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Intercultural dialogue as a precondition to mitigate tensions between the ordinary and the special indigenous jurisdictions in Colombia and Ecuador

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Abstract

Despite the jurisprudence issued by the Constitutional Courts of Colombia and Ecuador, which resolve tensions between the ordinary jurisdiction and the special indigenous jurisdiction, these continue to arise on issues such as prior consultation, legitimacy of the penalties applied by indigenous authorities, ethno-education (Colombia), bilingualism (Ecuador), and the rights of isolated indigenous peoples, to mention a few examples. In addition, the special indigenous jurisdiction is endorsed both by the Political Constitution of each country and by the international community, particularly by the American Declaration on the Rights of Indigenous Communities.

However, even the majority society and public officials, not only those linked to the judicial branch, still do not fully accept the decisions made by the indigenous authorities in their territory.

It could be said that the special indigenous jurisdiction has not been able to occupy its rightful place in the jurisdictional sphere of the countries. This article will recount the most significant events that have occurred at the international level and in each of the countries, up to the creation of the special indigenous jurisdiction and show the tensions that its creation and operation have caused, through the jurisprudence of the Constitutional Courts.

Finally, it is necessary to promote intercultural dialogue between the ordinary jurisdiction and the special indigenous jurisdiction, with a strong participation of the majority society and the indigenous community, as a real possibility for the special indigenous jurisdiction to reach its full development.

Keywords: *Intercultural dialogue, special indigenous jurisdictions, Colombia, Ecuador.*

Introduction

The native peoples of Colombia and Ecuador have had a long road to travel in order to have a special indigenous jurisdiction. The road began with the contributions of the International Labor Organization (ILO), which took up the clamor of the indigenous peoples for the respect of their rights, violated since the conquering and colonizing processes, and over time, a good part of the society, public sector officials and representatives of national and multinational private companies, continue to consider the

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natives as incapable of self-managing their lives in the territories they have always occupied.

While it is true that the ILO recognized the rights of indigenous communities, this recognition was given from the perspective of multiculturalism, i.e., it is accepted that different cultures can coexist in the same State, but only one of them is responsible for guiding the progress of society in legal, economic and cultural terms.

Since the promulgation of the Political Constitution of 1991, Colombia has been taken as a reference in various Latin American countries such as Bolivia, Ecuador, Chile and Peru, in terms of progress in the recognition of human rights for indigenous and Afro-descendant communities.

The Republic of Ecuador made the first attempt to include in its 1998 Political Charter the recognition of the rights of minority communities, and then in 2008, a milestone was reached in this matter, because it recognized the existence of autonomous nationalities, giving transcendental importance to indigenous communities which are not interested in having any contact with the majority society, and in whose territories the greatest wealth of natural resources is found, which cannot be exploited, because it would threaten the survival of such communities.

It is worth mentioning that after Colombia (32 years) and Ecuador (15 years) promulgated their Constitutions, the respect that the majority society (natural and juridical persons) grants to the rights of indigenous peoples is still incomplete, and the obstacles that have arisen in legal matters, have originated tensions between the JEI and the Ordinary Jurisdiction, which are still not resolved despite the jurisprudence that has emanated from the respective Constitutional Courts and which tends to remain so unless, as I try to explain here, an intercultural dialogue is initiated, an intercultural dialogue on an equal footing (which even allows discussing the development model) is initiated between the indigenous communities and the majority society, which is still clinging to maintain the dominant neoliberal culture, which responds more to foreign capitalist interests with its extractivist policy than to a real vision of defense of the common goods. This is a guarantee that the human species will not be eliminated from the territories inhabited by the indigenous communities, which have been invaded and violated since time immemorial.

It is real that today there is an economic, political and social inequality in the way in which indigenous communities live their daily lives, compared to the way in which other sectors of society do. This situation does not seem to be changing; on the contrary, indigenous communities are losing their language, changing their worldview, becoming economically impoverished, without the right to ethno-education, disrespected in their culture, and without receiving true recognition of their autonomy and their uses and customs in the solution of the conflicts that affect them in their territories.

It reaffirms that intercultural dialogue can allow that the special indigenous jurisdiction does not remain a dead letter, with a lot of literature, but without practical implementation, both ultimately by the action of members of the majority society, as well as by the presence of members of indigenous communities, which have permeated the majority culture and seek to "civilize" their criminal code.

This article arises from the completion of the graduate work, "Comparative Law Study of the Application of the Special Indigenous Jurisdiction in Colombia and Ecuador" to be submitted to the University of Santiago de Cali, to opt for the title of Doctor of Law and has been nourished profusely with the contribution of the body of advisors and evaluators in the various stages that have taken place in the research process, especially by the guidelines drawn by Dr. Pedro Hernando Gonzalez Sevillano.

1. Genesis of the Special Indigenous Jurisdiction Colombia and Ecuador

The International Labor Organization (ILO), at its fortieth session on June 5, 1957, adopted ILO Convention No. 107, considered the first significant international instrument because it enunciated the rights of indigenous and tribal peoples and the obligations of States ratifying the Convention with respect to such peoples. The text of Convention No. 107 is based on the following postulates.

"Having decided to adopt various proposals concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, which is the sixth item on the agenda of the meeting.

Having decided that these proposals shall take the form of an international convention.

Whereas the Declaration of Philadelphia affirms that all human beings have the right to pursue their material well-being and spiritual development in conditions of freedom and dignity, economic security, and equal opportunity.

Whereas in a number of independent countries, there exist indigenous and other tribal and semi-tribal populations who are not yet integrated into the national community and whose social, economic, or cultural situation prevents them from benefiting fully from the rights and opportunities enjoyed by other elements of the population.

Considering that it is desirable, both from the humanitarian point of view and in the self-interest of the countries concerned, to pursue the improvement of the living and working conditions of these populations by taking simultaneous action on all the factors which have prevented them up to the present time from participating fully in the progress of the national community of which they form a part; ..." (ILO, Convention No. 107 of 1957, Preamble).

The aim of this convention was to integrate groups of persons considered as indigenous into the majority society, so that they could take advantage of the rights and opportunities enjoyed by other members of society, with a view to protecting them.

In addition, it seeks to improve the living conditions of the indigenous population and, incidentally, to respond to the interest of the countries, basically to provide labor (Article 15, Part III, Recruitment and Conditions of Employment). The Agreement also establishes conditions for vocational training, handicrafts and rural industries, according to which the indigenous community is assimilated to the peasantry. Despite being an advance in relation to the previous state of affairs, Convention No. 107 does not consider at all issues such as autonomy, bilingualism (ethno-education), to mention only two aspects.

That is to say, the countries in accepting the text of Convention 107 recognize that there are indigenous communities in the territory and that they should be integrated into the productive sector, promoting their qualification in some cases and proposing conditions to be hired in jobs.

Subsequently, the International Labor Organization (ILO) at the 76th. Subsequently, at the 76th Session of the General Conference of the organization, it adopted Convention 169 on indigenous and tribal peoples in independent countries, which was subsequently approved by the Congress of the Republic of Colombia, through Law 21 of March 4, 1991.

In the motivating part of the Convention, it is stated that international law has evolved since 1957 and that "the changes that have occurred in the situation of indigenous and tribal peoples in all regions of the world make it advisable to adopt new international standards on the subject, in order to eliminate the orientation towards the assimilation of previous standards.

The ILO Conference recognizes that "the aspirations of these peoples to take control of their institutions and ways of life and of their economic development and to maintain and strengthen their identities, languages and religions within the framework of the States in which they live" make it necessary to take new decisions to ensure that the autonomy of native peoples is recognized in the countries subscribing to the Convention.

In addition, Convention 169 recalls "the special contribution of native and tribal peoples to cultural diversity, to the social and ecological harmony of humankind and international cooperation and understanding...", a unique fact in that it is the first time that the issue of cultural diversity has been addressed.

It is worth saying, then, that with the promulgation of ILO Convention 169 and its ratification by the countries that have signed it, a milestone is marked that changes the history of the relationship of States with indigenous peoples and begins a stage of openness of the State in the recognition of the existence of indigenous institutions that have allowed their survival over time, overcoming harsh conquering and colonizing attacks by outsiders in their territory.

