except judges and authorities with immunity. In proposals regarding the design of the representative democratic system, specific

interests such as expanding the participation of Colombians abroad or allowing party switching for a single additional time, are at stake.

The considerable amount of proposals, their thematic diversity, and the practically null success of exercising constitutional reform power could be interpreted in two ways. One possible explanation is the tendency to seek constitutional solutions to fundamental public-law problems that could instead be addressed through ordinary legislation. This approach dilutes the meaning of the Constitution as a foundational legal pact for a constitutional state governed by the rule of law, as it becomes overloaded with detailed regulations that should not be embedded in the constitutional text. But by constitutionalizing and making certain arrangements rigid, what is observed in the Chamber of Representatives is a deep trust in the constitutional norm as a transformative mandate.

The second interpretation highlights either the lack of understanding of the amendment process requirements on the part of congressmembers or a poor strategic use of the amendment power by congresspeople--even to the extent of exercising powers with the purpose of failure. In some cases, several of the amendment proposals tabled during 2024 were relevant initiatives of enormous complexity but sensitive to issues related, for example, to ensuring the minimum vital or creating conditions of equality between ethnic groups with regard to the autonomous development of their territories.

Among the 42 projects and the estimated 25 topics these projects address, three proposals are worth mentioning:

#### 1. Prohibition of modified seed imports

The project seeks to add some content to Article 81 of the Constitution. Namely, it purports to expand the prohibition on imports (currently applicable to toxic waste) of genetically modified seeds, in order to protect the environment, guarantee the rights of ethnic communities, their common goods of agrobiodiversity, their productive systems, and their right to healthy and adequate food. In the explanatory statement of the project, empirical reasons are shown to justify said proposal, but the effects of this decision in regard to the commitments acquired under free trade agreements are not sufficiently evaluated.

#### 2. Project to harmonize the constitution's provisions on political rights with the American Convention on Human Rights

This initiative aims to align the Constitution with what is stipulated in the American Convention on Human Rights, particularly with what was held by the Inter-American Court of Human Rights in the case *Petro Urrego v. Colombia* in 2021. According to this judgement, the sanction of removal from a popularly elected office can be made only by a criminal-law judge. It is noteworthy that the project received a negative report in the first debate, as it violates the margin of appreciation that the state preserves when interpreting and applying the Convention.

#### 3. Modification of royalties received from the exploitation of subsoil resources

The modification introduces an exception to Article 360 of the Constitution regarding the right to receive royalties from the exploitation of subsoil resources. More specifically, it aims to prohibit the exploration, exploitation, or production of hydrocarbons. Although the location of the amendment in the constitutional text is not technically correct, nor is it explained why the exception only covers hydrocarbon exploitation and not mining, the project adequately contemplates the protection of acquired rights for those developing such activities until the end of the concession provided.

### B. FAILED CONSTITUTIONAL REFORMS PRESENTED IN THE SENATE OF THE COLOMBIAN CONGRESS IN 2024

#### 1. In terms of protection of rights

There were 41 legislative acts that failed to fulfill the eight-debate requirement provided by law. These projects began in the Senate of the Republic reaching the first or second debates but were shelved because they did not comply with the postulates indicated in Article 375 of the Political Constitution in most cases.

A prominent example of these 41 unsuccessful amendment bills had to do with the proposal to grant the category of special district, and axis of knowledge, to the municipality of Manizales in the department of Caldas. Likewise, some other failed amendment proposals relate to the right to basic food and the right to water as a mechanism for preserving basic obligations. In fact, there has been a proposal to modify Article 65 of the Constitution to include the right to food and food sovereignty. This initiative aims to guide public policy toward securing the right to food and safeguarding against hunger and malnutrition. Furthermore, the proposal to reform the Constitution, Article 11-A within Chapter I of Title II, establishing water as a fundamental right, is pertinent to our discussion of failed reforms. In effect, water will be established as a right that all Colombians and future generations should enjoy; therefore, the State is obliged to ensure conservation and sustainable development in order to guarantee the population's access to water in order to meet its basic obligations. Likewise, it was proposed to modify articles 13, 54 and 67 of the Political Constitution of Colombia in order to accelerate equality, inclusion, the development of autonomy, and the prevention of stigma and discrimination against persons with disabilities in Colombia; this initiative was named *Colombia free of barriers*.

