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Comparative Law Study Of The Application Of The Special Indigenous Jurisdiction In Colombia And Ecuador

[1]Jonathan Karlo Martínez Ojeda, [1]Jessica Valentina Bolaños

jonathanmartinez00@usc.edu.co

Valentinaxyz7184@gmail.com

Universidad Santiago de Cali, Facultad de Derecho, Santiago de Cali, Colombia

Summary

This study, entitled "Study of Comparative Law on the Application of the Special Indigenous Jurisdiction in Colombia and Ecuador", analyzes the implementation of the Special Indigenous Jurisdiction (JEI) in both countries, under the Comparative Law approach. The research is structured in three scenarios: first, it addresses the historical evolution of the state response to indigenous demands on respect for their rights, both in the legal field and in the economic and social spheres. Second, it examines how the international normative frameworks, which have driven the constitutionalization of the JEI in both countries, have been received in Colombia, where multiculturalism predominates, and in Ecuador, which embraces plurinationalism.

The third scenario focuses on the practical challenges faced by indigenous communities when interacting with ordinary judicial systems, given the tension between the constitutional norms that support the JEI and the social and political realities that, in many cases, hinder its full implementation. Based on a critical review, this paper highlights the tensions between the different forms of justice, proposing an approach of harmonization through intercultural dialogue.

This study also addresses the criticisms of indigenous communities regarding Positive Law, the difficulties of coordination between indigenous and ordinary jurisdictions, and the solutions proposed to improve the effectiveness of the JEI. In addition, it suggests the creation of a harmonization law that respects the rights and autonomy of indigenous communities, recognizing their own forms of justice, as a basis for moving towards a model of effective legal pluralism.

Keywords: Special Indigenous Jurisdiction, Comparative Law, Indigenous Justice, Intercultural Dialogue, Plurinationalism, Multiculturalism.

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1. Introduction

The coexistence of disparate legal systems within the same territory has been a persistent challenge for States that recognize and respect the cultural plurality of their populations. In countries such as Colombia and Ecuador, the Special Indigenous Jurisdiction (JEI) has emerged as a legal response to the recognition of ethnic and cultural diversity, allowing indigenous communities to administer justice in accordance with their own customs and traditions. However, despite the constitutional and legal advances made in both countries, the implementation of the JEI has generated tensions between ordinary and indigenous legal systems, raising questions about the effectiveness and equity of the established regulatory frameworks.

Colombia's 1991 Constitution and Ecuador's 2008 Constitution marked a milestone in the recognition of the rights of indigenous communities, establishing coexistence between ordinary and indigenous jurisdiction as a way to guarantee the self-determination of indigenous peoples. In both cases, the principle of legal pluralism was adopted to foster inclusive and diverse justice that respected the ancestral worldviews and practices of indigenous communities. However, this principle has encountered significant obstacles in practice, since, although the right of indigenous peoples to administer justice has

been recognized, tensions between the two jurisdictions, differences in conceptions of justice and the lack of effective coordination between them have hindered the full exercise of those rights.

This study delves into the comparative analysis of the application of the JEI in Colombia and Ecuador, seeking to identify the similarities and differences in the implementation of this legal system in each of the countries. First, it analyzes the historical and legal context in which the JEI emerged, based on the demands of indigenous peoples who, over the years, have demanded the recognition of their right to administer justice within their communities. These processes of vindication were driven, in large part, by the internal social struggles of indigenous communities, but also by the pressure of international organizations that advocate for self-determination and the preservation of indigenous culture, such as the United Nations (UN) and the International Labor Organization (ILO), through the ratification of Convention 169.

The second relevant aspect addressed in this paper is the tension between the constitutional norms that favor the implementation of the JEI and the social and political realities that indigenous communities face in their interaction with the State. Despite the legal framework that recognizes indigenous justice, the ordinary jurisdiction, dominated by state power structures and the monist vision of the law, has managed to delegitimize the decisions of indigenous authorities on several occasions, thus undermining the autonomy of indigenous peoples. This phenomenon is due, in part, to the lack of training of judicial operators in indigenous normative systems and to the cultural resistance that exists in a large part of society towards the validity of indigenous law. In addition, state institutions often intervene in cases of indigenous jurisdiction, which creates a constant conflict over which system should prevail in certain cases, especially those involving serious crimes or fundamental rights.

On the other hand, this study also highlights the experiences of indigenous communities in the exercise of their right to justice. Over the years, communities have developed judicial systems of their own that seek to restore social harmony, rather than punish offenders. The restorative approach to indigenous justice, focused on reparation of harm and rehabilitation of the offender, contrasts with the punitive approach of the ordinary judicial system. However, this approach is not always understood or accepted by state authorities, leading to tensions over how communities can exercise their judicial autonomy without interference from external institutions.

In this sense, the research proposes a solution to the existing tensions by promoting an intercultural dialogue that allows reconciliation between the two legal systems. This approach seeks to promote harmonious and equitable coexistence between the ordinary and indigenous justice systems, recognizing the particularities of both and respecting the traditions and practices of indigenous communities. Through intercultural dialogue, a common framework of understanding can be established to overcome institutional and legal obstacles, promoting cooperation between both systems for conflict resolution and mutual respect.

In addition, this study examines the harmonization proposals that have emerged in the two countries, such as the creation of laws that facilitate coordination between the two jurisdictions, and the implementation of training mechanisms for justice operators, both state and indigenous, in order to improve understanding of and respect for indigenous law. Harmonization should not be limited only to the adaptation of normative frameworks, but should involve a profound cultural change that allows the validity and legitimacy of indigenous legal systems to be recognized within a pluralistic context, in which indigenous communities are not seen as a subordinate minority, but as legitimate actors within the judicial system.

Ultimately, this paper aims to contribute to reflection on the need for a justice system that is more inclusive and respectful of cultural diversity, in which the rights of indigenous peoples are fully recognized and protected, and in which the special indigenous jurisdiction is not an exception or a marginal form of justice. but an integral part of a pluralistic and equitable judicial system.

2. General objective

To analyze in a comparative manner the implementation of the Special Indigenous Jurisdiction (JEI) in Colombia and Ecuador, evaluating its progress, tensions, and challenges, in order to propose solutions to improve its integration and harmonization with the ordinary jurisdiction, through an intercultural approach that respects the autonomy of indigenous communities and promotes a pluralistic and inclusive justice system.

3. Methodology

Due to the nature of the study and the need to obtain valuable data and information that would allow us to understand the phenomenon from both a quantitative and qualitative point of view, it was set out to work with the type of mixed research, which, according to Hernández and Mendoza (2018):

They represent a set of systematic, empirical, and critical research processes and involve the collection and analysis of quantitative and qualitative data, as well as their integration and joint discussion, to make inferences from all the information collected (meta-inferences) and achieve a greater understanding of thephenomenonunderstudy.

Since mixed approaches often require additional financial resources, human involvement, knowledge, and time, the option to employ them is only appropriate when it improves the study compared to a single strategy. The method that the researcher feels best fits or aligns with his or her approach to the problem. In this regard, it is critical to note that problems that require trend identification are better suited for a quantitative design, while those that require in-depth research to gain a full understanding are better suited for a qualitative design. Similarly, combined techniques can be the solution to complicated problems or phenomena.