The advances achieved with the two aforementioned agreements were later complemented by the promulgation of the constitutional texts of Colombia in 1991 and Ecuador, for the former in 1998 and for Ecuador in 2008. The following page summarizes the constitutional articles that refer to indigenous communities and, in particular, create the special indigenous jurisdiction.

Political Constitution of Colombia on July 7, 1991	Constitution of Ecuador 2008
Article 1. Colombia is a social State governed by the rule of law, organized as a unitary, decentralized, democratic, participatory and pluralistic Republic, with autonomy of its territorial entities, founded on respect for human dignity, on the work and solidarity of its members and on the prevalence of the general interest. Article 2. The essential purposes of the State are: to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties enshrined in the Constitution; to facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the Nation; to defend national independence, maintain territorial integrity and ensure peaceful coexistence and the validity of a just order. The authorities of the Republic are instituted to protect all persons residing in Colombia, in their life, honor, property, beliefs, and other rights and freedoms, and to ensure the fulfillment of the social duties of the State and of individuals. Article 4. The	Art. 1.- Ecuador is a constitutional state of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular. It is organized as a republic and is governed in a decentralized manner. Sovereignty resides in the people, whose will is the basis of authority, and is exercised through the organs of public power and the forms of direct participation provided for in the Constitution. The non-renewable natural resources of the territory of the State belong to its inalienable, unrenounceable and imprescriptible patrimony. Art. 2.- The flag, the coat of arms and the national anthem, established by law, are the symbols of the homeland. Spanish is the official language of Ecuador; Spanish, Kichwa and Shuar are official languages of intercultural relations. The other ancestral languages are of official use for the indigenous peoples in the areas where they live and in the terms established by law. The State shall respect and encourage their conservation and use.

Constitution is the norm of norms. In any case of incompatibility between the Constitution and the law or any other legal norm, the constitutional provisions shall apply. Article 7. The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation. Article 10. Spanish is the official language of Colombia. The languages and dialects of ethnic groups are also official in their territories. The education provided in communities with their own linguistic traditions shall be bilingual. Article 13. All persons are born free and equal before the law, shall receive the same protection and treatment from the authorities and shall enjoy the same rights, freedoms and opportunities without any discrimination for reasons of sex, race, national or family origin, language, religion, political or philosophical opinion, religion, or political or philosophical opinion. Article 29. Due process shall apply to all kinds of judicial and administrative proceedings. No one may be judged except in accordance with laws existing prior to the act with which he is charged, before a competent judge or court and with observance of the fullness of the forms proper to each trial. In criminal matters, the permissive or favorable law, even when subsequent, shall be applied in preference to the restrictive or unfavorable law. All persons are presumed innocent until they have been judicially declared guilty. Whoever is accused has the right to a defense and to the assistance of an attorney chosen by him or ex officio, during the investigation and trial; to a public due process without unjustified delays; to present evidence and to controvert the evidence adduced against him; to challenge the conviction, and not to be tried twice for the same act. Evidence obtained in violation of due process is null and void as a matter of law. Article 70. The State has the duty to promote and encourage access to culture for all Colombians with equal opportunities, through permanent education and scientific, technical, artistic and professional education at all stages of the process of creation of national identity.	Art. 6.- All Ecuadorians are citizens and shall enjoy the rights established in the Constitution. Ecuadorian nationality is the political legal bond of persons with the State, without prejudice to their belonging to any of the indigenous nationalities that coexist in Ecuador. Art. 10.- Individuals, communities, peoples, nationalities and collectives are holders and shall enjoy the rights guaranteed in the Constitution and international instruments. Nature shall be the subject of those rights recognized by the Constitution. Art. 14.- The right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and good living, sumak kawsay, is recognized. The preservation of the environment, the conservation of ecosystems, biodiversity and the integrity of the country's genetic heritage, the prevention of environmental damage and the recovery of degraded natural spaces are declared to be of public interest. Art. 56.- The indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and the communes are part of the single and indivisible Ecuadorian State. Art. 57.- The following collective rights shall be recognized and guaranteed to the communes, communities, indigenous peoples and nationalities, in accordance with the Constitution and the covenants, conventions, declarations and other international human rights instruments: 1. Freely maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization. 2. Not to be subjected to racism and any form of discrimination based on their origin, ethnic or cultural identity. 3. Recognition, reparation and redress for collectivities affected by racism, xenophobia and other related forms of intolerance and discrimination. 4. To conserve the imprescriptible property of their community lands, which shall be inalienable, unseizable and indivisible. These lands shall be exempt from the payment of fees and taxes. 5. Maintain possession of ancestral lands and territories and obtain their free adjudication. 6. To participate in the use, usufruct, administration and conservation of the renewable natural resources found in their

Culture in its diverse manifestations is the foundation of nationality. The State recognizes the equality and dignity of all those who coexist in the country. The State shall promote research, science, development and dissemination of the cultural values of the Nation. Article 92. Any natural or legal person may request from the competent authority the application of criminal or disciplinary sanctions derived from the conduct of public authorities. The Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judiciary, the Office of the Attorney General of the Nation, the Courts and the Judges administer justice. The military criminal justice system also administers justice. The Congress shall exercise certain judicial functions. Exceptionally, the law may attribute jurisdictional functions in specific matters to certain administrative authorities. However, they are not allowed to conduct investigations or try crimes. Private persons may be temporarily invested with the function of administering justice in the capacity of conciliators or arbitrators authorized by the parties to render judgments at law or in equity, under the terms determined by law. Article 150. It is incumbent upon Congress to make laws. To define the general division of the territory in accordance with the provisions of this Constitution, to establish the bases and conditions for creating, eliminating, modifying or merging territorial entities and to establish their competencies. Article 152. By means of statutory laws, the Congress of the Republic shall regulate the following matters: (a) Fundamental rights and duties of persons and the procedures and remedies for their protection; b) Administration of justice; c) Organization and regime of political parties and movements; statute of the opposition and electoral functions; (d) Institutions and mechanisms for citizen participation; (e) States of emergency; (f) The right to vote; (g) The right to vote; and (h) The right to vote Article 152. By means of statutory laws, the Congress of the Republic shall regulate the	lands. 7. Free, prior and informed consultation, within a reasonable period of time, on plans and programs for prospecting, exploitation and commercialization of non-renewable resources found on their lands that may affect them environmentally or culturally; to participate in the benefits of such projects and to receive compensation for the social, cultural and environmental damage they cause them. The consultation to be carried out by the competent authorities shall be mandatory and timely. If the consent of the consulted community is not obtained, it shall proceed in accordance with the Constitution and the law. 8. To conserve and promote their biodiversity and natural environment management practices. The State shall establish and implement programs, with the participation of the community, to ensure the conservation and sustainable use of biodiversity. 9. Conserve and develop their own forms of coexistence and social organization, and of generation and exercise of authority, in their legally recognized territories and community lands of ancestral possession. 10. Create, develop, apply and practice their own or customary law, which may not violate constitutional rights, particularly those of women, children and adolescents. 11. Not to be displaced from their ancestral lands. 12. To maintain, protect and develop collective knowledge; their ancestral sciences, technologies and knowledge; genetic resources containing biological diversity and agrobiodiversity; their medicines and traditional medicine practices, including the right to recover, promote and protect ritual and sacred places, as well as plants, animals, minerals and ecosystems within their territories; and the knowledge of the resources and properties of fauna and flora. Any form of appropriation of their knowledge, innovations and practices is prohibited. 13. Maintain, recover, protect, develop and preserve its cultural and historical heritage as an indivisible part of Ecuador's heritage. The State shall provide the resources for this purpose. 14. To develop, strengthen and promote the intercultural bilingual education system, with quality criteria, from early stimulation to the higher level, in accordance with cultural diversity, for the care and preservation of identities in line with their

