ASSESSMENT OF THE STATE OF INDIGENOUS JUSTICE SYSTEMS: A COMPARATIVE STUDY OF THE EXPERIENCE IN COLOMBIA AND ECUADOR WITH THE SPECIAL INDIGENOUS JURISDICTION

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Summary
A systematic review was carried out on the production and publication of research papers related to the study of the Special Indigenous Jurisdiction variable under the PRISMA (Preferred Reporting Items for Systematic reviews and Meta-Analyses) approach. The purpose of the analysis proposed in this document was to know the main characteristics of the publications registered in the Scopus and Wos databases during the study and their scope in the study of the proposed variables, achieving the identification of 33 publications in total. Thanks to this first identification, it was possible to refine the results through the keywords entered in the search button of both platforms, which were SPECIAL INDIGENOUS JURISDICTION. The analysis was applied to a total of 14 documents, after excluding duplicates and those that were irrelevant to the main purpose of this document. The aim is to know, through the analysis of the literature, the variables that influence the tacit tension between the Ordinary Jurisdiction and the Special Indigenous Jurisdiction; The study focuses on the experiences of countries such as Colombia and Ecuador, without excluding that of neighboring countries in the Latin American community, with the purpose of identifying common aspects and the way in which these conflicts diminish from an analytical and scientific point of view. It is expected to evaluate indigenous justice systems from a descriptive approach based on the contribution of authors in that community.
Key words: *Special Indigenous Jurisdiction, Ordinary Jurisdiction, Colombia, Ecuador.*

1. INTRODUCTION

With the arrival of the nineteenth century, a series of trends were registered in the constitutional reforms undertaken by the countries of the Andean community, with emphasis on countries such as Ecuador and Colombia. These territories have been correlated with the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which allows them a similar legal framework. Of these regulatory reforms, the following stand out:

- Multicultural character of the state, nation or republic
- Law on Indigenous Peoples
- Indigenous Law and Special Jurisdiction

Although this series of reforms is not exempt from contradictions and limitations in these Latin American countries, it is possible to interpret them from a pluralist perspective which allows building the foundations for a multicultural state. (VAN COTT, 1999)

The Andean countries that have structured the constitution, including some formula for the recognition of indigenous rights and special jurisdiction, are: Colombia (1991), Peru (1993), Bolivia (1194) and Ecuador (1998). The comparative table of the constitutional reforms of these countries makes it possible to analyse some common features. These countries, in turn, maintain ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries.

The first change observed in this constitutional context is the recognition of the multicultural and multi-ethnic character of the nation. This fact is important because it is the basis for the recognition of linguistic and legal plurality, which allows for the recognition of specific indigenous rights. In other words, they recognize indigenous conflict resolution bodies, their rules and procedures, and it is also

pointed out that there should be no incompatibility between customary law and the fundamental rights defined by the national legal system or with internationally established human rights.
On the other hand, the Colombian constitution establishes the criterion of territorial jurisdiction, which governs indigenous jurisdiction and customary law within the territorial space of the indigenous people or communities. However, in Ecuador there is no specific mention of territorial jurisdiction. However, it should be emphasized that while the functions of justice or the administration and application of their own norms are granted to the authorities and indigenous communities, the competence is within the territories recognized or traditionally assumed by those indigenous communities.
It should be noted that no constitution sets any limits on indigenous rights and indigenous jurisdiction. Nor is the case limited by the severity or amount of the case. The only limit that is placed on these communities is the sanctions that can be applied by customary law (not violating human rights).
Despite this, constitutions present a series of limitations to the recognition of special jurisdiction, since they refer to the non-violation of fundamental rights recognized in the national legal system or internationally recognized human rights. These two countries have chosen to implement two formulas. The generic one, the Peruvian one, these limit the recognition of customary law to the non-affectation of the fundamental rights of individuals, which was established in ILO Convention 169. The constitutions of Colombia and Ecuador establish a shorter formulation: do not violate the constitution or the laws.

2. GENERAL OBJECTIVE

To analyze, from a bibliometric and bibliographic perspective, the production of research papers on the Special Indigenous Jurisdiction variable, published in high-impact journals indexed in the Scopus and Wos databases during the period 2018-2023.