#### 2. In the area of structural adjustments

In terms of defining the structure of the State, it was proposed to reduce the number of members in the Congress of the Republic of Colombia in an attempt to reduce their salaries. Additionally, it was proposed to strengthen Colombian political representation by expanding the representation of Colombians living abroad in the Congress of the Republic.<sup>1</sup> Finally, it was proposed to guarantee parity in public corporations by modifying the wording of articles 262, 264 and 265

<sup>1</sup> Original Project: Gazette No. 1116/2024 Paper 1st Debate: Gazette No. 1478/2024. Draft Legislative Act No. 002 of 2024 Senate

of the Constitution--all amendments aiming for equal participation of men and women in public corporations.

### 3. In matters of political responsibility

In this regard an amendment to Article 135 of the Political Constitution was proposed to introduce mechanisms of political accountability for special administrative units with legal personality, so that their directors are subject to political control through the motion of censure before the Congress of the Republic.<sup>2</sup>

In the area of control, inspection and surveillance, it was proposed to implement more effective mechanisms to generate greater control over education, with which it was proposed to modify articles 67, 68, 69, 150 and 189 of the Constitution.<sup>3</sup> This project was ultimately shelved by the constitutional commission at Parliament.

### 4. At the territorial level

It was proposed to create a national constituency for Afro-Colombian communities and peoples in the Senate of the Republic.<sup>4</sup> Furthermore, a proposal was made to designate Florencia (Caquetá) as a special district for environmental conservation, nature tourism, and peace. In the same sense, it was proposed to modify articles 328 and 356 of the Constitution to grant the categories of cultural, historical, technological and tourist districts to the municipality of Puerto Colombia in the department of Atlántico and the quality of special, tourist, historical and cultural districts to be granted to Villa de Leyva in the department of Boyacá<sup>5</sup>. Likewise, it was proposed to grant the categories of tourist, environmental, forestry, port, biodiverse and cultural districts to the municipality of Leticia, in the department of Amazonas,<sup>6</sup> as well as to the municipality of Quibdó in Chocó. Finally, it was proposed to grant the category of special district axis of knowledge to the municipality of Manizales in the department of Caldas.<sup>7</sup>

## C. SUCCESSFUL CONSTITUTIONAL REFORMS IN COLOMBIA 2024

During 2024, the Congress of Colombia approved three constitutional amendments. These reforms approached a variety of topics regarding social security rights, the denomination of the Air Force and modifications to the fiscal systems that distribute the nation's resources to the local and territorial entities.

### 1. Constitutional Amendment 1/2024

Approved July 16<sup>th</sup> of 2024, this norm modifies Article 48 of the Political Constitution by adding provisions related to the so called *mesada catorce* (fourteenth pension payment). The reform added *paragraph 3*,

<sup>2</sup> Original Project: Gazette No. 1275/2024 Paper 1st Debate: Gazette No. 1599/2024

<sup>3</sup> Original Project: Gazette No. 1275/2024 Presentation 1st Debate: Gazette No. 1553/2024

<sup>4</sup> Original Project: Gazette No. 1276/2024 Presentation 1st Debate: Gazette No. 1712/2024

<sup>5</sup> Draft Legislative Act No. 020 of 2024 Senate - No. 019 of 2024.

<sup>6</sup> Draft Legislative Act No. 021 of 2024 Senate - No. 074 of 2024 Chamber.

<sup>7</sup> Draft Legislative Act No. 022 of 2024 Senate - No. 032 of 2024 House

which states that members of the Armed Forces or the beneficiaries of Armed Forces members, who are receiving retirement allowance, a pension, have the right to receive this additional annual payment.

Additionally, the amendment included a *transitory paragraph 7* that extends this benefit to civilian and non-uniformed personnel of the Ministry of National Defense and the National Police who are retired under a special regime and are exempt from the General Pension System. These amendments ensure that both active and retired personnel in these categories receive an extra pension payment, reinforcing their financial security.