following matters: (a) Fundamental rights and duties of persons and the procedures and remedies for their protection; b) Administration of justice; c) Organization and regime of political parties and movements; statute of the opposition and electoral functions; (d) Institutions and mechanisms for citizen participation; (e) States of emergency; (f) The right to vote; (g) The right to vote; and (h) The right to vote. Article 246. The authorities of the indigenous peoples may exercise jurisdictional functions within their territorial scope, in accordance with their own rules and procedures, provided that they are not contrary to the Constitution and laws of the Republic. The law shall establish the forms of coordination of this special jurisdiction with the national judicial system. Article 286. The following are territorial entities: departments, districts, municipalities and indigenous territories. Article 329. The conformation of the indigenous territorial entities shall be made subject to the provisions of the Organic Law of Territorial Ordering, and their delimitation shall be made by the National Government, with the participation of the representatives of the indigenous communities, with the prior opinion of the Commission of Territorial Ordering. The reserves are collective property and are not alienable. The law will define the relations and coordination of these entities with those of which they form part. Article 330. In accordance with the Constitution and the laws, the indigenous territories shall be governed by councils formed and regulated according to the uses and customs of their communities and shall exercise the following functions: 1. to watch over the application of the legal norms on land uses and doubling of their territories. 2. Design policies and plans and programs for economic and social development within their territory, in harmony with the National Development Plan. 3. Promote public investments in their territories and ensure their proper execution. 4. To receive and distribute their resources. 5. To watch over the preservation of natural resources.	teaching and learning methodologies. A dignified teaching career will be guaranteed. The administration of this system shall be collective and participatory, with temporal and spatial alternation, based on community oversight and accountability. 15. To build and maintain organizations that represent them, within the framework of respect for pluralism and cultural, political and organizational diversity. The State shall recognize and promote all forms of expression and organization. 16. To participate through their representatives in the official bodies determined by law, in the definition of public policies that concern them, as well as in the design and decision of their priorities in the plans and projects of the State. 17. To be consulted prior to the adoption of any legislative measure that may affect any of their collective rights. 18. To maintain and develop contacts, relations and cooperation with other peoples, particularly those divided by international borders. 19. To promote the use of the clothing, symbols and emblems that identify them. 20. The limitation of military activities in their territories, in accordance with the law. 21. That the dignity and diversity of their cultures, traditions, histories and aspirations be reflected in public education and the media; the creation of their own social media in their languages and access to others without discrimination. The territories of the peoples in voluntary isolation are of irreducible and intangible ancestral possession, and any type of extractive activity shall be forbidden in them. The State shall adopt measures to guarantee their lives, ensure respect for their self-determination and will to remain in isolation, and ensure the observance of their rights. The violation of these rights shall constitute the crime of ethnocide, which shall be typified by law. The State shall guarantee the application of these collective rights without any discrimination whatsoever, under conditions of equality and equity between women and men. Art. 58.- In order to strengthen their identity, culture, traditions and rights, the collective rights established in the Constitution, the law and the covenants, conventions, declarations and other international human rights instruments are recognized for the Afro-Ecuadorian people.

6. Coordinate the programs and projects promoted by the different communities in their territory. 7. Collaborate with the maintenance of public order within its territory in accordance with the instructions and dispositions of the National Government. 8. To represent the territories before the National Government and the other entities to which they are integrated; and 9. Those indicated to them by the Constitution and the law. Paragraph. The exploitation of natural resources in indigenous territories shall be carried out without detriment to the cultural, social and economic integrity of the indigenous communities. In the decisions adopted with respect to such exploitation, the Government shall encourage the participation of the representatives of the respective communities.	Art. 59.- The collective rights of the Montubio peoples are recognized in order to guarantee their integral, sustainable and sustainable human development process, the policies and strategies for their progress and their forms of associative administration, based on knowledge of their reality and respect for their culture, identity and own vision, in accordance with the law. Art. 60.- The ancestral, indigenous, Afro-Ecuadorian and Montubio peoples may constitute territorial districts for the preservation of their culture. The law shall regulate their conformation. The communes that have collective ownership of the land are recognized as an ancestral form of territorial organization. Art. 171.- The authorities of the indigenous communities, peoples and nationalities shall exercise jurisdictional functions, based on their ancestral traditions and their own law, within their territorial scope, with the guarantee of participation and decision of women. The authorities shall apply their own rules and procedures for the solution of their internal conflicts, which are not contrary to the Constitution and the human rights recognized in international instruments. The State shall guarantee that the decisions of the indigenous jurisdiction are respected by public institutions and authorities. Said decisions shall be subject to the control of constitutionality. The law shall establish the mechanisms of coordination and cooperation between the indigenous jurisdiction and the ordinary jurisdiction.

The recognition of the existence of the special indigenous jurisdiction occurs with the promulgation of the constitutional charters of Colombia and Ecuador.

In the constitutionalization of the special indigenous jurisdiction in the two countries, there is a first major difference: Colombia carries it out with the criterion of Multiculturalism, and Ecuador under the shadow of Plurinationalism. In Ecuador the 2008 Constitution recognizes plurinationality and interculturality, it is linked to the concept of legal pluralism, so it ends up recognizing that in Ecuador there are as many legal systems as nationalities. The State recognizes the existence of normative orders other than those emerging from its institutions, including the legal systems of indigenous peoples.

The Colombian Constitution of 1991 established the principle of promotion and protection of cultural diversity by recognizing self-government for indigenous communities, which includes the creation of the Special Indigenous Jurisdiction, on the one hand, and territorial and political autonomy on the other, although with questionable limitations on the light of interculturality.

The recognition of the character of the Ecuadorian State as Plurinational is merely declarative, and its materialization is still lacking. This certainty must be called by its name, by virtue of the actions and theories undertaken by the rulers in office, in essence, the State "refounded in 2008" is still colonial, therefore, believing that the construction of the Plurinational State will be duly promoted from the part of power is still a utopia, on the other hand, from the counter-power, the construction that our ancestors left as a task, under the protection of the principle of historical continuity, is a challenge" (Simbaña and Rodríguez, 2020, 16).

In order to make a balanced judgment, it must be said that both the Colombian Constitution of 1991 and the Ecuadorian Constitution of 2008 make important contributions to the recognition of indigenous communities, both from the multicultural, intercultural and plurinational points of view (where, in addition to formally recognizing cultural differences, as multiculturalism does, it recognizes the interrelationship between cultures), The tensions between the Constitution and the recognition given in the political text are still present in both countries and with great strength in Ecuador, where surely if the internal confrontations in the indigenous nationalities were left aside, they would be a real option for political power in the country.

2. Complementary events to the constitutional recognition of the existence of the special indigenous jurisdiction

After the promulgation of the 2008 Constitution of Ecuador, the country's governments have taken decisions to grant licenses for extractive processes to be carried out in indigenous territories in conditions of voluntary isolation, increasing the destruction of nature, which is constitutionally a subject of law, without prior consultation procedures and significantly affecting the habitat of the nationalities for whom the land is their life.

In an attempt to establish coordination between the ordinary justice system and the special indigenous jurisdiction, on August 8, 1996, the Presidency of the Republic of Colombia issued Decree 1397, "Whereby the National Commission on Indigenous Territories and the Permanent Roundtable for Consultation with Indigenous Peoples and Organizations are created and other provisions are enacted," in response to the provisions of Article 189, paragraph 11 of the Political Constitution, Law 121 of 1991 and the paragraph of Article 330.

The National Commission of Indigenous Territories is assigned functions related to reservations and indigenous reserves. The Mesa de Concertación is responsible for:

1. Adopt principles, criteria, and procedures in relation to biodiversity, genetic resources, collective intellectual property, and cultural rights associated with them, within the framework of the special legislation of indigenous peoples.

2. Previously agree with indigenous peoples and organizations on official positions and proposals to protect indigenous rights regarding access to genetic resources, biodiversity and protection of collective knowledge, innovations and traditional practices presented by the Colombian government in international forums or within the framework of agreements and conventions signed and ratified by Colombia.

3. Agree on the development of indigenous constitutional rights in relation to biodiversity, genetic resources, collective intellectual property and associated cultural rights and environmental legislation.

4. To agree on the bill that modifies the Mining Code in order to guarantee the rights of indigenous peoples; to define the timetable, procedures and budgets necessary for the delimitation of indigenous mining zones in accordance with the requests of the communities and to follow up on their execution, in accordance with the provisions of Decree 2655 of 1988. The delimitation of the indigenous mining zones will be done in

agreement with the national and regional organizations and the indigenous authorities of the respective territory.

5. Review permits and licenses granted on indigenous territories and those in process and request their suspension or revocation when they violate the rights of indigenous peoples, in accordance with special legislation.

6. Agree on the budget allocations required for training, technical studies, advice and financing of projects for indigenous communities.