In accordance with what has been proposed, the mixed approach is decided in order to imprint a deeper understanding of the fact studied, so that it was possible to contrast the application of the Special Indigenous Jurisdiction in Colombia and Ecuador and to be able to determine its implications, its similarities and the contradictions and distinctions that each one has, in addition to the characterization of fundamental aspects according to the vision of interviewed specialists. who gave invaluable contributions to the theoretical construct generated, both by the documentation and literature consulted and by those oral contributions of specialists from different fields, but related to the central theme of the study.

3.1 Type of Research:

The research follows the approach of Critical Theory and is classified as socio-legal. This means that the study not only analyzes legal norms, but also the social interactions that derive from them, particularly in contexts where the collective rights of indigenous peoples are involved. The research has a practical approach and seeks to impact the understanding of the real problems of indigenous communities, in particular, their access to justice and rights related to the Special Indigenous Jurisdiction (JEI).

- **Critical Theory:** It allows an analysis of legal systems with the premise that law is not neutral, but is influenced by power relations. Hence, there is criticism of how current legal frameworks can perpetuate inequalities between indigenous peoples and the State.

- **Socio-legal:** Focuses on the effects of laws and norms on society, especially how state laws interact with indigenous peoples' traditions and norms.

3.2 Research Level:

The research is considered to be at the descriptive-analytical level:

- **Descriptive:** Describes the historical and legal context in which the implementation of the JEI takes place, as well as the characteristics of the indigenous judicial system in Colombia and Ecuador. It also addresses the evolution of constitutional regulations in both countries and how they have been received and applied by indigenous communities.

- **Analytical:** After describing the normative frameworks, the research goes on to analyze the tensions, challenges, and contradictions that arise when trying to implement and coordinate indigenous legal systems with ordinary jurisdiction.

3. Research Design:

The research design is comparative, as it seeks to explore the similarities and differences in the implementation of the JEI in Colombia and Ecuador:

- **Comparative:** The regulations and jurisprudence in both countries are analyzed to identify their common points, differences, and how those differences affect the application of indigenous justice. This approach allows us to understand how the particular characteristics of each country influence the effectiveness and legitimacy of the JEI.

4. Population and Sample:

The study population is composed of magistrates, judges, lawyers, academics, politicians, and indigenous authorities who have relevant and direct knowledge about the implementation of the JEI in Colombia and Ecuador.

- **Sample Selection:** The sample was formed based on the criterion of **relevant information**. Experts and authorities were selected who could provide valuable perspectives on the implementation of the JEI in both countries, based on their practical knowledge and high-level legal documentation.

- **Sample Size:** The sample was non-probabilistic and based on the principle of data saturation, i.e., the participation of **informed people with direct experience** was sought, until new substantial data emerged.

5. Information Collection Techniques and Instruments:

The semi-structured interview was the main tool used to collect data. This instrument made it possible to obtain opinions from the interviewees in a flexible and detailed manner, without limiting the information with closed questions.

- **Semi-structured interviews:** Interview guides with open questions were developed to explore the experts' vision of the JEI, the difficulties in its implementation, and the proposals to improve its functioning. The interviews included both general questions about the historical and legal context and specific questions about cases and practical experiences.

- **Documentary Sources:** In addition to the interviews, secondary sources were reviewed, such as rulings of the Constitutional Courts of both countries, documents from international organizations, and relevant legislation (Constitutions of Colombia and Ecuador, rulings on the JEI, etc.).

- **Ethnography:** In some cases, observation and field data collection were used, particularly in indigenous communities, to better understand the functioning of the JEI from the experience of the affected communities.

6. Information Analysis Techniques:

Qualitative analysis was the main method used to interpret the data collected.

- **Comparative Analysis:** A comparative analysis of laws and jurisprudence in Colombia and Ecuador was conducted, assessing how each country has addressed the implementation of the JEI, the tensions between the ordinary and indigenous judicial systems, and how judicial decisions affect indigenous communities.

- **Thematic coding:** Coding techniques were used to organize the information obtained from the interviews and documents, identifying recurring patterns and themes related to the application of the JEI and the tensions that arise from its interaction with the ordinary justice system.

7. Validity of the Instrument:

The validity of the instruments was guaranteed through the triangulation of sources, which made it possible to compare the perceptions obtained through the interviews with the data obtained from documentary sources and the reports of the Constitutional Courts.

- **Triangulation of Sources:** The interviews were contrasted with the review of Constitutional Court rulings and other legal documents, which allowed verifying the consistency and robustness of the findings. This process ensured that the conclusions were consistent and based on solid evidence.

8. Rigor Científico:

The scientific rigor of the study was guaranteed through the use of techniques established in legal and social research, complying with the ethical and methodological principles necessary for high-quality research.

- **Reliability and Coherence:** Rigorous procedures were applied to ensure that the results were reliable and accurately reflected the reality of the context studied. Conscious efforts were made to avoid bias, both in the selection of the sample and in the interpretation of the results.

- **Reflective Analysis:** In addition, a reflective stance was taken on the limitations of the research and on the possible impacts that power structures might have had on the implementation of the JEI.

9. Ethical Elements of Research:

The research complied with the necessary ethical standards, considering the following aspects:

- **Confidentiality and Informed Consent:** All participants in the interviews signed an informed consent form and were guaranteed the confidentiality of their responses.
- **Respect for Cultural Diversity:** The research was carried out respecting the traditions and worldviews of indigenous communities, avoiding imposing legal or cultural frameworks alien to their reality.
- **Social Impact and Responsibility:** The social impact of the research was taken into account, in order not only to contribute to academic knowledge, but also to the improvement of the implementation of the JEI, promoting social justice for indigenous communities.

4. Results

The Special Indigenous Jurisdiction (JEI) in Colombia and Ecuador has been a significant advance for the rights of indigenous peoples, recognizing the autonomy of these communities to administer justice in accordance with their uses and customs. Although both countries share a rich ethnic and cultural diversity, their approaches to implementing the JEI differ in several respects, especially in relation to the normative framework, interaction with ordinary justice, and the capacity of indigenous judicial systems to resolve disputes effectively. Next, a comparative analysis is made between the legal frameworks, practical application and the common and particular challenges of the JEI in both countries.

Constitutional Recognition and Legal Framework:

In Colombia, the JEI was first recognized in the 1991 Constitution, which establishes a multicultural and multi-ethnic state. Article 246 of the Colombian Constitution guarantees indigenous peoples autonomy in the administration of justice within their territories, in accordance with their traditions and customs, provided that it does not infringe the fundamental rights established in the Constitution. However, Colombian law does not establish specific mechanisms for coordination between indigenous and ordinary jurisdictions, which has generated tensions in judicial practice.

In Ecuador, the 2008 Constitution establishes a plurinational and intercultural state, recognizing indigenous justice more explicitly in Article 171. This article gives indigenous authorities the right to administer justice in their territories, based on their traditions, provided that they do not contradict internationally recognized human rights. Unlike Colombia, the Ecuadorian Constitution gives a higher hierarchy to indigenous jurisdiction, establishing a more formal system of interaction and coordination with the ordinary jurisdiction. However, this framework continues to face challenges in its effective implementation.

