

Conflict Resolution and Personal Integrity in the Kichwa Nationality of Ecuador

Carlos Ernesto Herrera Acosta, Yessenia Elizabeth Pozo Vergara, Alex
Mauricio Duchicela Carrillo, Ana Lucia Machado Ashqui

Universidad Nacional de Chimborazo, Riobamba, Ecuador
Email: ceherrera@unach.edu.ec

Abstract

Customary procedures are used to resolve conflicts in indigenous communities based on ancestral practices or customs. These ways of administering justice are not necessarily established by written laws, but are inherited from one generation to the next and evolved through experience and community consensus. Mainly, the Kichwa ethnic group from Orellana province, located in the Republic of Ecuador, applies indigenous justice to solve their internal problems. Their customary justice procedures include natural resources such as chili pepper, tobacco, nettle, guayusa branches, among others. Hence, this research analyzes the customary procedures of the Kichwa ethnic group of Ecuador, seeking to establish connections between these procedures and the rights to personal integrity, particularly for individuals undergoing trials within indigenous justice systems. The goal of indigenous justice is to correct, purify the body, prompt self-reflection, and encourage repentance in the punished indigenous person, serving as a method to maintain harmony among its community members. The investigation results conclude that the customary procedures applied by the Kichwa ethnic group are integral to their cultural identity. Consequently, these practices do not violate the personal integrity rights of individuals under judgment within their community's justice system.

Keywords: personal integrity, Kichwa ethnic group, customary laws, conflict resolution, ancestral practices.

1. Introduction

Ecuador is characterized as a plurinational and multiethnic state, where numerous indigenous peoples and nationalities with distinct systems of social, political, and economic organization coexist within its borders. This rich cultural identity serves as the foundation of the Political Constitution adoption in 1998, which acknowledges legal pluralism as a mechanism for ensuring justice. Within this framework, indigenous justice means, employing autonomous or customary methods to resolve internal disputes.

Customary procedures represent the indigenous peoples' own methods for resolving their internal conflicts. These practices are defined by the prevalence of their respective nationalities and indigenous peoples' customs, traditions, and practices. Embedded within their way of life and social organization, these methods of justice are "lacking positivized written law" (Torres,

2017, p. 30), which makes it difficult to ascertain, whether these justice practices of resolving their conflicts, comply with constitutional, human rights, due process, and other legal frameworks.

Across South America, mainly in countries like Peru, Bolivia, Colombia, Guatemala and Ecuador, the indigenous communities apply customary procedures for conflict resolution. In Ecuador, the customary or autonomous procedure is positivized with the enactment of the Political Constitution of 1998. The procedure grants “the authorities of the indigenous peoples to exercise justice functions, applying their own rules and procedures for the resolution of internal conflicts in accordance with their customs or customary law”. Currently, the Ecuadorian Constitution of the Republic (2008) ratifies the application of this ancestral form of justice and guarantees the participation of women in ancestral decision-making processes.

Orellana province is situated in the northeastern region of Ecuador. It comprises four cantons, each with its own set of parishes. Within these ancestral territories dwell a significant number of indigenous Kichwa people, who persistently defend their distinct worldview, practices, customs, and traditions. Among these customs is the preservation of their unique procedures and sanctions for resolving internal conflicts. However, scholars such as Anchatuña (2011), Guanín & Cañizares (2011), Cañar (2018), and Angamarca & Vázquez (2021) have raised concerns that these autonomous procedures may infringe upon constitutional rights and principles, citing instances of excesses and torture.

On the Article 66, number 3 of the current Constitution protects the right to personal integrity, which is one of the rights believed to be violated by the implementation of indigenous justice. The violation of this right would demand compromising an individual’s physical, psychological, and moral well-being, an offense which is punishable by deprivation of liberty under the Organic Integral Penal Code.

Furthermore, the Kichwa peoples of Eastern Ecuador resolves their internal conflicts by applying its own laws rooted in customary procedures. This form of justice administration is currently acknowledged and protected by both national and international legal frameworks. The customary procedure is characterized by its adherence to the customs and traditions of the indigenous nationality; however, it does not rely on any written norm. This procedure prioritizes oral traditions instead. This method continues as a means of transmitting knowledge from one generation to the next.

