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EDITED BY

RICHARD ALBERT  
DAVID LANDAU  
PIETRO FARAGUNA  
AND GIULIA ANDRADE



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# COLOMBIA

## JORGE ERNESTO ROA-ROA

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## MARCELO LOZADA-GÓMEZ

*Dphil in Law*  
University of Oxford

## ALEJANDRA OSORIO-ALVIS

*Dphil in Law candidate*  
Inter-American Academy of Human Rights

The following sections provide concise yet rigorous summaries of the main facts, decisions, ratio decidendi, and doctrinal arguments of each case, offering an updated overview of Colombian constitutional jurisprudence in 2024. Finally, a brief analysis will be provided on the anticipated directions of the Constitutional Court in the coming years.

## II. MAJOR CONSTITUTIONAL DEVELOPMENTS

Colombia's constitutional landscape underwent significant transformation in 2024, marked by three major developments that exposed ongoing tensions within the country's democratic system. The most consequential of these was President Gustavo Petro's proposal for a National Constituent Assembly, which emerged as his response to the legislative gridlock facing his reform agenda. In a speech delivered in Cali on March 15, Petro declared that if institutions were incapable of implementing the social reforms mandated by voters, "then Colombia has to go to a National Constituent Assembly" to transform these institutions to better reflect the people's will.

This proposal was subsequently clarified to focus on constitutional reform rather than full replacement. The President outlined six priority areas for the constituent process, including the effective implementation of the 2016 Peace Agreement, guarantees of basic living conditions (health, pensions, water access), judicial reform, fighting climate change, and modifying the central bank's mandate while maintaining its independence. Petro explicitly denied seeking re-election or term extensions, though opposition voices remained deeply skeptical.<sup>1</sup> The proposal faced significant procedural hurdles, as convening such an assembly would require approval from both chambers of Congress and ratification through a referendum—precisely the institutional channels where his reforms had encountered resistance. By mid-year, discussions about the constituent assembly had notably diminished, with Petro instead announcing a "rapid action response plan" to accelerate implementation of the peace agreement through congressional legislation.

The peace negotiation processes, particularly with the National Liberation Army (ELN), constituted the second major constitutional de-

<sup>1</sup> Jorge Ernesto Roa Roa. Una defensa de la Constitución de 1991: para cumplirla y transformar la sociedad. <[www.elcolombiano.com/generacion/edicion-del-mes/una-defensa-de-la-constitucion-de-1991-para-cumplirla-y-transformar-la-sociedad-MD24729746](http://www.elcolombiano.com/generacion/edicion-del-mes/una-defensa-de-la-constitucion-de-1991-para-cumplirla-y-transformar-la-sociedad-MD24729746)>

velopment. Following a six-month bilateral ceasefire established in August 2023, the process experienced a tumultuous trajectory through 2024. Despite the continued ceasefire, violence escalated, with the ELN resuming kidnappings for ransom and attacks on infrastructure. The breaking point came in September, when an ELN attack on a military base in Arauca killed two soldiers and injured more than two dozen people, leading the government to formally suspend peace talks that had been central to Petro's "Total Peace" policy. This marked a significant setback to the constitutional commitment to peace embodied in the 2016 Peace Agreement. The consequences of this failure were devastating for vulnerable communities, with NGOs reporting that 150 social activists had been killed by October 2024, according to INDEPAZ tracking, while former FARC combatants in the peace process continued to face deadly violence, with 27 murdered by November.

The third major constitutional development was the struggle over Petro's comprehensive social reforms. The health reform, which sought to restrict the role of private insurers and expand public administration of the system, suffered a decisive defeat in April when a Senate committee rejected it by a 9–5 vote. The pension reform fared better, advancing through the Senate in April 2024, though with significant modifications from its original design. Under the approved version, a three-pillar model was established: a solidarity pillar for the most vulnerable, a semi-contributory pillar, and a contributory pillar with a threshold of 2.3 minimum wages determining contributions to public and private funds. The labor reform, which proposed reducing working hours and increasing overtime pay, faced repeated legislative obstacles. By mid-2024, these mixed results demonstrated the limits of executive power in Colombia's constitutional system, even with a president elected on a transformative mandate. Overall, these constitutional developments illustrate the growing tension between representative institutions and appeals to popular sovereignty that charac-

terized Colombia's constitutional politics throughout 2024.