Constitutional Theory: Multiculturalism vs. Plurinationalism:

One of the main differences lies in the approach of constitutional theory. In Colombia, the approach is mainly multiculturalism, which implies that the existence of diverse cultures is recognized, but a unitary legal system is maintained in which the rights of indigenous communities are recognized in terms of diversity within a single legal system. This creates tensions, since, despite the recognition of indigenous autonomy, indigenous practices and norms continue to be subordinated to the laws of the State.

In Ecuador, the concept of plurinationalism implies a deeper recognition of indigenous nationalities as constituent actors of the State. Each nationality has political, administrative and judicial autonomy, which implies a greater capacity for self-government in the field of justice. This model is closer to the idea of a state in which various nations coexist with their own sovereign legal systems.

Relationship between Jurisdictions:

In Colombia, the relationship between ordinary and indigenous jurisdiction has been complex. Although the Constitution recognizes the right of indigenous peoples to apply their own justice, in practice, ordinary courts often intervene in cases involving indigenous communities, particularly in serious crimes or in situations that affect fundamental rights. This has generated constant tension over the delimitation of competences between the two jurisdictions, since there is no clear legislation that regulates how conflicts of jurisdiction should be resolved.

In Ecuador, the process of harmonization between ordinary and indigenous jurisdiction has been more structured thanks to the 2008 Constitution. While there are similar tensions regarding jurisdiction over certain crimes, Ecuador has created a more robust legal framework to define when and how jurisdictions should interact. Through laws such as the Organic Code of the Judicial Function and the Law on

Indigenous Justice, clear protocols have been established for the coordination and delimitation of competences. However, this system also faces challenges, as indigenous justice does not yet have the same acceptance and legitimacy in all spheres of the state judicial system.

Capacity of Indigenous Justice Systems:

Both countries face the challenge of ensuring that indigenous authorities have the capacity to effectively administer justice within their communities. In Colombia, the training of indigenous authorities has been a topic of debate. A lack of resources and state support has made it difficult for indigenous authorities to have the necessary training to handle complex cases, such as serious crimes or human rights violations. In addition, the lack of infrastructure and logistical difficulties in accessing judicial remedies have limited the capacity of indigenous courts.

In Ecuador, although the situation is somewhat better due to explicit constitutional recognition, indigenous authorities also face similar difficulties, such as a lack of resources and the distrust of some sectors of the state towards indigenous justice. Despite this, indigenous communities in Ecuador have achieved judicial autonomy in several cases, particularly in relation to minor crimes or internal conflicts within communities.

Interculturality and Dialogue between Jurisdictions:

Intercultural dialogue has been proposed as a key strategy for tensions between jurisdictions. In Colombia, intercultural dialogue has been less structured, and state authorities have often shown no willingness to recognize the legitimacy of indigenous justice. Cultural differences and mutual mistrust have made it difficult to create a space for cooperation between the two jurisdictions.

In Ecuador, the plurinational approach has allowed for a more fluid and formal dialogue between indigenous and ordinary jurisdictions. Although obstacles remain, such as ideological differences between the State and indigenous communities, the process of intercultural reconciliation has made significant progress, especially through training programmes and the creation of spaces for interaction between indigenous and State judges.

Serious Crimes and the Imposition of State Law:

A crucial point of comparison is the treatment of serious crimes (such as homicides, sexual violence, drug trafficking, etc.). In Colombia, tensions are evident, as Constitutional Courts and judicial authorities have repeatedly intervened to overturn decisions of indigenous courts in cases of serious crimes, arguing that the penalties imposed by indigenous authorities do not meet international human rights standards.

In Ecuador, the Constitution establishes that serious crimes must be dealt with by ordinary courts, but there is the possibility for indigenous communities to participate in the process through mechanisms such as prior consultation and intercultural mediation. Although there is a clearer framework, indigenous communities continue to face limitations in terms of jurisdiction over serious crimes and the ability to impose penalties.

Judgments and Recognition of Indigenous Justice:

In Colombia, the recognition of indigenous judicial decisions has been a controversial issue. Despite constitutional advances, the judicial authorities of the State have not always respected the decisions of the indigenous courts, which undermines the legitimacy of the JEI and reinforces the perception that indigenous law is inferior to state law.

In Ecuador, the recognition of indigenous justice has been more constant due to the mechanisms established in the Constitution and the law. However, the rulings of indigenous courts in complex cases continue to be challenged, particularly with regard to the protection of human rights and gender equality. Despite this, Ecuador has managed to advance more than Colombia in respect for indigenous judicial autonomy.

Training and State Support for Indigenous Justice:

In Colombia, state support to indigenous communities in terms of training and resources remains insufficient. Despite the efforts of some non-governmental organizations and international institutions, the indigenous authorities lack sufficient resources to carry out an efficientadministrationofjustice.

In Ecuador, the State has implemented training programmes for indigenous authorities and has created spaces for cooperation between the State and indigenous judicial systems. Although challenges remain,

political will in Ecuador has been stronger, allowing for significant progress in rebuilding the indigenous justice system.

4.1 Analysis of the Implementation of the Special Indigenous Jurisdiction (JEI) in Colombia and Ecuador: Progress and Tensions

The implementation of the Special Indigenous Jurisdiction (JEI) has been a significant process in Colombia and Ecuador, with constitutional advances that recognize the autonomy of indigenous communities to administer justice in accordance with their customs and traditions. In Colombia, the 1991 Constitution introduced the principle of legal pluralism, which allowed indigenous communities to manage their own legal affairs within their territories, while respecting their normative systems. However, tensions between the ordinary jurisdiction and the indigenous jurisdiction have intensified due to the lack of clarity in the delimitation of competences between the two jurisdictions. In many cases, state authorities have failed to recognize the decisions of indigenous courts, leading to legal conflicts.

For its part, Ecuador adopted plurinationalism in its 2008 Constitution, which explicitly recognizes indigenous communities as important actors within the legal system. In this regard, more explicit progress has been made in the application of the JEI, allowing the creation of its own bodies for the administration of indigenous justice, such as community courts. However, as in Colombia, the State has maintained restrictive control over judicial decisions involving serious crimes, which has caused a clash between the two jurisdictions. This reflects the difficulty of traditional judicial systems in accepting indigenous normative systems as equal in terms of legal authority, which weakens the effective implementation of the JEI.

In both countries, a similar pattern has been observed: constitutional recognition of the JEI has been accompanied by social and political resistance to its implementation. Although indigenous communities have the right to apply their judicial system, socio-cultural prejudices against indigenous practices and the lack of knowledge of indigenous justice by the majority society have perpetuated tensions. The lack of adequate training of justice operators in both systems also contributes to the resistance towards reconciliation of the two legal systems.

4.2 Challenges in the Harmonization of the JEI with the Ordinary Jurisdiction

One of the main challenges in the implementation of indigenous jurisdiction has been the harmonization between the JEI and the ordinary jurisdiction. Despite the fact that both countries have established legal frameworks that allow for the coexistence of these two jurisdictions, effective coordination between them remains a challenge. In Colombia, tensions have materialized in conflicts of jurisdiction between ordinary courts and indigenous courts. The lack of specific legislation regulating these interactions has created a regulatory vacuum, where indigenous communities have had to resort to national courts to obtain recognition of their judicial decisions.

In Ecuador, the process has been somewhat more fluid, due to the explicit recognition of indigenous justice in its Constitution. However, State control over judicial decisions in serious cases and disdain for traditional standards of justice remain major obstacles. The creation of a parallel legal framework, which allows the interaction and cooperation of both jurisdictions, continues to be a necessity in both countries.