The application of customary procedures is profoundly intertwined with the cultural identity of the communes, communities, indigenous peoples, and nationalities in Ecuador. These justice procedures have been practiced for many years, pre-dating the creation of positive law in the country. For instance, the Kichwa nationality of the Ecuadorian Amazon region resolves internal conflicts through its own indigenous justice system.

The Constitution of the Republic of Ecuador, in its Article 57, recognizes customary procedures, as it is stated in numeral 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” (Constitution of the Republic of Ecuador, 2008).

The Kichwa nationality has a long history of resolving conflicts according to its own non-positivized ways, that is, in a natural way, based on customary law. Within the Kichwa community, the adults or elders naturally assume the roles of authorities or leaders, a position attributed to their wisdom. They are entrusted with the responsibility of punishment. Elders view this not as a violation of human rights, but rather as a means of correcting bad attitudes and preventing crimes that could alter their coexistence. This approach emphasizes the wisdom of the elders in maintaining peace and order within the community.

This conflict resolution process within the Kichwa nationality occurs when a member engages in behavior that is frowned upon. Within their indigenous jurisdiction, they address not only the crimes defined in the Organic Integral Penal Code, but also behavior that disrupt peaceful coexistence. These include disrespect for parents, disobedience, infidelity, misbehavior while drunk, and irresponsibility at work.

Punishments within the Kichwa territory follow a ritualistic process that includes advance warning to the potential offender. They may receive advice or witness the punishment of someone who committed similar actions before. Ancestral investigation plays a decisive role, where the offender is caught in flagrante delicto, engaging in crimes such as robbery, theft, violence against women, cattle rustling, infidelity, and other offenses, leading to the punishment being carried out with complete conviction. Otherwise, in more discreet cases, community leaders coordinate to administer punishment to a member of their nationality on a specified day and time. They take measures to ensure the presence of members of the police, political chief, and political lieutenant as overseers. This oversight committee is to guarantee that the punishment is aligned with indigenous customs, and that there is no violation of constitutional and human rights.

When this correction is carried out within the family, the parents or in-laws, if relevant, request one of the regular visitors, often the godparents or grandparents, to administer the punishment to the offender. The chosen person is asked to spend the night at the family's home so that by four or five in the morning, they can proceed with the correction. The selection of this early hour serves two main purposes. One of them is to adhere to the ritualistic aspect of the custom, and because it is a time when people are typically resting or asleep, reducing the likelihood of the offender evading the punishment.

In Amazonian Kichwa punishment rituals, ancestral elements are employed to protect against evil spirits that may influence individuals to engage in impure acts contrary to the community's values. These elements, such as chili bell pepper, guayusa branches, tobacco, and nettle, are medicinal plants that grow within their territory. Through their application, the community aims to correct the behaviors of its members, preserving harmony and social peace. This practice also plays a crucial role in the formation of individuals, reminding even adults to avoid unlawful behaviors like cattle rustling, infidelity, violence, disobedience, and irresponsibility. Those who commit such acts are publicly punished using these elements, serving as a warning for others. This Amazonian kichwa public punishment aims to discourage illegal or immoral behavior, ensuring that community members adhere to the values defended by their customs.

Several authors argue that the administration of indigenous justice raises concerns about personal integrity. Guzmán (2007) highlights the fundamental human right to personal integrity, derived from the respect for life and a healthy development of an individual. In this context, the right to integrity could be seen as a violation when considering practices such as applying chili bell pepper to the offender's eyes, which causes pain and intense itching for about an hour, or using whipping, nettling, and tobacco, the latter of which can induce vomiting. However, from the kichwa peoples' perspective, these practices are viewed as a form of correction rather than inflicting harm. The goal is not to cause injuries but to eliminate the negative behaviors of the punished individual and guide them towards becoming a better person.