### III. CONSTITUTIONAL COURT CASES

#### 1. Cases Concerning Liberties

##### 1.1. *TikTok – Digital Platforms, Due Process, and Habeas Data (T-453/24)*

The first case concerns a *tutela* action<sup>2</sup> filed by a content creator who alleged that the social media platform TikTok violated his fundamental rights. The platform repeatedly blocked his account, claiming that he did not meet the minimum age requirement, despite the user demonstrating that he was 33 years old.

The Constitutional Court upheld the petitioner's rights to due process and habeas data, particularly his right to update his personal information, and ordered TikTok to restore his presence on the platform. The Court held that the platform had acted arbitrarily by blocking the account without justification and based on a factual error regarding the user's age. Furthermore, it emphasized that, while the relationship between the user and TikTok is governed by an adhesion contract, this does not legitimize unilateral decisions that affect fundamental rights without a real and reasonable basis.

Additionally, the Court clarified that content moderation by digital platforms must adhere to minimum due process guarantees, even when these powers are based on contractual stipulations. The Court underscored that this does not require the full formalities of judicial or administrative proceedings but does demand that any measure affecting users (such as account blocking or content limitation) be grounded in objective reasons, adopted with impartiality, and allow for an opportunity for defense.

##### 1.2. *Labor Discrimination Based on COVID-19 Vaccination Status (T-460/2024)*

In Judgment T-460 of 2024, the Constitutional Court reviewed a *tutela* action filed by a woman who was denied employment by a private company for her refusal to receive COVID-19 vaccination. The petitioner argued that this requirement violated her fundamental rights to work, to the free development of personality, and to privacy.

The Court upheld the petitioner's fundamental rights and ordered the company to reintegrate her into the hiring process, warning that vaccination could not be imposed as a condition for access to employment.

In its reasoning, the Court found that the vaccination requirement did not pass the integrated equality test. While it recognized that vaccination against COVID-19 is a reasonable and suitable measure to protect public health, it concluded that it was not necessary in this context, given the existence of non-pharmacological alternatives that also help reduce virus transmission.

Furthermore, the Court highlighted that the company failed to demonstrate a legal basis for the requirement, which was neither established in national biosecurity protocols nor in the company's hiring manual. Lastly, the Court reiterated that selection processes must guarantee the right to due process through adherence to the principles of publicity and transparency, as well as the right to equality, which requires that the exclusion of participants cannot be based on prejudicial or unfounded criteria. It also stressed that the right to the free development of personality holds particular importance in health-related matters, encompassing the ability to freely accept or decline medical procedures such as vaccination.

##### 1.3. *Gender Perspective in Custody and Care Cases (T-255/2024)*

In Judgment T-255 of 2024, the Court reviewed a *tutela* action brought by a Brazilian woman against a family court ruling that awarded sole custody of her three children to their Colombian father, contradicting a

<sup>2</sup> The Colombian constitutional rights-protective complaint.

prior Brazilian court decision that had recognized shared custody. The petitioner argued that the decision violated her rights and those of her children, and that the judgment disregarded the Court's precedent and inappropriately assessed evidence by portraying her as inattentive.

The Court upheld the petitioner's fundamental right to due process and her children's right to family life and their right not to be separated from their mother. It annulled the lower court's decision and ordered a new ruling that would conduct a reasoned and comprehensive assessment of the possibility of shared custody.

In its reasoning, the Court found that the family court's decision disregarded constitutional precedent on shared custody and reiterated that custody should not be treated as a contest between individual interests. The Court also noted that the challenged decision relied on an irrational and gender-insensitive interpretation of psychological and social reports, particularly in the context of separation or divorce. It explained that such assessments reproduced gender stereotypes and stigmatizations portraying women solely as household caretakers, thereby imposing unrealistic and unattainable standards. Additionally, the Court underscored that the lower court failed to consider a psychiatric report confirming the mother's suitability to care for her children.

## 2. Cases concerning Social Rights and Sustainable Development

### 2.1. *Recognition of Climate Displacement as a Form of Internal Forced Displacement (T-123/24)*

In this landmark case, the Constitutional Court addressed for the first time the phenomenon of internal forced displacement caused by environmental factors, marking a significant evolution in the recognition of climate change-related mobility. The Court examined the situation of an elderly farming couple who were forced to abandon

their rural property in Saravena, Arauca, after recurring floods from the Bojabá River destroyed their home and livelihood.