The main obstacles faced by both countries in harmonizing jurisdictions are political interests, social pressures, and a lack of will to build a truly inclusive justice system. The economic difficulties and lack of social inclusion of indigenous communities also contribute to the perpetuation of this problem.

4.3 Impact of Intercultural Dialogue on the Efficiency of the Justice System

Intercultural dialogue has been proposed as a key strategy to improve the relationship between the two jurisdictions. The main benefit of intercultural dialogue is the mutual understanding of indigenous and State legal practices. In many cases, indigenous communities have used intercultural dialogue as a tool to explain and defend their legal systems before the ordinary courts. This strategy has also helped to sensitize justice operators to the importance of respecting the decisions of indigenous authorities.

In the case of Colombia and Ecuador, intercultural dialogue has allowed progress in the construction of a common framework for resolving disputes between jurisdictions, which has generated greater cooperation. However, there are still significant structural and psychological barriers that hinder the full recognition of indigenous justice. On many occasions, state justice operators continue to view indigenous law as inferior or incomplete, which limits the effectiveness of the JEI.

In addition, intercultural dialogue should be considered not only as an instrument for resolving conflicts, but also as a pedagogical tool for integrating cultural diversity into the judicial system. In both countries, it has been recognized that the incorporation of the indigenous perspective into the overall legal framework would contribute to a better understanding of the problems faced by indigenous communities in the implementation of their law.

4.3.1 Intercultural dialogue as a strategy to achieve harmonization with the ordinary jurisdiction of the JEI in Colombia and Ecuador

In the process of seeking to integrate and respect the various forms of justice that coexist in these countries, intercultural dialogue presents a strategy to achieve harmonization between the ordinary jurisdiction and the special indigenous jurisdiction. This approach is based on the need to recognize and value the cultural and normative particularities of indigenous communities, while seeking a harmonious coexistence with the ordinary justice system.

The value of intercultural dialogue lies in its ability to recognize the presence of indigenous groups' own legal systems by conventional governing bodies. This is especially important in situations where customs and cultural values differ and must be respected (Alarcón et al., 2020).

Justice operators in both systems can exchange experiences and knowledge through dialogue. This improves mutual understanding and allows for more relevant and contextualized solutions to disputes in these communities. The interaction between officials of the regular system and the indigenous authority facilitates the creation of trust. Open communication between the parties allows you to eliminate misconceptions and old grudges, which improves cooperation in conflict resolution.

As a result of intercultural debate, protocols could be developed to regulate the handling of cases involving members of indigenous groups in the ordinary judicial system. It is essential to ensure respect for the rights and customs of these groups. Intercultural communication is used as a technique in the framework of transitional justice to redress historical injustices and promote reconciliation. It allows the opinions of indigenous groups to be heard and their experiences in the judicial system to be taken into account (Cruz, 2013). Despite its advantages, intercultural dialogue faces a number of obstacles, including the unwillingness of certain sectors to recognize the legitimacy of indigenous jurisdiction, the lack of intercultural competence among judicial personnel, and institutional impediments that prevent effective communication between the two systems.

4.4 Proposals to Improve Coordination Between Legal Systems

One of the key proposals to improve coordination between jurisdictions is the creation of a harmonization law, which establishes the principles of cooperation and mutual respect between both jurisdictions. This law should define the areas of action of each judicial system and establish clear procedures for resolving conflicts of jurisdiction.

In addition, continuous training of judicial operators in both jurisdictions is proposed. This would not only facilitate a better understanding of legal systems, but could also reduce interjurisdictional tensions. There is a need for judges, prosecutors and lawyers in both countries to be better prepared to understand and respect indigenous law, as well as to apply international standards that protect the rights of indigenous peoples.

International cooperation between Colombia and Ecuador could also be promoted, allowing the exchange of experiences and good practices in the implementation of the JEI. Collaboration with international bodies could help foster greater legitimacy of the JEI and ensure that indigenous judicial decisions are respected within the framework of international standards.

4.5 Towards a Pluralistic and Inclusive Justice Model

The implementation of the Special Indigenous Jurisdiction in Colombia and Ecuador has been a complex process, full of advances and setbacks. Despite constitutional recognitions and international standards, tensions between ordinary and indigenous jurisdictions remain a significant obstacle to true legal equality.

However, intercultural dialogue and harmonization of jurisdictions offer a path towards a more pluralistic and inclusive justice system. To achieve this, it is essential that both the State and indigenous communities work together to overcome the legal, social and cultural barriers that persist. In this sense, the legitimization of indigenous law and mutual respect between the two justice systems are essential

conditions for moving towards a model of justice that not only recognizes cultural diversity, but also promotes equity and justice for all.

5. Conclusions

In the indigenous communities of Colombia and Ecuador, the administration of justice has always existed, but not the concept of special indigenous jurisdiction, which had its origin with the promulgation of the Constitution of Colombia in 1991 and the promulgation of the Constitution of Ecuador in 2008.

From those years onwards, tensions began to arise in each country between the nascent jurisdiction and the ordinary jurisdiction, on issues such as collective rights, prior consultation, autonomy of indigenous peoples, legitimacy of the penalties applied by the indigenous authorities, ethno-education (Colombia), bilingualism (Ecuador), rights of isolated indigenous peoples, respect for nomadic indigenous peoples (Nukak Makuk, in Colombia), which, despite the fact that abundant jurisprudence has been issued by the Constitutional Court of the two countries, continue to be presentedtoresolvethem.

Tensions continue to arise between the special indigenous jurisdiction and the ordinary jurisdiction. This situation will continue over time because both jurisdictions handle very different and irreconcilable concepts to date. Each jurisdiction has different concepts, among others, about wrongdoing, crime, due process, imprisonment, penalty, punishment, etc., and they are questioned by the other jurisdiction.

This research carried out under the parameters of comparative law served as a theoretical basis in the elaboration of a concept required by the Constitutional Court of Colombia under file identifier CJU-560 order of evidence of August 12, 2024, where a conflict of jurisdictions between the Second Municipal Civil Court of Ipiales, Nariño, and the Special Indigenous Justice – Indigenous Reservation of Ipiales, the substantiating Magistrate is Dr. Natalia Ángel Cabo and the author of this investigation is required as an expert in this matter. We must bear in mind that it is the first judgment that addresses a conflict of jurisdiction between jurisdictions in civil matters; This concept was rendered with the coherence of what was developed in this text, conceptualizing as follows:

"In Colombia, after a little more than 33 years, we are still in debt for the issuance of the Law of Coordination and Harmonization, within it one of the most important aspects to develop is a duly regulated legislative guideline that serves to settle this type of controversies that arise between the Ordinary Jurisdiction and the Special Indigenous Jurisdiction in each of the areas where this type of tension arises, such as the Criminal area and as in this case the Civil area, so that at the time the facts arise, it is immediately known who is responsible for hearing the matter, in the absence of a legislative type, the Constitutional Court has made an enormous effort to try to provide parameters, some items that allow us to analyze case by case, with their own characteristics and try to provide some elements to judicial operators to resolve this type of positive or negative conflicts of jurisdiction, in some way try to standardize how to resolve these conflicts with minimum requirements that must be met in order to be referred to the system of Special Indigenous Jurisdiction operating according to its uses and customs.