According to the presidency of the Republic, the recognition of the additional payment will benefit 244,590 retired members of the Armed Forces, of which 14,548 have been retired through the figure of *pensión de invalidez*, granted to those who cannot work anymore.

### 2. Constitutional Amendment 2/2024

The reform was approved the 8<sup>th</sup> of November; the amendment modifies Article 217 of the Colombian Political Constitution by changing the name of the *Air Force (Fuerza Aérea)* to *Aerospace Force (Fuerza Aeroespacial)*. According to the new wording, the Nation will have permanent Military Forces for its defense, composed of the Army, the Navy, and the Aerospace Force. Additionally, Article 2 of the amendment establishes that, from the moment this legislative act is enacted, any legal reference to the term *Air Force* will automatically be understood as *Aerospace Force*.

This reform is a direct consequence stemming from Judgment C-080 of 2024 of the Constitutional Court. The Court reviewed a public action challenging Article 5 of Law 2302 of 2023, which renamed the national air force from *Fuerza Aérea Colombiana* to *Fuerza Aeroespacial Colombiana*. The plaintiffs argued that this change violated the Constitution, as Article 217 explicitly designates the air force as *Fuerza Aérea Colombiana*, thus creating a conflict with the principle of constitutional supremacy. After deliberation, the Court ruled Article 5 unconstitutional. Notably, the Court's ruling date, March 14<sup>th</sup> of 2024, and the constitutional reform's date, November 8<sup>th</sup> of 2024, is of the same year. As will be indicated later in section III.A, this shows a dialogic process between the different branches of power to ensure that constitutional reforms follow the appropriate channels.

### 3. Constitutional Amendment 3/2024

Approved on December 27th of 2024, the reform included various provisions that aim to increase and strengthen financial autonomy and independence for local entities. Specifically, the amendment reformed Article 357 of the Constitution and established that--through a 12-year process--the percentage of resources that the nation will allocate in the General Participation System (SGP for its initials in Spanish) will increase to 39.5%, in contrast to the previous 25%. This is the system that transfers national resources to the various regions of Colombia.

The reform also added paragraph 2 in Article 356 of the Constitution,

which stated that the local entities who benefit from the SGP will allocate resources to fund three years of preschool education, nine years of basic education, two years of secondary education, and may contribute to two years of higher education in public educational institutions. This indicates a new primary focus on supplying resources to support education initiatives in the regions to which local governments will offer funding and the nation will supply resources.

Furthermore, the reform included a provision that was originally provided through the Constitutional Amendment 1 of 1993 but was eliminated by Constitutional Amendment 1 of 2001. This provision states that the competencies of the central government cannot be decentralized without first allocating sufficient fiscal resources to cover them by the local entities via the SGP.

With this constitutional amendment, the cities of Buenaventura and Tumaco are organized as Special, Industrial, Port, Biodiverse and Ecotourism Districts. The political, fiscal, and administrative regime of these cities shall be established by the Constitution and the special laws enacted for that purpose. In all matters not expressly regulated therein, the provisions issued by the respective municipalities shall apply. Barrancabermeja is also constituted as a Special District with a focus on port activity, biodiversity, industry, and tourism. Its political, fiscal, and administrative framework will be governed by the Constitution and the special laws adopted for that purpose. In all matters not expressly regulated therein, the provisions issued by the municipality of Barrancabermeja shall apply. Lastly, the city of Medellín is organized as a Special District for Science, Technology and Innovation; its political and fiscal regime will be provided for in the Constitution and the special laws that are enacted for that purpose.

### III. THE SCOPE OF REFORMS AND CONSTITUTIONAL CONTROL

#### A. THE JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS IN 2024: A DIALOGIC REACTION

In 2024, the Constitutional Court did not exercise strong or activist judicial review over constitutional amendments. As a preliminary note, it is important to clarify that the Colombian legal system only allows the review of constitutional amendments passed by Congress through citizen activation via a public action of unconstitutionality (*actio popularis*).<sup>8</sup> Moreover, the three constitutional amendments approved by Congress were enacted in the second half of the year, meaning that while citizens may challenge their constitutionality, the Court's rulings will be issued in 2025. This is particularly relevant for Legislative Act 3 of 2024, the only constitutional reform that has been challenged through a public action, which was filed on January 29, 2025.