7. To agree on the regulatory decree of articles 2, 3, 5, 8, 9, 10, 12, 13, and paragraph 2 of article 7 of Law 191 of 1995 with the border indigenous peoples and communities, their authorities and respective regional and national organizations.

8. To prepare the necessary procedures to agree among the indigenous peoples and organizations the proposal for the regulation of the right of participation and consultation of the administrative and legislative decisions that may affect the indigenous peoples according to the particularities of each one, and to coordinate the issuance of the decree.

9. To agree on the transitional procedure and other matters required for participation, consultation and consultation with specific indigenous peoples or communities, while the regulatory decree is being issued. The agreement shall be made respecting the uses and customs of each people.

10. Open a process of dissemination, analysis and discussion of Law number 100 of 1993 with the indigenous organizations and communities so that decisions of interest and protection of the rights of the indigenous peoples can be made; agree on the pertinent modifications and regulations and involve them in its execution. The Government will guarantee the resources to advance this process through the organizations.

11. Review Decrees 1088 of 1993 and 1407 of 1991 on indigenous authorities and their associations and the foundations and corporations that work in indigenous territories, respectively, in accordance with ethnic and cultural diversity and agree on their modifications.

12. To define the procedures and terms of reference for the evaluation of the state structure for the care of indigenous peoples and to agree on the decisions required in accordance with the results of the same.

13. Agree on a process of dissemination, analysis and discussion of Law number 218 of 1995 or Paez Law with the indigenous communities and their organizations so that decisions of interest and protection of the rights of the indigenous peoples can be made; agree on the draft laws for their modification as required, and their regulation. The Government will guarantee the resources to advance this process through the organizations. The regulation of the law will guarantee that persons from outside the region do not abuse the benefits of the law.

14. Follow up on the execution of the social and environmental investment for the indigenous peoples established by the law of the National Development Plan; agree on the necessary measures to guarantee the allocation and execution of the 2% annual social and environmental investment for the indigenous peoples in the terms set forth in Articles 29 and 42 of Law 188 of 1995 and for the fulfillment of the commitments acquired by the National Government with indigenous peoples, communities or organizations. The Government shall unify and simplify the procedures, requirements and forms for access to the co-financing funds, after consultation with the Round Table referred to in this Decree.

Likewise, follow-up will be agreed upon in order to expedite and guarantee the execution of the resources of the 1996 fiscal year.

15. To agree on draft laws and regulatory decrees related to the transfer of current income from the Nation to the indigenous reserves and to follow up on their compliance.

16. To agree on matters related to the development of the competencies granted by transitory article 56 of the Constitution to the National Government and all matters related to indigenous territorial planning.

17. To review the norms related to the indigenous peoples' own education and to agree on their modifications and regulations, and to monitor their compliance.

18. To agree on measures to guarantee and supervise the application of Decree 1811 of 1991.

19. To give itself its own regulations in accordance with the provisions of this Decree.

It can be inferred from the reading of the functions of the Mesa de Concertación that the intention was to find a way to allow the participation of the indigenous communities in the making of administrative and legislative decisions that could have some effect on the indigenous communities. Another aspect that comes to light after observing the functions of the two bodies created, is that they are not given the capacity to make decisions, they only remain in the field of consultation and revision of some norms, leaving the frame of reference for coordination between jurisdictions still in limbo.

Up to this point, the legal and conventional framework for the special indigenous jurisdiction in Colombia and Ecuador is based on the ILO Conventions, the Political Constitutions and some other internal norms that seek to give solidity to the necessary coordination between jurisdictions. In spite of this, it is considered that there is much that is not known about the implementation of indigenous law and its recognition by the State.

The Constitutions allow the authorities of the indigenous peoples to exercise jurisdictional functions within their territorial scope, in accordance with their own rules and procedures, as long as they are not contrary to the Constitution and the law, however, due to complaints from some people who are part of the indigenous peoples who disagree with the decisions adopted within their communities by their authorities, It has been up to the Courts to respond, materializing a copious jurisprudence, which in our opinion is insufficient, so that it can be said that the special indigenous jurisdiction is fully recognized, respected and complied with by the State bodies and by society in general.

With the constitutional recognition of the special indigenous jurisdiction in Colombia and Ecuador, tensions begin to arise between the ordinary jurisdiction and the recently recognized indigenous jurisdiction.

3. Tensions between ordinary justice and indigenous justice

n Colombia in 1991 and Ecuador in 2008, with the approval of the National Constitution, it was recognized that there are two systems of administration of justice, the ordinary jurisdiction and the special indigenous jurisdiction and it is there where "the paradigm of evil, of crime and the way it is treated begins to be different and even questioned" (Guerrero, 2019, 11).

The tensions that have arisen between the two jurisdictions, has its origin in the different conception of, for example, crime, due process, jurisdiction, prison, and punishment, among others, which until now have been almost incompatible.

By way of example, behaviors considered undesirable in a social organization, which are contrary to the way of life, are called crimes and contraventions, in the legal system; they are punished with a penalty or a series of actions, according to their seriousness. The Colombian Penal Code typifies 363 crimes in the modality of basic types, without counting aggravating or extenuating circumstances (Penal Code Law 599 of 2000 - Colombian Legislation 2021).

The Integral Organic Code of Ecuador in Article 18, on criminal offense, indicates that it is "the typical, anti-juridical and guilty conduct whose sanction is foreseen in this Code.

Infringements, according to Article 19 of said Code, are classified into crimes and misdemeanors. "A crime is a criminal offense punishable by imprisonment for more than thirty days. Contravention is a criminal offense punishable by non-custodial or custodial sentences of up to thirty days".

So here a fundamental conceptual tension arises, ordinary justice provides a response (punishment) to offensive behaviors contained in the criminal law (Penal Code), which according to Zagrebelsky (2009, 33) "leads to conceive the activity of jurists as a mere service to the law, even as its simple exegesis, i.e., it leads to the pure and simple search for the will of the legislator".

The ordinary justice system imposes the rules of the game and the participants in the legal process (lawyers, judges, prosecutors, experts, court personnel, public forces), try to comply with them, with a participation that can be classified as passive of those who have the conflict, who are accused of the crime or who have suffered the consequences of the occurrence of the crime.

While, in the special indigenous jurisdiction, the undesired conduct has a treatment supported by the oral tradition, (with criteria of reparation of the damage caused) with the participation of the general assembly, relatives, godparents, neighbors and friends who feel the pain assume the search for the solution of the problem, with the objective of rehabilitating or curing and with the ultimate goal of reaching an agreement between the parties.

The treatment of the pain caused by the unwanted action is assumed directly by the community, in an effort to apply justice from the vision of those affected, with the presence of those affected and the offenders, making clear the pain caused and the way in which this pain can be alleviated.

For indigenous justice, imprisonment does not constitute an end to the exercise of doing justice, because what is sought is that the guilty party (or whoever committed the error) assumes responsibility and repairs the damage, an effect that is not possible to achieve with the imprisoned person, and rather, given the impossibility of repairing the damage caused, there are other means of alleviating the pain of those affected, such as public reprimand, suspension of rights and as a last option, the major penalty of expulsion is imposed.

Another aspect that should be highlighted and that causes tension between the jurisdictions is that the ordinary justice system in the Criminal Code (in both countries), as already mentioned, sets out the rules of the game to be considered in the legal process. In the special indigenous jurisdiction, the rules of the game are not written and are instead transmitted by oral tradition. Moreover, it is noted that it is not necessary to speak of a general indigenous justice, but that there is "diversity of conceptions and practices of justice or notions of what is unjust and just in each of the different indigenous peoples, that is, there is no justice or set of rules, procedures, uses and basic or related customs that group, or with which they identify, the 85 indigenous peoples of Colombia" (Gómez, 2008, 211). This consideration by Gómez may well be applied to the indigenous collectivities of Ecuador (indigenous nationality, indigenous people, indigenous community, indigenous commune), where there are different characteristics in terms of indigenous justice.

The conceptions, norms, procedures, uses and customs of indigenous justice are not homogeneous in most cases within the same indigenous people (cabildos and resguardos in Colombia and indigenous collectivities in Ecuador) because there are aspects that must be considered in order to understand the concurrence of a set of multilocalized indigenous

justice practices and processes that do not always converge and even give way to tensions within the same indigenous groups (Ariza, 2010, 56).

