

DOCUMENTARY EXPLORATION OF THE SPECIAL INDIGENOUS JURISDICTION IN COLOMBIA AND ECUADOR: A FOCUS ON THE HUMAN RIGHTS OF INDIGENOUS PEOPLE AND MINORITIES

JONATHAN KARLO MARTINEZ OJEDA

Jonathanmartinez00@usc.edu.co

Universidad Santiago de Cali, Colombia

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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 variable Special Indigenous Jurisdiction, Human Rights and Minorities 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 26 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, HUMAN RIGHTS, MINORS. 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. It is expected to identify factors that may jeopardize the preservation of compliance with human rights in indigenous communities and Latin American minorities, with a greater focus on Colombian and Ecuadorian communities. In this way, it is possible to consider the importance of a documentary review in the study of the application of the Special Indigenous Jurisdiction and the broad debate regarding the ordinary justice system in these countries.

Key words: *Special Indigenous Jurisdiction, Ordinary Jurisdiction, Human Rights, Colombia, Ecuador.*

1. INTRODUCTION

The study of special indigenous jurisprudence in Latin America is essential to understand and respect the cultural and legal diversity of the region. These special judicial systems recognize and apply the traditions, customs, and values of indigenous communities, providing a space for the exercise of their autonomy and self-determination in legal and justice matters. (Rodríguez, 2010)

With regard to the protection of human rights for indigenous peoples and minorities in general, it was a crucial issue that required special attention. These communities often face discrimination, marginalization and violations of their fundamental rights due to historical, social and economic factors. Therefore, it is necessary for states to implement effective measures to ensure equal rights and opportunities for all ethnic and minority groups. (De Sousa Santos, 2014)

The protection of human rights for indigenous people and minorities involves several aspects, such as access to justice, political and social participation, preservation of culture and identity, access to basic services such as health and education, and protection of their lands and natural resources. This requires a comprehensive approach involving inclusive public policies, appropriate legislation, and the promotion of intercultural tolerance and respect. (Ruiz, 2007)

Indigenous special jurisprudence systems are an important tool in this process, as they recognize and strengthen the collective and individual rights of these communities, thus contributing to greater equality and justice for all sectors of society. However, it is essential that these systems operate in harmony with international human rights standards and that effective monitoring and protection mechanisms are ensured to prevent any abuse or violation of rights. (Medina Marín & Espitia Castro, 2022)



In Colombia and Ecuador, special indigenous jurisprudence has been a significant advance in the recognition of the rights of indigenous communities. Both countries have enacted laws and policies that recognize the autonomy and special jurisdiction of these communities in legal and justice matters, in line with international standards on indigenous peoples' rights.

In Colombia, the 1991 Constitution recognizes the country's ethnic and cultural diversity and establishes the autonomy of indigenous communities in article 246. In addition, Act No. 270 of 1996 provides for the recognition of special indigenous jurisdiction. However, despite these legal advances, indigenous communities in Colombia continue to face numerous challenges, including violence, forced displacement, limited access to basic services, and pressure on their ancestral territories. (Assies, van der Haar, & Hoekema, 1999)

In Ecuador, the 2008 Constitution recognizes the collective rights of indigenous and Afro-Ecuadorian peoples, as well as their special jurisdiction, in accordance with international conventions. In addition, the Organic Law on Special Indigenous Jurisdiction, enacted in 2009, provides for the recognition and protection of indigenous communities' own justice systems. However, despite these legal frameworks, challenges such as discrimination, poverty, lack of access to land and natural resources, and lack of prior consultation in development projects affecting indigenous communities persist. (Iglesias, 2010)

In summary, while special indigenous jurisprudence represents a significant advance in the recognition of the rights of indigenous peoples in Colombia and Ecuador, there are still significant challenges that need to be addressed in order to ensure effective protection of these rights and prevent their violations. This requires continued engagement by governments, civil society and the international community to address the structural causes of discrimination and exclusion faced by indigenous and minority communities in both countries.

2. GENERAL OBJECTIVE

To analyze, from a bibliometric and bibliographic perspective, the production of research papers on the variables Special Indigenous Jurisdiction, Human Rights and Minorities, published in high-impact journals indexed in the Scopus and Wos databases during the period 2018-2023 by Latin American institutions.

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 the Scopus and Wos databases for information using the words SPECIAL INDIGENOUS JURISDICTION, HUMAN RIGHTS, MINORS. (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.