The purpose of these punishments is not to assault, cause harm, or inflict suffering. Instead, they aim to correct immoral, unlawful, or unacceptable behaviors exhibited by community members. Within their community, they administer their own laws to maintain positive relations according to their customs and traditions. It is important to highlight that the Ecuadorian constitution acknowledges the application of customary law within the territories of indigenous nationalities. However, it also stipulates that these practices must not violate fundamental rights.

The La Cocha case (2014) provides a legal example on the conflict between indigenous jurisdiction and ordinary jurisdiction. In this case, the Constitutional Court of Ecuador resolved an extraordinary action for protection filed against a decision of the indigenous justice of the Panzaleo people, a subgroup of the Kichwa nationality in the province of Cotopaxi. Through sentence No. 113-14-SEP-CC, the Court clarified that the ordinary justice system holds exclusive jurisdiction over determining criminal actions that directly affect the right to life, including those involving individuals from indigenous communities, peoples, and nationalities. However, individuals from these groups are allowed administering indigenous justice in conflicts occurring within their territories and among their members, particularly when such conflicts impact community values. This court sentence established a balance between the roles of the ordinary justice system and indigenous justice in the context of the Ecuadorian legal framework.

The behavioral corrections conducted by the Kichwa nationality in the province of Orellana are not viewed as an unlawful transgression on personal integrity. This is because these corrections are rooted in customary law and are not intended to cause unjustified suffering among members of the indigenous community. The punishments employed are not designed to intimidate, assault, or inflict pain based on discrimination. Moreover, they do not seek to strip the punished individual of their personality. On the contrary, the purpose of these corrections is to guide the behavior of individuals who have committed immoral or culturally unacceptable acts within their territory. Therefore, these corrective measures cannot be classified as torture or as inhuman, cruel, or degrading treatment. Rather, the objective is to guide the individual towards the correct course of action based on the kichwa's worldview, cultural beliefs, and traditions. These practices align with their cultural values and aim to maintain community standards and harmony.

According to Mrs. Antonia Grefa (personal communication, July 30, 2022), indigenous punishments are conducted publicly in front of others, whether they are family members or those affected by the offense. This public demonstration serves as a means for fellow members of the nationality to witness the consequences of certain actions, thereby understanding that similar behavior will result in similar punishment. The presence of various authorities such as

community members, the National Police, the political chief, and political lieutenant of the area, is intended to ensure the safety and rights of the punished offender during the indigenous punishment process. These authorities serve as overseers of the Kichwa nationality’s procedures in Orellana province, tasked with guaranteeing the respect for their own rights without violating fundamental constitutional rights or international human rights standards.

Some scholars and discourses argue that there is inherent suffering when indigenous justice is applied among its members, as it involves causing pain and discomfort. This perspective contrasts with the beliefs of indigenous people, particularly the Kichwa indigenous community of the Ecuadorian Amazon. According to the Kichwa nationality’s idiosyncrasy, suffering is not the primary aim of these corrective measures. Instead, it is viewed as a form of correction and a benefit conferred upon one of its members and the community as a whole. By applying these punishments, the offender is prevented from causing further harm or loss to other members of the community.

2. Methodology

The unit of analysis is situated in Orellana province, Ecuador, specifically within the Kichwa community. The study aimed to examine the customary procedures used within this indigenous community and their relation to the right to personal integrity of those subjected to these procedures. To achieve this, a mixed qualitative-quantitative approach was employed to address the legal issue at hand. The study benefited from inductive, analytical legal, historical-logical legal, and descriptive legal methods. For the outlined objectives, the research was characterized as pure, dogmatic, historical legal, field, and descriptive, employing a non-experimental design. The studied population included authorities, indigenous leaders, and judges of constitutional guarantees, to whom we administered a questionnaire. The gathered information underwent processing through mathematical techniques such as data tabulation, computer-based methods for information processing, and logical techniques for the interpretation and discussion of the results.

3. Results and Discussion

Question 1. Are the customary procedures applied in the resolution of conflicts of the Kichwa nationality part of the cultural identity?