The Court identified a significant protection gap in Colombian legislation, which currently only recognizes internal displacement caused by armed conflict, leaving environmentally displaced persons without adequate legal protection. Drawing on international standards, particularly the Deng Principles on Internal Displacement, the Court concluded that people forced to flee their homes due to environmental disasters, climate change effects, or environmental degradation qualify as internally displaced persons entitled to comprehensive protection.

The ruling acknowledged the multicausal and complex nature of environmental displacement, noting it disproportionately affects the most vulnerable populations, including peasants, indigenous peoples, and Afro-descendants. The Court emphasized that such displacement threatens multiple fundamental rights, including the rights to adequate housing, work, basic subsistence, food security, and personal safety.

In response, the Court ordered the municipality and department to implement protection measures for the petitioners, conduct a risk assessment of their property, and ensure either a safe return or dignified relocation. Going beyond the individual case, the Court granted the decision inter communis effects, extending protection to all persons displaced by the Bojabá River. Most significantly, the Court exhorted Congress to develop a comprehensive legal framework to address environmental displacement with a rights-based approach in light of ongoing environmental deterioration.

### 2.2. *Balancing Peace Agreement Commitments with Child Protection in Family Reunification Cases (T-341/24)*

In ruling T-341/24, the Constitutional Court addressed the tension between family re-

unification commitments made under the Peace Agreement and the legal protection of adoption confidentiality. The case involved a former FARC combatant ("Verónica") who sought to reconnect with her biological child placed for adoption in 2010 after being separated from her newborn during the armed conflict.

The petitioner claimed that several state entities—including the National Agency for Reincorporation and Normalization (ARN) and the Colombian Family Welfare Institute (ICBF)—violated her rights to petition, truth, family unity, and due process by denying her information about her child's adoption process and refusing to facilitate contact.

The Court ruled that while some agencies violated her right to petition by providing inconsistent or incomplete responses, neither the ARN nor ICBF violated her right to family unity. The Court determined that Colombia's 20-year confidentiality period for adoption records (Article 75 of Law 1098/2006) and the legal extinction of biological parent-child relationships through adoption take precedence even over Peace Agreement obligations.

Notably, the Court criticized the lower court judges for failing to apply a gender perspective, highlighting that they inappropriately blamed the petitioner for "abandoning" her child without considering the complex circumstances she faced as a female combatant. The Court emphasized the unique challenges women experienced regarding maternity during the conflict.

Rather than ordering immediate reunification, the Court invited the petitioner to submit her documentation to ICBF's Origins Search Group, which maintains records that adopted children can access upon reaching adulthood if they wish to learn about their biological origins.

This ruling demonstrates the Court's approach to balancing competing constitution-

al principles: the state's peace commitments versus the paramount principle of the best interests of the child, while highlighting the importance of gender-sensitive approaches to justice in post-conflict settings.

### 2.3. Healthcare Access for Elderly Persons Living Alone (T-077/24)

In ruling T-077/24, the Constitutional Court addressed a significant challenge at the intersection of healthcare access and the growing phenomenon of social isolation among elderly persons. The case involved a 77-year-old person who sought medical care at a healthcare institution for a stress test ordered by his physician. The healthcare provider refused to perform the procedure because the patient had no accompanying person, as required by its institutional protocol.

The petitioner, who claimed to live alone with no family or close acquaintances who could accompany him, sought protection of his fundamental rights to health and social security. After lower courts denied protection, arguing that the healthcare provider's requirement was medically justified rather than arbitrary, the Constitutional Court reversed these decisions.

The Court recognized that requiring an accompanying person may be medically justified as a safety measure for certain procedures. However, it held that healthcare institutions cannot deny essential medical services to elderly persons living alone merely because they lack someone to accompany them. The Court emphasized that such rigid application of protocols creates a barrier to healthcare access that disproportionately affects vulnerable populations, particularly elderly persons living in isolation.

In its groundbreaking decision, the Court ordered the health insurance provider to appoint a non-medical companion to accompany the petitioner during the stress test. Additionally, it required the healthcare institution to ensure informed consent was properly documented,

clearly establishing the companion's responsibilities and limitations.