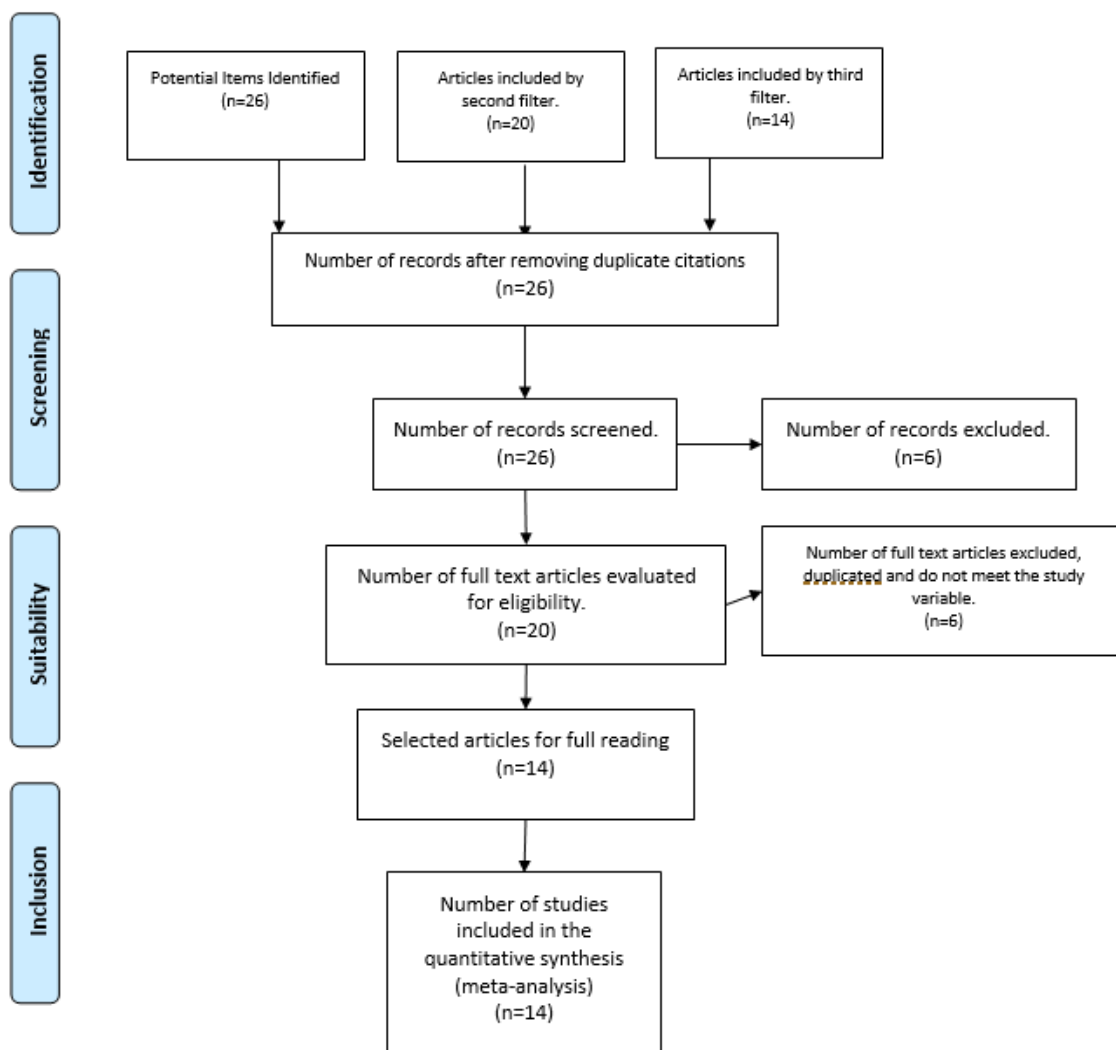


Figure 1. Flowchart of a systematic review carried out under the PRISMA technique (Moher, Liberati, Tetzlaff, Altman, & Group, 2009)

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	<i>Protection of culture and the right to intercultural bilingual education in Pichari (VRAEM) in Peru;</i> [THE PROTECTION OF CULTURE AND THE	Bedriñana, K. A., & Gutiérrez, G. H. (2023)	PERU	QUALITATIVE	SCOPUS



