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La justicia Indígena en los Territorios Comunitarios y Ancestrales

Indigenous justice in Community and Ancestral Territories

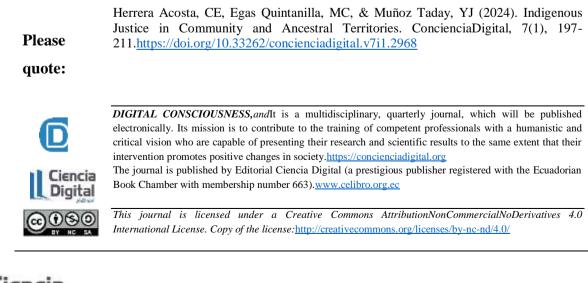
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Palabras claves: Justicia indígena; Territorios comunitarios; Ancestrales; Base legal; Comunidades

Resumen

Los sistemas de justicia indígena no están reconocidos o no tienen una base legal sólida, esto puede llevar a la marginación de estos sistemas ya su exclusión de los procesos de toma de decisiones legales y políticas, desigualdad de recursos: Los sistemas de justicia indígena a menudo se enfrentan a limitaciones de recursos, incluidos la falta de financiamiento y la falta de personal capacitado, esto dificulta su funcionamiento efectivo y puede poner en desventaja a las comunidades indígenas en comparación con los sistemas legales estatales que cuentan con más recursos. (Justicia indígena, 2002). Se sugiere que existe un grado significativo de conciencia y comprensión sobre los sistemas de justicia de las comunidades indígenas. mayor visibilidad mediática y académica de los temas indígenas, campañas de sensibilización y educación, así como un mayor interés de las personas en aprender sobre las culturas y los derechos de los pueblos indígenas. Ecuador es un país con una importante presencia de comunidades indígenas que han mantenido sus tradiciones y sistemas de justicia a lo largo del tiempo. Para comprender el significado y la importancia de estos datos, es crucial explorar el contexto histórico y social del país, así como las políticas gubernamentales y los movimientos indígenas que han influenciado la visibilidad y el reconocimiento de la justicia indígena. como objetivo analizar la justicia indígena como un enfoque conceptual y legal para una mejor compresión de los autores al momento de la aplicabilidad, se empleó la metodología descriptiva enfocada en la investigación bibliográfica y de campo al momento de análisis, el histórico lógico, el de inducción deducción y el de análisis y síntesis.

Keywords:

indigenous justice; Community territories; Ancestral; Legal basis; Communities

Abstract

Indigenous justice systems are not recognized or do not have a solid legal basis, this can lead to the marginalization of these systems and their exclusion from legal and political decision-making processes, resource inequality: Indigenous justice systems often faces resource constraints, including a lack of funding and a lack of trained staff, this makes it difficult to operate effectively and can put Indigenous communities at a disadvantage compared to more resourced state legal systems. (Indigenous justice, 2002). It is suggested that there is a significant degree of awareness and





understanding of the justice systems of indigenous communities. greater media and academic visibility of indigenous issues, awareness and education campaigns, as well as greater interest among people in learning about the cultures and rights of indigenous peoples. Ecuador is a country with a significant presence of indigenous communities that have maintained their traditions and justice systems over time. To understand the meaning and importance of this data, it is crucial to explore the historical and social context of the country, as well as the government policies and indigenous movements that have influenced the visibility and recognition of indigenous justice. The objective was to analyze indigenous justice as a conceptual and legal approach for a better understanding of the authors at the time of applicability, the descriptive methodology was used focused on bibliographic and field research at the time of analysis, the logical historical, the induction. deduction and analysis and synthesis.

