



MAX PLANCK INSTITUTE

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The Right of Cultural Minorities to Binding Consent: A Case Study of Judicial Dialogue in the Framework of a *Ius Constitutionale Commune en América Latina*

MPIL Agora

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What stands behind a “peripheral” Constitutional Court being considered one of the most powerful and proactive in the world? The Colombian Constitutional Court has developed a wide-ranging and remarkable case law, thus attracting the attention of global scholars, policy makers, along with business and social actors. In doing so, it has not hesitated in confronting public authorities and strong external powers. In this respect, protection of indigenous peoples and other cultural minorities is a case in point.

Prior consultation has become one of the most useful tools that positive and judge-made law has created in recent decades to protect the collective rights of indigenous peoples and afro-descendants. However, increasing interventions in the territories of cultural minorities are putting these groups, as well as the environment, in front of several challenges. Taking into account the standards of the Inter-American Court of Human Rights and specially the Constitutional Court of Colombia, I will present detailed concepts, tables and graphics, highlighting: (i) the context and type of interventions carried out in the territories of cultural minorities; (ii) the main outcomes of the landmark cases *Saramaka v. Surinam* and decisions C-030/08 and T-129/11; (iii) the potential of “binding consent” as an alternative to the problematic category of the so-called “veto power”; and (iv) the relevance of regional integration in the framework of a broader *Ius Constitutionale Commune en América Latina*.



Juan C. Herrera (LL.M) is a former law clerk of the Constitutional Court of Colombia and current PhD researcher and teaching assistant of Constitutional Law at Universitat Pompeu Fabra, Barcelona. His research interests lay in supranational integration and constituent power in Latin America. He has publications on the relevance of the “Latin American integration clauses” in the framework of the *Ius Commune*, currently under construction in the region.

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