3. METHODOLOGY

The present research is qualitative, according to Hernández, et al., qualitative approaches correspond to the investigations that carry out the procedure of obtaining information to review and interpret the results obtained in these studies; To do this, it searched for information in the Scopus and Wos databases using the words SPECIAL INDIGENOUS JURISDICTION. (2015)

3.1 Methodological design

The research design proposed for the present research was the Systematic Review that involves a set of guidelines to carry out the analysis of the collected data, which are framed in a process that began with the coding to the visualization of theories On the other hand, it is stated that the text corresponds to a descriptive narrative since it is intended to find out how the levels of the variable affect; and systematic, because after reviewing the academic material obtained from scientific journals, theories on knowledge management were analyzed and interpreted. (Strauss & Corbin, 2016) (Hernandez, Baptista, & Fernandez, 2015)
The results of this search are processed as shown in Figure 1, through which the PRISMA technique for the identification of documentary analysis material is expressed. It was taken into account that the publication was published during the period between 2018 and 2023 without distinction of country of origin of the publication, without distinction of area of knowledge, as well as any type of publication, namely: Journal Articles, Reviews, Book Chapters, Book, among others.

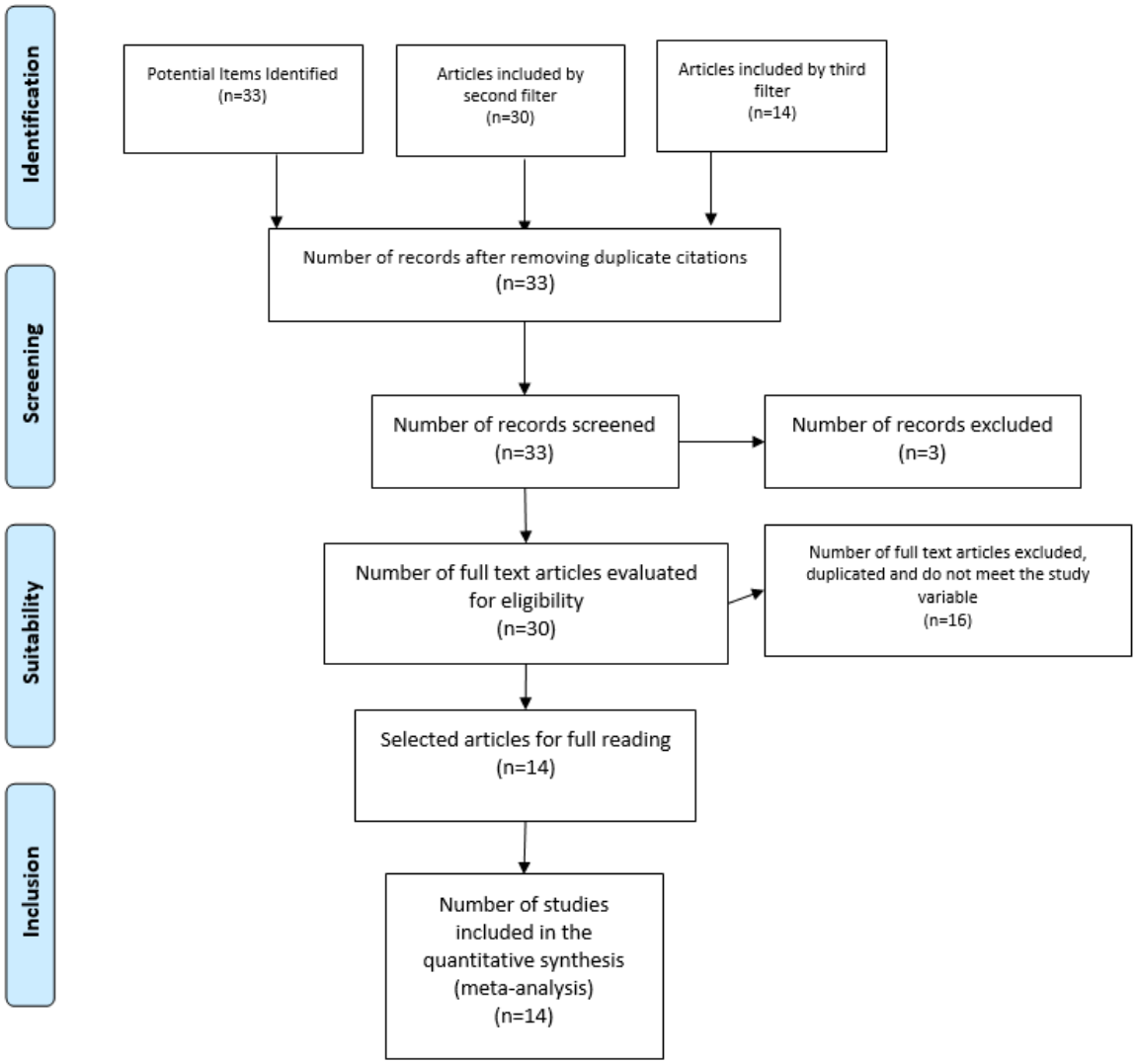

Figure 1. Flowchart of a systematic review carried out under the PRISMA technique (Moher, Liberati, Tetzlaff, Altman, & Group, 2009)
Source: Authors' own creation; Based on the proposal of the Prisma Group (Moher, Liberati, Tetzlaff, Altman, & Group, 2009)

4. RESULTS

Table 1 shows the results after applying the search filters related to the methodology proposed for this research, after recognizing the relevance of each of the referenced works.

No.	RESEARCH TITLE	AUTHOR/YEAR	COUNTRY	TYPE OF STUDY	INDEXING
