

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

## CONSTITUTIONALISM OF THE GLOBAL SOUTH

The Indian Supreme Court, the South African Constitutional Court, and the Colombian Constitutional Court have been among the most important and creative courts in the Global South. In Asia, Africa, and Latin America, these courts are widely seen as activist tribunals that have contributed (or attempted to contribute) to the structural transformation of the public and private spheres of their countries. The cases issued by these three courts are gradually creating what can be called a constitutionalism of the Global South. This book addresses in a direct and detailed way the jurisprudence of these three Courts on three key topics: access to justice, cultural diversity, and socioeconomic rights. This volume is a valuable contribution to the discussion about the contours and structure of contemporary constitutionalism. It makes explicit that this discussion has interlocutors both in the Global South and in the Global North, while showing the common discourse between them and the important differences in how they interpret and solve key constitutional problems.

Daniel Bonilla Maldonado is Distinguished Leitner Center Visiting Professor at Fordham Law School and Associate Professor of Law at the Universidad de los Andes in Bogotá, Colombia. He received his JSD and LLM from Yale Law School. He has been a visiting professor or lecturer at a number of institutions, including Yale Law School, Oñati International Institute for the Sociology of Law, Fordham Law School, University of Texas School of Law, Georgia State University College of Law, and Universidad Nacional de Colombia. His recent publications include *La función social de la propiedad* (2013); *Democracia, derecho y economía de mercado* (2010); and *Teoría del derecho y trasplantes jurídicos* (2009). He is the recipient of a Fulbright Fellowship and several awards for distinctions in teaching.

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India,  
South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

# *Constitutionalism of the Global South*

THE ACTIVIST TRIBUNALS  
OF INDIA, SOUTH AFRICA,  
AND COLOMBIA

*Edited by*

**Daniel Bonilla Maldonado**

Fordham University School of Law

and

Universidad de los Andes, School of Law



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107036215](http://www.cambridge.org/9781107036215)

© Cambridge University Press 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2013

Printed in the United States of America

*A catalog record for this publication is available from the British Library.*

*Library of Congress Cataloging in Publication Data*

Constitutionalism of the global South : the activist tribunals of India, South Africa, and Colombia / [edited by] Daniel Bonilla Maldonado.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-03621-5

1. Political questions and judicial power – South Africa. 2. Political questions and judicial power – India. 3. Political questions and judicial power – Colombia. I. Bonilla Maldonado, Daniel, editor of compilation.

K3367.C664 2013

340'.115091724–dc23 2012036761

ISBN 978-1-107-03621-5 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India,  
South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

---

*To my father*

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India,  
South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

## Contents

*Contributors* *page* ix

**Introduction: Toward a Constitutionalism of the Global South** 1  
Daniel Bonilla Maldonado

### Part I. Socioeconomic Rights

- 1 **Constitutionalism, the Global South, and Economic Justice** 41  
David Bilchitz
- 2 **The Embedded Negotiators: India's Higher Judiciary and Socioeconomic Rights** 95  
Shylashri Shankar
- 3 **The Economic and Social Rights of Prisoners and Constitutional Court Intervention in the Penitentiary System in Colombia** 129  
Libardo José Ariza

### Part II. Cultural Diversity

- 4 **Cultural Diversity, "Living Law," and Women's Rights in South Africa** 163  
Catherine Albertyn

vii

Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

viii

CONTENTS

- |                                    |   |     |
|------------------------------------|---|-----|
| 5                                  | <b>Keeping the Faith: Legitimizing Democracy through Judicial Practices in India</b><br>Gurpreet Mahajan  | 211 |
| 6                                  | <b>Self-Government and Cultural Identity: The Colombian Constitutional Court and the Right of Cultural Minorities to Prior Consultation</b><br>Daniel Bonilla Maldonado | 243 |
| <b>Part III. Access to Justice</b> |   |     |
| 7                                  | <b>Courts and Structural Poverty in South Africa: To What Extent Has the Constitutional Court Expanded Access and Remedies to the Poor?</b><br>Jackie Dugard            | 293 |
| 8                                  | <b>Access to Justice in India: The Jurisprudence (and Self-Perception) of the Supreme Court</b><br>Menaka Guruswamy and Bipin Aspatwar                                  | 329 |
| 9                                  | <b>Access to Constitutional Justice in Colombia: Opportunities and Challenges for Social and Political Change</b><br>Manuel Iturralde                                   | 361 |
|                                    | <i>Index</i>  | 403 |



Cambridge University Press

978-1-107-03621-5 - Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia

Edited by Daniel Bonilla Maldonado

Frontmatter

[More information](#)

## Contributors

**Catherine Albertyn** University of the Witwatersrand School of Law, Johannesburg, South Africa

**Libardo José Ariza** Universidad de los Andes School of Law, Bogotá, Colombia

**Bipin Aspatwar** Advocate before the Supreme Court of India, New Delhi, India

**David Bilchitz** University of Johannesburg School of Law, Johannesburg, South Africa

**Daniel Bonilla Maldonado** Fordham Law School, New York, New York, and Universidad de los Andes School of Law, Bogotá, Colombia

**Jackie Dugard** Socio-Economic Rights Institute of South Africa, University of the Witwatersrand, School of Law, Johannesburg, South Africa

**Menaka Guruswamy** Advocate before the Supreme Court of India, New Delhi, India

**Manuel Iturralde** Universidad de los Andes, School of Law, Bogotá, Colombia

**Gurpreet Mahajan** Center for Political Studies, Jawaharlal Nehru University, New Delhi, India

**Shylashri Shankar** Centre for Policy Research, New Delhi, India