

Republic of Colombia*
Constitutional Court
Presidency

PRESS RELEASE No. 01

On January 23, 2008, during its plenary session, the Constitutional Court adopted, among other things, the following decision:

Case File D-6837 – Decision C-030/08

Magistrate Rapporteur: Dr. Rodrigo Escobar Gil

1. Denounced law

ACT 1021 OF 2006 (April 20), “That officially issues the General Forestry Act”.

2. Description of the legal problem

The Court should determine if Act 1021 of 2006, “That officially issues the General Forestry Act,” is contrary to the constitutional ordinance, specifically, the articles 1, 2, 3, 7, 9, 13, 93, and 330 of the Political Constitution, for issuing the Act having omitted the requirement to consult with indigenous and tribal communities, granted in article 6 of Convention 169 of the International Labour Organization (ILO).

3. Decision

To declare **unconstitutional** Act 1021 of 2006, “That officially issues the General Forestry Act”.

4. Grounds for the decision

The Court upheld the jurisprudence regarding the recognition of ethnic and cultural diversity as a fundamental constitutional principle of Colombian nationality (arts. 7 and 70 of the Political Constitution). The Court highlighted that this special protection is expressed in the obligation to implement consultation processes with indigenous and tribal communities for the adoption and execution of decisions that may affect them. This duty is the expression and advancement of Article 1 of the Constitution, which defines Colombia as a democratic, participatory and pluralistic State; article 2 [of the Political Constitution] which establishes the State’s goal to facilitate the participation of everyone in decisions that affect them; article 7 of the Chart, that recognizes and protects ethnic and cultural diversity; from [art.]40-2 that guaranties the right of all citizens to democratic participation; and article 70 that considers culture as a foundation of nationality. According to this framework, the Court recalled that with regards to the

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indigenous and tribal communities, the right to consultation is one of the forms of democratic participation provided for in the Constitution, described in particular in articles 329 and 330 that provide for the participation of communities in the shaping of indigenous territorial entities and the exploitation of natural resources in their territories. This right is supported by ILO Convention 169, approved by Act 21 of 1991 that aims to assure the rights of indigenous peoples to their territory, and to the protection of their cultural, social, and economic values, as a means to secure their subsistence as human groups. As jurisprudence has repeatedly shown, the mentioned Convention is part of the constitutionality block [formed by international treaties that Colombia has ratified, which aim to protect human rights], and in its article 6 which provides that in applying the provisions of this Convention, the Governments shall “(a) Consult the concerned peoples [stakeholders], through appropriate procedures and in particular, through their representative institutions, whenever consideration is being given to legislative or administrative measures that may directly affect them.”

In the case under examination, the Court concluded that: **a)** The General Forestry Act contains comprehensive regulation [of forestry] matters. **b)** Despite the fact that the law included provisions that preserved the autonomy of indigenous and Afro Colombian communities to use forestry resources in their territories, the truth is that the law established general policies, definitions, guidelines and criteria, which even if they were not applied directly to indigenous territories, could affect areas where communities are generally located and which consequently, could affect their lifestyle and the close relationship they maintain with the forest. **c)** To this extent, and as defined in Constitutional system and in particular, ILO Convention 169 that is part of the constitutionality block, these communities should have been consulted regarding the adoption of the law, in order to look for ideas regarding how to prevent the law from affecting them negatively, and even [to discuss] the content of the guidelines and criteria that could have a direct effect on tribal and indigenous territories or ways of life, even when they are applied generally. **d)** This consultation, which has special characteristics, was not complied with in this case, and cannot be substituted by a general participative process that the State complied with regarding the [Forest] bill. **e)** In order to have complied with the consultation requirement, it would have been necessary to inform the indigenous communities about the bill, illustrate its scope and how it could affect them, and give them opportunities to effectively state their opinions about the bill. [The State] did not comply with this process. For this reason the Court concluded that, given that the bill is about a matter that profoundly affects the worldview of these communities and their relationship with the earth, there is no other alternative than to declare this law unconstitutional.

RODRIGO ESCOBAR GIL

President