Introduction

Indigenous justice is identified within the Organic Structure of the Executive Branch of the Republic of Ecuador, included in the intersectoral social cabinet, in relation to the National Service of Intellectual Rights; in the ... "The Constitution of the Republic of 2008 establishes Ecuador as a plurinational and intercultural country. One of the most important advances has been the recognition of indigenous justice to resolve conflicts in their own territories that affect essential principles such as ama llulla, ama killa, ama shwa and ranti. Considering their customs, their own law and their socioeconomic situation, sanctions other than imprisonment are applied." Although there should be equality of hierarchies, ordinary justice limits the powers of indigenous authorities at the same time that more than 600 indigenous people are deprived of their freedom(https://wiwgia.org, 2022)

The fundamental problem is the conflict in the traditions and cultural norms of indigenous communities and their poor understanding and marginalization in comparison with state justice systems, there are legal limitations, cultural challenges and the gap between indigenous justice and the state legal system. (Diaz & Antúnez, 2016); Constitution of the Republic, the power of the authorities of the indigenous communities to judge is taken into account, always clarifying that the decisions of the aforementioned authorities

They must be consistent with the Constitution itself and with international human rights





conventions and treaties, controlling the constitutionality of their acts and decisions and facing challenges and obstacles in their implementation and recognition. The dissemination of information on indigenous justice is essential to promote understanding and respect for this legal system. This involves educating society in general about its principles, practices and contributions to justice and social harmony.

This research aims to analyze indigenous justice as a conceptual and legal approach for a better understanding of the authors at the time of applicability, the descriptive methodology focused on bibliographic and field research was used at the time of analysis, the logical historical, the induction deduction and the analysis and synthesis.

Indigenous justice from the social, historical, economic and cultural worldview as an ancestral right based on custom as customary law, it is necessary to strengthen indigenous justice that requires the recognition of its autonomy, harmonization with the state legal system, the strengthening of indigenous leaders and wise men, and the promotion of participation and access to justice, prejudices and discrimination towards indigenous justice, it is necessary to establish a clear regulatory framework, promote dialogue and agreement, and guarantee access to adequate resources and support.(CONAIE, 2019)

To understand with the information of indigenous justice, it is a conflict resolution system that is based on the traditions and cultural norms of indigenous communities. These systems are inherently different from state or formal justice systems as they are rooted in the history, worldview and values of indigenous communities. However, despite its importance and relevance, indigenous justice is often underused, poorly understood and marginalized compared to state justice systems. This can lead to a lack of access to justice for indigenous communities, as well as the perpetuation of negative stereotypes and prejudices. (Bruno, 2022)

As background, from the Constitution of 1819, in art. 10 it was established that the Senate would be composed, in addition to equal representation by provinces, of 3 military senators of rank no less than Colonel Major, a Bishop, three ecclesiastics, a senator for each University and the Director of State when his term of office ended. In art. 56 it was provided that the executive power was exercised by a director of State elected by the 2 Chambers together (art. 62).

Unlike the Western legal system, indigenous justice has a more community-based and restorative approach. Rather than focusing on punishing the offender, it seeks to restore relationships and harmony within the community. The main goal is to find a solution that promotes healing and balance for both the offender and the affected community. Indigenous justice is based on community participation. Leaders and elders play a crucial role in decision-making and conflict resolution. Specific methods and practices such as mediation, dialogue, and reconciliation are used to address disputes and promote repair





of the harm caused. (Mejia, 2021)

It is important to note that indigenous justice is recognized by the legislation of many countries and is a fundamental element in the protection of the rights of indigenous peoples. However, there are challenges that must be overcome. To promote the visibility and understanding of indigenous justice systems, the following strategies can be implemented:

- Recognition and respect: It is essential that state justice systems recognise and respect indigenous systems as a legitimate and autonomous form of administration of justice. This implies establishing mechanisms of cooperation between both systems where the authority of the decisions taken by indigenous leaders and authorities is recognised.
- Education and outreach: Greater education and outreach on indigenous justice systems should be promoted both at the academic level and in society at large. This may include the inclusion of related content in curricula, the organization of workshops and conferences, and the dissemination of information through various media.
- Participation and empowerment: It is important to encourage the participation of indigenous communities in decision-making and the administration of justice. This involves ensuring that indigenous leaders and authorities have a say in justice processes and that the empowerment of communities to make decisions that affect their own well-being is promoted.
- Intercultural dialogue: Promoting intercultural dialogue between state justice systems and indigenous justice systems can help build bridges of understanding and overcome existing prejudices and stereotypes. This involves mutual recognition, active listening, respect for differences and the search for joint solutions.
- Protection of indigenous rights: Ensuring the protection of the collective and individual rights of indigenous communities is essential to promote the visibility and understanding of their justice systems. This involves the implementation of legal and political measures that promote inclusion, non-discrimination and respect for cultural diversity. (Yucailla, Barrionuevo, 2022)