According to Ariza, the aspects that must be considered in order to understand that it is not possible to label indigenous justice as one, but as multiple, are, among others:

"1. The relationship and combination of processes and aspects as varied as the cultural space in or through which the conflict originates, transits and resolves (such as kinship networks, shamanism, resguardo, cabildo).

2. The experience and type of historical-cultural relationship of each resguardo (cabildo) with state law and national society.

3. The degree of validity of the tradition and transformation or dynamics of their conceptions and practices and of the types of appropriation and use of exogenous legal norms.

4. The strength of the internal community organization and the exercise of ethnic autonomy of each cabildo.

5. The legitimacy or recognition enjoyed or suffered by the different types of existing authority and the type or "nature" of the transgression to be redressed or the conflict to be resolved". (Ariza, 2010, 57).

No less important issue, causing tensions between the ordinary and special indigenous jurisdictions, is the recognition that has been given initially from the international context and then within each country, to the collective rights of indigenous peoples, which mark a difference between individual and collective rights, not understood as a sum of individual rights.

The recognition of collective rights implies that the way of interpreting reality must be rethought, because collective rights are not the "sum" of the rights of the individuals that make up the collectivity, but rather the rights agreed upon and exercised by the collectivities.

For example, in the indigenous philosophy, the deprivation of liberty penalty does not have cultural acceptance, seen from the perspective of collective rights, understood as "the set of legal principles, norms, practices and procedures that regulate the rights of indigenous communities, peoples and nationalities for their self-determination, claimed by them and recognized by the State; identified and cohesive among themselves, whose fundamental characteristic is that of being millenary peoples, ancestrally settled in a determined geographic territorial jurisdiction, who exercise a collective, social, economic, cultural, political, legal, religious, linguistic, cultural, political, legal, religious, language, and religious and cultural system, and who have the right to self-determination" (CONAIE, cited by Román, 2005, 23).

It is mentioned that collective rights in indigenous communities are contained in Article 57 of the Constitution of Ecuador (2008), among which, the right to freely maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization are mentioned. Create, develop, apply and practice their own or customary law, which may not violate constitutional rights, particularly those of women, children and adolescents.

In Colombia, the Constitutional Court has indicated that indigenous peoples have the right to dignity, honor and the good name of ethnic groups; they are different cultural communities, bearers of values and goals different from those that characterize Western culture and deserve respect and equal treatment.

They have the right to collective ownership of their lands, territories and resources, allowing them the social, economic, political and religious organization that complies with their traditions. Their territory must be optimal for their practices and must have a

special protection in which all members of the community are owners of the entire portion of the territory. It is not attributed only to one person, the owners of the land are, as a whole, the community. For indigenous peoples, the territory is more than the material conception of things, it is directly related to man and the land because it has spiritual components that connect them. Within the territory, they have the power to develop traditional activities. Their culture and political control have complete influence over this physical space.

It is worth highlighting the right to prior consultation, which, in addition to the consultation of indigenous peoples on the exploitation of natural resources, covers all matters that may directly affect them, including administrative and legislative measures that may affect them, including amendments to the Constitution, approval of international treaties, delimitation of indigenous territorial entities, and others.

4. Actions taken to overcome the tensions between jurisdictions

On the road to overcoming the tensions that have arisen from the very moment of recognition of the special indigenous jurisdiction, the Constitutional Courts of Colombia and Ecuador have taken action in the matter, basically resolving tutela actions, which has generated a compendium of jurisprudence that has shed light on the process but are still far from illuminating the way to achieve a true implementation of indigenous justice, as part of the state legal system, which does not assume it as excluding but rather as complementary, and as a source of legal knowledge to achieve interpretations of crime, punishment, due process, etc., that can better respond to the need of indigenous peoples' needs. that can better respond to the need to achieve the consolidation of true democratic systems.

To give the reader a better idea of the work that has been done by the Constitutional Courts of Colombia (from 1992 to 2014) and Ecuador (2019 to 2021), a very synthetic table is presented, without covering everything that has been done, because it would be an action that goes far beyond the scope of this article.

Constitutional Court of Colombia	
Thematic	Sentences
Principle of effectiveness of rights	Decision T-567 of October 23, 1992. Presiding Judge: José Gregorio Hernández Galindo The Court considered that the reticence in which the administration has incurred violates, in addition to the right to petition, the right to material equality, since there is a constitutional duty to adopt the pertinent measures in favor of discriminated or marginalized groups.
Case: Indigenous Organization of Antioquia (EMBERA-CATIO Indigenous Community of Chajeradó, Municipality of Murindó) v. Corporación Nacional de Desarrollo del Chocó (CODECHOCO) and Compañía de Maderas del Darién (MADARIEN),	Ruling T-380 of September 13, 1993 Presiding Judge: Eduardo Cifuentes Muñoz The Court orders the Legal Representative of the National Corporation for the Development of Chocó, within 48 hours from the notification of this decision, to initiate the necessary actions to restore the natural resources affected by the illegal logging and, after the quantification of the damages caused, to take legal action against the allegedly responsible individuals to demand their reparation, without prejudice to those that may eventually be brought by the injured community or its members.
Military service by indigenous people	Decision C-058 of 1994. Presiding Judge: Alejandro Martinez Caballero The Court authorized the exclusion of indigenous peoples from compulsory military service, based on the same argument of recognition of the difference as a condition

	to safeguard the right to material equality.
indigenous communities subject to rights and obligations	T- 254 of May 30, 1994. Presiding Judge: Eduardo Cifuentes Muñoz The Court grants protection of the fundamental right to due process to the petitioner and of the right to physical integrity to his children, and, consequently, orders the members of the indigenous council of El Tambo to welcome the petitioner and his family back into the indigenous community, under its responsibility, while they proceed once again to take the decision that may be appropriate for the facts that Mr. ANANIAS NARVAEZ is accused of, without the latter being able to involve his family in a trial that respects the norms and procedures of the community, but in strict compliance with the Constitution.
Interpretation criteria to resolve value conflicts. Defencelessness against indigenous communities. Indigenous autonomy and unitary regime, Indigenous jurisdiction, Validity of fundamental rights, Principle of ethnic and cultural diversity, Banishment and confiscation penalties.	Ruling T-254/94 of May 30, 1994 Presiding Judge: Eduardo Cifuentes Muñoz The Court established that the indigenous authorities have the constitutional attribution to administer justice, within their territorial scope, taking into account that the uses and customs are not contrary to the constitution and the laws. However, in the administration of justice, at the time of applying such customs and traditions, conflicts of values and interpretation may arise between the national order and the special order that governs the indigenous communities and provides criteria to resolve them.
Indigenous Jurisdiction	T/496/96 of September 26, 1996. Presiding Judge: Carlos Gaviria Díaz In this regard, the Constitutional Court considered that the indigenous jurisdiction constitutes the right of the individual to be judged by his own community applying the customary laws of his ancestors.
The Special Indigenous Jurisdiction	Ruling C-139/96 of April 9, 1996 Presiding Judge: The Constitutional Court, taking into account the content of articles 7° and 246 of the Political Constitution of 1.991, reaffirms the juridical pluralism and, consequently, the collective right to cultural diversity of the indigenous peoples. It considers that it is not true that the validity of the indigenous jurisdiction is suspended until the law of coordination with the national judicial system is issued.
Limits to the special indigenous jurisdiction	Decision T-349 of August 8, 1996. Reporting Judge Dr. Carlos Gaviria Díaz Insists on the importance of respecting the autonomy of the indigenous communities, but also that this jurisdiction guarantees due process to the person involved or implicated, so that he understands that he can make use of his right to defense.
Protection action filed against Luis Alberto Passu, Governor of the Indigenous Council of Jambaló and Luis Alberto Finscue, President of the Association of Councils of the Northern Zone of the Department of Cauca, for	Decision T- 523 of October 15, 1997. Presiding Judge: Carlos Gaviria Díaz The Court indicated that the tutela judges were not right when they stated that the Governors of the Indigenous Councils of the Northern Zone of Cauca violated the plaintiff's right to due process, since these authorities took extreme care in complying with the procedure traditionally used