1	*To pay, heal, and repair Mother Earth in the Sierra Nevada de Santa Marta: Experiences of indigenous*	Santamaria, A., Cáceres, P., D'amico, M., Sefair, R., Rosas, F., Restrepo, L., ... & Moreno, G. (2023).	COLOMBIA	QUALITATIVE	SCOPUS

	women's reparation in the implementation of the Colombian Peace Accord				
2	*Forced begging as a form of the crime of trafficking in persons. Embera-chamí case; [Begging as a modality of the crime of trafficking in persons. Embera-Chamí Case]*	Álvarez, L. M., Calvo, L. D. B., & Guevara, G. F. (2019).	COLOMBIA	QUALITATIVE	SCOPUS
3	*CSEC Associated with Travel and Tourism in Indigenous Peoples in Colombia; [ESCNNA associated with travel and tourism in indigenous peoples in Colombia]*	Tirado Acero, M., Monroy Quecán, G., Rey Guerrero, D. F., & Charry Rojas, R. (2023)	COLOMBIA	QUALITATIVE	SCOPUS
4	*Losing Ground: Indigenous Territoriality and the Núcleo Agrario in Mexico*	Herlihy, P. H., Kelly, J. H., Hilburn, A. M., Viera, A. R., Smith, D. A., Aguilar-Robledo, M., & Dobson, J. E. (2022).	UNITED STATES, CANADA	QUALITATIVE	SCOPUS
5	*Intimate Partner Violence in Tribal Communities: Sovereignty, Self-Determination, and Framing*	LaPorte, C. (2021)	UNITED STATES	QUANTITATIVE	SCOPUS

6	*Holding Corporations Liable for Breaches of Indigenous Peoples' Right to a Healthy Environment in Colombia: Chimera or Reality?*	Martini, P., & Velásquez, M. P. L. (2023).	COLOMBIA, UNITED KINGDOM	QUALITATIVE	SCOPUS
7	*Some notes on indigenous law and special indigenous jurisdiction; [Some Notes on Indigenous Jurisdiction and Special Indigenous Jurisdiction]*	Iglesias, M. D. A. (2023).	SPAIN	QUALITATIVE	SCOPUS
8	*Study of the evidence at special jurisdiction for peace from the evidence due process; [Study of the evidence in the Special Jurisdiction for Peace (JEP) from the point of view of due process of evidence]*	Palomo Vélez, D., Bustamante Rúa, M. M., Toro Garzón, L. O., & Marín Tapiero, J. I. (2020).	COLOMBIA, CHILE	QUANTITATIVE/QUALITATIVE	SCOPUS
9	*INDIGENOUS ISLAND AUTONOMY AND SPECIAL ECONOMIC ZONE STATUS*	Grydehøj, A., Kim, S. P., & Su, P. (2023).	SOUTH KOREA	QUALITATIVE	SCOPUS
10	*Indigenous Micropolitics of Reconciliation in Jimaín, Colombia*	Santamaría, A. (2020).	COLOMBIA	QUALITATIVE	SCOPUS