The ruling represents a significant evolution in the Court's healthcare jurisprudence as it directly addresses loneliness and social isolation as factors affecting constitutional rights. The Court recognized solitude as a global public health concern requiring systematic policy responses and emphasized that elderly persons' right to healthcare must be interpreted in conjunction with their rights to autonomy, independence, and dignified care.

This decision illustrates the Court's nuanced approach to balancing the healthcare system's legitimate safety protocols with the fundamental rights of vulnerable populations. It also highlights the obligation of the State to adapt healthcare services to the changing demographic reality of Colombian society, where increasing numbers of elderly persons live alone without traditional family support networks.

## 3. Cases concerning Political Rights, Democracy and Separation of Powers

### 3.1. *The Use of AI in Judicial Decision-Making. A Judgment Soon to Be Reviewed—by Humans or by AI (T-323/24)*

This ruling examined the case of a tutela judge who used ChatGPT to expand the reasoning behind a judicial decision. The Constitutional Court was tasked with determining whether the use of such an AI tool was compatible with the right to due process. The Court concluded that the use of artificial intelligence did not violate due process, insofar as the arguments generated by the AI were supplementary and complementary to the judge's own legal reasoning.

However, the Court went further and analyzed whether the principles of transparency, accountability, and privacy were respected in the use of AI within a judicial decision. The Court expressed concern over

the lack of full disclosure regarding the specific prompts and responses exchanged with ChatGPT. It also raised serious privacy concerns, given that sensitive data may have been introduced into the AI system during the consultation process—particularly troubling in this case, which involved a minor.

The Court held that artificial intelligence cannot substitute certain non-delegable functions of the judge as a human decision-maker. These include human logical reasoning, the assessment of evidence, and the duty to provide a reasoned judgment. According to the Court, maintaining human oversight in these core judicial tasks mitigates the risks of algorithmic bias, prevents so-called AI hallucinations, and ensures that evidentiary material is directly and contextually evaluated by the judge.

Furthermore, the Court emphasized that any use of AI in judicial decision-making must be clearly and transparently disclosed. This includes an explanation of the reasons for using such tools and the judge's level of training or competence in their use. Judicial reliance on AI does not absolve the judge from the duty to critically review the information generated and to safeguard the privacy of any sensitive data involved in the proceedings. Once again, the Court recognized that Colombia lacks an adequate regulatory framework governing the use of artificial intelligence and issued a formal exhortation to the legislative branch to adopt such regulation.

Undoubtedly, the decision is significant. However, it reflects a somewhat tentative approach that is likely to be revisited in the near future. Most of the concerns raised by the Court—such as algorithmic bias, lack of transparency, and risks to privacy—are already well-documented in the academic literature and in comparative legal practice involving AI.

Despite these concerns, comparative experiences suggest that the integration of AI into judicial functions is advancing rapidly

and, to some extent, inevitably. While a core of human judicial responsibility remains indispensable, there is a growing number of judicial tasks that can be meaningfully delegated to AI systems. In light of this, it is more constructive to acknowledge this evolution and address it constitutionally, rather than to attempt to halt it through judicial pronouncements.

### 3.2. Once Again: The Powers of the Office of the Inspector General to Restrict the Political Rights of Elected Officials — A Persistent (and Erroneous?) Disagreement (SU-381/24 and SU-382/24)

This report has examined the ongoing tension between Colombian constitutional jurisprudence and the Inter-American human rights framework regarding the powers of the Office of the Inspector General (*Procuraduría General de la Nación*, PGN) to dismiss and disqualify popularly elected public officials. The more protective standard—established by the Inter-American Court of Human Rights—is clear: such sanctions may only be imposed through criminal proceedings, by a criminal judge, and with full guarantees of due process.

Some have proposed a broader understanding of the judicial process, one that includes non-criminal proceedings so long as they are fully rights-protective. Nevertheless, the Colombian Constitutional Court has explicitly rejected the Inter-American standard, upholding the administrative authority of the Inspector General to impose such sanctions. The Council of State, in turn, has oscillated—at times endorsing the more rights-protective standard consistent with the Inter-American system, and at other times aligning with the Constitutional Court’s defense of the Procuraduría’s disciplinary powers.