violation of their rights to life, equality and due process. He requested through this judicial mechanism that the final report of the investigation carried out by the indigenous authorities of Northern Cauca, in relation to the death of Marden Arnulfo Betancur, not be presented to the Paez community.	in the community.
Case: U'WA Indigenous Ethnic Group v. Ministry of Environment and Occidental de Colombia, Inc,	Judgment SU-039 of February 3, 1997 Presiding Judge: Antonio Barrera Carbonell In the opinion of the Court, the participation of the indigenous communities in the decisions that may affect them in relation to the exploitation of natural resources offers as a particularity the fact or circumstance observed in the sense that the referred participation, through the mechanism of consultation, acquires the connotation of a fundamental right, since it is an instrument that is basic to preserve the ethnic, social, economic and cultural integrity of the indigenous communities and to ensure, therefore, their subsistence as a social group.
On May 28, 1997, the United Pentecostal Church of Colombia and 31 indigenous Arhuacos filed a tutela action before the family chamber of the Superior Court of the Judicial District of Valledupar against several authorities of the Arhuaca indigenous community, on the grounds that these authorities violated their fundamental rights to life (CP Article 11), to personal integrity (CP Article 12), to the free development of personality (CP Article 16), to freedom of expression (CP Article 20), to honor (CP Article 21) and to personal liberty (CP Article 28). P Article 16, to freedom of expression (C.P Article 20), to honor (C.P Article 21) and to personal liberty (C.P Article 28).	Decision SU-510 of September 18, 1998. Presiding Judge: Dr. Eduardo Cifuentes Muñoz The Court established that the enshrinement of the principle of ethnic and cultural diversity, from which the fundamental rights mentioned (specific and differentiated rights according to the group) are derived, is in a relationship of tension with the system of fundamental rights enshrined in the Constitution, since, while the former seeks the protection and acceptance of diverse worldviews and value parameters, even contrary to the postulates of a universal ethics of minimums, the latter is based on norms that are supposed to be transcultural and universal, allowing peaceful coexistence among nations.
Alleged violation of the rights to due process and defense and of the right to special indigenous jurisdiction of the Arhuaco people.	Ruling T- 266 of April 27, 1999 Presiding Judge: Carlos Gaviria Díaz It is ordered that the respective file be delivered to the Mamos, together with the detainee Suárez Álvarez, so that they, as the competent judicial authorities that they are, may resolve the case in accordance with the norms of that people.
The role of education in the	Decision C-053 of February 2, 1999.

process of strengthening and recovering the particular identities that make up the Colombian community.	Presiding Judge: Eduardo Cifuentes Muñoz The Court indicates that the Constitution has established as one of the purposes of the State the protection of the cultural wealth of the nation, among whose manifestations are the various languages used in the national territory. The freedom to teach requires that the teacher must, in any case, be able to express himself/herself in the official language. In the regions of the country that have their own linguistic identity, recognized as official, the purposes of the State - to protect cultural wealth - are developed when the teacher is required not to ignore the use of the local language. This does not prevent them from autonomously establishing the content of their teaching. On the contrary, it ensures that his educational mission is effective and fulfills its purpose.
Indigenous jurisdiction and block of constitutionality	Ruling T -606/01 of June 7, 2001 Presiding Judge: Marco Gerardo Monroy Cabra The Court is emphatic in noting that under no circumstances may a judge prevent a proceeding from being processed by the corresponding jurisdiction. If he impedes it, he is violating fundamental rights of access to justice and due process, susceptible of protection through tutela.
It deals with the Conflict of Jurisdiction between Indigenous Jurisdiction and Criminal Jurisdiction. What happens when during the course of the process a positive conflict of competence between the special indigenous jurisdiction and the national judicial system is proposed or pending?	Decision T-728/02, September 5, 2002. Presiding Judge: Jaime Córdoba Triviño It dealt with the opportunity of intervention of the special indigenous jurisdiction for punishable acts committed by members of indigenous communities. The Court indicated that by subjecting an indigenous person to national criminal law, the right to due process and the special jurisdiction of the indigenous communities, as set forth in Article 246 of the Political Constitution, was ignored. On the other hand, for the Court it is not possible to recognize Omaira Pancho Sancha's right to indigenous jurisdiction, based exclusively on the personal factor, since being capable of understanding the values of the recriminated conduct, it is not inconvenient to judge her according to the national legal system.
Can the indigenous jurisdiction, which imposed on one of its own a sentence consisting of deprivation of liberty, order that the sentence be served in an institution of the ordinary justice system?	Ruling T-239 of April 5, 2002 Judge reporting: Alfredo Beltrán Sierra The Court indicates that the petition for protection should be denied, because the plaintiff is being held in a prison of the ordinary justice system, by decision of the indigenous jurisdiction to which he belongs. And it is a product of the agreement between the authorities of both jurisdictions. Therefore, the sentence under review is confirmed.
Consultation with indigenous peoples and communities in decisions that affect their living conditions.	Sentence C--169 of February 14, 2001 Presiding Judge: Carlos Gaviria Diaz The Court analyzed the scope of prior consultation and concluded that such consultation is not mandatory except in the specific hypothesis provided for in the paragraph of article 330 of the Constitution, related to the exploitation of natural resources.
Inimputability on grounds of	Decision T-370 of May 14, 2002.

cultural diversity	Presiding Judge: Eduardo Montealegre Lynett The court concluded that the figure of unaccountability due to cultural diversity is Exequible under the understanding that the declaration of unaccountability and the security measure do not have a punitive or curative or rehabilitative character, but exclusively of protection or protection because cultural diversity cannot be criminalized.
Coordination and cooperation between the ordinary jurisdiction and the special indigenous jurisdiction.	Ruling T- 239 of May 4, 2002 Presiding Judge: Dr. Alfredo Beltrán Sierra The Court referred to the sanctioning power of the indigenous authorities and the cooperation of the ordinary justice system in the execution of custodial sentences.
Fundamental rights of indigenous peoples to ethnic and cultural diversity-recognition and due protection and other issues	Judgment T-514 of July 6, 2012. Presiding Judge: Luis Ernesto Vargas Silva The Court notes that members of ethnic groups shall have the right to an education that respects and develops their cultural education.
Right to ethnic and cultural diversity-Reiteration of jurisprudence.	Decision T-001 of 2012, January 11, 2012. Presiding Judge: Juan Carlos Henao Pérez It is established that indigenous communities have the right to have their indigenous jurisdiction respected in such a way that, once a case is taken up for hearing, the decision adopted has the same hierarchy as an ordinary judgment.
Indigenous jurisdiction and ordinary jurisdiction - conflict of competences	Decision T-002 of 2012, January 11, 2012. Presiding Judge: Juan Carlos Henao Pérez The Court heard and rejected two (2) cases in which the Superior Council of the Judiciary had denied the competence of the special indigenous jurisdiction to hear sexual crimes committed against children.
Exercise of indigenous jurisdiction	Judgment T-921 of 2013, December 5, 2013. Presiding Judge: Jorge Ignacio Pretelt Chaljub The Court decided to protect the fundamental rights of the plaintiff, and therefore annulled the decision of the Superior Council of the Judiciary that decided the positive conflict of jurisdictions and ordered to refer the case and deliver the accused to the indigenous authorities.
Legitimacy by active in guardianship of indigenous community - on behalf of community members.	Judgment T-866 of 2013, of November 27, 2013. Presiding Judge: Alberto Rojas Rios The Court ruled in favor of a tutela action filed by the governor of an indigenous cabildo of Bosa who, acting as an unofficial agent of a community member, filed a tutela action against a court of execution of sentences and security measures of Fusagasugá, since he considered that the rights to due process, ethnic and cultural diversity, equality and ne bis in idem were being violated.
Jurisdictional autonomy of indigenous peoples to resolve conflicts by their own authorities and according to rules and	Judgment C-463 of 2014, July 9, 2014. Presiding Judge: María Victoria Calle Correa The Court insists that the rights of the victims must be protected in the indigenous jurisdiction, since they are

procedures established by each community.	also part of the due process, and because it is so provided by different constitutional commitments and international human rights law. These rights include truth, justice, reparation and guarantees of non-repetition.