The Constitutional Court in the case under discussion has reduced the space for discussion to the elements developed in several judgments including judgment T-387 of 2020, where the following elements are developed as a way to settle conflicts of jurisdictions these personal, territorial, objective and institutional elements, has been reduced to the fact that if it complies with these three factors it will know the Indigenous Jurisdiction, if the three are not fulfilled together, the one who will know is the Ordinary Jurisdiction, if this were the only analysis that the operator should carry out to know the competent jurisdiction, the Special Indigenous Jurisdiction would not need a deep development, a cosmogonic development, but it would be a formalistic discussion of requirements in each of the matters to be addressed. if this were the only way we would not have the need to discuss, at some point that our legislator issues the expected law of coordination and harmonization, the issue would be resolved, we must understand that this is one of the many ways that exist for judicial operators to transfer cases to the Special Indigenous Jurisdiction or declare themselves competent to hear, but this does not prevent them from resorting to other additional and interpretative factors that allow a broader analysis to be carried out to know whether or not the issue corresponds to a certain jurisdiction.

In settling this type of controversy, the aim is to achieve coordination, so that real coordination is achieved between the indigenous justice systems and the ordinary justice system, there is the imponderable need to advance an intercultural dialogue, because it is necessary to reach in-depth understandings in the scenario of justice and to transcend the legislative to assume issues such as coexistence, national integration, the administration of justice in multicultural contexts, among many

others. It is a matter of understanding and respecting diversity and acting accordingly, always thinking about administering justice in conditions of equity and equality.

Coordination is not solved by drafting rules, indicating procedures or responsibilities, functions manual, etc., or defining competencies to receive or send cases files from one jurisdiction to another. That is a work of administrative mechanics, not coordination in equality and respect.

The ordinary jurisdiction is not in a position to regulate the exercise of the special indigenous jurisdiction, because, "within its own traditions there is an underlying cultural normativity or regulation, and because the ethnic and cultural diversity of the country cannot be violated." (Constitutional Court. Judgment T-1108-08. Rapporteur, Judge Humberto Sierra Porto).

These types of disputes continue to arise between the special indigenous jurisdiction and the ordinary jurisdiction. This situation will continue over time because both jurisdictions handle very different and irreconcilable concepts to date. Each jurisdiction has different concepts, among others, about wrongdoing, crime, due process, imprisonment, penalty, punishment, etc., and they are questioned by the other jurisdiction.

In the case under discussion regarding some legal requirements that the Civil Court demanded of the governor of the cabildo that requested to be referred to process within its indigenous jurisdiction and the internal body to which it corresponds; the ordinary jurisdiction requests a series of documents to meet these requirements, mentions that the subjective and institutional elements are met, when it was accredited, it proved that the defendants are members of the reservation and that the community exposed "the existence of a structure to process and resolve the conflicts of its community".

The judge stated that the territorial and objective elements are not met. The first insofar as the indigenous governor did not send support that proves that the events took place within the reservation.

The second because there is no certainty about the interest of the guard to assume the knowledge of the matter. On the last point, the authority specified that the legal asset protected in this case is public faith and that it is not the exclusive property of the indigenous community.

In the face of the specific points on which there is doubt, the following arguments will be made; First, it is stated that "there are doubts about the configuration of the territorial, objective and institutional elements, the magistrate considers that it is necessary to specify the place where the events under investigation take place and the specific reasons why the indigenous authority considers that its jurisdiction extends to that place."

Although Article 246 of the Political Constitution of Colombia states that they may exercise jurisdictional functions within their territorial scope, this can be seen in a notion in a strict and broad sense.

The concern expressed by the office is a physical-demographic perception or notion in the strict sense, where it could be accredited as long as it is restricted to a space of land, to a specific location where the alleged events occurred, this vision could be contrary to the worldview of the indigenous culture, since this translates into the way of observing life, the territory, the things, the conflicts, this vision goes beyond this demographic space, for these purposes what must be taken into account is that the subjects in dispute who are part of the same indigenous community, whatever the space of territory where the facts are or have been developed, actually recognize that their applicable norms, their natural judge taken as a figure of Western law or their simile in their own conception, their way of settling their disagreement is the Indigenous Jurisdiction of the reservation to which they belong, regardless of whether the factual ones are in that space assigned to the indigenous community, this is what we can call demographic notion in the broad sense, Because this notion goes where the subjects go, where they exercise their activities, according to their worldview they can even go to places outside the space recognized for their community as long as this legitimate recognition of their own authority has not been lost. This would be the first argument for which the Special Indigenous Jurisdiction must be heard.

In addition, a second argument is added, is that for the specific case it will also comply in the strict or demographic sense, taking into account the place where the events took place are part of this indigenous reservation, that is, this requirement is fulfilled whether it is seen from the broad sense of territory as in the strict sense, Although at the time the indigenous governor apparently did not send the documentation, it can be corrected to settle the controversy, if it is not possible to prove it in this way, it could be done with the participation of the parties in conflict, the leader of the reservation himself or an anthropologist who will prove belonging to the territory of the reservation; This will be achieved since this type of reservations have a particularity and that is that they are within the urban territory, it is not

the reservation that has a precisely defined space, its uses and customs have developed coexisting with Western urban cultures, without losing its uses and customs, its essence, its reason for being, this reservation extends over the extension of the territory of the Municipality of Ipiales, this being the indigenous reservation of Ipiales, this could not be dismantled by areas of the city, but in its entirety of territory, to understand this correlation we must refer to the figure of interculturality, seen as the existence of a comprehensive communication between the different cultures that coexist in the same space, it is through these that mutual enrichment takes place and, consequently, the recognition and appreciation (both intrinsic and extrinsic) of each of the cultures in a framework of equality.

"Interculturality cannot be limited to recognition, respect and elimination of discrimination, interculturality implies a process of exchange and communication based on the structuring patterns of each culture, overcoming the arrogant prejudice that truth is the heritage of this or that culture and that, as possessor, it has the "burden" of transmitting it to others"

"In relation to the objective element, it is necessary to determine what is the interest of the claimant indigenous people in order to know and process the conflict that is the subject of this process. In particular, it is necessary to determine which legal assets are protected by the community that are affected by the conduct attributed to the defendants."

In view of this element and being consistent with the above, the interest is given from the constitutional recognition itself to have a Special Indigenous Jurisdiction, as a right, it would be contradictory that in order to claim the recognition of a right of constitutional roots, whoever alludes to it must demonstrate a specific interest to make use of it, when the only condition that this has in the article is that these are not contrary to the constitution and laws of the Republic, requesting that he must demonstrate an interest would become an additional requirement to exercise a constitutional right, but let us assume for the sake of discussion that these elements that the Court has designed as elements to be taken into account, the interest of the community is demonstrated from the very moment of making the request, it can be inferred that they wish to resolve the controversy from their uses and customs. To ask for a request to be made with specific arguments would be to go against the recognition of a constitutional right.

"Regarding the institutional element, it is necessary to establish in greater detail what are the procedures, sanctions or remedies applied by the community for this type of behavior and the authorities empowered to impose them. In addition to these elements, the Court needs to verify what are the guarantees associated with the due process of the defendants and the plaintiffs. In relation to this point, since the plaintiffs in this case did not claim to be members of the claimant people, it is necessary to determine whether the community has measures in place to protect the rights of persons linked to the procedure who do not have their ethnic identification."