Table 1: Cultural identity

Cultural identity	Kichwa authorities and leaders of the province of Orellana		Judges of the province of Orellana	
		%		%
Yes	25	100%	5	100%
No	0	0%	0	0%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - From the survey results, it is clear that all respondents (100%) agreed on that the customary procedures used in resolving conflicts within the Kichwa nationality are indeed integral to their cultural identity. None of the respondents (0%) indicated otherwise.

Considering the collective and individual nature of the right to cultural identity for the Kichwa nationality in the province of Orellana, it is rooted in their values, traditions, beliefs, ways of life, and behavior. These aspects create a sense of belonging and voluntary acceptance among the community, as they have been practicing customary procedures by the generations of their parents, grandparents, and great-grandparents, defining their identity as the Kichwa nationality. The survey showed that centuries ago, there were no laws governing the behavior of the Kichwa population. As a result, Kichwa nationality developed their own methods of dealing with those who committed reprehensible acts according to their beliefs. They view their indigenous law as more effective than ordinary justice because those who undergo punishment do not tend to reoffend. This approach contributes to maintain and restore harmony within the nationality. Moreover, Article 21 of the Constitution of the Republic of Ecuador affirms the right of individuals to develop and preserve their cultural identity. This includes both tangible and intangible aspects, which are considered part of their historical heritage passed down from generation to generation.

In the same vein, it is crucial to consider Article 27 of the Universal Declaration of Human Rights, which affirms that individuals have the right to freely participate in cultural life of their community. We agree on the sentiments expressed by the respondents, as cultural identity encompasses the right of every individual to live according to their customs, free from discrimination, and with equal standing alongside other inherent rights to all human beings.

Question 2. Do the customary procedures apply within the indigenous justice system cause injuries to the offender?

Table 2: Injuries to the offender

Injuries to the offender	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	4	16%	2	40%
No	21	84%	3	60%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. – From the survey results, 28% of respondents indicated that the customary procedures of indigenous justice do cause injury to the offender, while 72% stated they do not. However, it is important to note that the application of these customary procedures does not result in severe injuries that render the individual handicapped. On the contrary, proponents argue that the purpose is to correct the offender's behavior and guide them to become better individuals. The elements used in these procedures are natural and medicinal plants. While they may cause discomfort, it is emphasized that this discomfort typically lasts no more than an

hour. This period of time serves as an opportunity for the punished offender to engage in self-reflection and correct their behavior.

Moreover, the Article 171 of the Constitution of the Republic of Ecuador allows indigenous peoples and nationalities to perform their jurisdictional functions in accordance with their traditions and rights. While the use of chili pepper, tobacco, guayusa branches, and nettle may appear extreme to someone, it is an integral part of their cultural identity that has been practiced for generations.

Question 3. Do the customary procedures applied within the indigenous justice system have a psychological effect on the person being punished?

Table 3: Psychological impact on the person being punished

Psychological impact on the person being punished	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	3	12%	2	40%
No	22	88%	3	60%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. – According to the survey results, 26% of respondents stated that the customary procedures applied within the indigenous justice system do have a psychological effect on the person being punished. In contrast, 74% of respondents indicated that these procedures do not have a psychological effect on the person being punished.

Psychological conditions are related to the temporary or permanent alteration of emotions and behavior in an individual, particularly an indigenous person, when undergoing punishment without the necessity of physical force. The United Nations Organization (UNO) acknowledges that indigenous people possess a distinct and unique worldview, which might appear drastic or unfamiliar to others. However, this practice serves as a reaffirmation of their cultural identity and aims to correct the behavior of one of their members. Before and during the punishment, they engage in reproach and provide advice in their own Kichwa language, encouraging the person being punished to positively regulate their misbehavior.

The purpose of indigenous punishment is not to have a psychological impact; rather, similar to ordinary justice systems, the objective is to attain the social rehabilitation of the punished individual. The aim is for them to recognize their misconduct and to reflect on their actions. It is believed that the punishment carried out will even help the offender expel negative energies that may incite further misconduct.