Constitutional Court of Ecuador	
Thematic	Sentence
Creation of a state system of indigenous justice parallel to the ordinary justice system.	Opinion 5-19-RC/19 Judge Rapporteur: Daniela Salazar Marín The Constitutional Court fulfills the first moment of control of constitutionality for the processing of the initiative of constitutional amendment, leaving its competence to carry out the control of constitutionality by means of a judgment when pertinent.
Issuance of norms tending to include "indigenous courts" in the general structure of the State; the creation of a maximum autonomous body of indigenous justice and the establishment of parameters for the election of its authorities cannot be processed via partial reform because it restricts rights.	Opinion 9-19-RC/19 Reporting Judge: Ramiro Avila Santamaría The Court rules that the partial reform procedure is not suitable to process the constitutional amendments proposed by the petitioner.
Pre-legislative consultation of normative acts of administrative authorities that affect the rights of Indigenous Peoples.	Ruling No. 20-12-IN/20 Reporting Judge: Daniela Salazar Marín The Constitutional Court resolved the public action of unconstitutionality filed against Ministerial Agreement No. 080 issued by the Ministry of Environment, and declared that the challenged agreement is unconstitutional for violating the rights of indigenous communities to (i) be consulted prior to the adoption of a legislative measure that may affect any of their rights (Art. 57.17); (ii) limit military activities in their territories (Art. 57.20); and, (iii) maintain possession of their ancestral lands (Art. 57.5).
Declination of jurisdiction of the ordinary justice system in favor of the indigenous justice system.	Ruling No. 134-13-EP/20 Reporting Judge: Agustín Grijalva Jiménez The Constitutional Court accepted the claim for extraordinary action of protection filed by the Kichwa Community Unión Venecia "Cokiuve" against the judicial decisions adopted in a possession trial, because the right of indigenous peoples, communities and nationalities to decide according to their own rights in the framework of the plurinational and intercultural State was violated.
The Statute issued by an indigenous community and the registration thereof are not subject to an action of unconstitutionality of normative acts of a general nature.	Ruling No. 36-12-IN/20 Reporting Judge: Ramiro Avila Santamaría The Constitutional Court rejected the unconstitutionality action filed against Article 5 of the Statute of El Cisne, Indigenous Community of the Paltas People, and the administrative act issued by CODENPE through which it registered the Statute, for lack of

	purpose.
When does a pre-legislative consultation on the amendment of an ordinance take place?	Ruling No. 22-16-IN/21 Reporting Judge: Agustín Grijalva Jiménez The Constitutional Court analyzed and dismissed the public action of unconstitutionality filed against the second general provision inserted in the reform to the "ordinance that regulates the occupation, circulation and parking of transportation vehicles in the canton of Cañar, province of Cañar based on the mobility plan". This, considering that the GAD (Intercultural Decentralized Autonomous Government of the Cañar canton) was not obliged to initiate a pre-legislative consultation process.
When is a cross-cultural interpretation possible in criminal cassation?	Ruling No. 2024-16-EP/21 Reporting Judge: Ramiro Avila Santamaría The Constitutional Court dismissed the extraordinary protection action filed against a judgment issued by the Specialized Criminal, Military Criminal, Police Criminal and Transit Chamber of the National Court of Justice, which declared a cassation appeal inadmissible.
Scope of habeas corpus in cases of persons belonging to peoples in isolation and of recent contact.	112-14-JH/21. Review of guarantees. Reporting Judge: Agustín Grijalva Jiménez The decisions of the Constitutional Court mainly were: 1. To vacate judgment No 223-2013 issued by March 11, 2014 by the Single Chamber of the Provincial Court of Justice of Orellana. 2. To declare the violation of the right to liberty and personal integrity of Quimontari Orengo Tocari Coba, Omeway Tega Boya Guinegua, Kaguime Fernando Omeway Dabe, Tague Caiga Baihua, Wilson Enrique Baihua Caiga, Cahuiya Ricardo Napahue Coba and Velone Emou Tañi Paa and to accept the habeas corpus action filed on their behalf. 3. To consider that, with respect to the violations to the liberty and personal integrity of the persons belonging to the Waorani nationality who were deprived of their liberty, this sentence constitutes in itself a form of reparation.
Constitutional reform to establish public policies and sanctions as the only way to guarantee the effectiveness of indigenous justice decisions.	Opinion No. 6-20-RC/21 Reporting Judge: Carmen Corral Ponce The Court rules that the partial amendment procedure, established in Article 442 of the Constitution, is not suitable for the constitutional amendment of Article 171, second paragraph.
Cross-cultural interpretation in the application of sentences, special regime for the elderly, and guarantee of non reformatio in peius	Ruling No. 1494-15-EP/21 Presiding Judge: Karla Andrade Quevedo Orders the National Court of Justice to present public apologies to the plaintiffs for affecting their constitutional rights and that the National Court of Justice and the Council of the Judiciary publish this judgment in the main part of its institutional web page for a period of three months without interruption and to disseminate its content among judges throughout the country.
Jurisdiction and legitimacy of	Judgment No. 1-15-EI/21 and joined (Jurisdiction and

indigenous authorities.	legitimacy of indigenous authorities) Reporting Judge: Ramiro Avila Santamaría The Constitutional Court rejected the claims of extraordinary action of protection against decisions of the indigenous justice system, filed against the resolutions issued by the Corporation of Governments and Communities of the Otavalo Canton ("CORDEGCO"), for not having authority to exercise indigenous jurisdiction and for lacking, consequently, of object.
Indigenous peoples and the collective right to retain indivisible ownership of their lands.	Ruling No. 2-14-EI/21 Reporting Judge: Daniela Salazar Marín The Court concluded that the challenged decision violated the right to equality of the plaintiffs by excluding them from access to community land, as well as the right to collective ownership of the land by introducing divisions that altered the communal character of the land.

It is worth noting that the compilation of the data from the aforementioned judgments and rulings was made possible thanks to the documents prepared by the Constitutional Court in each country.

Although there has been no review of the provisions of the Constitutional Court and the Supreme Court of Justice in both countries on compliance with the provisions of the special indigenous jurisdiction, in addition to what is contemplated at the international level, much has been clarified so far regarding the implementation of the special indigenous jurisdiction and therefore the recognition of the individual and collective rights of indigenous peoples, but within the hegemony of the majority society, which leads to the tensions between the ordinary and indigenous jurisdictions that continue to arise.

But it must be said that the basic problem regarding the violation of the rights of indigenous peoples is not a legal or institutional problem of the State, at least not exclusively, but rather that the constitutional developments and the contributions of the international community have not found either the political will or the necessary resources in each country to be put into practice. The discourse of multiculturalism is still in force, contributing to the strengthening of the idea of democratic strengthening without solving the structural problems, leaving aside the intercultural dialogue between jurisdictions with the participation of both the majority society and the indigenous communities.

"Part of the problem is that despite the incorporation of diversity, the new projects are "trapped in old concepts" and there is no real political will, not only to recognize multiculturalism, but also to arbitrate the pertinent measures in terms of its real possibilities of development" (Walsh, 2000b:8). (Walsh, 2000b:8)

The multiculturalist vision has maintained the hegemony of power and only goes so far as to recognize cultural diversity, but not to give equal and equitable treatment to indigenous communities. Therefore, in practice, the progress of the special indigenous jurisdiction has been slow and tortuous. I would dare to say that the multiculturalist proposal is not a path to follow if we are trying to put an end to the historical violation of the rights of the indigenous communities and in general of the members of ethnic minorities in both countries.

Kymlicka, Tully and Taylor, theorists of multiculturalism, tried unsuccessfully to provide possible solutions to the tensions, from the perspective of multiculturalism, without much success.

"...set out their normative proposals that fail to recognize and include cultural diversity. They merely recognize culturally diverse liberal communities. They state that individual rights and democratic values should always take precedence over the moral and political values of non-liberal communities. Similarly, hybrid communities should always give priority to the liberal facets of their traditions. For them, non-liberal groups should be liberalized, and hybrid communities should suppress their non-liberal values" (Bonilla M., D. 2006, 35).

6. Need for intercultural dialogue

It is important to emphasize that the tensions that have arisen between the ordinary jurisdiction and the special indigenous jurisdiction originate in the fact that each jurisdiction handles different concepts, and in particular, the ordinary jurisdiction thinks of indigenous justice from its western paradigm, often without paying attention to the indigenous cosmovision and their collective rights, although these have achieved national and international recognition.