To improve the visibility and understanding of indigenous justice systems or even legal systems, a comprehensive approach must be adopted that involves recognition, education, participation and intercultural dialogue, because the indigenous justice system seeks to preserve and protect the autonomy and cultural identity of indigenous communities, as well as their right to self-determination (Trujillo, 2019).

Competent authorities such as judges and prosecutors cannot intervene in the processes or decisions taken by indigenous authorities. However, there is legal and constitutional





recognition of the existence and validity of indigenous justice systems in many countries, which implies that human rights and procedural guarantees must be respected in their application. It is important to note that while there is autonomy and independence in the indigenous justice system, there may also be some form of coordination or collaboration between indigenous authorities and competent authorities on specific issues such as the protection of the rights of indigenous communities or the resolution of conflicts involving both indigenous and non-indigenous people. (Cujilema, 2022)

However, there is recognition and protection of the rights of indigenous communities in national legislation, which implies collaboration in some specific areas (Angamarca Vázquez, 2021).

In justice, written laws and their relationship with the grassroots must also be taken into account; the State imposes a simple, rigid and inflexible legal system that does not take into account the cultural heterogeneity of the various peoples that make it up. (Quishpe, 2019), the history of Ecuadorian rights, the policies of exclusion, isolation, culture and economy are also evident that each time, the institutional structure is embodied by the vertical imposition of a nation state. The acceptance and observance of these norms of customary law makes them an objective basis of power and authority, as well as a subjective mechanism of solidarity, cooperation and reciprocity. The research also found that legal custom is normative in nature, required by the real or imagined psychological and social needs of society, and that aboriginal law is of this nature; this practice is recognized, accepted and shared by all sectors of society. The great diversity of such practices, due to the legal, social, cultural, geographical and regional circumstances of indigenous peoples, means that their norms and traditions vary in their application and recognition as distinct from one place to another. (Sanchez, 2019)

The Confederation of Indigenous Nationalities of Ecuador supports and defends the indigenous justice system as a legitimate way of administering justice within indigenous communities. They consider that indigenous justice is based on respect for the ancestral rights and values of their peoples, on community participation and on the peaceful resolution of conflicts. They also maintain that indigenous justice is a complementary form to the ordinary justice of the State, and defend that both systems must coexist and be respected. They also consider that indigenous justice is an expression of the autonomy and self-determination of indigenous peoples, and that its exercise should not be subordinated or limited by State institutions. (CONAIE, 2019).

The lack of knowledge of indigenous justice systems in Ecuador presents a series of challenges that affect both indigenous communities and the state justice system and may include:

Lack of cultural understanding: Often, lack of knowledge of indigenous justice



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systems is related to a lack of understanding and appreciation of the culture, traditions and values of indigenous communities. This makes it difficult to properly apply these systems and can lead to misunderstandings or misinterpretations. (Cortés & Guerrero, 2022)

- Language barriers: Indigenous justice systems often rely on local and traditional languages, which can present a barrier for those who do not speak the language. The lack of interpreters or adequate translation mechanisms hinders the full and effective participation of non-indigenous people in these systems.
- Gap between justice systems: There is a significant gap between indigenous justice systems and state or national legal systems. Differences in terms of procedures, laws and norms can lead to conflicts and tensions when cases involve members of indigenous communities.
- Discrimination and stigmatization: Lack of knowledge about indigenous justice systems often leads to discrimination and stigmatization of these communities. This can negatively affect the perception and treatment of indigenous people in legal proceedings, making it difficult to seek equitable justice. (Valle, 2022)