	RIGHT TO INTERCULTURAL BILINGUAL EDUCATION IN PICHARI (VRAEM) OF PERU]				
2	Disadvantaged Groups and Doctrine of Margin of National Appreciation; [Vulnerable groups and national margin of appreciation]	Falcón, J.G.(2021)	CHILE	QUALITATIVE	SCOPUS
3	Formation of the indigenous pedagogue: A land of rights and resistance; [Formação de pedagogos e pedagogas indígenas: Uma terra de direitos e de resistência]; [Training Indigenous Educators: A Land of Rights and Resistance]	Gehrke, M., Sapelli, M. L. S., & Faustino, R. C. (2020).	BRAZIL	QUALITATIVE	SCOPUS
4	The unconstitutionality of the Constitutional Amendment Project no. 215/2000 against the rights of the indigenous peoples; [A inconstitucionalidade do Projeto de Emenda Constitucional nº 215/2000 frente aos direitos dos povos indígenas]; [The unconstitutionality of Constitutional Amendment Bill No. 215/2000 with regard to the rights of indigenous peoples],	de Lima Santos, R. K. M., & Galvão, V. (2020).	BRAZIL	QUALITATIVE	SCOPUS



5	<i>Dialogue between the inter-american court and the European court of human rights on the human right to cultural identity; [Dialogue between the Inter-American Court of Human Rights and the European Court of Human Rights on the Human Right to Cultural Identity],</i>	Faundes, J.J.(2020)	CHILE	QUANTITATIVE	SCOPUS
6	<i>Political representation and partisanship in the Inter-American human rights system: The case of indigenous peoples; [Political Representation and Party Affiliation in the Inter-American System of Human Rights: The Case of Indigenous People</i>	MAIA, L., DE ARAÚJO BORGES, M. C., & NUNES DA COSTA FILHO, A. E. (2020).	BRAZIL, PORTUGAL	QUALITATIVE	SCOPUS
7	<i>Free, prior and informed consent (FPIC) in Mexico: Elements for its construction and challenges</i>	Herrera, J. I. (2019).	MEXICO	QUALITATIVE	SCOPUS
8	<i>Epidemics, protagonism and health specific rights: the creation of the Yanomami Special Health District and the Indigenous Health Policy in Brazil (1991-2021)</i>	Athila, A. R. (2022).	BRAZIL	QUANTITATIVE/QUALITATIVE	WOS
9	<i>Primary health care as a platform for addressing racial discrimination to leave no one behind</i>	Hone, T., Gomez, S., Rao, M., Ferreira, A., Barkley, S., &	BRAZIL, UNITED KINGDOM, SWITZERLAND	QUALITATIVE	WOS



	<i>and reduce health inequities</i>	Swift Koller, T. (2022).			
10	<i>THE INDIGENOUS GENOCIDE IN BRAZIL: COVID-19 AND COLONIAL HERITAGE</i>	Conte, D., & Paula, T. V. (2022).	BRAZIL	QUALITATIVE	WOS
11	<i>Health needs of indigenous Mayan older adults in Mexico and health services available</i>	Pelcastre-Villafuerte, B. E., Cuecuecha Rugerio, E., Treviño Siller, S. G., Rueda Neria, C. M., & Ruelas-González, M. G. (2020).	MEXICO	QUALITATIVE	WOS
12	<i>Transitional Injustice For Indigenous Peoples From Brazil</i>	Demetrio, A., & Kozicki, K. (2019)	BRAZIL	QUALITATIVE	WOS
13	<i>Indigenous Peoples, Exclusion and Precarious Work: Design of Strategies to Address Poverty in Indigenous and Peasant Populations in Ecuador through the SWOT-AHP Methodology</i>	García Guerrero, J. E., Rueda López, R., Luque González, A., & Ceular-Villamandos, N. (2021). I	ECUADOR, COLOMBIA, SPAIN	QUALITATIVE	WOS
14	<i>Participation, Representation and Political Inclusion Is There an Indigenous Vote in Mexico?</i>	Sonnleitner, W. (2020).	COLOMBIA	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.