Yrigoyen (1999, 117) states that the recognition of indigenous law requires measures that imply a change in reality: respect for indigenous authorities, decriminalization of culture and its legal practices, respect for indigenous acts and decisions. It proposes the recognition of formal legal pluralism.

Suggests that several legal bodies should be reformed (criminal code, criminal procedure, civil, municipal, registry laws, etc.) to order the introduction of rules that make explicit the aforementioned contents.

t also indicates that the axes for establishing guidelines for coordination between indigenous and state law must resolve, among other issues, the establishment of criteria and rules for defining and resolving conflicts of jurisdiction, defining the scope of intervention of indigenous justice, as well as defining the so-called limits or boundaries of the jurisdictions, therefore it is necessary to build stable mechanisms for coordination with the respective states that address essential issues such as the following.

- The institutional effects of the judicial decisions made by the indigenous authorities, i.e., compliance by State agents through, for example, the character of res judicata and, consequently, the impossibility for the ethnic subject to be tried twice for the same crime, as often happens in practice.

- Collaboration on the part of the state authorities to enforce the determinations made by these authorities, especially in those complex cases that exceed the effective capacity of the communities or are located outside the indigenous territorial scope.

- The development of investigative processes that, due to their characteristics, require certain technical, logistical and technological support.

- The implementation of a flexible prison policy that adapts to the different ethnic thoughts in terms of confinement, punishment, rehabilitation and re-socialization.

- A real budget allocation and a clear participation in the decision of the resources of the administration of justice, especially if we take into account the contribution of indigenous justice in terms of the decongestion of judicial offices and the need for a minimum infrastructure for the authorities to be operational in matters of justice.

- Access to information as well as to a registry system compatible between the indigenous and state spheres.

Yrigoyen adds that the elements to be taken into account in the coordination between jurisdictions are as follows:

"(1) Material competence; (2)Territorial competence, 3) Personal competence, (4) Temporal competence between both systems, (5) Decriminalization of indigenous law and justice, (6) Mechanisms for the respect of legal acts of indigenous law, (7)

Mechanisms for the respect of jurisdictional decisions of indigenous justice, 8) Referral of cases or situations to indigenous law, 9) Strengthening of indigenous authorities and guidelines for relations with state authorities, 10) Mechanisms for collaboration and support between systems, and 11) Procedures for resolving complaints of alleged human rights violations under indigenous law.

Therefore, an intercultural dialogue is merited in order to give indigenous jurisdiction full recognition and autonomy.

Interculturality allows, without a doubt, to assume the so-called due process to indigenous people and to respect, of course, the judicial independence, generating these aspects the culture of coordination. It is important that when an indigenous person appears before a judicial authority it is taken into account:

- The existence of the Indigenous Jurisdiction and not its a priori denial.

- The possibility of duly proceeding with an indigenous person by calling the authority to make a decision on the relevance to the people of origin indicated by the defendant.

The jurisdictional coordination does not determine the existence of the special indigenous jurisdiction, that is why the indigenous peoples clearly maintain: the forms of coordination will continue to work and consultations will be carried out with the indigenous peoples following a procedure that will always be intercultural.

But interculturality should not be taken as an adjective to qualify a characteristic of a State, but rather it implies respect for each of the cultures, granting them equal power in their institutions. As Gargarella notes, interculturality should also have to do with the contents of the constitutions, since they have been conceived by the majorities (victors), without opening democratic spaces to indigenous and other ethnic minorities and with respect to these social components, their constitutional mention has been basically to give them some recognition, but not on an equal footing with other members of society.

Interculturality as a project contradicts multiculturalism, because the latter remains in the recognition of cultural difference, and interculturality seeks to develop interaction between people, knowledge and culturally different practices, in conditions of equality, through which the "other" is assumed as a subject with its own identity, participant in the spaces of encounter to build an egalitarian, equitable and fair world.

Intercultural dialogue has to do with the understanding communication between the different cultures that coexist in the same space, being through these where mutual enrichment takes place and, consequently, the recognition and valuation (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 overbearing prejudice that truth is the heritage of this or that culture and that, as the possessor, it has the "burden" of transmitting it to the others" (Malo, 2002, 4).

"While multiculturalism sustains the production and administration of difference within the national order, making it functional to the expansion of neoliberalism, interculturality, understood from its meaning by the indigenous movement, aims at radical changes to this order. Its aim is not simply to recognize, tolerate or even incorporate the different into the established matrix and structures".

Walsh affirms that it is a matter of achieving equitable relations of power and coexistence, in a dynamic process of communication, negotiation and interrelations where the particular and the individual do not lose their difference "... but have the opportunity and capacity to contribute from this difference to the creation of new understandings, coexistence, collaboration and solidarity. That is why interculturality is not a given fact but something in permanent journey, insurgency and construction" (Walsh, 2008, 141).

This process of communication between cultures, as understood by Parekh, "requires that each culture be open to the influence of the others and, in addition, be willing to learn from the others. This, in turn, requires it to be critical of itself and to be willing and able to engage in a dialogue with itself" (Parek, 2000, 494); that is, it is not simply conceived communication, but must reach the level of intercultural dialogue, which is given to the extent that it is premised that:

"a) All cultures represent different systems of meaning and significance, and therefore have different conceptions of the good life;

b) All cultures are incomplete or limited, so that learning based on otherness is positive; and,

c) All cultures are internally plural, and this is a presupposition for being open to valuing the differences of other cultures" (Parek, 2000, 494).

Grueso (2003, 22) citing Robert Bernasconi, notes that this author has highlighted the advantage of interculturality over multiculturalism, indicating that it is precisely interculturalism that allows cultures to change when they interact with other cultures.

Since under the interculturality approach it is understood that all cultures are equally valuable, there is no reservation of values or principles of some of them; all occupy the same place in the intercultural discourse; all have the same capacity or opportunity to shape a common heritage of values and rights. Institutional prerequisites must be in place for intercultural dialogue to be realized, such as freedom of expression, consensus on basic procedures and ethical norms to be followed, participatory public spaces, equal rights, a structure of authority accountable to the people, and the vesting of citizens with certain powers and authority. Also necessary are essential public virtues such as mutual respect, concern for others; tolerance, self-control, willingness to enter unfamiliar worlds of ideas, love of diversity, open-mindedness to new ideas, as well as the ability to persuade and the capacity to live in the midst of unresolved differences (Garzón, 2012, 46).

According to Walsh (2007, 54), the intercultural model (interculturalism) refers to "complex relations, negotiations and cultural exchanges, and seeks to develop an interaction between culturally different people, knowledge, practices, logics, rationalities and principles of life; an interaction that admits and starts from the social, economic, political and power asymmetries, and from the institutional conditions that limit the possibility that the "other" can be considered a subject - with identity, difference and agency - with the capacity to act. It is not simply a matter of recognizing, discovering or tolerating the other or the difference itself. Fidel Tufino states that in Latin America the intercultural option appeared as an ethical-political alternative to the failure of the homogenizing assimilationism of the national States. Specifically, it emerged in the field of indigenous education as an alternative model to the uniformising and homogenizing education of the national states (Lozano, 2005, 31).

"From its significance within the Ecuadorian indigenous movement and as an ideological principle of the political project of this movement, interculturality is based on the need for a radical transformation of the structures, institutions and relations of society; therefore, it is the central axis of an alternative historical project.

Indeed, without this radical transformation, interculturality remains only at the functional and individual level, without affecting to a greater extent the coloniality of social structuring and, therefore, the monocultural, hegemonic and colonial character of the State" (Walsh, 2008, 140,141).

Conclusion

The recognition of legal pluralism is a challenge for society, the peoples and the State and creates the need to incorporate new intercultural perspectives on human rights, what the peoples understand by dignity, rehabilitation and reincorporation of the offender into the community, the limits and purposes of the sanction, in order to move towards coordination, delimitation and resolution of possible conflicts of competence and jurisdiction.

It appears as a real possibility to assume another perspective, intercultural dialogue, through which it is possible to accept diversity in all its forms, needs, opinions, knowledge, desires, knowledge, worldviews, perspectives, among others.

The tensions that have arisen between the two jurisdictions, due to the different conceptions of crime, due process, imprisonment, and punishment, among others, in the two systems, are irreconcilable until what this article calls intercultural dialogue is advanced.

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