Nonetheless, the Court exercised constitutional control over ordinary laws that sought to amend the Constitution. In Judgment C-080 of 2024, the Tribunal examined a public action against Article 5 of Law

2302 of 2023. This provision changed the official name of the national air force from *Fuerza Aérea Colombiana* to *Fuerza Aeroespacial Colombiana*. The plaintiffs argued that this violated the Constitution, as Article 217 explicitly designates the air force as *Fuerza Aérea Colombiana*. Therefore, they claimed that the law contradicted the principle of constitutional supremacy.

The Court declared Article 5 unconstitutional. It held that "the fact that the change of name does not affect the entity's competencies, organization, or overall constitutional framework does not justify altering its integrity."<sup>9</sup> Additionally, the Court dismissed the arguments presented by the law's defenders, stating that "changing a constitutionally designated name through an ordinary law cannot be justified on grounds of convenience, which belong to a political debate but are inadmissible in a constitutional debate."<sup>10</sup> This ruling prevented the amendment of the air force's official name through an ordinary law and led Congress to pass constitutional amendment 2/2024, as examined above.

The absence of judicial review over constitutional amendments—whether through direct or indirect challenges, as demonstrated—does not imply judicial passivity on the part of the Court. In abstract review, the Tribunal examined 82 citizen actions challenging the constitutionality of laws: 1 legislative decree, 9 laws approving international treaties, and 3 statutory law bills. In total, the Court issued 95 judgments, ensuring constitutional supremacy across various legislative domains. However, given the late enactment of the 2024 constitutional reforms, it is likely that the Court will not rule on these amendments until 2025.

Despite criticisms regarding the Court's reluctance to hear all public actions of unconstitutionality filed by citizens, the figures on judicial review in Colombia remain remarkably strong. From a qualitative perspective, the Court continues to serve as a transformative institution committed to protecting the rights of vulnerable individuals. Only a few exceptions in tax matters, such as the ruling on royalties of non-renewable natural resources, can be counted as major errors that serve as islands in an ocean of progressive jurisprudence. The latter confirms that the Court maintains the constitutional proposition of advancing towards effective equality and the guarantee of rights.

### IV. LOOKING AHEAD

The year 2025 will be the last year of President Gustavo Petro's government. Several constitutional amendment proposals are pending debate and voting in the Congress of the Republic. One of the most significant aspects of the constitutional debate is undoubtedly the government's recent call for a referendum. In this consultation, the president will ask citizens whether they think a few reforms previously rejected by parliament should go ahead. Most of these reforms are legal; however, some of them are likely to require constitutional reform.

The questions that the President will put to the citizens in the future referendum will revolve around the restoration and strengthening of workers' rights. Since there will be a space for citizen participation in

<sup>8</sup> Roa Roa, Jorge Ernesto. *La acción pública de constitucionalidad a debate*. Universidad Externado de Colombia, Bogotá, 2015, pp. 37-45.

<sup>9</sup> CCC. Judgment C-080 of 2024.

<sup>10</sup> CCC. Judgment C-080 of 2024.

the construction of the questions, perhaps some issues proposed by the citizens themselves will be included.

The consultation requires the prior approval of the Senate by a simple majority. The Senate can only determine if the referendum is viable after an evaluation period of no more than 30 days. If the Senate reviews it, the President may call for a referendum within three months of the Senate's approval. In order for the consultation to be successful, more than 13 million people must participate and the result must be a majority affirmative to the questions posed by the president as convener. The positive decision of the people in the consultation requires the President and the Congress to pass the necessary laws or decrees to implement the will of the people.

One of the most important constitutional debates concerns the determination of what exactly the president and Congress must do if a popular consultation is successful. It is clear that the referendum cannot be based on a specific norm, but it is not clear what the margin of action of the Congress will be if the people pronounce a majority in favor of the president's questions and, therefore, in favor of the labor reforms or others that the parliament itself has already rejected.