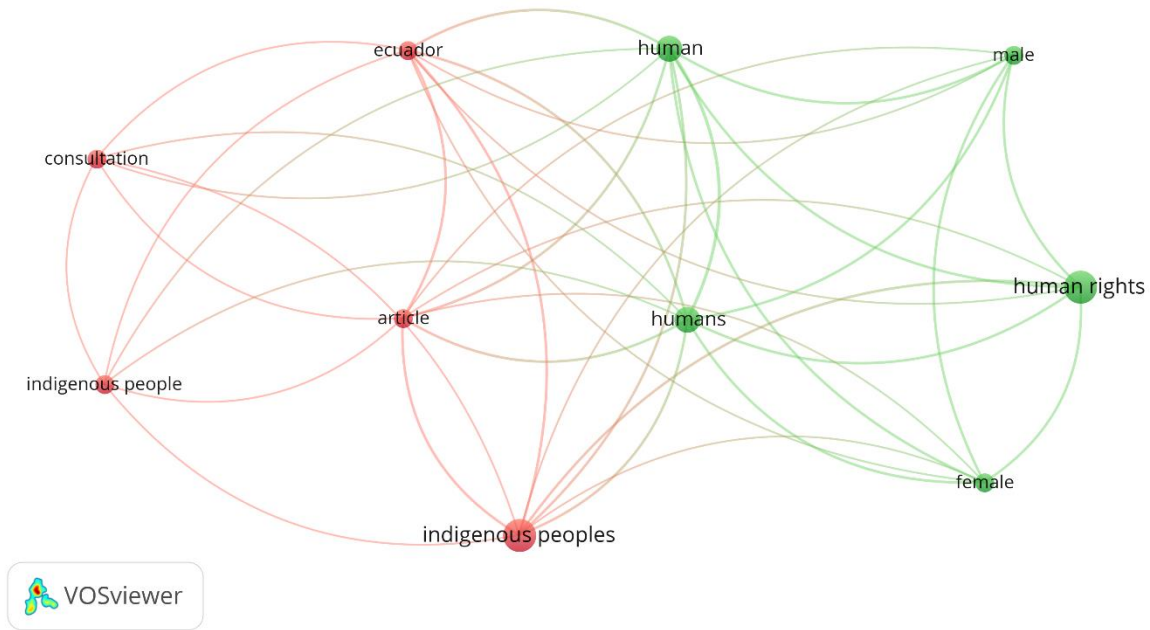


Figure 2. Co-occurrence of keywords.


Source: Authors' own creation

The above figure shows two main groups of research related to each other by their keywords, which are terms or phrases that summarize the main content of a document or study. These keywords are used to facilitate the search and indexing of research in academic databases and search engines. Keywords help researchers quickly identify relevant content and improve the visibility and accessibility of their work. Generally, keywords are carefully chosen to reflect the main themes, key concepts, and areas of interest of the study. On the one hand, Human Rights is distinguished by the closeness in terms of research related to research on Humans, Masculine, Feminine and the component of the being as such, on the other hand, Indigenous population, predominates the identified studies, so it can be inferred that there is relevance between the articles selected for analysis and the topic proposed in this research.

4.2 DISCUSSION

Through this documentary review, it was possible to compile, analyze and synthesize the existing scientific production on the subject, providing an overview of previous studies, research and debates. This is important because it allows us to identify trends, gaps in knowledge, and areas that require more research attention. In addition, it facilitates the contextualization of the topic in the historical, political, social and legal framework of each country, as well as the identification of similarities and differences between them.

In the case of human rights and the rights of indigenous people and minorities in Colombia and Ecuador, a desk review can contribute significantly to the understanding of the challenges, achievements, obstacles and opportunities in the protection and promotion of these rights in the region. In addition, it can serve as a basis for future research, public policy, and advocacy actions on behalf of these vulnerable groups. This can be evidenced in research works such as the one entitled



"Dialogue between the Inter-American Court of Human Rights and the European Court of Human Rights on the Human Right to Cultural Identity" of which we can affirm that the dialogue between the IACHR and the ECtHR is fundamental because it allows the exchange of experiences, jurisprudence and best practices in relation to the protection of this right in different regional contexts. This can result in a mutual enrichment of legal interpretations and the promotion of stronger and more coherent global standards of cultural identity. In addition, this dialogue can contribute to raising awareness of the importance of protecting and respecting cultural diversity in an increasingly globalized world. It can also strengthen collaboration among regional human rights systems and foster international cooperation in the promotion and protection of the rights of indigenous peoples and minorities. (Faundes, 2020)

One of the articles that stands out the most within this research is the one entitled "Indigenous Peoples, Exclusion and Precarious Work: Design of Strategies to Address Poverty in Indigenous and Peasant Populations of Ecuador through the SWOT-AHP Methodology" whose purpose was to analyze the options that, following decent employment and the social economy, they can enable the human development of poor, excluded and vulnerable indigenous populations in Ecuador. It is important to highlight that the study highlighted the importance of an economy based on reciprocity and trust, through the identification of production and consumption niches within communities, highlighting the participation of indigenous groups as fundamental actors in job creation and business sustainability, since the institutionalization of employment policies aimed at benefiting indigenous communities in Ecuador are essential to address the problems of indigenous communities, historical and socioeconomic inequalities faced by these populations. These policies can play a crucial role in reducing the poverty, exclusion and discrimination that have traditionally affected indigenous peoples in the country. (García Guerrero, Rueda López, Luque González, & Ceular-Villamandos, 2021)