To better understand indigenous justice, we must take into consideration that there are several opportunities for the state justice system, which may include:

- Legal diversity: Recognition and understanding of indigenous justice systems can enrich a country's legal diversity. These systems emerge with unique perspectives and approaches based on tradition, community and reconciliation, which can complement and enhance existing legal systems.
- Culturally appropriate justice: By understanding and respecting indigenous justice systems, more culturally appropriate legal solutions and judicial processes can be offered to indigenous communities. This promotes equal access to justice and respect for the human rights of these communities. (Sánchez Perugachi, 2023)
- Indigenous Participation and Empowerment: Recognizing and valuing indigenous justice systems involves involving indigenous communities in legal and political decision-making processes. This promotes the empowerment and self-determination of indigenous peoples, strengthening their voice and representation. (Peñafiel Contreras, 2017)
- Cultural preservation: Knowledge and respect for indigenous justice systems contribute to the preservation of the cultural traditions and heritage of these communities. This is essential for maintaining cultural diversity and recognizing the importance of ancestral knowledge.
- Protecting the environment and natural resources: Many indigenous justice systems are deeply rooted in a worldview that values connection and respect for the land, environment, and natural resources. These systems can provide opportunities to





promote sustainable development and protect the environment, which is vitally important in the current practical context of climate change and environmental degradation (Bajaña-Tovar, 2019).

- Mutual learning: Mutual recognition and respect between indigenous justice systems and state legal systems can open avenues for mutual learning. Indigenous justice principles and practices can bring valuable insights to existing legal systems, and vice versa. This can lead to the adoption of more inclusive and holistic approaches in justice in general. (Perez, 2021)
- Human rights and self-determination: Recognition and proper implementation of indigenous justice systems can contribute to the protection and promotion of the human rights of indigenous peoples, including the right to self-determination. This implies respecting their autonomy and their ability to make decisions on matters that directly concern them. (Ramón Proaño, 2022)

Methods

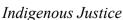
The research is descriptive (Valle, 2022), documentary, field, applied exploratory and non-experimental, which describes indigenous justice that explores the difficulties in the legal and its applicability or relationship to justice of the constitution, and in the internal processes; of the communities and the product of the applicability and its difficulties, a strategic course is set that supports managerial decision-making. Among the research methods that were used is the general dialectical materialist philosophical method, by adopting objective positions, based on the logic of science, with an integrative character and with a systemic vision; the approach is systemic because it states that an organization takes elements (resources) from its environment and transforms or processes them as products that are distributed again in the environment. Another method applied is the quantitative one (Cárdenas, 2018), by using statistics, least squares, to express in numbers most of the indicators that support decision-making. Of the empirical methods that were used in the course of the research are: Review of historical information, direct observation of the organization, diagnosis of the theory.

Results

Question 1: Are you familiar with the concept of indigenous justice in community and ancestral territories?

Table 1	

Indigenous Justice	Frequencies	Percentages
Yeah	10	77%
No	3	23%







Total 13 100%			
	Total	13	100%

Fountain: Questionnaire applied to indigenous authorities. (2023)

The data show that 77% of the sample surveyed said they were familiar with the concept of indigenous justice in community and ancestral territories, while 23% said they were not. This analysis focuses on understanding the level of knowledge and awareness that the population has on this specific topic.

Question 2: Do you consider it important to recognize and respect the justice systems of indigenous communities in community and ancestral territories?

Table 2

Justice systems

Justice systems	Frequencies	Percentages
Yes, it is essential to preserve their autonomy and cultural traditions.	12	92%
No, only the state justice system should prevail.	1	8%
I'm not sure	0	0%
Total	13	100%

Fountain: Questionnaire applied to indigenous authorities. (2023)

The data provided reveal a clear trend in the opinion of the sample surveyed. 96% of respondents consider it important to recognise and respect the justice systems of indigenous communities in community and ancestral territories. In contrast, only 8% believe that only the state justice system should prevail, and there is no response that indicates being unsure.