From the moment that the leaders, mamos, taitas, governors of each of the indigenous reservations make requests to the ordinary jurisdiction so that the processes are referred to their jurisdictions, it can be seen that they always try to demonstrate that their procedures are closely related and similar to the system of ordinary law, we realize how in criminal matters, assimilate the figures of accuser, defender, individual or plural judge, to make their decisions, how they respect due process and other figures created from Western law, with unrestricted application in the ordinary jurisdiction, to require these figures in their very rigor would break the very essence of the Special Indigenous Jurisdiction whose autonomy does not depend on resembling other figures, but to preserve their own uses and customs, the challenge is not to know the due process of their ancestral forms, but to identify what their equivalent is within their internal procedures; this was developed by the court in Judgment T-523 of 1997, with a presentation by Dr. Carlos Gaviria Díaz, who states that "our due process finds an equivalent in indigenous cultures and finds it to the extent that everywhere they want to punish abuses, everywhere there are people who abuse power and everywhere they want to punish abuses".

Dr. Gaviria indicates in the aforementioned Judgment that a manifestation of due process can be seen when the conduct of a person is judged in an assembly, normally the relatives in certain ethnic groups are present in those assemblies. So the guarantee of the right of defense is seen by the Court, for example, in that the relatives are indeed present at the assembly that indicates the punishment for the person, and in that we must see an equalization of the right of defense, and if they are not there, the right of defense is violated.

In this specific case, what must be evaluated is what could be similar to due process in cases that have to do with settling property conflicts, how that simile would respect its own system of law, that this system is ancestral, that it comes from its own history and far from resembling Western figures. whatever

prevails is their original way of settling this type of conflict, the very loss or assimilation of figures would mean that it is not necessary in this case to resolve the conflict in a space other than the ordinary jurisdiction; the raison d'être of autonomy of the special indigenous jurisdiction lies in the difference between its figures, its ancestral procedures, its original form, even if this does not correspond to Western figures.

In the face of ethnic identification, it will be the mainstay of the system designed as a census of the indigenous communities and their members to determine their belonging to it, if such data are not available, the system designed by the different indigenous peoples must be used to identify each other.

With the arguments put forward above, a favorable opinion is issued that the Special Indigenous Jurisdiction hears this matter and not the Ordinary Jurisdiction."

The contribution of this research to this date went far beyond an epistemic contribution to the doctrine, it was taken by the highest body of constitutional interpretation as an input to resolve practical cases, the theoretical basis and the dogmatic contribution already represents and will represent a starting point to settle this type of controversy. By changing the traditional structure of formal requirements, carrying out truly intercultural analyses, this will help to counteract this colonial vision and imposition, of the subjection of one culture to another.

Although the special indigenous jurisdiction is a single one, recognized by constitutional norm, indigenous justice is not unique, the existence of several indigenous justices must be considered, because each people has its own conceptions, norms, procedures, uses and customs, and they are not always assimilable to those of another people, because in each community, these characteristics are derived from its worldview. of their culture and beliefs and of the environment in which they survive.

On the other hand, the majority of society and state officials (not only linked to the judicial branch), multinational companies, and foreign governments still do not fully accept the decisions made by the indigenous authorities in their territory.

At the end of the 20th century and the beginning of the 21st century, the legal culture characterized by the capitalist mode of production, the liberal-individualist ideological hegemony, the Sovereign State as an institutional form of power, all compatible in practice with a normative paradigm based on the principles of monism, statehood, formal rationality and legal security, entered into crisis.

The crisis is seen in a state of exhaustion and lack of adequate responses to the economic and political transformations generated by the complexity of collective conflicts marked by the recognition of indigenous rights, social demands and new needs created by the globalization of the market and that, given the influence that communication technologies have on society, These transformations have become their own in the transplanted, dependent and peripheral socio-political structures.

It is necessary for all sectors of society to promote intercultural dialogue between the ordinary jurisdiction and the special indigenous jurisdiction, with the strong participation of the majority society and the indigenous community, as a real possibility for the special indigenous jurisdiction to achieve its full development and to achieve true coordination with the ordinary jurisdiction.

This intercultural dialogue can (or should) result in a reformulation of the constitutional principles of autonomy, equality and political participation, in addition to leading to a reform of legal bodies (codes, laws), which are in line with the new constitutional principles.

Indigenism, Living Well, colonial racism, colonial power, anti-colonialism, the political centrality of the indigenous, developmentalism, are among other concepts that both the indigenous intelligentsia and "Western" thinkers have to work so that when it comes to advancing an intercultural dialogue, it is effectively possible to achieve the full recognition of the rights of indigenous communities. Since 1950 important contributions have been made in this regard and it is time to highlight them.

6. Recommendations

In Colombia and Ecuador, it is important to begin to debate whether it is advisable to assume the pluralist paradigm of law in order to achieve coordination between the special indigenous jurisdiction and the ordinary jurisdiction, because this will achieve a better interpretation of the complexity of the current events that the context of globalization is causing in the legal world and in its emancipatory version. the Law can be an instrument at the service of the most unprotected and vulnerable groups.

Although the Constitutional Court in Ecuador has already proposed it, this research reaffirms that a dialogue between cultures must be opened "always in a two-way street, respectful of indigenous autonomy, sensitive to cultural differences and that must contribute to adequate coordination between the systems of rights of indigenous peoples and state law, which is possible to achieve, from an intercultural interpretation.

It is necessary to insist that recognizing and implementing one's own law from the creation of the special indigenous jurisdiction will not in any way bring about the minimization of state law and, on the contrary, it is recommended to understand that it is a necessary law, but not sufficient and it is also worth saying that it is one of the many legal forms that can exist in society. It is clear that state law is fundamental and important, but when we speak of legal pluralism, it covers not only independent and semi-autonomous practices in relation to state power, but also official and formal normative practices along with unofficial and informal practices such as the own (customary) law of indigenous communities.

Bibliographic references

[1] Agudelo-Giraldo, O.A. (Ed.). (2018). The question of the method: law and methodology of research. Bogotá: Editorial Universidad Católica de Colombia.

[2] Ahumada, I. (2021). Church and monarchy before the indigenous Hispanic American languages. *Rev. Artes y Letras, Univ. de Costa Rica , 1*(45), 183-205. https://doi.org/https://revistas.ucr.ac.cr/index.php/kanina/article/view/46826/46355

[3] Alarcón, J., Fernández, Z., & Leal, M. (2020). Interculturality and the recognition of multiple others in educational coexistence. *Rev. Boletín Antropológico, 38*(100), 458-484. https://www.redalyc.org/journal/712/71266664009/html/

[4] Almeida, I., Arrobo, N., & Ojeda, L. (2005). *Indigenous Autonomy in the face of the nation state and neoliberal globalization.* Ecuador: Ediciones Abya-Yala. https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1017&context=abya_yala&httpsredir=1&referer=

[5] Almeida, P. (2017). *Social Movements in Latin America.* Argentina: Clacso. https://biblioteca.clacso.edu.ar/clacso/se/20170721051921/Movimientos_sociales.pdf

[6] Ávila, O. (2021). *Anticolonialism: A Study of the Ideas of Self-Proclaimed Black and Indian Thinkers.* Colombia: Ediciones Autónomas. https://accpol.org/accpol/wp-content/uploads/2021/01/Anticolonialismo-Version-para-internet-FINAL-ODIN-AVILA-ROJAS.pdf