Question 4. Do the customary procedures applied within the indigenous justice system affect the morale of the punished person?

Table 4: Moral affectation of the punished person

Moral affectation of the punished person	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	7	28%	3	60%
No	18	72%	2	40%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - Out of all the respondents, 44% believe that the traditional practices of indigenous justice hold a moral weight in the punishment process, whereas the remaining 56% argue that these customary procedures do not carry a moral impact on the individual being punished.

According to Article 5 of the American Convention on Human Rights, individuals are entitled to respect for their physical, psychological, and moral integrity. The term “moral integrity” refers to a collection of attitudes, values, and behaviors within a specific group of people that are considered either good or bad, correct or incorrect, based on their culture and customs. For instance, members of the Kichwa nationality in the province of Orellana are raised from childhood with a clear understanding of acceptable and unacceptable behavior. This upbringing includes witnessing the consequences of certain actions through the punishments meted out to others. The intention behind this practice is to serve as a deterrent, encouraging individuals to abstain from behaviors that lead to punishment.

Thus, Indigenous justice is intrinsic to the conscience and social organization of its inhabitants, making it a natural part of their way of life. This is why it is not seen as causing moral harm, but rather as a mechanism that encourages repentance and reflection. We agree with the majority of respondents in this regard, as this custom is not distant to the indigenous people of the Kichwa nationality in the province of Orellana. By contrast, it is an integral part of their cultural heritage. This form of justice is not governed by formal regulations; rather, it relies on the collective memory of the community’s leaders and members as a guiding principle.

Question 5. Are the customary procedures for conflict resolution considered as either penalties, healing of the body and soul or corrections when applied by the Kichwa nationality?

Table 5: Characteristics of the customary procedure in the Kichwa nationality.

Characteristics of the customary procedure in the Kichwa nationality.	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Penalties	8	32%	1	20%
Penalties	1	4%	0	0%
Healing of body and soul	14	56%	4	80%
Corrections	2	8%	0	0%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - Out of 100% of respondents, 26% answered that the customary procedures applied in indigenous justice are considered punishments, 4% indicated they are sanctions, 68% stated they are for healing of the body and soul, while 8% considered they are corrections.

The customary procedure for resolving conflicts within their community may have varying labels, often called as punishment or correction. However, for its members, these terms hold similarities, as they aim to restore harmony among community members. This is achieved through a combination of punitive measures and guidance to rectify the actions of the offender being disciplined. Among the majority of respondents who view it as punishment, the belief is rooted in its ancestral role as a response to negative actions. On the other hand, those who perceive it as sanctions see it as a means to repair the harm done to the community. Meanwhile, those who classify it as corrections point out that it addresses not only serious offenses like theft but also behaviors deemed inappropriate within family and social contexts, such as disobedience to parents or elders. Hence, we agree with the respondents who state that they are corrections, since the purpose is to correct and at the same time the wise elders are in charge of advising and touching the feelings of their members so that they act in harmony with their indigenous companions. Lastly, those who view it as a healing process see the punishment as a way to cleanse the soul and expel of negative energies.

Question 6. Are the customary procedures applied by Kichwa nationality for conflict resolution established in the Ecuadorian legislation?

Table 6: Legality of customary procedures

Legality of customary procedures	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	20	80%	4	80%
No	5	20%	1	20%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - From the total respondents, 80% of those surveyed people mentioned that the customary practices administered in the indigenous justice are governed by some form of regulation. On the other hand, 20% of the respondents believed they are not governed by any specific norm. Respondents highlighted the legal recognition of these procedures in national and international norms, notably in Article 57 No. 10 and 171 of the Constitution of the Republic of Ecuador, Article 343 of the Organic Code of the Judiciary, and Articles 8, 9, and 10 of Convention 169 on Indigenous and Tribal Peoples in Independent Countries. However, due to the diverse communes and communities that have the right to apply indigenous justice for resolving internal conflicts, particularly within the Kichwa nationality of the Ecuadorian Amazon, there is no single document where the specific customary procedures

for each case are recorded. Therefore, these procedures vary according to the customs of each distinct group within the community.