Question 3 Do you believe that indigenous justice can contribute to the resolution of conflicts and the restoration of social balance in indigenous communities?

Table 3

Indigenous Justice

Indigenous Justice	Frequencies	Percentages
Yes, it takes into account the particularities and needs of the community.	10	77%
No, I consider that only the state justice system is	2	15%
effective. I don't have enough	1	8%





information to answer.		
Total	13	100%

Fountain: Questionnaire applied to indigenous authorities. (2023)

Affirmative responses: 77% of participants support the idea that indigenous justice can be an effective tool for resolving conflicts and restoring social balance within indigenous communities, 15% of respondents believe that only the state justice system can be effective in resolving conflicts and restoring social balance in indigenous communities.

Question 4: What challenges do you think the implementation of indigenous justice in community and ancestral territories faces?

Table 4

Implementation of indigenous justice	Frequencies	Percentages
Lack of recognition and support from the state justice system	3	23%
Conflicts between indigenous norms and national laws	7	54%
Lack of resources for effective implementation	2	15%
Does not face significant challenges	1	8%
Total	13	100%

Implementation of indigenous justice

Fountain: Questionnaire applied to indigenous authorities. (2023)

Lack of recognition and support from the state justice system (23%), conflicts between indigenous norms and national laws (54%), the most notable result in this survey indicates that more than half of the respondents perceive as a main challenge the conflicts that arise between indigenous norms and national laws.

Question 5: Do you believe that cooperation between indigenous and state justice systems is essential to achieving more inclusive and equitable justice?

Table 5:

Indigenous Justice

Indigenous Justice	Frequencies	Percentages
Yes, both systems can	5	38%





complement and enrich each other.		
No, each system must operate	7	54%
independently. I don't have enough	1	8%
information to answer.		
Total	13	100%

Fountain: Questionnaire applied to indigenous authorities. (2023)

Of the 100% of respondents from indigenous authorities, 38% of respondents indicate that both systems, such as indigenous justice and state justice, can complement and enrich each other, while 54% of respondents indicate that each system should operate independently, while 8% of respondents indicate that they do not have enough information on cooperation between indigenous and state justice systems.

Discussion

Most indigenous authorities point out that cooperation between indigenous and state justice systems involves recognizing and respecting the cultural and legal diversity of indigenous peoples. In doing so, it recognizes that indigenous justice systems have been an integral part of their communities for centuries and have developed ways of resolving conflicts and maintaining social order that reflect their values and traditions. It can improve access to justice for indigenous communities, who often face cultural, linguistic and geographical barriers in the state justice system, as it can facilitate mediation and conflict resolution in ways that are closer to their ways of life and worldview.

as it suggests that there is a significant degree of awareness and understanding about the justice systems of indigenous communities. Greater media and academic visibility of indigenous issues, awareness and education campaigns, as well as greater interest by people in learning about the cultures and rights of indigenous peoples. Ecuador is a country with a significant presence of indigenous communities that have maintained their traditions and justice systems over time. To understand the meaning and importance of these data, it is crucial to explore the historical and social context of the country, as well as government policies and indigenous movements that have influenced the visibility and recognition of indigenous justice.

By recognizing and respecting indigenous justice systems it is significant and reflects a broad awareness of the importance of preserving the autonomy and cultural traditions of indigenous communities. They value cultural diversity and recognize that the justice systems of indigenous communities are essential to the preservation of their identity and way of life. Indigenous justice systems in community and ancestral territories have



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received an overwhelming affirmative response with 96% support. One of the relevant voices in this discussion is that of Carlos Pérez Guartambel, an Ecuadorian indigenous leader and representative of the indigenous movement in the country. In his work "Vivir Bien/Buen Vivir: Filosofía, políticas, estrategias y experiencias regionales desde una perspectiva indígena" (2016), Pérez Guartambel addresses the concept of Buen Vivir as a proposal for justice that is based on harmony and balance between human beings and nature, highlighting the importance of recognizing and respecting indigenous justice systems as part of the ancestral worldview.