Finally, the consultation call as the executive's response to the legislative blockade of its government program has been criticized. More so, the cost of a referendum and the president's constant use of popular mobilization have also been criticized. 2025 will be a great year for constitutional debate in Colombia.

## V. FURTHER READING

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## Bosnia and Herzegovina

The qualification and appointment of judges to the Constitutional Court of Bosnia and Herzegovina were central to discussions on constitutional reform in the year under review. The debate involved various stakeholders, including the Venice Commission, the Parliamentary Assembly of BiH, and the Constitutional Court of BiH. Ultimately, the Constitutional Court decided to amend its rules to extend the mandate of current judges until their replacements are appointed.

## Botswana

In 2024, Botswana saw reforms regarding the rights to privacy, the status of refugees and current proposals pertaining to citizenship rights—all propositions that may prove to be some of the most important legislative enactments in Botswana's constitutional history.

## Brazil

In 2024, Brazil saw limited formal amendments but intense constitutional politics. Key developments included fiscal reforms, rising judicial protagonism, and Supreme Court rulings on fundamental rights (maternity leave, LGBTQIA+ rights, freedom of expression, etc.) and institutional limits. Amid democratic threats and political polarization, constitutional change occurred more through judicial interpretation than legislation, reflecting deep tensions across all government branches.

## Cabo Verde

The year under review did not see use of the formal procedure of constitutional reform, and the CCCV did not recognize the incorporation of previously non-included rights in the bill of rights or informal changes to the Basic Law. At the academic level, no publication on this matter was edited either.

## Canada

In 2024, the most significant constitutional developments in Canada were of an informal nature. In particular, the Quebec government created a committee to make constitutional proposals concerning Quebec's constitutional role within the federation, as well as developments in relation to Canada's parliamentary system in the aftermath of Justin Trudeau's final term as Prime Minister.

## Chile

Following a five-year cycle around constitution-making, 2024 saw continued discussion and two amendments enacted. One amendment loosens regulation for a heavily used State of Emergency; the second created a “suprateritorial” prosecutor's office specializing in organized crime. Further discussion considers modifying Chile's political system to strengthen it.

## China

The most important accomplishment of China's constitutional reform is twofold in 2024: 1) the NPCSC issued the first batch of Record-and-Review guiding cases and 2) the Supervision Law received major revisions to enhance China's fourth branch of government's power.

## Colombia

In 2024, Colombia's Congress passed three constitutional amendments: the first responding to a court ruling on the air force's name, the second on military members' rights, and the third on regional financial resources. In 2025, the key prospect is a presidential call for a popular consultation on rejected legal initiatives.

## Congo-Brazzaville

Congo-Brazzaville experienced significant constitutional developments in 2024 without formal amendments. President Sassou Nguesso proposed decentralization and electoral reforms, Parliament created new administrative departments, the Constitutional Court issued landmark decisions on legislative quality and parliamentary autonomy, and a noted constitutional expert recommended restructuring the party system and establishing a vice presidency.

## Congo-Kinshasa

The DRC experienced significant constitutional discourse in 2024 without formal amendments. President Tshisekedi's critique of the Constitution as foreign-drafted ignited nationwide debate amid security crises in eastern provinces. The Constitutional Court cemented its authority through electoral rulings, while the first female Prime Minister embodied the implementation of gender equality principles.

## Costa Rica

Costa Rica added the right to sport to its catalogue of rights. This right is interdependent with the right to health and serves as a preventive function against future illnesses.

## Croatia

In the Republic of Croatia, 2024 was marked by the reopening of old issues regarding the reform of the President of the Republic's constitutional position, as well as the process of electing judges to the Constitutional Court.

## Cyprus

In 2024, the 19th amendment of the Constitution of Cyprus added the autonomous right to secure, clean, healthy and sustainable environment, which includes the rights to have access to relevant information, justice and effective remedy. Positive obligations have been imposed upon the State, while certain rights' restrictions can be justified.