[7] Bernasconi, R. (2003). *Race and Racism in Continental Philosophy.* Indiana University Press. https://es.scribd.com/document/363861844/Robert-Bernasconi-Race-and-Racism-in-Continental-Philosophy-1

[8] Boaventura, S. (2010). *Refounding the State in Latin America: Perspectives from an Epistemology of the South.* Peru: Democracy and Global Transformation Program Editores. https://www.boaventuradesousasantos.pt/media/Refundacion%20del%20Estado_Lima2010.pdf

[9] Bocarejo, D., & Restrepo, E. (2011). Introduction. Multiculturalism and racism. *Colombian Journal of Anthropology, 47*(2), 07-13. http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0486-65252011000200001

[10] Boccara, G. (2002). *Colonization, resistance and miscegenation in the Americas (XVI-XX centuries).* Ecuador: Ediciones Abya-Yala. https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1033&context=abya_yala

[11] Bonfil, G. (1991). *Thinking about our culture.* Alianza Editorial. https://antropologiapoliticaenah.wordpress.com/wp-content/uploads/2014/12/bonfil-pensar-nuestra-cultura.pdf

[12] Bonilla, D. (2006). *The multicultural constitution.* Bogotá: Siglo del Hombre Editores. https://www.corteidh.or.cr/tablas/19174.pdf

[13] Bönnemann, M., & Riegner, M. (2021). *Critical comparative law.* Bogotá - Universidad de los Andes: Siglo del Hombre Editores. https://derecho.uniandes.edu.co/publicaciones/derecho-comparado-critico/

[14] Carducci, M. (2012). *Multiculturalism. Between the Hegelian circle and the constitutionalism of otherness.* Multiculturalism and criminal law.

[15] Carnevalli, R. (2007). Multiculturalism: A Challenge for Modern Criminal Law. *Rev. Criminal Policy, 2*(3), 1-28. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2719116

[16] Civallero, E. (2007). Indigenous libraries in Australia and New Zealand: a literature review. *Inter-American Journal of Library Science, 30*(2), 231-250. http://www.scielo.org.co/pdf/rib/v30n2/v30n2a11.pdf

[17] Economic Commission for Latin America [ECLAC]. (2014). *Indigenous peoples in Latin America.* Santiago, Chile: Edit. United Nations. https://repositorio.cepal.org/server/api/core/bitstreams/b1b631f7-30df-4668-9047-6e2060cb30a6/content

[18] Indian Council of South America [CISA]. (2002). *Commission on Human Rights. Working Group on Indigenous Populations.* Geneva. https://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9bce/92561c64.dir/442_ES.pdf

[19] Constitution of the Republic of Ecuador. (2008). Ecuador: National Assembly of Ecuador. https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.PDF

[20] Political Constitution of Colombia. (1991). Colombia: Superior Council of the Judiciary, Administrative Chamber. https://www.ramajudicial.gov.co/documents/10228/1547471/CONSTITUCION-Interiores.pdf

[21] Political Constitution of the Republic of Ecuador. (1998). *First Section of Indigenous and Black or Afro-Ecuadorian Peoples.* Ecuador: Constitutional Gazette. https://www.acnur.org/fileadmin/Documentos/BDL/2002/0061.pdf

[22] Cruz, E. (2013). Plurinational State, Interculturality and Indigenous Autonomy: A Reflection on the Cases of Bolivia and Ecuador. *VIA IIRIS Journal*(14), 55-71. https://www.studocu.com/ec/document/universidad-tecnologica-empresarial-de-guayaquil/contabilidad-1/cruz-rodriguez-estado-plurinacional-interculturalidad-y-pdf/21249773

[23] Pan-Hispanic Dictionary of Legal Spanish. (2023). *Multiculturalism.* https://dpej.rae.es/lema/multiculturalismo

[24] Royal Spanish Academy Dictionary. (2024). *Autarchy.* Madrid. https://dle.rae.es/autarqu%C3%ADa?m=form

[25] Royal Spanish Academy Dictionary. (2024). *Status quo.* Madrid. https://dle.rae.es/statu%20quo

[26] Royal Spanish Academy Dictionary. (2024). *Tribual.* Madrid. https://dle.rae.es/tribual

[27] Dicionario Real Academia Española. (2024). *State.* Madrid. https://dle.rae.es/estado?m=form

[28] Engle, K. (2018). *Indigenous development, an elusive promise. Rights, culture, strategy.* Editors Siglo del Hombre de la Universidad de los Andes. https://api.pageplace.de/preview/DT0400.9789586654807_A43843249/preview-9789586654807_A43843249.pdf

[29] Estupiñan, R. (2014). Indigenous and tribal peoples: the construction of cultural contents inherent in inter-American human rights jurisprudence. *Rev. Mexican Yearbook of International Law, 14*,

581-616. https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-46542014000100016

[30] Garapon, A., & Papadopoulos, I. (2008). *Judge in the United States and in France. French legal culture and common law.* Bogotá, Colombia: Edit. Legis, S.A. https://repositorio.uvm.cl/server/api/core/bitstreams/689af73d-bc5b-4270-9277-99aabe51ccab/content

[31] Garzón, E. (2021). Paradigms of dialogue in multiculturalism. *Rev. Prolegomena, 24*(48), 83-92. https://dialnet.unirioja.es/servlet/articulo?codigo=8208120

[32] Grueso, D. (2003). What is multiculturalism? *Rev. Man and Machine, 20*(21), 16-23. https://www.redalyc.org/pdf/478/47812406003.pdf

[33] Hall, S. (2010). *No Guarantees: Trajectories and Problems in Cultural Studies.* Colombia: Envión editores. https://www.ram-wan.net/restrepo/documentos/sin_garantias.pdf

[34] Jiménez, H., Viteri, B., & Mosquera, M. (2021). Indigenous justice and the violation of the principles contemplated in the constitution of Ecuador. *Revista Universidad y Sociedad, 13*(2), 176-183. https://www.researchgate.net/publication/354354654_La_justicia_indigena_y_la_violacion_de_los_principios_contemplados_en_la_constitucion_del_Ecuador

[35] Kennedy, D. (2015). *Three globalizations of law and legal thought, 1850-2000.* Colombia: Universidad Externado de Colombia. https://books.google.com.co/books?id=xaPBCwAAQBAJ&printsec=frontcover&redir_esc=y#v=onepage&q&f=false

[36] Kymlicka, W. (1996). *Multicultural citizenship. A liberal theory of minority rights.* Spain: Editorial Paidós. https://es.scribd.com/doc/302935722/Ciudadania-Multicultural-Kymlicka

[37] Kymlicka, W. (2007). *Multicultural odysseys. The new international policies of diversity.* Spain: Editorial Paidós. https://www.academia.edu/23770860/_Las_Odiseas_Multiculturales_Rese%C3%B1a

[38] Llasag, R., Fernández, T. K., & Zapata, A. (2020). Intercultural Interpretation of Indigenous Justice in the Constitutional Court of Ecuador. *Rev. Open Edition Journals*(94), 157-174. https://doi.org/10.4000/cal.11530

[39] Malo, C. (2002). Culture and Interculturality. *Rev. Aportes Andinos*(2), 1-4. https://repositorio.uasb.edu.ec/handle/10644/531