Some of the positive aspects of these policies could include:

- ✓ Employment generation: Policies that encourage the creation of specific job opportunities for indigenous communities can contribute to increasing the employment rate within these populations and improving their quality of life.
- ✓ Economic inclusion: By facilitating indigenous people's access to formal employment and entrepreneurship opportunities, greater economic inclusion can be promoted and dependence on the informal economy, which often disproportionately affects these communities.
- ✓ Recognition of traditional skills and knowledge: By valuing and leveraging the traditional skills and knowledge of indigenous communities, these policies can promote cultural diversity and strengthen the local economy.
- ✓ Community empowerment: Policies that promote the active participation of indigenous communities in the formulation and implementation of employment programs can strengthen their capacity for self-management and promote greater community empowerment.

However, it's important to keep in mind a few key challenges and considerations:

- ✓ Equitable access: It is critical to ensure that employment policies are equitably accessible to all indigenous communities, including those living in rural or remote areas.
- ✓ Respect for cultural identity: Employment policies must respect and take into account the cultural identity and values of indigenous communities, avoiding cultural assimilation and promoting respect for their autonomy and self-determination.
- ✓ Education and training: There is a need to provide appropriate training and training programmes that respond to the specific needs of indigenous communities, in order to improve their labour and business skills and capacities.



However, a vital issue on the national agenda in any country is health as a fundamental right for the entire population, as mentioned in the article entitled "Primary health care as a platform to address racial discrimination to leave no one behind and reduce health inequities" which highlights the inequality in health that reflects a series of factors historical, social, economic and structural. This disparity in access to health care and health indicators between indigenous communities and the rest of the population is a reflection of the deep inequities faced by these populations. Latin American indigenous communities face a common scourge and difficulty in accessing health services, either due to lack of infrastructure, the shortage of medical professionals in the areas near their communities, the insecurity in this type of terrain that is generally jungle or desert and consequently the difficulty of accessing continuous transportation that facilitates access to health care centers. At the social level, the living conditions of many indigenous communities, such as poverty, limited access to clean water and sanitation, lack of adequate housing and malnutrition, contribute significantly to the health disparities they face, and finally, an aspect that seems to have been impossible to eradicate in the Latino community, which is discrimination and racism that can hinder indigenous communities' access to health services as well as discouraging them from seeking medical care due to previous experiences of mistreatment or disrespect for their cultural identity. (Hone, y otros, 2022)

5. CONCLUSIONS

Thanks to the documentary analysis proposed for this research, it is possible to determine that achieving social equity between indigenous groups and the community in general in Latin America, especially in Ecuador and Colombia, involves addressing a series of key aspects that go beyond justice and jurisprudence, although these are fundamental tools in the process. These aspects are listed below, taking into account the position of the different authors cited in the development of this article:

Recognition and respect for cultural diversity: It is crucial to recognize and respect the cultural diversity of indigenous communities and to promote harmonious coexistence between different ethnic groups. This involves valuing the traditions, languages, customs and ways of life of indigenous communities and fostering intercultural dialogue.

Equal access to justice: Ensuring that all people, including indigenous communities, have equal access to justice is critical. This includes not only access to ordinary justice systems, but also the recognition and strengthening of special indigenous jurisprudence as a complementary form of administration of justice that respects the rights and autonomy of these communities.

Participation and consultation: Actively involving indigenous communities in decision-making that affects their lives is essential to ensuring real equity. This implies consulting and seeking the free, prior and informed consent of indigenous communities in development projects, public policies and decisions that may affect their rights and interests.

Protection of collective and individual rights: It is essential to ensure the protection of the collective and individual rights of indigenous communities, including the rights to land, territory, self-determination, culture, education and health. This requires the adoption of effective measures to prevent discrimination, marginalization and violence against these communities.

Sustainable development and respect for the environment: Promoting sustainable development that respects the traditional knowledge and care for the environment of indigenous communities is essential to ensure their social equity. This means protecting their ancestral territories from exploitation and destruction, and encouraging development practices that are respectful of nature and culturally appropriate.



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