It is crucial to note that these customary procedures must be aligned with the Constitution and laws of Ecuador. The procedures are designed to uphold human rights and avoid discrimination against any individual, serving as vital components of indigenous justice. These methods serve as crucial tools for resolving conflicts in a legitimate, culturally relevant, and effective manner.

Question 7. Are the customary procedures applied within the indigenous justice system in accordance with the provisions of the Constitution of the Republic of Ecuador?

Table 7: Constitutional provisions

Constitutional provisions	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	21	84%	5	100%
No	4	16%	0	0%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. – 92% of the respondents, out of the total surveyed answered that the customary procedures applied within the indigenous justice system align with the Constitution, while 8% disagreed on. The Ecuadorian Constitution of 2008 recognizes and ensures the administration of indigenous justice, allowing it to be based on the customs and traditions of each indigenous community. This recognition has roots in the Magna Carta of 1998, where Article 191 attributed the right to indigenous peoples to exercise their own justice. Additionally, the current Constitution of Ecuador guarantees women’s participation in ancestral procedures too.

Furthermore, the Constitution recognizes and protects the right of indigenous communities, peoples, and nationalities to establish, develop, apply, and practice their own customary rights, as long as they do not violate constitutional rights. Notably, these customary procedures must be intercultural, ensuring that they respect and value the diverse cultures and worldviews of Ecuador. Additionally, they should not discriminate on the basis of gender, ethnicity, religion, sexual orientation, or any other status. It is also essential that these procedures respect fundamental human rights, such as the right to life, liberty, equality, and due process.

Question 8. May the customary procedures applied within the indigenous justice system be considered inhuman and cruel treatment?

Table 8: Inhuman and cruel treatment

Inhuman and cruel treatment	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	2	8%	1	20%
No	23	92%	4	80%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - Out of the total respondents, 14% displayed that those customary procedures within the indigenous justice system could be considered as inhumane and cruel treatment, while 86% disagreed on. According to articles 5 and 7 of the International Covenant on Civil and Political Rights, inhumane and cruel treatment includes intentional acts that cause mental suffering, humiliation, fear, or degradation. These articles specifically state that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. It should be pointed out that the purpose of indigenous justice within the Kichwa nationality is to correct, cleanse, and purify the offender. This process often involves the use of materials such as chili pepper, tobacco, guayusa branches, and nettle. Therefore, within their ancestral procedures to correct errors, the community does not perceive these actions as inhumane or cruel treatment.

According to the Kichwa nationality, the customary procedures used to resolve their internal conflicts are not seen as inhumane acts; instead, they are integral to their cultural identity. In fact, they coordinate with various authorities such as the police, political chief, political lieutenant, lawyers, and representatives of the prosecutor’s office to prevent human rights violations. Together, they monitor to ensure that the rights of the offender are not violated. The presence of these leaders ensures that their own laws are applied without compromising the personal integrity of the offender.

Question 9. Can customary procedures be considered acts of torture?

Tabla 9: Acts of torture				
Acts of torture	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	3	12%	1	20%
No	22	88%	4	80%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - Out of the total respondents, 16% suggested that customary procedures might be viewed as acts of torture, while 84% disagreed on this notion. Mainly, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment defines torture as an act that intentionally inflicts severe pain or suffering, whether physical or mental. However, according to the perspectives of the Kichwa indigenous nationality, their intent is not to inflict torture. Instead, the purpose of applying indigenous justice is correction by utilizing medicinal elements from the local area. They believe that what truly constitutes torture is the deprivation of liberty.

As per the Kichwa community members, they employ a method of addressing community issues by appealing to the conscience of the offender facing punishment, aiming to guide them willingly towards righteous behavior. Also, it's essential to note that before the punishment is administered, the offender is warned about the potential consequences should their actions or anti-moral acts disrupt the peaceful coexistence within the community.

Question 10. Are women involved in customary procedures?