Conclusion

- Indigenous justice in Ecuador faces significant challenges, but also offers valuable opportunities. Despite its importance and legitimacy, indigenous justice is underutilized, poorly understood, and marginalized compared to state justice systems. However, by recognizing and understanding indigenous justice systems, benefits such as legal diversity, culturally appropriate justice, and the preservation of indigenous culture can be realized.
- To strengthen indigenous justice, it is necessary to promote intercultural dialogue, legal recognition of indigenous justice systems and intercultural training, which implies recognizing the autonomy of indigenous justice, harmonizing it with the state legal system, strengthening indigenous leaders and wise men, and promoting participation and access to justice. There are challenges such as prejudice and discrimination towards indigenous justice, as well as the conflict of jurisdictions with the state legal system.
- To overcome these obstacles, it is necessary to establish a clear regulatory framework, promote dialogue and consultation, and guarantee access to adequate resources and support. Strengthening indigenous justice will contribute to building a more inclusive and diversity-respectful society in Ecuador. It is essential to recognize and value the importance of indigenous justice systems as a legitimate expression of the culture and traditions of indigenous communities, and to work together to promote their recognition, respect, and strengthening. Universidad Andina Simón Bolívar (2022).

Conflict of interest

The authors declare that there is no conflict of interest in relation to the submitted article.

Bibliographic references

Angamarca Vázquez, DD (October 2021). Indigenous Justice. Retrieved from https://fipcaec.com/index.php/fipcaec/article/view/474/824

Bruno, L. (2022). Retrieved from



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https://repositorio.cepal.org/bitstream/handle/11362/47750/1/S2100921_es.pdf

- Cárdenas, J. (2018). Quantitative research. Valencia: Edition: Bettina Schorr.
- Cejamericas. (2020). Andean Commission of Jurists. Retrieved from https://cejamericas.org/wpcontent/uploads/2020/09/98CAJ Estadodelarelacion.pdf
- CONAIE. (2019). Indigenous justice in Ecuador. Obtained from file:///C:/Users/pc3/Downloads/Dialnet-LaJusticiaIndigenaEnLaComunidadDeTuntatactoEcuador-7153033%20(3).pdf
- Cujilema, W. (2022). The limits of Indigenous Justice in the application of human rights. Retrieved from https://dspace.uniandes.edu.ec/bitstream/123456789/15476/1/UR-DER-PDI-125-2022.pdf
- Díaz, OE, & Antúnez, S.A. (2016). THE CONFLICT OF JURISDICTION IN JUSTICE. Socio-Legal Issues Journal, 22.
- https://wiwgia.org. (November 22, 2022). www.iwgia.org. Retrieved from https://www.iwgia.org/news/4967-indigenous-justice-in-ecuador.html
- INEC. (2021). Statistical Information System of the Directory of Companies and Establishments. Quito: INEC.
- Mejia, G.C. (July 2021). Retrieved from https://repositorio.consejodecomunicacion.gob.ec/bitstream/CONSEJO_REP/23/ 1/La-justicia-indi%CC%81gena-a-trave%CC%81s-de-los-medios-decomunicacio%CC%81n.pdf
- Quishpe, A. (2019). Intercultural Interpretation, Indigenous Rights and Justice. Retrieved from http://www.dspace.uce.edu.ec/bitstream/25000/17449/1/T-UCE-0013-JUR-136.pdf
- Sanchez, ED (2019). Retrieved from https://www.corteidh.or.cr/tablas/r35496.pdf
- Trujillo, J. (2019). Collective Rights and Administration of Indigenous Justice. Retrieved from file:///C:/Users/pc3/Downloads/3765.pdf
- Valle, T. A. (2022). Descriptive Research with a Qualitative Approach in Education. Lima: Faculty of Education PUCP.
- Yucailla, Barrionuevo, A. J. (2022). Obtained from Indigenous Justice in Ecuador: An Analysis : https://www.recimundo.com/index.php/es/article/view/1909/2367





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