11	*Discovering What Is Already Known: The Afro-Colombian Ancestral Justice System before the Special Jurisdiction for Peace*	Bries Silva, N. (2024).	COLOMBIA	QUALITATIVE	WOS
12	*Under western eyes: Articulation between indigenous justice and the national judicial system*	Benavides-Vanegas, F. S. (2017).	SPAIN	QUALITATIVE	WOS
13	*From Research to Practice: Bridging the Gaps for Psychologists Working in Indigenous Communities Affected by Gangs*	Goodwill, A., & Giannone, Z. (2017).	UNITED STATES	QUALITATIVE	WOS
14	*Judicial coloniality, legal pluralism and republican citizenship. Reflections on an unrelenting tension*	Polo Blanco, J. (2022).	ECUADOR	QUALITATIVE	WOS

TABLE 1. LIST OF ARTICLES ANALYSED

Source: Authors' own creation

4.1 Co-occurrence of words

Figure 2 shows the relationship between the keywords used to search for the study material for the systematic analysis proposed for this research.

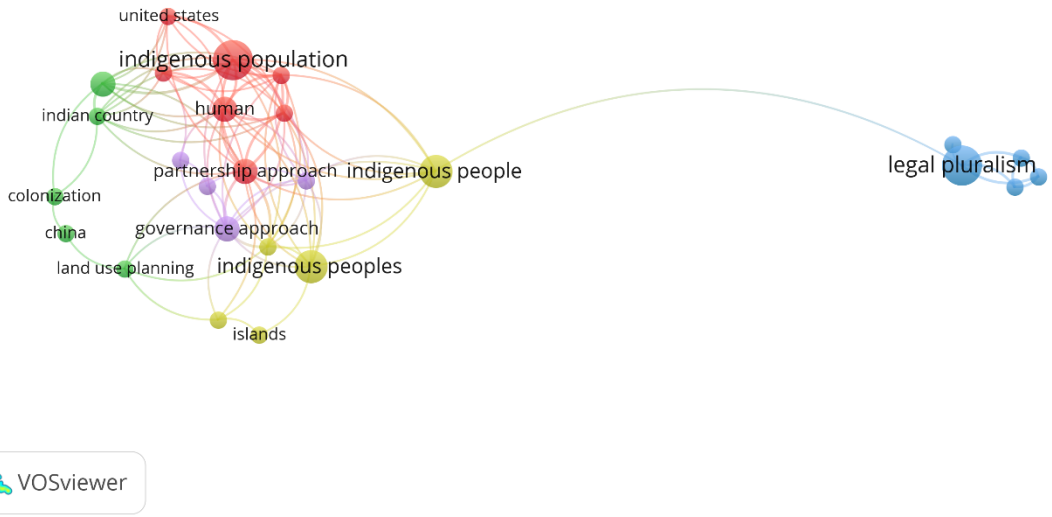

Figure 2. Co-occurrence of keywords.

Source: Authors' own creation

Figure 2 shows the most frequently used keywords and their correlation with research on topics associated with the problems of Special Indigenous Jurisdiction. In this way, it is possible to affirm that Indigenous Jurisdiction constitutes the central axis of the research identified for the analysis developed in this article, directly related to research in Latin America, Legal Pluralism, Indigenous Population, Communities, Cultural Heritage, among others, which allow to confirm the relevance of the data analyzed in compliance with the proposed objective. It is noteworthy that the special indigenous jurisdiction is established as a fundamental part of the social state of law that is multi-ethnic, multicultural and democratic. These factors and aims of the State have developed the foundation of culture as part of the nation, which is evidenced in its complementarity with the different rights. The protection of the nation's cultural wealth and heritage and the right to self-determination of indigenous communities. In addition, countries such as Ecuador and Colombia have expanded the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169.

4.2 DISCUSSION

The purpose of this article was to analyze, from a systematic perspective, the contribution of the authors, through their publications, to the study of the usability problems of Special Indigenous Jurisdiction, carried out in high-impact journals indexed in Scopus and Wos databases by authors affiliated with Latin American institutions. In this way, it is possible to affirm that the publications indicated in the body of this document have carried out research at different levels whose findings contribute to the generation of new knowledge regarding the variables proposed for this study, this is how great contributions are identified as contemplated in the article entitled "To approve or not to approve? A Comparative Analysis of Interactions between State, Business, and Indigenous Communities in Mining in Canada and Sweden" The overall objective is to identify the factors that shape the quality of Indigenous community-industry-state interactions in mining and mining development. An underlying ambition of the research is to develop knowledge to help manage mining-related land-use conflicts in Sweden, drawing on Canadian comparisons and experiences. This article summarizes comparative research that has been conducted across jurisdictions in three Canadian provinces and Sweden. It focuses on the interaction between governance system properties, the