Table 10: Women's participation

Women's participation	Kichwa authorities and leaders of the province of Orellana	%	Judges of the province of Orellana	%
Yes	25	100%	5	100%
No	0	0%	0	0%
TOTAL	25	100%	5	100%

Source: Questionnaire addressed to leaders and inhabitants of the Ecuadorian Kichwa nationality.

Author: The researchers (2024)

DISCUSSION OF RESULTS. - The total number of the consulted respondents indicated that women actively participate in decision-making within the indigenous justice system. This is aligned with the current Ecuadorian constitution, which emphasizes that indigenous communities, peoples, and nationalities must perform their jurisdictional functions with the guaranteed participation and decision-making of women. Specifically, within the Kichwa nationality from Orellana province, the involvement of women in decision-making is significant. Year after year, gender equity is being strengthened, allowing women to play an active role in the process. Women in this community, not only have the power to correct, but also, they are considered highly capable of providing advice. They are skilled in using the right words to explain the reasons for the punishment and to urge the offender not to repeat the same crimes or misbehaviours that would warrant a stricter penalty.

Historically, indigenous women have been excluded from decision-making processes, including conflict resolution; nonetheless, their role is crucial to achieve lasting and stable peace. Particularly, indigenous women have a deep knowledge of their cultures, worldview, and traditional justice systems, which gives them a unique perspective in addressing conflicts. These women are often involved in conflict resolution at the family and community level that allows them to identify and address problems early on. The earlier prevention of these issues, the better they can stop them from spreading to higher levels.

4. Conclusions

According to the analysis of doctrine and law, personal integrity stands as a fundamental element of human dignity. It encompasses physical, emotional, and cognitive aspects, reflecting the skills and abilities unique to each individual. In a broader sense, the customary procedures of indigenous justice are recognized within both national and international legal systems. Therefore, the ancestral execution practiced within the Kichwa nationality is not only culturally significant

but also has a solid legal foundation. These customs, practices, traditions, beliefs, and rituals have been passed down through generations, forming a crucial part of their cultural identity. This form of justice within indigenous territories has played a vital role in preserving harmony, upholding good traditions, and maintaining the values practiced by their ancestors over time.

The customary procedures within the Kichwa nationality are administered by the leaders, authorities, parents, or the eldest and most knowledgeable members of a family, whether they be men or women. These procedures are designed to correct undesirable habits and misbehaviors that would constitute crimes and transgressions according to positive law. This investigation takes place where the indigenous justice system addresses and corrects behaviors such as theft, robbery, domestic violence, infidelity, idleness, irresponsibility, and other attitudes that go against good practices. One distinguishing feature of the customary procedure is its public nature. It typically begins with advice and warnings to the offender. If the individual does not amend their misbehavior, the procedure advances to punishment, which may involve the use of elements like chili pepper, tobacco, guayusa branches, and purple nettle. Additionally, in certain cases, community members may organize public meetings to collectively decide on the voluntary correction of those they deem to be behaving inappropriately within their ancestral territory.

As per Western thought, the use of nettle, chili, tobacco, and guayusa branches as punishment can result in skin irritations, pain, inflammations, and even pathologies. From this perspective, these effects would be considered harmful and could be seen as inducing the crime itself, warranting punishment for those who caused them. Nonetheless, within the worldview of the indigenous Kichwa, these plants such as nettle, chili, tobacco, and guayusa branches hold a different significance. They are viewed as medicinal plants that, when used in a ritual, are believed to ward off evil spirits. These spirits are thought to influence the indigenous offender to commit impure acts, which are considered to be outside the good customs and traditions of the community. From this perspective, the customary procedures applied in conflict resolution, do not violate the right to personal integrity of the punished offender; but rather, they are seen as a means to cleanse and purify, addressing the spiritual influences believed to lead to improper behavior.

To prevent misunderstandings and unfounded opinions, authorities of both indigenous and ordinary justice systems should hold meetings to establish a clear procedure for the application of indigenous justice. These meetings should take into account the diverse customs, traditions, and practices of the various peoples and nationalities of Ecuador.

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