Meanwhile, corruption continues to rise in Colombia, and the sanctions issued by the PGN are increasingly at risk of losing constitutional legitimacy, given their incompatibility with Inter-American standards. This

situation also jeopardizes Colombia’s international responsibility for human rights violations. The solution is both evident and straightforward—one that has already been articulated by international bodies and national experts.<sup>3</sup> Yet, the political and institutional will to enact a meaningful and lasting reform has remained conspicuously absent.

## IV. LOOKING AHEAD

In 2026, Colombia will hold presidential elections, and the campaign season is set to begin next year (i.e., 2025). Electoral years in Colombia are not merely periods of political mobilization; they also shape the rhythm and content of the legislative agenda in critical ways. President Gustavo Petro’s administration enters this phase with a backlog of unfulfilled commitments, as the Colombian Congress has blocked or failed to pass the majority of its progressive social initiatives. As is common in presidential systems, executive influence over the legislature wanes as the term approaches its end. This dynamic is compounded by the fact that several legislators are expected to announce presidential bids, thereby diminishing their legislative engagement and increasing electoral fragmentation. The result is likely to be a markedly slow and unproductive legislative session.

This legislative stagnation could have significant consequences, particularly for sectors of the electorate who placed high expectations on what was framed—discursively at least—as a transformative and egalitarian government. A key point of constitutional contention will likely revolve around the administration’s proposal to convene a popular referendum to bypass congressional inaction and seek direct democratic legitimation for its flagship reforms in the areas of labor rights and healthcare.

The Petro administration has consistently appealed to social mobilization as a mecha-

nism of democratic validation. While this strategy draws on a tradition of participatory constitutionalism, its repeated use may lead to public fatigue and raise concerns about the erosion of institutional mediation. The Colombian Senate is constitutionally empowered to authorize or reject the proposal to hold such a referendum. The executive should, in principle, respect the Senate’s decision as part of the institutional checks and balances. Nevertheless, there have been indications that the government may be willing to proceed with a direct appeal to the people, even in the absence of Senate approval—a course of action that would test the boundaries of Colombia’s constitutional order and provoke renewed debate about the proper relationship between representative and participatory democratic mechanisms.

One of the most significant developments in Colombian constitutionalism in 2025 will be the renewal of three out of the nine justices of the Constitutional Court. That year, Justices Cristina Pardo, Diana Fajardo, and José Fernando Reyes are set to complete their terms. All three successors must be elected by the Senate. The replacements for Justices Fajardo and Reyes must be selected from shortlists (*ternas*) submitted by the Supreme Court of Justice, while the nominee to replace Justice Pardo will be drawn from a shortlist presented by President Petro.

This transition follows a similarly consequential change in 2024, when Justices Alejandro Linares—nominated by the President—and Antonio José Lizarazo—nominated by the Council of State—completed their terms. In practical terms, this means that five of the nine justices, or a majority of the bench, will have been replaced within a two-year span (2024–2025). Such a degree of turnover is highly consequential, as it may directly impact the quality, coherence, stability, and independence of the Court’s jurisprudence for the foreseeable future—potentially for the next eight years, given the fixed term of office for Constitutional Court justices in Colombia.

<sup>3</sup> Jorge Ernesto Roa Roa. ¡Es posible una Procuraduría Convencional! *Ámbito Jurídico*, January 21, 2025. <[www.ambitjuridico.com/noticias/analisis/constitucional-y-derechos-humanos/es-posible-una-procuraduria-convencional](http://www.ambitjuridico.com/noticias/analisis/constitucional-y-derechos-humanos/es-posible-una-procuraduria-convencional)>

This moment of institutional transformation carries considerable weight, especially for a court that has long been regarded—both within Colombia and abroad—as a model of constitutional adjudication and democratic legitimacy in Latin America. The Colombian Constitutional Court has historically played a central role in the defense of the 1991 Constitution’s transformative ambitions, particularly in the protection of fundamental rights, the enforcement of social rights, and the articulation of a participatory vision of democracy. However, recent political dynamics and increasingly polarized nomination processes raise concerns about the erosion of that legacy. The years 2024 and 2025 may therefore mark a critical juncture in the evolution of the Colombian constitutional system, and the direction it takes will likely influence broader regional debates about the role of constitutional courts in contexts of democratic erosion.