[40] Molina, A. (2015). *Critical Studies of Law.* Mexico: National Autonomous University of Mexico. https://archivos.juridicas.unam.mx/www/bjv/libros/8/3875/15.pdf

[41] Molina, J. (2009). Multiculturalism and indigenous peoples. *Rev. Contemporary Legal Problems , 3*(23), 38-60. https://doi.org/https://doi.org/10.35487/rius.v3i23.2009.165

[42] United Nations [UN]. (1966). *International Covenant on Civil and Political Rights.* Bulletin of the Office of the High Commissioner . https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[43] United Nations [UN]. (2013). *The United Nations Declaration on the Rights of Indigenous Peoples. Handbook for National Human Rights Institutions.* Office of the United Nations High Commissioner for Human Rights (OHCHR). https://www.ohchr.org/sites/default/files/Documents/Publications/UNDRIPManualForNHRIs_SP.pdf

[44] United Nations Organization. General Assembly. (2007). *General Assembly Resolution 61/295 on the Rights of Indigenous Peoples.* UNHCR/UNHCR. https://www.refworld.org/es/leg/resol/agonu/2007/es/49353

[45] International Labor Organization [ILO]. (1989). *Convention No. 169 on Indigenous and Tribal Peoples.* NORMLEX. https://normlex.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

[46] International Labor Organization [ITO]. (1957). *Convention No. 107 concerning Indigenous and Tribal Populations.* NORMLEX. https://normlex.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

[47] Ospina, P., & Guerrero, F. (2005). The power of community. Structural Adjustment and the Indigenous Movement in the Ecuadorian Andes. *Rev. Anthropologica, 23*(23), 304. https://doi.org/10.18800/anthropologica.200501.010

[48] Parekh, B. (2000). *Rethinking multiculturalism.* Spain: Ediciones Itsmo, S.A. https://www.te.gob.mx/formulario/media/files/90fe55874ce84d3.pdf

[49] Pegoraro, L. (2010). Comparative Constitutional Law and connotative use of the word "rights" (and the adjectives that accompany it). *Ibero-American Yearbook of Constitutional Justice, I*(14), 347-372. https://doi.org/https://dialnet.unirioja.es/servlet/articulo?codigo=3331589

[50] Quijada, M., & Bustamante, J. (2003). *Intellectual elites and collective models.* Consejo Superior de Investigaciones Científicas (Spain). http://hdl.handle.net/10261/17871

[51] Riegner, M., & Bonilla, D. (2021). History, State and Nation. Constitutionalism and the processes of decolonization. *Rev. Vniversitas. Pontifica Universidad Javeriana, 70*, 1-22. https://doi.org/https://doi.org/10.11144/Javeriana.vj70.henc

[52] Rivera, S. (2015). *Sociology of the image. Ch'ixi Perspectives from Andean History.* Lemon ink. https://sentipensaresfem.wordpress.com/2016/09/10/src2015/

[53] Rodríguez, J. (2008). Indigenous movements in Latin America. Resistances and Alterities in a Globalized World. *Gazeta de Antropología, 24*(2). https://www.ugr.es/~pwlac/G24_37Javier_Rodriguez_Mir.html

[54] Rueda, E., & Villavicencio, S. (2018). *Modernity, colonialism and emancipation in Latin America.* Buenos Aires: Clacso. https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/11423/1/Modernidad.pdf

[55] Sartori, G. (2005). The multiethnic society: pluralism, multiculturalism and foreigners. *Rev. Politics and Government, 12*(2), 343-345. https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1665-20372005000200343

[56] Semper, F. (2006). *The rights of the indigenous peoples of Colombia in the jurisprudence of the Constitutional Court.* Germany: Yearbook of Latin American Constitutional Law. https://biblioteca.corteidh.or.cr/tablas/R21731.pdf

[57] Soto, V. (2021). *Concepts of plurinationality and interculturality.* Chile: Library of the National Congress. https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/32781/1/N_108_21_Plurinacionalidad_e_Interculturalidad.pdf

[58] Stavenhagen, R. (2008). The Human Rights of Indigenous Peoples: Challenges and Challenges. *IIHR Journal, 48*(2), 257-268. https://repositorio.iidh.ed.cr/handle/123456789/1135

[59] Taylor, C. (1993). *Multiculturalism and the Politics of Recognition.* Mexico: Popular Collection. https://es.slideshare.net/slideshow/charles-taylor-el-multiculturalismo-y-la-poltica-del-reconocimiento-1/250750692

[60] Torres, J. (2011). Individual, structure and social practice: three debates in social sciences. *Espiral (Guadalajara), 18*(50), 35-63. https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1665-05652011000100002

[61] Toussaint, E. (2020). *The crimes of colonial Belgium in the Congo.* Alai. https://doi.org/https://www.alainet.org/es/articulo/207345

[62] Triana & Antorveza, H. (1987). *Indigenous languages in the social history of the New Kingdom of Granada.* Bogotá: Instituto Caro y Cuervo. https://core.ac.uk/download/pdf/144422569.pdf

[63] Tubino, F. (2015). *Interculturality in question.* PUCP. Editorial Fund. https://www.google.co.ve/books/edition/La_interculturalidad_en_cuesti%C3%B3n/M6LNDwAAQBAJ?hl=es-419&gbpv=0

[64] Tully, J. (1995). *Strange multiplicity: constitutionalism in an era of diversity.* University of Cambridge.

[65] Vargas, J. (2005). Social movements for the recognition of indigenous movements and indigenous political ecology. *Rev. Ra Ximhai, 1*(3), 453-470. https://www.redalyc.org/articulo.oa?id=46110302

[66] Wallerstein, I., & Balibar, E. (1988). *Race, Nation and Class. Ambiguous identities.* Single Direction. https://espai-marx.net/elsarbres/wp-content/uploads/2020/02/Raza_naci_n_y_clase.pdf

[67] Walsh, C. (2009). *Interculturality, State, society. (De)colonial struggles of our time.* Ecuador: Editors Universidad Andina Simón Bolívar / Abya-Yala. https://es.scribd.com/document/263822409/Interculturalidad-estado-y-sociedad-pdf

[68] Walzer, M. (1998). *Multiculture and individualism. Treatise on Tolerance.* Barcelona, Spain: Paidós Editores. https://www.revistadelibros.com/tratado-sobre-la-tolerancia-de-michael-walzer/

[69] Wolkmer, A. (2003). Legal pluralism: a new emancipatory framework in Latin America. *CENEJUS,* 1-18. https://biblioteca.clacso.edu.ar/clacso/otros/20111021100627/wolk.pdf

[70] Zapata, C. (2019). *Crisis of multiculturalism in Latin America. Social Conflict and Critical Responses from Indigenous Political Thought.* Buenos Aires: Unsam Edita. https://www.unsamedita.unsam.edu.ar/wp-content/uploads/2021/03/zapata.pdf

[71] Zavaleta, R. (2009). *The State in Latin America.* Bogotá: Siglo del Hombre Editores CLACSO. https://biblioteca.clacso.edu.ar/clacso/se/20160314050938/15estado.pdf

[72] Zenteno T., B., & Osorno S., A. (2015). Elements for the design of legal research. A multidimensional perspective. Meritorious Autonomous University of Puebla. Mexico.