quality of interaction, and governance outcomes. We combine institutional and interactive governance theory and use the concept of governance to assess how and why specific outcomes such as mutually beneficial interaction, collaboration, or opposition occurred. This analysis suggests that the Swedish government can take steps to improve the governance of mining-related issues, by developing alternative and more effective ways to recognize and protect Sámi rights and culture, broaden the scope and increase the legitimacy and transparency of EIAs, raise the quality of interaction and consultation, and develop tools to actively stimulate and support collaboration and partnerships on equal terms. Overall, we argue that indigenous communities' responses to mining should be understood within a broader framework of indigenous self-determination, in particular communities' own assessments of their opportunities to achieve their long-term goals using alternative modes of governance and types of interactions. Supporting the above idea, the contribution made by the development of the article entitled "Holding companies accountable for violations of the right of indigenous peoples to a healthy environment in Colombia: chimera or reality?" is evident. This article aims to examine whether companies can be held liable for violations of indigenous peoples' right to a healthy environment in Colombia. After explaining the scope of the right in the international, regional and Colombian legal systems, it addresses Colombia's obligation to protect it against violations committed by third parties and to provide judicial remedies in case of violations. It then discusses how the absence of binding international and national legal frameworks that impose obligations on corporations in environmental matters affects the judicial remedies available to indigenous peoples. He argues that Colombia's Constitutional Court and the Special Jurisdiction for Peace have tried to fill the void left by the legislature. While the former has recognized the existence of corporate obligations in environmental matters, the latter has recognized indigenous territories as subjects of rights to further protect indigenous rights and the environment in general. However, as any methodology is not exempt from presenting problems through its use, as shown in the article entitled "Study of the evidence in the Special Jurisdiction for Peace (JEP) from the due process of evidence" This article presents a study of the evidence in the Special Jurisdiction for Peace, Regulated by Laws 1922 of 2018 and 1957 of 2019. To this end, it is based on an analysis of the content of the evidentiary due process. It then examines the criteria for prioritization and selection of cases in the transitional justice model, testing the probative value of contextual evidence and evidence sharing in this jurisdiction. Subsequently, it reflects on the practice of evidence in indigenous territories, the testimony of the minor victim, the practice and assessment of evidence with victims of sexual violence in the armed conflict, as well as on the standard of proof to convict in this special jurisdiction. (Beland Lindahl, 2023)(Velásquez, 2023)(Diego Palomo Vélez, 2020)

5. CONCLUSIONS

This review article concludes by highlighting the importance of knowing the updated status of the bibliography published in databases such as Scopus or Wos, referring to the study of the usability problems of Special Indigenous Jurisdiction during the period between 2018 and 2023, however, it has also been important to highlight those problems within the use of them, identified by the authors cited here, as recorded in the body of this article. The special indigenous jurisdiction, established by the Constitution in Colombian and Ecuadorian territory, has important connotations for indigenous communities, since it allows them to administer justice within their territory and communities, in accordance with their established rules and procedures. This right to administer justice has innumerable legislative functions, as it allows these communities to create their own rules and procedures to be applied within their jurisdiction.

The jurisdiction of the Constitutional Court has recognized that the fundamental rights of indigenous peoples such as the right to subsistence, derived from the protection of the right to life, the right to ethnic, cultural and social integrity, the right to collective property and the right to participate in natural resource relations.

However, the special indigenous normativity and jurisdiction has not yet been finalized, since the countries mentioned above lack greater ownership of these reforms by civil society in general and by indigenous peoples and communities, so that they can participate in the process of drafting

regulations for the establishment of consensual mechanisms. plural and democratic among constitutional systems. In addition, the construction of a plural jurisdiction within the framework of multicultural states requires intercultural dialogue and due respect for beliefs, culture and differences. Given the situation faced by these communities, it is important to promote the active participation of these communities, so that they are not mere recipients of imposed norms. In addition, it is essential to implement a law on coordination between the two jurisdictions, ordinary and indigenous, which will enable judicial operators and indigenous authorities to have explicit regulations that contribute to clarifying in a comprehensive manner the effective exercise of special indigenous jurisdiction. In addition to the creation of special centers, which meet the necessary conditions to preserve the ethnic and cultural integrity of these communities.

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