## V. FURTHER READING

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2. Anna Luisa Walter de Santana and Jorge Ernesto Roa-Roa, ‘Una lectura constitucional de la subsidiariedad efectiva del sistema interamericano de protección de los derechos humanos’ in Harold Bertot Triana (ed), *El orden jurídico internacional ante las vicisitudes del Siglo XXI* (Tirant Lo Blanch 2024) 731–781.
3. Magdalena Correa y Jorge Ernesto Roa-Roa, ‘The Jurisprudence of Constitutional Court of Colombia’ en Johanna Fröhlich (ed), *Constitutional Reasoning in Latin America and the Caribbean* (Hart Publishing 2024) 153–174.
4. Jorge Ernesto Roa-Roa, José Fernando Reyes Cuartas and Juan Jacobo Calderón Villegas (eds), *Las sentencias fundamentales de la Corte Constitucional de Colombia* (Editorial Palestra Europa 2025).
5. Jorge Ernesto Roa-Roa and Juan José Aristizábal, ‘A justiça constitucional transformadora e a proteção da democracia constitucional na Colômbia’ (2025) 30(1) *Revista Direitos Fundamentais & Democracia* 66
6. Jorge Ernesto Roa-Roa and Juan José Aristizábal, ‘The court speaks first? Problems and challenges of prior judicial review’ (2024) 1(1) *Suprema Revista de Estudos Constitucionais* 55–
7. Gonzalo A Ramirez-Cleves, ‘The Proposal for a National Constituent Assembly in Colombia’ IACL-AIDC Blog (9 April 2024) <<https://blog-iacl-aidc.org/2024-posts/2024/4/9/the-proposal-for-a-national-constituent-assembly-in-colombia>>

# JURISDICTION SUMMARIES

## BOLIVIA

In 2024, Bolivia's Plurinational Constitutional Court deepened institutional tensions by extending its own mandate and annulling Evo Morales's leadership of MAS, revealing internal power struggles and raising serious concerns about judicial independence and the erosion of constitutional limits in the context of ongoing political instability.

## CANADA

On March 28, 2024, the Supreme Court of Canada announced a significant 348-page decision in *Dickson v Vuntut Gwitchin First Nation*. Six justices held that the *Canadian Charter of Rights and Freedoms* applies to self-governing Indigenous communities meeting certain legal criteria, thereby allowing them to be recognized as governments.

## BOSNIA AND HERZEGOVINA

In 2024, Bosnia and Herzegovina (BiH) experienced political tensions as the Office of the High Representative imposed legal reforms criminalizing defiance of its decisions and introduced electoral reforms to enhance transparency and accountability. The Constitutional Court of BiH also invalidated Republic of Srpska laws that violated the BiH Constitution.

## CHILE

With momentum for constitutional replacement fading, Chile has entered a new phase of incremental constitutional reform. In 2024, two constitutional amendments were approved. Focus is now turning to changes in the composition of the Supreme and Constitutional Courts, marked by recent judicial removals and appointments.

## BRAZIL

In 2024, Brazil's constitutional landscape featured institutional tensions, judicial assertiveness, and pivotal reforms. The Federal Supreme Court expanded rights, prosecuted January 8 rioters, and faced legislative backlash. Amendments addressed fiscal policy, electoral quotas, and judicial structuring. The "Marco Temporal" dispute over Indigenous land rights highlighted inter-branch conflict and democratic resilience.

## CHINA

In 2024, China's constitutional developments focused on socioeconomic recovery by strengthening equality protections for private enterprises through the draft Private Economy Promotion Law and addressing labor shortages through gradual delay of the retirement age. These reforms reflect efforts to balance economic stability with constitutional labor rights amid mounting demographic challenges.

## CABO VERDE

Municipal elections were held in December. Furthermore, the legislative agenda led to the approval of relevant acts. The Constitutional Court (CCCV) delivered several important opinions. The state of liberal democracy remained stable and there was no substantive change to the constitutional system.

## COLOMBIA

In 2024, Colombia grappled with persistent democratic tensions. President Petro's proposal for a National Constituent Assembly to overcome legislative gridlock in his reform agenda emerged as a major constitutional development, symbolizing deep struggles between representative institutions and calls for popular sovereignty that defined Colombian constitutional politics throughout 2024.

